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Title: The Visible Minority Experience of Marginalization in the Canadian Labour Force - A Proposal to the Ontario Government to Reintroduce Employment Equity Legislation in Ontario

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Introduction

Visible minorities still face barriers which impede their success in the workforce. The most powerful force preventing them from entering the labour market and climbing the corporate ladder is systemic discrimination. This essay seeks to shed some light on the damaging effects of systemic discrimination through the eyes of visible minorities. It contends that the existence of federal Employment Equity legislation has improved the representation of visible minorities in the labour force. Therefore, the essay proposes that Employment Equity legislation be reintroduced in Ontario in an effort to do the same.

Labour Market Discrimination

There are two main types of discrimination: direct discrimination and systemic discrimination. Direct discrimination involves intentional behaviour. Individuals are treated in a negative manner based on stereotypes about the group to which such persons belong. This form of discrimination is more blatant than systemic discrimination and therefore, it is easier to identify. Systemic discrimination occurs through the operation of established employment procedures that discriminate against one or more groups (Weiner 1995: 79-81). This form of discrimination is very powerful and damaging as it is often very difficult to detect. Employment Equity legislation seeks to confront the problems of both direct and systemic discrimination.

Theories of Discrimination in the Labour Market

Labour market discrimination arises when equally qualified individuals with similar productive capacities are treated differently solely on the basis of the demographic groups to which they belong. Racial discrimination can manifest itself in several ways.

First, racialized groups may be denied employment opportunities. Second, if hired, they could experience wage discrimination and/or occupational discrimination. Wage discrimination is said to exist when visible minorities with the same experience, occupying identical positions, and working under precisely the same conditions as non-racialized groups receive lower remuneration than the latter group. Occupational discrimination occurs when employers place visible minorities with similar levels of education and productive capacities as non-racialized groups into occupations which are low paid and/or provide these visible minorities with little responsibility (Ehrenberg, Smith & Chaykowski 2004: 372).

Regardless of the form of racial discrimination that takes place, the effects can be devastating to racialized groups and negatively impact their behaviours. If visible minorities feel that racial discrimination is pervasive in the workforce, that may influence their decision to pursue higher education, participate in work training programs and stay in the labour market on a continuous basis. Visible minorities who are confronted by discrimination are less inclined to make these types of human capital investments (Blau, Ferber & Winkler 1998: 186).

Economists have advanced several theories to explain labour market discrimination. These include Employer Discrimination, Employee Discrimination, Customer Discrimination, Statistical Discrimination and Human Capital Theory. Each of these theories will now be explored.

Employer Discrimination

An employer with prejudicial tastes against racialized groups will consider there to be non-pecuniary costs associated with hiring visible minorities. Thus, for this employer the cost of hiring a member of a non-racialized group will only be his/her wage, while the cost of hiring a visible minority will be his/her wage plus the discrimination factor. As such, this employer will justify paying the visible minority it hires at a lower wage than its non-racialized employees (Blau, Ferber & Winkler 1998: 201).

Employee Discrimination

Non-racialized employees who have discriminatory attitudes towards visible minorities believe that there are non-pecuniary costs of working alongside these groups of persons. Therefore, in order for these employees to be induced into working with visible minorities, they must receive higher remuneration. The authors of *The Economics of Women, Men and Work* make a rather troubling comparison when they state that, “[t]his is analogous to the compensating wage differential that economists expect workers to be offered for unpleasant or unsafe working conditions (Blau, Ferber & Winkler 1998: 203). It appears then that some employers reward prejudiced attitudes of their non-racialized employees by paying them higher wages.

Customer Discrimination

Consumers who are prejudiced against racialized groups are of the opinion that there is a non-pecuniary cost to buying goods and services from racialized groups. Hence, for visible minorities to sell as much as non-racialized groups, they would be compelled to charge lower prices. Due to this form of discrimination, visible minorities who are equally productive as non-racialized employees will be less productive in terms of revenue brought in. Therefore,

employers will consider visible minorities to be less desirable and, thus, pay them lower wages (Blau, Ferber & Winkler 1998: 205).

Statistical Discrimination

Employers are often required to make very difficult and important decisions about hiring employees. During the selection process, even after carefully assessing the applicants' qualifications, employers are never certain how they will perform after being hired. Recruitment and selection errors can prove to be quite costly to firms (Schwind, Das & Wagar 2002: 191). Due to these uncertainties, employers frequently rely on information related to productivity and job stability when faced with difficult hiring decisions. Where employers believe that visible minorities are less productive or stable than non-racialized employees they may engage in statistical discrimination. This form of discrimination arises when employers assess individual visible minorities based on their ideas about averages concerning visible minorities as a group. Statistical discrimination can result in visible minorities being paid lower wages, and being passed up for hiring or promotions (Blau, Ferber & Winkler 1998: 207).

Human Capital Theory

Human Capital Theory seeks to explain racial discrimination by assessing the characteristics of different groups of people. It is based on the premise that an individual's investment in education, training and experience will ultimately determine his/her return for a unit of labour. Proponents of this theory opine that racial discrimination in employment can be attributed to some visible minority group members' failure to attain required levels of human capital. Therefore, such individuals are confined to low-level and low-income jobs as a result of discriminatory practices in the labour market as well as lower levels of human capital investments. In considering this theory it is imperative to be cognizant of the effect of labour market discrimination on its victims. For instance, if visible minorities feel that they are going to be discriminated against in the labour market, they may be less inclined to invest in their human capital as they expect little in terms of returns (Agocs & Jain 2001: 7). Or, because of systemic discrimination, they may obtain less education or training.

Persistent Disparity between Racialized and Non-Racialized Groups

The Canadian Race Relations Foundation released a report in 2000, which examined whether Aboriginal persons and visible minorities had equity in Canadian society specifically with respect to education, employment and income. The study found that there were still barriers which impeded the success

of visible minorities in the labour force. Visible minorities in Canada are disadvantaged in terms of employment and income relative to non-racialized groups. Detailed findings of this report will now be explored.

Education

In relation to education, visible minorities on a whole were better educated than non-racialized groups (de Silva 1997). Among those not completing high school, Canadian-born visible minorities were the least inclined to do so (Lock Kunz, Milan & Schetagne 2000: 10). There was also a greater likelihood for visible minorities to attend a post-secondary institution on a full-time basis. In 1996, more than two-thirds of visible minorities between the ages of 18 and 20 were enrolled in a post-secondary institution while only 46% of non-racialized Canadians were attending such institutions (Lock Kunz, Milan & Schetagne 2000: 10). Both foreign-born and Canadian visible minorities had a greater representation among university graduates than did non-racialized groups (Lock Kunz, Milan & Schetagne 2000: 17). There were twice as many visible minority university graduates than Whites (Lock Kunz, Milan & Schetagne 2000: 10). Visible minorities have had above-average levels of education for over two decades (Silberman Abella 1984: 84). One would think that the high levels of education among visible minorities would translate in to very favourable employment opportunities. However, such is not the case.

Employment

Studies have found that persons with higher education are more likely to be employed and to receive greater remuneration (Lock Kunz, Milan & Schetagne 2000: 10). Also, an individual's educational level is generally associated with his or her employability and occupational status (Lock Kunz, Milan & Schetagne 2000: 10). Unfortunately, this has not been the reality for many visible minorities in Canada. Racial minorities encounter considerable difficulty in securing employment in spite of their high levels of education. The reverse is true for non-racialized groups. Despite lower levels of educational attainment, these groups have done exceptionally well in terms of employment. In 1996, they had the highest employment rate as approximately three quarters of the adult population had work.

This is in contrast to visible minorities as only two thirds were employed. On both a regional and a national basis, non-racialized groups had the lowest level of unemployment in 1991 and 1996. In 1996, 12% of foreign-born visible minorities with college level education were unemployed. Conversely, Canadian-born visible minorities and non-racialized groups had unemployment rates between 7% and 8%. With respect to university level

education, merely 4% of Canadian-born racialized groups were unemployed while more than double of foreign-born visible minorities were unemployed at a rate of 10%. This discrepancy can partly be attributed to many Canadian employers' failure to recognize foreign educational credentials.

However, in 1996, visible minorities who completed their post-secondary education in Canada still had lower employment rates than non-racialized groups. The 1997 National Graduate Survey found that two years post-graduation, visible minorities with degrees in education, social sciences, agricultural and biological sciences and health, nursing and applied sciences had an employment rate of 78.4%, 71.9%, 67.5% and 78.7% respectively. In contrast, non-racialized groups who have graduated in the same fields have employment rates of 88.8%, 82.9%, 77% and 88.9%. Therefore, the disparity in employment rates between racialized and non-racialized groups ranges between 9.5% for agricultural and biological sciences graduates and 11% for social science graduates (Lock Kunz, Milan & Schetagne 2000: 20).

Occupation

It is important to consider the types of occupations held by racialized groups. Both Canadian-born visible minorities and non-racialized groups had representation in professional jobs. Only 16% of racial minorities held such positions and 22% of non-racialized groups did the same. While on its face it appears that visible minorities and non-racialized groups are equally as likely to hold senior or middle management positions, upon further analysis it becomes clear that there was a major distinction in this occupational category. At least half of the managerial positions held by visible minorities were ones in which they were self-employed. On the other hand, approximately two-thirds of managerial positions held by non-racialized groups were ones in which they were employed by others (Lock Kunz, Milan & Schetagne 2000: 20).

There appears to be a distinction between the relationship of education to occupational status for visible minorities and non-racialized groups. For those with a university degree, six out of 10 members of non-racialized groups occupied managerial or professional positions. This is in contrast to merely four out of 10 foreign-born visible minorities and five out of 10 Canadian born-visible minorities (Lock Kunz, Milan & Schetagne 2000: 20).

Income

Due to the fact that a high level of importance is placed on education in an increasingly knowledge-based economy, there is an expectation that higher levels of education will lead to higher income and occupational status. However, this has not been the reality for many racialized groups within Canadian society

despite being better educated on a whole. In 1996, there was a much greater likelihood for non-racialized groups to be in the highest income quintile than foreign-born visible minorities. One in five members of non-racialized groups were in the top 20% of income earners while just one in eight foreign-born visible minorities were in this category. In addition, there was an over-representation of foreign-born visible minorities within the lowest income quintile. Specifically, three out of 10 were among the bottom 20% of income earners (Lock Kunz, Milan & Schetagne 2000: 20-21).

For racialized groups, higher education did not necessarily translate into higher economic returns. Not surprisingly, this was not the case for non-racialized groups; that is; higher education did not translate into higher economic returns. Twenty-three percent of university educated, foreign-born visible minorities were in the bottom income quintile compared to only 15% of non-racialized group members.

Despite precisely the same educational levels, visible minorities lag behind their non-racialized counterparts in terms of employment income. Among the Canadian born, with university education, approximately 38% of non-racialized group members were in the top income quintile. This is in contrast to 29% of Canadian-born visible minorities and 21% of foreign born visible minorities. Foreign-born non-racialized group members are equally as likely to be in the top income quintile at 38%.

Based on these statistics, it is apparent that non-racialized groups, regardless of place of birth, are twice as likely as foreign-born visible minorities to be among the top 20% of income earners. Additionally, despite being born in Canada, visible minorities are less likely than their Canadian-born, non-racialized counterparts to be in the top 20% of income earners (Lock Kunz, Milan & Schetagne 2000: 21). This paradox can be largely explained by discriminatory practices within the Canadian labour force.

Discrimination Permeating All Stages of the Employment Process

It is important to note that discrimination can take place at different stages of the employment process. There can be entry-level job barriers and/or post employment practices (Jain 1985: 2). Each of these will be discussed in turn.

Entry-Level Job Barriers

A job barrier is said to exist when there is a requirement which has no relationship to actual or potential performance or success on the job. A few

examples of job barriers include: recruitment, educational requirements, tests and interviews.

Recruitment procedures can often discriminate against racialized groups. Generally, organizations utilize established channels of recruitment. If an informal method of recruitment is used such as word-of-mouth, only the friends and relatives of the firm's employees will likely secure employment.

Due to the fact that many firms have traditionally hired few visible minorities, the latter will probably not be well-represented in terms of new hires. Also, there are some organizations which have policies in which they must recruit from within prior to searching beyond the organizations' perimeters. This practice could adversely affect visible minorities due to the same reason as noted above (Jain 1985: 2) Educational qualifications can act as barriers to visible minorities attaining employment. This can be attributed to the failure of some Canadian employers to recognize educational credentials from other countries (Jain 1985: 3).

Tests can also create obstacles to visible minorities securing employment. Some standardized tests may have cultural barriers thereby adversely affecting racialized groups (Jain 1985: 3).

Interviews are used by many organizations as a vehicle to pre-screen potential candidates. This process can be laden by discrimination as the interviewer, through personal bias, prejudice or stereotyping can eliminate a disproportionate amount of visible minorities. Thus, the effect of all these entry-level job barriers is to restrict visible minorities' opportunities within the Canadian labour force (Jain 1985: 3).

Henry and Gunzberg conducted a study in 1984 in an effort to determine who secures entry-level employment in Toronto between racialized and non-racialized groups. Black and White job seekers with equal qualifications had to apply to positions advertised in the newspaper. The study revealed that White job applicants were three times as likely to receive offers as the Black applicants. In addition, job seekers with accents were more likely to be screened out when they called to inquire about jobs posted in the newspaper. This was especially true for job seekers from South Asia and the Caribbean (Henry 1994: 103). Employment agencies can contribute to labour market discrimination by colluding with employers not to hire people from certain ethno-cultural or racialized groups. The Canadian Civil Liberties Association conducted a telephone survey in 1991 and discovered that most employment agencies surveyed were willing to carry out discriminatory job requests. Only three out of the 15 agencies surveyed were emphatically against discriminatory job orders. The remaining twelve agencies were quite willing to comply with such orders. Some of the agencies' responses to discriminatory job orders were as follows:

- “It is discrimination but it can be done discretely without anyone knowing. No problem with that” (Henry 1994:110).
- “That’s no problem, it’s between you and me. I don’t tell anyone; you don’t tell anyone” (Henry 1994:110).
- “You are paying to see the people you want to see” (Henry 1994:110).
- “Absolutely – definitely...that request is pretty standard here” (Henry 1994:110).
- “That’s not a problem...appearance means a lot, whether it’s colour, or overweight people” (Henry 1994:110). Unfortunately, discriminatory practices do not end at the pre-employment stage. Such practices often continue into the post-employment phase.

Post-Employment Practices

Once an individual has been hired, there is ample opportunity for an employer to discriminate. Discrimination can manifest itself in many forms – through poor performance evaluations, failure to promote and/or increase remuneration (Jain 1985:4). Henry and Ginzberg repeated their study in 1991 to determine who gets work in Toronto among racialized and non-racialized groups. The results from this study were different from the previous study in that Black and White job applicants received the same number of offers. There are two factors which may have had influenced this result. First, there was a tight labour market at the time that the study was conducted. Second, employers were more willing to hire applicants from racialized groups for entry-level positions (Henry 1994: 103). While visible minorities are finding it easier to secure employment, once employed, they realize they are confronted with the glass ceiling. This barrier impedes their ability to climb the corporate ladder despite having the necessary qualifications. A major hindrance to visible minorities obtaining promotions is employers’ general reluctance to alter traditional policies and practices. Many employers are of the opinion that employees have to “pay their dues” before they are able to move through the ranks.

A perfect example of this is the banking industry, which tends to hire significant numbers of visible minorities for entry-level positions. It takes approximately 20 years for an employee to move into a more senior position due to the bank’s resistance to expedite the rate of mobility (Henry 1994:110). Jain (1985) also notes that visible minority workers may be denied promotion opportunities due to restrictive promotion criteria, by placing limitations “...upon the posting and bidding arrangements for internal recruitment, by restricting [them into] lower pay job classifications and mobility clusters and by discriminatory seniority systems” (4-5).

A Potpourri of Policy Responses

There have been several provincial and federal policy responses to labour market discrimination. First, the provincial policy responses will be discussed, and then federal ones will be examined.

Provincial Responses

At the provincial level, in Ontario, there is the *Human Rights Code*, R.S.O. 1990, c. H. 19. The purpose of this Code as specifically stated in the Preamble is to ensure that a climate is created in which there is mutual respect and understanding of all persons, thereby facilitating a communal environment in which all members are full participants. With regard to employment, the s.5(1) of the Code provides that every person has the right to be treated equally and be free from discrimination resulting from his/her race, ancestry, place of origin, colour and ethnic origin. If an employer discriminates against an employee based on one of the above-mentioned prohibited grounds, the latter can file a complaint with the Human Rights Commission (*Human Rights Code*, s.32(1)).

The Commission must then investigate the complaint and determine whether there has been an infringement under the Code (*Human Rights Code*, s.33(1)). If there has been a violation and the Commission has been unable to settle the dispute, it can refer the matter to the Human Rights Tribunal of Ontario (*Human Rights Code*, s.36(1)). If one of the parties is unhappy with the decision, he/she can appeal to Divisional Court (*Human Rights Code*, s.42(1)).

It is important to note that section 14(1) of the *Human Rights Code* provides that a right is not infringed where a special program is implemented in an effort to address economic disadvantage or to facilitate equal opportunity. Thus, according to this provision Employment Equity policies are not contrary to this Code.

Another policy response to labour market discrimination in Ontario was the *Employment Equity Act*. However, as discussed in Chapter 1, this Act was repealed by the Harris government in 1995 before it had a chance to effect change.

Federal Responses

At the federal level, the policy responses to labour market discrimination have been the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 (hereinafter "the Charter"), the *Canadian Human Rights Act*, R.S. 1985, c. H-6. and the *Employment Equity Act*, 1995, c. 44.

The *Charter* guarantees certain rights and freedoms which can only be limited in exceptional circumstances (s.1). Equality is a fundamental right which is guaranteed by the *Charter*. Section 15(1) states that all persons have an equal right to the protection and benefit of the law without being discriminated against on the basis of race, colour, ethnic or national origin. The general wording of this section suggests a broad application extending into the employment domain. Section 15(2) of the *Charter* does not expressly authorize Employment Equity programs in Canada. However, such programs will not be vulnerable to attack under s.15(1) by virtue of section 15(2) (Finkelstein & MacLeod Rogers 1988: 138).

The *Canadian Human Rights Act* seeks to ensure that all people are treated equally and are able to achieve their full potential in society without discriminatory practices hindering their success (s.2). This Act identifies prohibited grounds of discrimination, some of which include: race, colour, national or ethnic origin (s.3(1)). Therefore, employers who discriminate against employees due to one of the afore-mentioned reasons will be acting in contravention of the Act. Sections 7, 8, 9, 10 are the parts of the Act which specifically deal with discriminatory practices in employment.

A discriminatory practice is described as:

1. one in which an employer either directly or indirectly refuses to hire or keep an employee (s.7);
2. an employer adversely distinguishes between employees based on a prohibited ground (s.7);
3. an employer uses application forms or publishes advertisements that indicate there is a specification or preference based on a prohibited ground (s.8);
4. an employee organization's exclusion, expulsion, suspension or segregation of members based on a prohibited ground (s.9);
5. the establishment of a policy or practice regarding recruitment, hiring, promotion, training and transfer which denies a person or the group to which he/she belongs from securing employment based on a prohibited ground (s.10).

The *Canadian Human Rights Act* also expressly states what does not constitute discrimination. Section 16(1) explains that special programs which are designed to prevent, eliminate or reduce disadvantages experienced by groups based on prohibited grounds are not discriminatory practices. Thus, Employment Equity practices are consistent with this Act.

The federal *Employment Equity Act* first came into effect in 1986 and it served two primary purposes. First, section 2 of the *Employment Equity Act* provides that

[the] Act is aimed at achieving equality in the workplace by ensuring that no one is denied employment opportunities for reasons unrelated to his/her ability. The Act is also aimed at correcting the disadvantage experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities in employment "...by giving effect to the principle that [E]mployment [E]quity means more than treating persons in the same way but also requires special measures and the accommodation of differences". [Emphasis added](s.2). The *Employment Equity Act* applies to the federal public service, Crown corporations and private sector, federally regulated firms which have more than 100 employees (s.4).

Under Part I, employers are required to:

1. give employees a questionnaire which enables them to indicate whether they belong to one of the designated groups (Cornish, Schucher & Pask 1998: 1);
2. identify jobs where the percentage of designated group members falls short of their labour market availability (Cornish, Schucher & Pask 1998: 1). Labour market availability is a term which describes "the distribution of people in the designated groups as a percentage of the total Canadian population" (Treasury Board of Canada Secretariat 2000: 24);
3. provide information regarding employment equity to their employees; consult and cooperate with employee representatives (Cornish, Schucher & Pask 1998: 1);
4. detect barriers in employment systems which may be hindering employment opportunities for designated group members (Cornish, Schucher & Pask 1998: 2);
5. create an employment equity plan which seeks to promote an equitable workplace. The plan should entail measures to eliminate employment barriers and have clear timetables and goals (Cornish, Schucher & Pask 1998: 2);
6. take all reasonable steps to put the plan into action (Cornish, Schucher & Pask 1998: 2); and
7. monitor, review and revise their plan and create an annual report regarding their employment equity statistics and activities (Cornish, Schucher & Pask 1998: 2).

Section 6 of the *Employment Equity Act* specifies certain measures which the employer is not required to take. The obligation to implement employment equity does not require an employer to: take a particular measure which would cause undue hardship to the employer; hire or promote unqualified persons; or create new positions. One of the most prevalent criticisms of employment equity

practices is that it encourages employers to hire people who are unqualified for the position in question. Thus, Section 6 is absolutely critical as it serves to silence critics of their unfounded concerns.

Part of the Human Rights Commission's mandate is to enforce obligations imposed on employers pursuant to the *Employment Equity Act*. The Commission has the power to designate any person to be an Employment Equity Review Officer. In this capacity, such a person is responsible for conducting audits on employers to ensure that they are acting in compliance with the Act. Section 35(1) lists various types of violations. This section provides that a violation is committed where a private sector employer:

- (a) fails to file an employment equity report;
- (b) fails to provide required information in the employment equity report;
- (c) knowingly provides false or misleading information in the report.

Section 36(2) places limits on the amounts of money that employers can be fined for violations under the Act. Where there has been a single violation, the monetary penalty cannot exceed \$10,000. Where there have been repeated or continuous violations, the monetary penalty cannot exceed \$50,000. It is important to note that the language of the legislation is clear. The violations and penalties pertain specifically to private sector employers.

How Employment Equity Should Work

In *C.N.R. v. Canada (Human Rights Commission)*, [1987], 1 S.C.R. 1114, the Supreme Court of Canada eloquently described the way in which an Employment Equity program should work. The bench noted that the program is designed to work in three ways:

First, by countering the cumulative effects of systemic discrimination...[Second], by placing members of the group that had previously been excluded into the heart of the workplace and by allowing them to prove ability on the job, the [E]mployment [E]quity scheme addresses the attitudinal problem of stereotyping...[Third], an [E]mployment [E]quity program helps to create what has been termed a "critical mass" of the previously excluded group in the workplace. This "critical" mass has important effects. The presence of a significant number of individuals from a targeted group eliminates the problems of "tokenism" (1143-1144).

However, Employment Equity in the federal public service has fallen short of this critical mass in various departments. This is evidenced by the Table 3 which sets out the distribution of federal public service employees by selected departments. Of the 43 departments listed, there are only five in which the percentage of visible minorities employed is equal to or greater than the labour market availability figure.

The Harsh Reality For Visible Minorities in the Federal Public Service

It is quite ironic that the federal *Employment Equity Act* does not apply to the Federal Public Service. The consequence of this has been devastating for visible minorities in this sector. Part of the mandate of the federal public service is to serve all Canadians. However, its workforce fails to reflect the rich diversity of our Canadian population. The representation of visible minorities is sadly lacking. In 1999, only one in 17 employees of the federal public service was a visible minority. The representation of visible minorities in the managerial or executive capacities is even more staggering. Merely one 1 in 33 of these positions is held by a member of a visible minority group (Treasury Board of Canada Secretariat 2000: 13).

Senator Don Oliver has been very vocal about the under-representation of visible minorities in the public service. He made a powerful statement during a recent interview when he stated, “[i]t is clear to me that Canada’s multicultural garden is a mess – choked with weeds, parched by lack of water and ruined through sheer neglect. It’s time to shed some sunlight on the issues” (Aubry 2004).

Senator Don Oliver explains that there are significant hurdles in the public sector which are hindering the advancement of visible minorities in the public sector. The largest obstacle appears to be the prevalence of systemic discrimination which permeates all levels of the public sector. The Federal Service’s Report entitled “Embracing Change in the Federal Public Service” recommended that specific targets be set for hiring visible minorities between 2000 and 2005.

To date, these targets have been missed. In spite of the fact that visible minorities account for 13.4 % of the population in Canada, they make up a mere 7.4% of the federal public service workforce. Sadly, statistics show that the percentage of new hires of visible minorities this year has declined (Aubry 2004). Wally Boxhill, a Director at the Public Service Human Resource Management Agency who tracks trends for equality in the federal government notes that there

is room for improvement in hiring visible minorities. He stated quite candidly in an interview that “our principle challenge rests with visible minorities...[on the bright side] the government continues to surpass its employment goals for other equity groups including women, aboriginal persons and persons with disabilities” (Francoli 2004: <http://www.geocities.com/Baja/7635/Federalpublicservice/IRB/pieters/anti-racismcommissioner2.html>).

Perceptions of Employment Equity

Some individuals are under the erroneous impression that because visible minorities serve to benefit from Employment Equity initiatives that they all embrace such practices. This is not necessarily the case. Some visible minorities are opposed to Employment Equity because they perceive it to be a process which produces heavy stigmatization. This stigmatization can result from some employers using the process in an inappropriate manner.

Thus, incompetent visible minorities receive position as result of corruption (McWhirter 1996: 133). Even when employers are complying with all legislative requirements for Employment Equity, non-racialized groups may feel that an excellent candidate of the wrong race is being passed up for a job opportunity for a mediocre candidate of the right race (McWhirter 1996: 147).

Such sentiments manifest themselves in the ways in which non-racialized groups treat racialized groups in the workplace. Visible minorities may become frustrated with being labeled as non-meritorious and/or as a token and, therefore, become disenchanted with Employment Equity initiatives. The attitudes of both groups breed feelings of hostility among racialized and non-racialized groups within the workforce and society at large.

While Canadian Employment Equity initiatives are distinct from American Affirmative Action programs, there are American authors who have written about the Affirmative Action debate and their positions are useful in providing insight regarding attitudes on Employment Equity.

D’Souza (1996) believes that Affirmative Action creates a paradox in that it is supposed to eradicate the historical effects of racism yet it is a process which utilizes race as a basis for hiring and promotions (429). He feels that Affirmative Action needs to be re-evaluated as the justification for it has weakened. He is of the opinion that other alternatives can be used (D’Souza & Edley 1996: 433). Petrusis (1996) believes that Affirmative Action is a failed policy. He stresses that the laws should be equal in both form and practice. He feels that Affirmative Action is essentially about quotas and preferences.

Petrulis notes that Affirmative Action is perceived as a matter of power and control and he uses the analogy of a poker game:

Proponents of [A]ffirmative [A]ction] liken their situation to a poker game in which the White male dealer has been controlling the cards so that he wins and accumulates chips. He then turns to the minority...player at the table and announces that from now on, the game will be played fairly. The White male does not offer to return any of his winnings, a fact obvious to the minorities...Continuing this analogy, [Employment Equity] is the means to force the White male dealer to give the minorities at the table chips of their own (Petrulis 1996: 380).

He then goes on to state that:

White males are not a monolithic entity. Disenfranchised, disadvantaged people come in all sizes, colours and shapes...The victims of past discrimination should be most sensitive to the possibility of causing harm to others. However, they choose not to be. Seeing the White male at the table, they rationalize the "harm" as harmless, because the victim isn't deserving of sympathy. This de-personalizes and stereotypes white males, which is necessary so that the old victims can ignore the new (Petrulis 1996: 380).

Thus, from this excerpt it is apparent that Petrulis shares Lynch's (1991) view that White males are the invisible victims of Affirmative Action practices.

Despite its long existence, he argues that Affirmative Action has had very little success. Thus, he believes that preferential treatment is not a solution. Rather than producing racial equality, he feels that Affirmative Action has exacerbated racial tensions. Petrulis stresses that those advocating for the racial diversity in the workforce should not rely on the government to be supportive of their position. Instead, they should utilize strategies which rely on self-help.

While Petrulis acknowledges that it is necessary to remove barriers which can be imposed by virtue of one's race, it is important not to create barriers for others. He feels that Affirmative Action in essence, justifies discrimination when its primary purpose was to eliminate it. Thus, he explains that Affirmative Action is being used a political tool by disadvantaged groups against others (Petrulis 1996: 385).

On the other end of the spectrum is Edley (1996), who holds the conviction that Affirmative Action should be continued. He sites several reasons for this

position. First, Affirmative Action should continue due to the prevalence of discrimination within society.

Studies have been conducted where persons who are the same age, physical appearance, speech pattern, type of dress, résumé and everything else with the exception of race, gender or national origin are asked to apply for a job. These studies indicate that discrimination undeniably exist in today's society. Second, there are personal preferences of those who have the power to make decisions with respect to who will be hired. These are subtle and subjective preferences. Third, diversity and inclusion is necessary in all facets of society. Finally, providing people with the directive that "thou shall not discriminate" is inadequate (D'Souza & Edley: 1996: 436). Due to the widespread existence of discrimination and personal preference, Affirmative Action is needed simply as a matter of practicality. Affirmative Action is an important policy as it opens the door of opportunity for those who have been historically shut out (D'Souza & Edley 1996: 436).

Myths and misconceptions regarding employment equity

Individuals' misconceptions regarding Employment Equity may cause them to be suspicious of and, ultimately, resist the implementation of such policies in the workplace. The purpose of this section is to dispel some of the myths about Employment Equity.

Myth #1: Employment Equity practices lead to hiring unqualified persons (Allan 1988:15). Those who share this view feel that extraneous considerations are taken into account by employers who use Employment Equity practices and, therefore, a person who is not necessarily the best qualified for the position will get it (Lepofsky 1994: 7). The implication is that Employment Equity leads to a reduction in standards for recruitment.

Fact #1: The purpose of Employment Equity is to remove systemic barriers from the labour force. The adoption of Employment Equity practices does not require employers to lower their recruitment standards. (Lepofsky 1994: 7) Rather, this policy seeks to ensure that qualified candidates who have previously been denied employment opportunities are given a chance to fill these positions (Allan 1988: 15). Furthermore, hiring an unqualified person for a job would be would be in contravention of the *Employment Equity Act* as section 6 expressly states employers are not obliged to hire unqualified individuals.

Myth #2: Employment Equity means job quotas (Martin 1993: 410).

In his article “Challenging Orthodoxy: A Critical Analysis of Racially –Based Job Quotas”, Martin (1993) makes a point of using the words racially based-job quotas instead of Employment Equity. He argues that the latter term has been used in effort to obfuscate and has been successful in so doing. The thrust of his article, then, is to illuminate readers by emphasizing that Employment Equity is really about job quotas which are based on race. He posits that quotas are unjustifiable as they as they are racist, immoral and anti-democratic (Martin 1993: 410). Unfortunately, this view of Employment Equity is not limited to Martin. This is evidenced by the title of the Bill that was used to repeal the *Employment Equity Act* in Ontario - *An Act to Repeal Job Quotas and To Restore Merit-Based Employment Practices in Ontario*.

Fact #2: It is regrettable that individuals often confuse American Affirmative Action with Canadian Employment Equity. In the United States, some Affirmative Action programs create hiring quotas for members of designated groups. Canadian Employment Equity initiatives neither encourage nor entail hiring quotas. They may set targets for the future representation of designated group members. Ultimately, it is true that Employment Equity policies seek to meet these targets. However, the primary focus of these policies is to eliminate systemic barriers in employment thereby increasing the representation of groups who have been historically disadvantaged. The distinction between quotas and targets needs to be emphasized. On one hand, there is a quota system which is primarily concerned with results. On the other hand, a target system is not merely result-oriented; rather, it provides greater flexibility as Employment Equity as a policy is more comprehensive than Affirmative Action (Lepofsky 1994: 4-5). In distinguishing between quotas and Employment Equity Lepofsky explains that:

In a quota system, a certain number of positions must be filled by designated group members. Quotas are qualitatively different from the mere infusion of [E]mployment [E]quity considerations in hiring decisions. On can readily have an [E]mployment [E]quity program, replete with positive measures, without adopting a hiring quota at all (1994: 6).

There are many critical elements to an effective Employment Equity program. First, employees are surveyed to determine which members of the designated groups are under-represented. Second, employers establish targets and timetables for the long-run. Third employers engage in an employment systems

review. Employers, employees and sometimes unions are involved in the process. The parties assess the diverse systems in place for recruitment, hiring, promotion and management to identify existing barriers hindering designated group members from full participation in the workplace. Aside from these key components, some Employment Equity programs have initiatives to recruit designated group members in an effort to encourage their participation in new areas. There are other Employment Equity plans which contain positive measures. Positive measures can involve targeting designated group members for specific job opportunities within an organization. Such measures can be carefully crafted to ensure that there is equitable representation of all designated group members at every level of the organization (Lepofsky 1994: 5-6). The most extreme positive measure would be the adoption of a quota system. The presence of such a system in Canada is very rare (Lepofsky 1994: 6).

Myth #3: Employment Equity constitutes reverse discrimination (Allan 1988: 16). The implication behind reverse discrimination is that racialized group members are in effect being given preference over non-racialized groups (Allan 1988: 16). This reverse discrimination “theory” presupposes that all job applicants in Canada are competing on a level playing field (Lepofsky 1994: 10). This is inaccurate.

Fact #3: The playing field is far from level. It has and continues to be tipped in favour of members of non-racialized groups. The prevalence of the under-representation of visible minorities in the Canadian workforce speaks to this issue (Lepofsky 1994: 10). Furthermore, many visible minorities have become quite intimate with labour market discrimination as their credentials are often under-valued, and they are frequently denied jobs and promotions in spite of having the requisite qualifications and experience. Employment Equity does not serve to benefit one group at the expense of another (Allan 1988: 16). The existence of Employment Equity as a policy in no way impedes non-racialized group members’ access to job opportunities (Lepofsky 1994:10). Employment Equity measures have as a primary objective to ensure the appropriate representation of visible minorities in the labour force having regard to their numbers in the population at large (Allan 1988: 16).

References

- Act to Repeal Job Quotas and To Restore Merit-Based Employment Practices in Ontario*, 1995.
- Agocs, C. and Jain, H. (2001). *Systemic Racism In Employment In Canada: Diagnosing Systemic Racism In Organizational Culture*. Toronto, ON: The Canadian Race Relations Foundation.
- Allan, J. (1988). *Employment Equity: How We Can Use It To Fight Workplace Racism*. Toronto, ON: Cross Cultural Communication Centre.
- Aubry, J. (2004). Public Service Mired in Racism, Senator Charges. *The Ottawa Citizen*, May 3, 2004.
- Blau, F., Ferber, M. and Winkler, A. (1998). *The Economics of Women, Men and Work*. 3rd ed. Upper Saddle River NJ: Prentice Hall.
- Block W. and Walker, M. (Eds.). (1982). *Discrimination, Affirmative Action, and Equal Opportunity*. Vancouver, B.C.: The Fraser Institute.
- Block W. and Walker, M. (1985). *On Employment Equity: A Critique of The Abella Royal Commission Report*. Vancouver, B.C.: The Fraser Institute.
- Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.)*, 1982, c.11.
- Canadian Human Rights Act*, R.S. 1985, c. H-6.
- Cornish M. and Faraday, F. (1998). Employment Equity Charter Challenge. *Update*, 1-14.
- Cornish, M, Schucher K. and Pask, A. (1998). *Federal Employment Equity Act (1995)*. *May Update*, 1-14.
- C.N.R. v. Canada (Human Rights Commission)*, [1987], 1 S.C.R. 1114.
- de Silva, A. (1997). Wage Discrimination Against Visible Minority Men in Canada. *Canadian Business Economics*, 5(4): 25-42.
- D'Souza, D. and Edley, C. (1996). Affirmative Action Debate: Should Race-Based Affirmative Action Be Abandoned as a National Policy? *Albany Law Review*, 60, 425-465.
- Ehrenberg, R.G., Smith, R.S. and Chaykowski, R.P. (2004). *Modern Labour Economics: Theory and Public Policy*. 1st Canadian ed. Toronto, ON: Pearson Addison Wesley.
- Employment Equity Act*, S.O. 1993, c.35.
- Employment Equity Act*, 1995, c.44.
- Finkelstein, N. and MacLeod Rogers, B. (1988). *Charter Issues in Civil Cases*. Toronto, ON: Carswell
- Francoli, P. (2004). Systemic Racism in the PS at all- time high: Senator. *The Hill Times*, April 19, 2004. Retrieved from

- <http://www.geocities.com/Baja/7635/Federalpublicservice/IRB/pieters/anti-racismcommissioner2.html> on May 12, 2004.
- Henry, F. (1994). The Marginalization of Racial Minorities In The Canadian Workforce. *New Approaches to Employee Management*, 2, 101-113.
- Human Resources Development Canada. (1993). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (1994). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (1995). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (1996). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (1997). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (1998). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (1999). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (2000). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (2001). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (2002). *Employment Equity Act Annual Report*.
- Human Resources Development Canada. (2003). *Employment Equity Act Annual Report*.
- Human Rights Code*, R.S.O. 1990, c. H. 19.
- Jain, H. C. (1985). *Anti-Discrimination Staffing Policies: Implications of Human Rights Legislation for Employers and Trade Unions*. Department of the Secretary of State of Canada.
- Johnson, E. (1996). The System Gives It and the System Takes It Away: When Do We Get Off This Merry Go Round? *Southern University Law Review*, 23.2, 145-156.
- Lepofsky, D. (1994). Understanding The Concept of Employment Equity: Myths and Misconceptions. *Canadian Labour Law Journal*, 2, 1-15.
- Lock Kunz, J. Milan, A. and Schetagne, S. (2000). *Unequal Access: A Canadian Profile of Racial Differences in Education, Employment and Income*. Canada: The Canadian Race Relations Foundation.
- Lynch, F. (1991). *Invisible Victims: White Males and The Crisis of Affirmative Action*. NY: New York: Praeger Publisher.

- Martin, R. (1993). Challenging Orthodoxy: A Critical Analysis of Racially Based Job Quotas. *Canadian Labour Law Journal*, 1, 409-440.
- McWhirter, D. (1996). *The End of Affirmative Action: Where Do We Go From Here?* United States: Carol Publishing Group.
- Ministry of Finance (2003). Census 2001 Highlights. Retrieved from www.gov.on.ca/FIN/english/demographics/cenhi6e.htm on July 26, 2004.
- Pay Equity Act*, R.S.O. 1990, c. P.7.
- Petruelis, K. (1996). A Liberal's Argument Against Affirmative Action. *University of West Los Angeles Law Review*, 27, 377-385.
- Schwind, H., Das, H., and Wagar, T. (2002). *Canadian Human Resource Management: A Strategic Approach*. (6th ed.). Toronto: McGraw-Hill Ryerson Limited.
- Silberman Abella, R. (1984). Equality In Employment: A Royal Commission Report. Ottawa, ON: Canadian Government Publishing Centre.
- Statistics Canada. (2003). *2001 Census: analysis series. Canada's ethnocultural portrait: The changing mosaic*. Catalogue no. 96F0030XIE2001008.
- Weiner, I. "Workplace Equity" Chapter 4 in Simmer, G. and Thompson, M. (Eds.) (1995). *Public Sector Collective Bargaining in Canada*, IRC Press: Queen's University, Kingston.
- Treasury Board of Canada Secretariat. (2000). *Embracing Change in the Federal Public Service – Task Force on the Participation of Visible Minorities in the Federal Public Service*. Retrieved from http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_852/ecfps-PR_e.asp?printable=True on May 5, 2004.