

Senate



Sénat

CANADA

# **REFLECTING THE CHANGING FACE OF CANADA: Employment Equity in the Federal Public Service**

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*Chair*

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*Deputy Chair*

**Standing Senate Committee  
on Human Rights**

June 2010

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## **MEMBERS**

The Honourable Janis G. Johnson, Chair of the Committee  
The Honourable Mobina S. B. Jaffer, Deputy Chair of the Committee

*The Honourable Senators:*

Raynell Andreychuk  
George Baker, P.C.  
Patrick Brazeau  
Vim Kochhar  
Grant Mitchell  
Nancy Ruth  
Rod A. A. Zimmer

*Ex-officio members of the committee:*

The Honourable Marjory LeBreton, P.C., (or Gérald Comeau) and James Cowan (or Claudette Tardif).

In addition, the Honourable Senators Campbell, Carstairs, P.C., Dallaire, Dawson, Dyck, Fraser, Goldstein, Kinsella, Lang, Lovelace Nicholas, Martin, Munson, Oliver, Pépin, Peterson, Plett, Poy, Ringuette, Spivak and Stratton were members of the committee or participated from time to time during this study.

*Library of Parliament Research Staff:*

Julian Walker and Jennifer Bird, analysts.

*Clerk of the Committee:*

Adam Thompson

## ORDER OF REFERENCE

Extract of the *Journals of the Senate*, Tuesday, March 23, 2010:

The Honourable Senator Johnson moved, seconded by the Honourable Senator Stratton:

That the Standing Senate Committee on Human Rights be authorized to examine issues of discrimination in the hiring and promotion practices of the Federal Public Service, to study the extent to which targets to achieve employment equity are being met, and to examine labour market outcomes for minority groups in the private sector;

That the papers and evidence received and taken and work accomplished by the committee on this subject since the beginning of the First session of the Thirty-eighth Parliament be referred to the committee; and

That the committee submit its final report to the Senate no later than June 30, 2010.

The question being put on the motion, it was adopted.

Gary W. O'Brien  
*Clerk of the Senate*

This order of reference is similar to the committee's order of reference in previous sessions.

**“[I]ndeed, we are not even near there yet.”**

(Testimony of Jennifer Lynch, Chief Commissioner,  
Canadian Human Rights Commission, 4 February 2008)

**“While we continue to believe that the gap can be closed,  
we are concerned with how long it will take us to get there.”**

(Testimony of Maria Barrados, President,  
Public Service Commission, 23 April 2007)

## **EXECUTIVE SUMMARY**

In this report, the Standing Senate Committee on Human Rights charts the progress that has been made by the federal government in meeting the key objective of the *Employment Equity Act*: achieving representation rates in the federal public service for women, Aboriginal peoples, persons with disabilities and visible minorities (the four groups classified as designated groups under the Act) that are at least equivalent to their workforce availability numbers. The committee last reported on this issue in February 2007 with the release of its report, *Employment Equity in the Federal Public Service – Not There Yet*.

### **The Committee’s Findings**

The committee concluded, based on the workforce availability numbers from the 2006 Canadian census, that while the federal public service appeared to be meeting this key objective for women, Aboriginal peoples and persons with disabilities, it still was not doing so for visible minorities. Based on the new numbers available for the core public service in 2008 – 2009:

- women are represented at a rate of 54.7% (their workforce availability rate based on the 2006 census is 52.3%);
- Aboriginal people are represented at a rate of 4.5% (their workforce availability rate based on the 2006 census is 3.0%);
- persons with disabilities are represented at a rate of 5.9% (their workforce availability rate based on the 2006 Participation and Limitation Activity Survey (PALS) is 4.0%; and

- visible minorities are represented at a rate of 9.8% (their workforce availability rate based on the 2006 census is 12.4%).<sup>1</sup>

However, it also became clear to the committee during the course of its hearings that these numbers may not tell the entire story or present as accurate a picture as one might wish. There are two main reasons for this. Firstly, although workforce availability numbers from the 2006 census finally became available for all four of these groups in 2009, and finally started being used by the core agencies responsible for assessing the federal government's performance in meeting the Acts objectives (the Office of the Chief Human Resources Officer, the Public Service Commission and the Canadian Human Rights Commission) during that year, these numbers are already becoming obsolete. Outdated workforce availability numbers present the greatest challenge with respect to assessing the government's performance in the category of visible minority representation, as immigration to Canada makes this group one of the fastest growing segments of Canadian society.

Secondly, the representation rates used by key agencies to evaluate government performance with respect to employment equity are derived from self-identification surveys that individual federal government departments and agencies ask their employees to complete on a periodic basis. Based on large discrepancies between the recruitment rates and representation rates for visible minorities revealed by the Public Service Commission's new methodology for calculating recruitment rates, as described in its 2008 – 2009 Annual Report,<sup>2</sup> it appears possible that individual government departments may not be administering the self-identification process as effectively as they could be or that members of designated groups are choosing not to self-identify for a variety of reasons.

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<sup>1</sup> Treasury Board Secretariat, *Employment Equity in the Public Service of Canada: 2008 - 2009*, 31 March 2010, Chapter 3, available on-line at: <http://www.tbs-sct.gc.ca/reports-rapports/ee/2008-2009/eepr-eng.asp?format= print>.

<sup>2</sup> There were also small discrepancies between recruitment and representation rates for Aboriginal peoples and persons with disabilities, when recruitment rates were calculated using the Public Service Commission's new methodology for calculating such rates. See Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, available at <http://www.psc-cfp.gc.ca/arp-rpa/2009/rpt-eng.pdf>, para. 3.76.



Further investigation into the root causes of failure to self-identify and as to how to best calculate representation rates is required for all designated groups, but particularly for visible minorities. As various witnesses pointed out to the committee during the course of its hearings, the Public Service Commission's new methodology for calculating recruitment or hiring rates does not necessarily provide a more accurate picture of representation rates for visible minorities, Aboriginal persons or persons with disabilities in the public service,<sup>3</sup> since the new method only provides information regarding numbers of individuals from these designated groups that are appointed to positions in the federal public service. In other words, a higher recruitment rate does not necessarily guarantee that individuals from designated groups continue long-term careers with the public service once hired. More information is needed to see whether or not the large discrepancies between recruitment and representation rates, for visible minorities in particular, are indicative of a retention problem with respect to this designated group. Another possible explanation for the large discrepancy between recruitment and representation rates for visible minorities (and smaller discrepancies in the case of Aboriginal peoples and persons with disabilities) could be that members of designated groups feel less comfortable self-identifying once hired than they do when they first apply for positions in the public service. This possibility should also be investigated in order to see whether or not there are problems with work culture in the public service or, alternatively, with the administration of the self-identification process.

In addition, it is important to note that the recruitment rates calculated using the Public Service Commission's new methodology only account for those hired through advertised job postings and not those hired through non-advertised postings. According to the most recent data available, only 74% of people hired to positions in the federal public service are hired through advertised processes.

Information provided to the committee also revealed other challenges the government must grapple with in order to achieve full and equitable representation for the four

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<sup>3</sup> The Public Service Commission's new methodology for calculating recruitment rates is not used to calculate recruitment rates for women. The Public Service Commission continues to gather data on recruitment rates for women using pay data. Ibid. at para. 3.73.

designated groups across the public service. Some of the issues brought to the committee's attention included:

- the fact that there is a drop-off rate<sup>4</sup> for visible minority applicants, but no appreciable drop-off rate for Aboriginal peoples and persons with disabilities, a phenomenon which requires further investigation to ensure that selection biases are not informing the appointment process;
- women are still lagging behind men in terms of being appointed to executive positions, are still largely clustered in certain occupations and departments;
- women still generally hold lower paying jobs than men, are over-represented in term appointments;
- Aboriginal peoples, while represented in the public service at levels above their workforce availability numbers, are predominantly working for three government departments (Indian and Northern Affairs Canada, the Correctional Service of Canada, and Human Resources and Social Development Canada), and thus are not equitably represented throughout the federal public service; and
- persons with disabilities are not being recruited at their workforce availability level, which suggests the federal departments and agencies may be reaching its employment equity targets for persons with disabilities through reliance on the demographics of aging, rather than seeking to actively recruit persons from this designated group, rather than being actively recruited.

The committee noted that the core agencies, as well as the federal public service generally, are all taking steps to address some of the challenges noted above. The Public Service Commission is, for example, working with agencies like the Office of the Chief Human Resources Officer to develop a common methodology for calculating representation and recruitment rates; deliberate efforts have been made to create visible minority hiring pools at the executive level; and a new program led by Citizenship and

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<sup>4</sup> The “drop-off” rate reflects the rate at which applicants for positions in the federal public service are eliminated from the competitive process, between the time they apply for an externally advertised job and the time that someone is hired to fill the job.

Immigration Canada has been instituted to attempt to reduce biases in hiring by facilitating diversity on selection boards. However, the committee is of the view that more needs to be done.

To complicate matters, there has recently been a shift towards giving deputy ministers and deputy heads of federal departments and agencies more control over hiring and staffing in the human resources arena. This change was signaled first by the enactment of the *Public Service Modernization Act* in 2005, and was re-emphasized with the creation of the new Office of the Chief Human Resources Officer, Treasury Board Secretariat in March 2009. When the former Chief Human Resources Officer appeared before the committee in April 2009, she stated that “the Office of the Chief Human Resources Officer should only undertake those roles that must be carried out on a corporate- or government-wide basis — for example, define the broad framework for people management. ...” This presumably gives deputy ministers or deputy heads of federal government departments and agencies wider discretion over how they choose to handle human resources matters within their departments. However, despite the fact that deputy ministers and deputy heads have been given more control over hiring and staffing than ever before, the committee was advised that meeting employment equity objectives is only one part of their performance evaluation, and that their performance pay is not contingent on meeting those objectives. This may prove problematic, particularly if the Office of the Chief Human Resources Officer will play less of a role in monitoring human resources managers than the Canada Public Service Agency (CPSA) or the Public Service Human Resources Management Agency of Canada (PSHRMAC) did.

### **The Committee’s Recommendations**

In response to the committee’s findings on the evidence provided to it between April 2007 and June 2009, the committee has made 13 recommendations. It is important to note, however, that recommendations 1, 10, 11 and 12 serve to both echo and enhance recommendations made by this committee in its February 2007 report. We have reiterated these recommendations here, supplementing them with more specific proposals for concrete action, because the recommendations in our previous report have not, as yet,

been implemented. We urge the government to move forward on these matters quickly. Swift action is necessary to ensure that the federal civil service leads the way in responding to Canada's changing demographics, reflecting the diversity of Canadian society within its own workforce.

**RECOMMENDATION 1 (See page 59)**

**The committee recommends that the federal government focus on concrete initiatives in order to achieve its employment equity goals. Such initiatives should include:**

- **Swift publication and effective implementation of the Office of the Chief Human Resources Officer's updated employment equity policy;**
- **Providing strong incentives for government agencies and departments to develop and submit staffing strategies that include plans to address gaps in employment equity representation by the end of 2010;**
- **Instituting processes which avoid immediate-needs hires that directly and indirectly circumvent employment equity goals;**
- **Providing on-the-job language training specifically targeted to assist the career advancement goals of individuals that enter the public service with only one official language;**
- **Providing funding to assist public service employees to earn their accreditation in Canada;**
- **Encouraging managers to balance the high value that they place on Canadian experience with employment equity priorities; and**
- **Renewing core funding, in order to allow all government agencies and departments to fulfill their employment equity objectives.**

**RECOMMENDATION 2 (See page 61)**

**The committee recommends that Statistics Canada work cooperatively with the Public Service Commission, the Canadian Human Rights Commission and the Office of the Chief Human Resources Officer to ensure that workforce availability numbers from the most recent national census, reflecting the workforce availability of Canadian citizens, are made available to both the**

public and to individual federal departments and agencies as soon as they are published.

**RECOMMENDATION 3 (See page 61)**

The committee recommends that individual departments and agencies in the core public administration of the federal public service, as well as monitoring agencies such as the Public Service Commission, Canadian Human Rights Commission and the Office of the Chief Human Resources Officer, make use of the most recent census data as soon as it is published, for the purpose of assessing departmental and agency performance in meeting employment equity targets and setting accurate and realistic goals for the future.

**RECOMMENDATION 4 (See page 62)**

The committee recommends that, in its 2009 – 2010 Annual Report, the Public Service Commission publish the results of its consultations on developing a common method for calculating representation and recruitment rates in the federal public service.

**RECOMMENDATION 5 (See page 62)**

The committee recommends that, in its future Annual Reports, the Public Service Commission:

- Release recruitment rates for all four employment equity groups, as it has recently done in its 2008 – 2009 Annual Report;
- Provide statistics on recruitment rates for employment equity groups for the percentage of jobs that are not publicly advertised;
- Publish statistics on executive advancement rates; and
- Make information available regarding trends in recruitment, for both advertised and non-advertised positions.

**RECOMMENDATION 6 (See page 64)**

The committee recommends that, in 2010, the federal government undertake a systemic, government-wide study as to the reasons why federal government employees choose not to self-identify as members of employment equity groups

once they have been hired to positions in the federal public service, and that it make the results of this study publicly available as soon as possible following the conclusion of the study.

**RECOMMENDATION 7 (See page 64)**

The committee recommends that in its future Annual Reports, the Public Service Commission and the Office of the Chief Human Resources Officer publish statistics on retention rates and retention rate trends for all four designated employment equity groups.

**RECOMMENDATION 8 (See page 65)**

The committee recommends that, in their Annual Reports, the Public Service Commission and the Office of the Chief Human Resources Officer break down data for Aboriginal peoples, persons with disabilities and visible minorities by gender when providing statistics regarding employment equity matters in their Annual Reports.

**RECOMMENDATION 9 (See page 65)**

The committee recommends that in 2010-2011, the Public Service Commission undertake further study of appointment rates of employment equity groups, in order to identify reasons why visible minorities are “dropped-off” or eliminated from competitions for jobs in the federal public service at a rate that is higher than that of other designated groups, and that the Public Service Commission table a report in Parliament, outlining both the results of its study and a proposed strategy designed to address and eliminate the causes of visible minority “drop-off”.

**RECOMMENDATION 10 (See page 66)**

The committee recommends that the federal government develop concrete means of seeking accountability from managers in the federal public service for their responsibilities in enforcing the standards outlined in the *Employment Equity Act*. Mechanisms to make managers more accountable could include:

- **Tying deputy head bonuses to employment equity performance assessments, especially in those departments and agencies where special remedial measures have been put in place due to past difficulties in meeting employment equity targets;**
- **Enhanced and specific human rights training for deputy heads; and**
- **Publishing the names of departments and agencies or statistics with respect to failure to meet employment equity objectives.**

**RECOMMENDATION 11 (See page 69)**

**The committee urges the federal government to place special emphasis on the need for leadership and a strong organization culture when seeking to achieve its employment equity goals. This should be done for all four employment equity groups collectively, as well as for each employment equity group individually. The push for employment equity must begin at the highest levels – including the Prime Minister’s Office – and should encourage a policy of speaking directly to managers to teach them the importance of employment equity to the future of the federal public service.**

**RECOMMENDATION 12 (See page 70)**

**The committee recommends that the federal government implement a communication strategy to promote its employment equity goals. This strategy should seek to honestly admit the challenges the government has faced in achieving these goals, and the steps it intends to take to create a public service that fully reflects the composition of Canadian society. The strategy should also send a strong message selling the importance of working in the federal public service and the government’s renewed commitment to openness in the meeting of its employment equity objectives.**

**RECOMMENDATION 13 (See page 70)**

**The committee recommends that the government seek to make Canada’s human rights protection system under the *Canadian Human Rights Act* more effective and accessible, in order to ensure its ability to protect individuals from discrimination in a concrete way.**





## CHAPTER 1: INTRODUCTION TO THE STUDY

Employment equity is an issue that lies at the heart of a representative workplace and at the heart of efforts to create welcoming work environments for all individuals. The federal government has taken up this issue in recent years, seeking, as Canada's largest employer, to respond to the country's changing demographics and evolving workplace norms in an effort to create a workplace that is reflective of the Canadian public.

One of the federal government's first initiatives to promote employment equity was the implementation of the first *Employment Equity Act* in 1986.<sup>5</sup> However, the 1986 Act applied only to federally regulated companies with 100 employees or more (primarily companies in the banking, transportation and communications sectors), requiring these employers to eliminate workplace barriers and institute equity plans in relation to four specific target groups: women, Aboriginal persons, persons with disabilities, and members of visible minorities. In 1996, a new and substantially revised *Employment Equity Act*<sup>6</sup> came into force, which extended the applicability of the employment equity regime to the federal public service as a whole. The current Act maintains its focus on the same four target groups, or "designated groups," as the former Act, and requires that their employment status be monitored within the federal public service and the federally regulated private sector.

Under the Act, the federal public administration is required to promote and achieve representation numbers for designated groups that are equivalent to workforce availability numbers for these four groups in Canadian society as a whole.<sup>7</sup> If the representation numbers in the public service for these groups are lower than their workforce availability number, federal government departments and agencies are required to implement policies and practices to increase representation levels to close the "representation gap" (the difference between the workforce availability numbers for these groups and their actual representation levels within the public service). Federal

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<sup>5</sup> R.S.C. 1985, c. 23 (2<sup>nd</sup> Supp.).

<sup>6</sup> *Employment Equity Act*, S.C. 1995, c. 44.

<sup>7</sup> See section 5 of the Act.

government departments and agencies are also required to identify and eliminate barriers that may be preventing persons in these groups from achieving integration and increased representation within Canada's federal public service. Specific duties imposed on the government as an employer under the Act include:

- striving to reach set qualitative and numerical goals and activities in relation to employment equity within set timetables;<sup>8</sup>
- providing reasonable accommodation;<sup>9</sup> and
- informing employees of the purpose of employment equity, key measures it has undertaken to implement it, and the progress it has achieved.<sup>10</sup>

Approximately four years after the coming into force of the current Act, the federal government implemented a new policy initiative entitled "Embracing Change." This initiative was implemented in recognition of the fact that the government had not reached the employment equity objectives and goals required by the Act. Specifically, this initiative involved the implementation of strategies to increase the representation of visible minorities in the federal public service. Through Embracing Change, the government set two recruitment benchmarks:

- by 2003, one in five people hired to positions in the federal public service should be members of visible minority groups; and
- by 2005, one in five employees appointed to executive positions should be members of visible minority groups.

The plan also dealt with issues such as promotion and the career development of visible minorities, as well as measures for developing a more inclusive and supportive culture for visible minorities in the federal workplace.

In an attempt to monitor the progress of these legislative and policy initiatives and inspired by concern about the low levels of representation of visible minorities in the federal public service, in November 2004, the members of the Standing Senate

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<sup>8</sup> See section 10 of the Act

<sup>9</sup> Ibid.

<sup>10</sup> See section 14 of the Act.

Committee on Human Rights (“the committee”) began examining issues of alleged discrimination in the hiring and promotion practices of the federal public service and the extent to which targets to achieve employment equity for minority groups were being met. While progress is clearly being made in this area, the committee nevertheless undertook to investigate the extent to which the federal public service has managed to overcome impediments to hiring women, Aboriginal persons, persons with disabilities, and visible minorities; to determine what the consequences of the employment equity framework have been; and to provide recommendations for how to move forward into the future.

The results of the first stage of the committee’s study were tabled in the Senate in February 2007, in a report entitled *Employment Equity in the Federal Public Service – Not There Yet*.<sup>11</sup> The committee documented how it had learned that the public service has reached some of its goals for hiring women, Aboriginal peoples and persons with disabilities. These groups are now represented within the federal public service at a rate that is higher than their workforce availability. However, the public service had still not yet met its goals for hiring visible minorities, who continue to be represented at less than their workforce availability. In 2006, representation of visible minorities in the public service was 2.3 percentage points lower than their workforce availability (visible minorities represented 8.1% of federal public service employees during that year, while their workforce availability rate was 10.4%).<sup>12</sup> Furthermore, from 2000 to 2005, while employment applications from visible minorities averaged over 25%, this group received only 10% of appointments – this phenomenon was called “drop off”. The committee also expressed concern that although representation for most designated groups may be becoming more equitable on a broad scale within the federal public service, the growth that has occurred has primarily been at the lower levels. All four of the designated groups continue to be underrepresented in the executive ranks.

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<sup>11</sup> Standing Senate Committee on Human Rights, *Employment Equity in the Federal Public Service – Not There Yet*, February 2007, available at: <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/huma-e/rep-e/rep07feb07-e.pdf>.

<sup>12</sup> Ibid. at p. 12.

These numbers convinced the committee that while progress was being made; there was still much work to be done. In its report, the committee recognized that the government has put initiatives in place that are moving in the right direction; however, they were not doing so effectively or fast enough. While also emphasizing the importance of organizational culture in terms of improving the situation of minorities in the workplace, the committee made the following recommendations designed to support the hiring of more visible minorities to positions in the public service, and to promote more people from the designated groups into the executive ranks:

- 1. The committee recommended that, as a next step toward strengthening leadership and enhancing management and executive accountability, the bonuses of deputy ministers should be tied to performance assessments in terms of progress on diversity and employment equity goals.**
- 2. The committee recommended that the federal public service should develop more concrete means to implement its action plans to ensure equal access to executive positions and all occupational categories for each of the designated groups.**
- 3. The committee recommended that the federal public service should adopt a plan to remove systemic barriers that exist within hiring and staffing processes. This plan should include:**
  - a communication strategy geared towards reaching out to different populations across Canada;**
  - enhanced strategies to acquire and maintain external candidates, including enhanced outreach efforts to help such candidates understand the federal public service hiring process;**
  - research and analysis into the underlying causes of drop off rates;**
  - increased emphasis on recruitment programs such as the Post-Secondary Recruitment Program;**
  - support for official language training, particularly within immigrant communities; and**
  - minimizing the use of temporary contracts.**

Since releasing its February 2007 report, the committee has continued to monitor progress in this area. It has heard from numerous witnesses, regarding their perspectives on these recommendations and, more generally, on movement towards employment

equity in the federal public service and beyond. Witnesses heard from since that time include the President of the Public Service Commission of Canada, Maria Barrados, and her officials, whom the committee heard from in both 2007 and 2009, officials from the Canada Public Service Agency (the new name for the Public Service Human Resources Management Agency of Canada), and officials from the new Office of the Chief Human Resources Officer, Treasury Board Secretariat (in March of 2009 this office took over the functions formerly performed by the Canada Public Service Agency, a change that will be explained in more detail in Chapter 2 of this report). In addition, the committee heard witnesses from the Canadian Human Rights Commission, the Department of Justice, Statistics Canada, the National Council of Visible Minorities in the Federal Public Service, the Canadian Labour Congress, the Public Service Alliance of Canada, the Professional Institute of the Public Service of Canada, the Center for Research Action on Race Relations, various provincial professional regulatory agencies, and immigration lawyer, Ravi Jain. A full list of witnesses has been included as Appendix A to this report.

The committee wishes to acknowledge the work of the Standing Senate Committee on National Finance, which also conducted a study on human resources in the federal public service in 2008. That committee's report,<sup>13</sup> released in April 2008, reflected many of this committee's observations, expressing concern at recruitment through term and casual appointments and the situation of visible minorities in the context of employment equity objectives. The National Finance Committee noted the gap between workforce availability and representation of visible minorities in the federal public service, noting a drop in recruitment between 2005-2006 and 2006-2007; and called on the federal government to develop initiatives that would promote hiring more visible minorities in the federal public service in proportion to their representation in the national workforce.

The following chapters will highlight the committee's observations from its 2007, 2008 and 2009 hearings, touching on changes in representation and new government initiatives in the area of employment equity in the federal public service. They will also

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<sup>13</sup> Standing Senate Committee on National Finance, *Report on the Human Resource Management Issues in the Public Service*, 2<sup>nd</sup> Session, 39<sup>th</sup> Parliament, April 2008, available at: <http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/fina-e/rep-e/rep12apr08-e.htm>.

outline a number of recommendations that expand on the committee's suggestions from its earlier report.

## CHAPTER 2: THE COMMITTEE'S OBSERVATIONS

This report will not enter into a detailed discussion of the framework for the employment equity regime established by the federal government. For an outline of the various agencies involved and broad employment equity laws and policy initiatives that have been undertaken by the Canadian government, reference may be made to Chapter 2 of the committee's February 2007 report. However, the three key agencies that play roles in ensuring that the *Employment Equity Act* is implemented with respect to the federal public service are:

- the Office of the Chief Human Resource Officer (OCHRO);
- the Public Service Commission of Canada (PSC), and
- the Canadian Human Rights Commission (CHRC).

In terms of the respective roles of these agencies in relation to employment equity matters, the OCHRO is responsible for monitoring the compliance of deputy heads of federal government departments (deputy ministers in most cases) with the human resources or "people" component of their Management Accountability Frameworks, of which employment equity targets form a part.<sup>14</sup> The PSC is responsible for hiring in the federal public service under the *Public Service Employment Act*<sup>15</sup> and is charged with identifying and removing barriers to employment equity and integration in its recruitment and staffing systems, policies and practices under the *Employment Equity Act*. Finally,

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<sup>14</sup> The Management Accountability Frameworks, (MAFs) in turn, effectively become part of the performance agreements between deputy ministers and the Clerk of the Privy Council. Accordingly, deputy ministers are not required to specifically include management results in their performance agreements. See *2009-2010 Performance Management Program Guidelines : Deputy Ministers, Associate Deputy Ministers, and Individuals Paid in the GX Salary Range*, Senior Personnel and Special Projects Secretariat, Privy Council Office, February 2010, available on-line at: <http://www.pco-bcp.gc.ca/index.asp?lang=eng&page=secretariats&sub=spsp-psps&doc=pmp-pgr/dm-sm/guide-eng.htm>.

<sup>15</sup> S.C. 2003, c. 22, sections 12 and 13. It is important to note, however, that under the new *Public Service Employment Act*, which constituted a major component of the *Public Service Modernization Act*, S.C. 2003, c. 22, the PSC delegates much of its staffing authority to deputy heads of federal government departments and agencies. The new *Public Service Employment Act* also provides deputy heads with new means of employment equity targets, such as the ability to expand the area of selection for members of designated groups, or to restrict selection to designated groups only. The new Act also provides a definition of merit that allows employment equity to form a fundamental component of merit criteria for a position in the federal public service.

the CHRC is responsible for receiving complaints about employment equity matters, among others, and conducts departmental audits to monitor compliance with the *Employment Equity Act*. It can also negotiate agreements with federal government departments and agencies to take specific remedial measures, and then, through the mechanism of the Employment Equity Review Tribunal, order these departments and agencies to take certain measures if they fail to live up to their agreements.

It should be noted that the OCHRO is a relatively new agency, created on 2 March 2009. It replaced another agency, the Canada Public Service Agency (CPSA), which operated between 1 May 2007 and 2 March 2009. The CPSA, in turn, replaced the Public Service Human Resources Management Agency of Canada (PSHRMAC), which operated between 12 December 2003 and 1 May 2007.<sup>16</sup> The latter two agencies played roughly the same role as the OCHRO now plays; however, the role played by the OCHRO is somewhat more generalized, shifting more responsibility and accountability for meeting employment equity targets onto deputy heads of federal government departments and agencies.<sup>17</sup>

#### **A. Employment Equity in the Federal Public Service – April 2007 to March 2008**

Part A of this Chapter provides a snapshot of testimony heard by the committee from April 2007 to March 2008, and of information contained in the 2006 – 2007 Annual Reports of the PSC and CHRC. In terms of broad statistics, there was no significant change between the trends noted in the committee’s February 2007 report and the trends noted by March 2008, although one serious concern was raised with respect to

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<sup>16</sup> See <http://www.infosource.gc.ca/inst/hrh/fed01-eng.asp>.

<sup>17</sup> As will be discussed more fully in Part B of this Chapter, on 2 March 2009, the newly created Office of the Chief Human Resources Officer (OCHRO), located in the Treasury Board Secretariat, took over both the business and policy functions of the Canada Public Service Agency (CPSA), and those functions formerly performed by various sections within the Treasury Board Secretariat previously responsible for pensions, benefits, labour relations and compensation operations in relation to the federal public service. This change was largely initiated in order to give Deputy Ministers “primary responsibility and accountability for managing their employees, and to build and maintain a diverse and representative workforce tailored to their business needs.” See the Opening Statement of Michelle d’Auray, former Chief Human Resources Officer of Canada, to the Standing Senate Committee on Human Rights, 27 April 2009, at p. 2.



recruitment levels of visible minorities following the committee's 2007 report on employment equity. This concern was that the recruitment rate for visible minorities was at its lowest rate in six years, while the drop off rate continued to be high. Evidence heard by the committee on this point will be discussed in further detail below.

*i. Representation and Recruitment Rate Statistics from 2006 – 2007 Annual Reports*

In general, statistics in the Canadian Human Rights Commission's (CHRC) 2007 Annual Report<sup>18</sup> indicated that as of March 2007, women represented 53.9% of all federal public service employees, Aboriginal peoples represented 4.2%, persons with disabilities represented 5.7% and visible minorities represented 8.8%. In comparing representation rates in the federal public service with workforce availability numbers available at that time, women, Aboriginal people and persons with disabilities remained equitably represented; however, under-representation continued to be a serious issue for visible minorities, despite an improvement in the numbers.<sup>19</sup>

The significant change that the committee noted during its study of employment equity matters between April 2007 and March 2008 was that the numbers showed a decline in appointments (new hires) to the federal public service for Aboriginal persons, women and visible minorities (persons with disabilities was the sole group for which a decline in appointments was not registered during this period), despite the fact that there was an overall increase in appointments to the federal public service in general. Recruitment of women fell from 56.9% in 2005-2006 to 55.7% in 2006-2007, recruitment for Aboriginal peoples fell from 3.7% to 3.3% and recruitment for visible minorities fell from 9.8% to 8.7%. While Maria Barrados, President of the Public Service Commission, appeared before the committee in December 2007, she indicated that she did not feel that the drop in representation for women and Aboriginal peoples was a significant issue (both

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<sup>18</sup> Canadian Human Rights Commission, *Annual Report 2007*, March 2008, available at: [http://www.chrc-ccdp.ca/pdf/ar\\_2007\\_ra\\_en.pdf](http://www.chrc-ccdp.ca/pdf/ar_2007_ra_en.pdf).

<sup>19</sup> Women and Aboriginal people in the federal public service were represented at a rate of 1.7 percentage points above their general workforce availability levels, while persons with disabilities were represented at a rate of 2.1 percentage points above their general workforce availability level. By contrast, members of visible minorities were represented at a rate of 1.6 percentage points below their general workforce availability level.

groups continued to be represented in the public service above their workforce availability levels). However, she and many other witnesses expressed grave concern at the implications of this drop for visible minorities. Ms. Barrados commented that:

I had said, I believe, in my testimony before the committee when I was here the last time, that with the increased recruitment we saw going on in the public service I was optimistic we could close the gaps more rapidly. What I had not expected was that downturn, and that is quite a significant downturn.<sup>20</sup>

The CHRC's 2007 Annual Report also noted that the recruitment rate for visible minorities during 2006 – 2007 represented the lowest proportion of hires of visible minorities in the last six years. It further noted that if the recruitment rate did not improve, the gap in representation on a general level for visible minorities will only get worse. Most significantly, the workforce availability numbers used by the CHRC for the purposes of its 2007 Annual Report were based on the 2001, and not the 2006, census, and thus were extremely dated figures by 2008. It was anticipated that once numbers from the 2006 census became available, and those figures began to be factored into the employment equity equation, the representation gap for all designated groups (but particularly for visible minorities, given increasing immigration to Canada) was likely to be even worse than the statistics available in the spring of 2008 indicated.

Complementing this negative image, Ms. Barrados also told the committee that the drop-off rate (the rate at which people who voluntarily self-identify as members of one of the four designated groups when they apply for jobs in the federal public service are eliminated or screened out of the competitive process) for visible minorities had not improved in 2007, and that the phenomenon was present throughout all occupational groups, regions and departments in the public service. Strikingly, the Public Service Commission's 2006 – 2007 Annual Report<sup>21</sup> noted that visible minorities applied for public service jobs at a rate of twice their availability in the Canadian workforce and on average, eight applications were submitted per applicant. Among all applicants, visible

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<sup>20</sup> Maria Barrados, President, Public Service Commission of Canada, testimony before the committee, 3 December 2007.

<sup>21</sup> Public Service Commission of Canada, *2006-2007 Annual Report*, 2007, available at: <http://www.psc-cfp.gc.ca/arp-rpa/2007/rpt-eng.pdf>.

minorities were the most highly educated – over half had completed bachelors or higher degrees.<sup>22</sup>

*ii. Consequences of Representation and Recruitment Rate Statistics for Visible Minorities and Other Designated Groups*

These statistics with respect to visible minorities were concerning in another way, as they appeared to indicate that the culture of the federal public service was less than welcoming both to visible minority applicants and to visible minorities already employed by the federal public service. Indeed, when he appeared before the committee in December 2007, Igho Natufe of the National Council of Visible Minorities in the Federal Public Service cited Morris Rosenberg, head of the federal government's Visible Minorities Champion Committee, stating that two consecutive federal public service employee surveys have shown that more than one third of visible minorities have felt discrimination. Nor was this problem restricted to visible minority applicants. Ed Cashman of the Public Service Alliance of Canada also noted during his February 2008 testimony before the committee that the 2005 Public Service Employees Survey showed that 33% of Aboriginal employees reported harassment and that 29% reported discrimination. These surveys made the committee concerned that the drop in recruitment numbers for designated group was beginning to have a seriously detrimental impact on organizational culture and on feelings of belonging in the public service.

*iii. Underrepresentation of Women and Visible Minorities in Executive (EX) Positions*

Many of the committee's observations from its February 2007 report regarding underrepresentation of designated groups at the executive levels of government also continued to be relevant to the composition of the public service as of March 2008. In terms of executive recruitment, Ms. Barrados told the committee during her 2007 appearance that women and, in particular, visible minorities continued to be underrepresented in executive positions. The CHRC 2007 Annual Report noted that 40.4% of executive positions were filled by women in that year. This number was an improvement

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<sup>22</sup> Ibid. at para. 3.82.

on previous years, but it was frustrating for the committee to note that 81.6% of clerical positions were filled by women – occupational stereotypes seem difficult to break. The committee was, however, heartened to see that there was a 70% increase in entry appointments for visible minorities to the executive group over the last year.<sup>23</sup> 70% represented a significant increase (51 individuals who were members of visible minority groups were appointed to executive positions in the federal public service in 2006 – 2007, whereas only 30 individuals who were members of visible minority groups were appointed to such positions in 2005 – 2006), and it was anticipated that these new appointments would go at least some way towards filling the gap that currently exists for visible minorities at the executive level.

*iv. Extensive Use of Casual or Term Hiring Processes*

The PSC's 2006 – 2007 Annual Report also confirmed some of the observations made by the committee in its February 2007 report with respect to the negative effects of term and casual positions on hiring generally. The report noted that the Public Service Commission had conducted an analysis revealing that 75% of permanent hires over the last six years were appointments of individuals who started in the public service as term or casual employees.<sup>24</sup> While on its face, this is not a negative situation, the committee was encouraged to see that the Public Service Commission recognized that term and casual employees are hired for immediate needs and do not go through the rigorous screening process that includes employment equity objectives when they are first hired. Term and casual employees tend to be hired locally and through connections, thus also bypassing potential applications from other urban centres with higher visible minority populations.

*v. Need to Include Employment Equity Considerations in Merit Criteria*

In 2007, Maria Barrados told the committee that one of the obstacles to achieving employment equity goals in the federal public service is that most federal organizations have not yet developed the staffing strategies needed to make effective use of the new

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<sup>23</sup> Ibid. at para. 3.84.

<sup>24</sup> Ibid. at paras. 3.60 and 3.61.

definition of merit contained in the *Public Service Employment Act* (a major component of the *Public Service Modernization Act*<sup>25</sup> passed by Parliament in 2005). This new definition supports the inclusion of employment equity considerations in the merit criteria and the targeting of hiring processes to one or more employment equity groups in order to achieve a representative public service. The Public Service Commission's 2006 – 2007 Annual Report indicated that although 88% of departments have employment equity plans, only 12 departments and agencies had developed staffing strategies that included plans to address gaps in employment equity representation by December 2007.<sup>26</sup>

*vi. Problems with Foreign Credential Recognition*

Another issue witnesses raised was that of recognition for foreign credentials. As aptly noted by Ravi Jain, an immigration lawyer who appeared before the committee in March 2008, the federal government does not have jurisdiction over professional regulatory bodies, and accordingly has limitations as to what it can do to achieve simpler or quicker recognition of foreign credentials without provincial cooperation. Having said this, the committee remains concerned that the lack of recognition for foreign credentials remains a significant obstacle to employment for new Canadians. When she appeared before the committee in December 2007, Maria Barrados provided a more detailed examination of how a lack of recognition for such credentials can create obstacles to employment, noting that the initial electronic screening of applicants to the federal public service often manages to match foreign credentials to their Canadian equivalent. She indicated that unless there is a very specific requirement, foreign credentials often manage to pass through this initial screening process. The problem appears to arise after applications are passed on to specific departments for actual hiring.<sup>27</sup> The credentials

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<sup>25</sup> S.C. 2003, c. 22.

<sup>26</sup> Public Service Commission of Canada, *2006-2007 Annual Report*, 2007, supra note 21, paras. 3.105 and 3.106. Also see testimony of Maria Barrados, President, Public Service Commission of Canada, supra note 20.

<sup>27</sup> For a summary of recent steps the Government Canada has taken in order to improve foreign credential recognition, as well as some of the challenges that remain in this area, please see House of Commons, Standing Committee on Citizenship and Immigration, *Recognizing Success: A Report on Foreign Credential Recognition*, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, November 2009, available at: <http://www2.parl.gc.ca/content/hoc/Committee/402/CIMM/Reports/RP4227034/cimmrp13/cimmrp13-e.pdf>.

recognition problem could provide one possible explanation as to why the drop-off rate for visible minority applicants remains high. It is possible that a significant proportion of visible minority applicants may be “dropped off” or eliminated from the competitive process because they are new Canadians who have not yet managed to achieve recognition of their foreign credentials from the applicable provincial regulatory body.

*vii. Problems Achieving Employment Equity Targets at the Department of Justice*

Finally, the committee was concerned to hear, from both Department of Justice officials and others, that the Department of Justice seemed to be lagging behind many other federal government departments and agencies in terms of achieving its employment equity targets for Aboriginal persons, persons with disabilities and, in particular, visible minorities, at least at the executive and senior lawyer levels. Although department officials indicated when they appeared before the committee in December 2007 that the Department of Justice was exceeding workforce availability numbers for all four employment equity groups as of 31 March 2007,<sup>28</sup> they advised that it was not yet meeting Embracing Change benchmarks for acting and permanent appointments at the executive, or EX, levels for Aboriginal persons, persons with disabilities or visible minorities.<sup>29</sup> As of December 2007, the Department of Justice had 19 women, one Aboriginal person, one person with disabilities and no visible minorities in EX positions.<sup>30</sup>

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<sup>28</sup> Camille Therriault-Power, Director General, Director General's Office, Department of Justice Canada, testimony before the committee 10 December 2007. For example, Department of Justice officials advised that of the 4,500 employees working for the Department of Justice at that time, 483 (10.6%) were visible minorities, which exceeded the workforce availability number for visible minorities of 7.9%. It is important to note, however, that the workforce availability number for visible minorities used by the Department of Justice came from the 2001, and not the 2006, census, and that it does not represent all visible minorities who are available for work in Canada or all visible minorities who are Canadian citizens, which is the number used by much of the rest of the federal public service. Instead, the department was using numbers of all visible minorities in the Canadian population that have the credentials to work at the Department of Justice as a lawyer.

<sup>29</sup> Ibid.

<sup>30</sup> Zina Glinski, Senior Policy Advisor, Employment Equity, Human Resources Planning, Employment Equity and HR Systems, Department of Justice Canada, testimony before the committee 10 December 2007.

According to officials, some of the challenges the department faces in terms of meeting benchmarks at the EX level for Aboriginal persons, persons with disabilities and visible minorities include:

- the fact that there is an extremely small cohort of EX employees at the Department of Justice (35 in total) as compared to other federal government departments;<sup>31</sup>
- individuals who are in EX positions perform mostly corporate management functions, and it is difficult to attract members of the executive cadre to these positions at the Department of Justice because “the rules are very specific,” and “[a] lot of the senior executive roles are played by lawyers;”<sup>32</sup> and
- it is a challenge to find suitable, qualified external candidates, who are at the middle or senior levels of their careers for appointments to positions at the Director General (DG) level, which results in the department tending to recruit at more junior levels and promote from within the organization.<sup>33</sup>

With respect to appointments of members of visible minority groups who are immigrants specifically, officials advised that additional barriers are faced by these individuals. They indicated that a person who has received his or her legal training outside of Canada and who comes to Canada as a permanent resident may have difficulty getting a job immediately with the Department of Justice because, like other federal government departments, preference in terms of hiring is given to Canadian citizens.<sup>34</sup> Furthermore, one must first be a member of a provincial or territorial law society before one can be hired to work as a lawyer at the Department of Justice.<sup>35</sup> This again raises the issue of foreign credential recognition as a barrier to employment in the federal public service.

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<sup>31</sup> Ibid.

<sup>32</sup> Testimony of Camille Therriault-Power, Director General, Director General's Office, Department of Justice Canada, *supra* note 28.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Pamela Woods, Manager, Staffing, Official Languages and Awards, Staffing, Official Languages and Recognition Section, Department of Justice Canada, testimony before the committee 10 December 2007.

In addition to the testimony of Department of Justice officials, the committee heard from Mark Persaud, a former Department of Justice lawyer, in February 2008.<sup>36</sup> He spoke about the hiring and promotion practices of the Department of Justice and his own experiences at the department.<sup>37</sup>

## **B. Employment Equity in the Federal Public Service in 2009**

In March 2009, the committee re-commenced its hearings on employment equity in the federal public service. It quickly became apparent to the committee, during hearings held between March and June 2009, that while many of the concerns noted with respect to employment equity in the federal public service continued to exist, parts of the employment equity picture had either changed or were beginning to change. The committee also noted that new issues were also beginning to emerge.

### *i. 2006 Workforce Availability Numbers from Statistics Canada*

One of the most significant of these changes was the fact that Statistics Canada had released employment rate numbers (numbers that represent the rates at which individuals in specified categories are employed in the Canadian workforce at large) from the 2006 census for the four designated groups.<sup>38</sup>

When officials from Statistics Canada appeared before the committee on 23 March 2009, they indicated that Aboriginal persons, persons with disabilities and visible minorities made up a larger percentage of the Canadian population in 2006 than they did in 2001. According to the 2001 census, Aboriginal persons represented 3.3% of the Canadian population; by 2006, this percentage had increased to 3.8%. Similarly, the percentage of persons with disabilities in the Canadian population increased from 12.4% in 2001 to 14.3% percent in 2006, while the percentage of visible minorities in the

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<sup>36</sup> Mr. Persaud is currently the President and Chief Executive Officer of the Canadian International Peace Project.

<sup>37</sup> Mark Persaud, Lawyer, testimony before the committee 4 February 2008.

<sup>38</sup> Employment rates for each of the four designated groups were provided only for persons considered to be of core working age (25 to 64 years of age).



Canadian population increased from 13% to 16% during the same period.<sup>39</sup> Despite the fact that these three groups represented a larger share of the Canadian population in 2006 than they had in 2001, the figures provided by Statistics Canada also revealed that persistent gaps in rates of employment between the general population and these three groups remain. For example, in 2006, the rate of employment for non-aboriginal persons of core working age (25 to 64) was 82%, while the rates of employment for Inuit persons, Métis persons, First Nations persons off reserve and First Nations persons on reserve were 61%, 75%, 66% and 52% respectively. Similarly large gaps existed between the rate of employment for the general population in 2006 (72.6%) and the rates of employment for persons with disabilities (53.5%) and visible minorities (61.5%).<sup>40</sup>

On a more positive note, the numbers provided by Statistics Canada demonstrated that while women continued to have an employment rate lower than that of men in 2006 (57.5% for women as compared to 67.5% for men),<sup>41</sup> the gap in employment rate between men and women appears to be narrowing.<sup>42</sup> Having said this, women continue to face issues of employment quality when compared to men, with women earning approximately 77 cents for every dollar made by men.<sup>43</sup>

ii. *Outdated Workforce Availability Numbers Used in 2007 – 2008 Annual Reports*

Despite having a more accurate picture, based on the 2006 census, as to how the four employment equity groups are doing in Canada's labour market as a whole in 2009, the committee was disheartened to learn that workforce availability numbers used in the 2007

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<sup>39</sup> Geoff Bowlby, Director, Labour Statistics Division, Statistics Canada, testimony before the committee 23 March 2009. Also see the Statistics Canada submission entitled *The Labour Market Situation for Minority Groups In Canada* which was provided to the committee on 23 March 2009.

<sup>40</sup> Ibid. It is important to note, however, that the employment rate for visible minorities in 2006 comes from a Table entitled *Labour Force Activity for Visible Minority Groups*, available on Statistics Canada's website at: <http://www.statcan.gc.ca/bsolc/olc-cel/olc-cel?catno=97-562-X2006013&lang=eng>.

<sup>41</sup> See the table entitled *Labour Force Indicators by Age Group for Both Sexes, Employment Rate*, available on Statistics Canada's website at: <http://www12.statcan.ca/census-recensement/2006/dp-pd/hlt/97-559/T601-eng.cfm?Lang=E&T=601&GH=4&SC=1&SO=99&O=A>.

<sup>42</sup> Testimony of Geoff Bowlby, Director, Labour Statistics Division, Statistics Canada, supra note 39. Also see the Statistics Canada submission entitled *The Labour Market Situation for Minority Groups In Canada*, supra note 39.

<sup>43</sup> Ibid.

– 2008 Annual Report of the PSC,<sup>44</sup> the Canada Public Service Agency's (now the OCHRO's) 2006 – 2007 and 2007 – 2008 Reports on Employment Equity in the Federal Public Service,<sup>45</sup> and the CHRC's 2008 Annual Report were from the 2001, rather than the 2006, census. The committee viewed this as problematic, since this meant that the conclusions regarding whether federal government departments and agencies were exceeding workforce availability numbers in terms of hiring and representation were probably inaccurate for at least three of the four employment equity groups (Aboriginal persons, persons with disabilities and visible minorities). It was only in the PSC's, CHRC's and OCHRO's most recent Annual Reports that workforce availability numbers from the 2006 census were used.<sup>46</sup>

As the data provided to the committee by Statistics Canada demonstrated, Aboriginal persons, persons with disabilities and visible minorities represented larger proportions of the Canadian population in 2006 than they did in 2001. Accordingly, it was felt that the use of outdated workforce availability numbers in the reports prepared by monitoring agencies like the Canada Public Service Agency (now the OCHRO), the CHRC and the PSC, as well as in individual departments' assessments of their own performance in meeting employment equity targets, might therefore have led to assertions that the public service generally or individual departments are exceeding workforce availability numbers in terms of hiring and representation when this was not, in fact, the case.

What was even more troubling to the committee was that not every employment equity assessment conducted in 2007—2008 used workforce availability numbers from

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<sup>44</sup> Public Service Commission of Canada, *2007 -- 2008 Annual Report*, 2008, available at <http://www.psc-cfp.gc.ca/arp-rpa/2008/rpt-eng.pdf>.

<sup>45</sup> Canada Public Service Agency, *Employment Equity in the Public Service of Canada: 2006–2007 and 2007–2008*, 23 March 2009 available at [http://www.tbs-sct.gc.ca/rp/dwnld/EE%20AR%20ENG%202007-2008\\_WEB.pdf](http://www.tbs-sct.gc.ca/rp/dwnld/EE%20AR%20ENG%202007-2008_WEB.pdf).

<sup>46</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2, Canadian Human Rights Commission, *Annual Report 2009*, 30 March 2010, available on-line at: [http://www.chrc-ccdp.ca/pdf/ar\\_2009\\_ra\\_eng.pdf](http://www.chrc-ccdp.ca/pdf/ar_2009_ra_eng.pdf), and Treasury Board Secretariat, *Employment Equity in the Public Service of Canada: 2008–2009*, 31 March 2010, supra note 1.

2001. For example, the 2006 Employment Equity Data Report,<sup>47</sup> produced by the Labour Program at Human Resources and Skills Development Canada (HRSDC) and released in 2009, provided national workforce availability numbers for all employers who must comply with the *Employment Equity Act*. The federal public service is one such employer, but other employers required to comply with the Act include:

- federal contractors who supply goods and services pursuant to federal contracts valued at \$200,000 and who employ 100 people or more;
- other public sector employers who employ 100 people or more, such as the Canadian Forces and Royal Canadian Mounted Police (RCMP);
- federally regulated private sector employers and crown corporations who employ 100 or more people in the banking, transportation and communications sectors; and
- separate employers' organizations in the federal public service such as the Canada Revenue Agency, Canada Food Inspection Agency and Parks Canada.<sup>48</sup>

While the committee recognizes that the workforce availability figures contained in the 2009 HRSDC report will never exactly match the ones calculated for the core public administration alone,<sup>49</sup> due to the fact that the federal civil service gives preference to Canadian citizens when hiring, the report did provide 2006 workforce availability numbers for Aboriginal persons, visible minorities and women who are Canadian citizens.<sup>50</sup> Accordingly, it appears likely that at least some data from the 2006 census

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<sup>47</sup> Labour Program, Human Resources and Skills Development Canada, *2006 Employment Equity Data Report*, 2009, available at: [http://www.hrsdc.gc.ca/eng/labour/publications/equality/eedr/2006/docs/EEDR\\_2006.pdf](http://www.hrsdc.gc.ca/eng/labour/publications/equality/eedr/2006/docs/EEDR_2006.pdf).

<sup>48</sup> *Ibid.* at p. 3.

<sup>49</sup> The core public administration consists of all federal departments and agencies that are subject to the *Public Service Employment Act* (PSEA), S.C. 2003, ss. 12, 13. The number of federal departments and agencies subject to the PSEA is smaller than the number of employer that are subject to the terms of the *Employment Equity Act* as a whole.

<sup>50</sup> These Canadian citizen workforce availability numbers were 3.3% for Aboriginal persons, 47.9% for women and 12.5% for visible minorities. See Labour Program, Human Resources and Skills Development Canada, *2006 Employment Equity Data Report*, 2009, *supra* note 47 at pp. 33 – 40. Workforce availability numbers for persons with disabilities, who are also Canadian citizens, were not included in HRSDC's 2009 Employment Equity Data Report because workforce availability data for

was available to central agencies like the CPSA, CHRC and PSC at the time they were preparing their 2007 – 2008 Annual Reports. Given this fact, it is unclear to the committee why the figures in the 2009 HRSDC reports were not at least referenced in the central agency's annual reports, or in testimony given by these agencies before the committee in 2009, even if these organizations did not feel comfortable fully relying upon them for comparison purposes (the Treasury Board Secretariat is the agency responsible for determining the workforce availability numbers for the core public administration, and the Treasury Board had not yet released these numbers at the time that these three agencies produced their 2007 – 2008 reports). Inclusion of these figures in those reports or in testimony before the committee would have assisted not only this committee, but also stakeholder organizations, such as the National Council of Visible Minorities in the Federal Public Service (NCVM), unions, such as the Public Service Alliance of Canada (PSAC), and the Canadian public in obtaining a more accurate picture of whether or not the core public administration of the federal public service was meeting its employment equity targets for the four employment equity groups during the relevant period.

*iii. New 2006 Workforce Availability Numbers for the Core Public Administration of the Federal Public Service*

Supplementary information provided by the Office of the Chief Human Resources Officer (OCHRO) of the Treasury Board Secretariat on 26 June 2009,<sup>51</sup> the 2008 – 2009 Annual Reports of the PSC, CHRC and OCHRO, all of which became available to the committee after its 2009 hearings ended, supplied the committee with workforce availability numbers from the 2006 census for the core public administration of the federal public service. Upon receiving these numbers, the committee was finally able to compare representation rates for the four employment equity groups in the federal public service with workforce availability numbers obtained from the 2006 Canadian census and

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persons with disabilities comes from a specific survey, the Participation and Activity Limitation Survey (PALS), and this survey does not collect citizenship information.

<sup>51</sup> Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, from Michelle d'Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights.

the 2006 Participation and Limitation Activity Survey (PALS) for persons with disabilities. Using the most recent numbers available,<sup>52</sup> it appears that:

- women were represented at a rate of 54.7% in the core federal public service as of 31 March 2008 and that the workforce availability rate for women based on the 2006 census was 52.3%;
- Aboriginal people were represented at a rate of 4.5% as of 31 March 2008 and their workforce availability rate based on the 2006 census was 3.0%;
- Persons with disabilities were represented at a rate of 5.9% as of 31 March 2008 and their workforce availability rate based on the PALS survey was 4.0%; and
- visible minorities were represented at a rate of 9.8% as of 31 March 2008 and their workforce availability rate based on the 2006 census was 12.4%.<sup>53</sup>

Accordingly, women in the federal public service are employed at a rate of 2.4 percentage points above their general workforce availability rate, Aboriginal peoples at a rate of 1.5 percentage points above their workforce availability rate, and persons with disabilities at rate of 1.9 percentage points above their workforce availability rate. By contrast, members of visible minorities are at rate of 2.6 percentage points below their general workforce availability rate.

As was anticipated by the committee, based on the statistics available in 2009, the core public administration appears to be meeting its workforce availability targets for women, Aboriginal persons and persons with disabilities, but still not for visible minorities, at least in terms of representation rates. Indeed, in the case of visible minorities, the gap appears to be widening, as visible minorities come to represent a greater and greater portion of the Canadian population. The supplementary information provided by the OCHRO to the committee on 26 June 2009 included a table providing a

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<sup>52</sup> It must once again be noted, however, that although the 2006 census numbers are finally being used by federal government departments and agencies to measure representation rates in the federal public service, these numbers are also becoming dated. In 2011, Statistics Canada will be undertaking yet another census.

<sup>53</sup> Treasury Board Secretariat, *Employment Equity in the Public Service of Canada: 2008–2009*, 31 March 2010, supra note 1 at Chapter 3. and Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2 at para. 3.80, Table 9, Footnote 4.

department by department breakdown, indicating how each core public administration department or agency is doing in meeting its employment equity representation targets, based on 2006 workforce availability numbers. Unsurprisingly, this table shows that most individual departments experience their greatest representation shortfalls in the area of visible minority representation.

*iv. Issues of Concern Pertaining to Representation and Recruitment of Women, Persons with Disabilities, Visible Minorities and Aboriginal Peoples*

While visible minorities remain the only designated group for which representation rates in the federal public service are below workforce availability numbers, this does not mean that there are no issues of concern regarding recruitment or representation rates with respect to the remaining three groups. The OCHRO's most recent report on Employment Equity in the Federal Public Service, released in March 2010 and the PSC's 2008 – 2009 Annual Report both revealed problems that are worthy of investigation and follow-up in relation to the other groups.

For example, with respect to women, the report revealed that while women represented 54.7% of public service employees in 2008–2009, they only represented 43% of executives.<sup>54</sup> Further, while the percentage of indeterminate (permanent) employees who are women increased slightly from 54.2% in 2007–2008, to 54.6% in 2008 – 2009, women were still over-represented in term (temporary) positions during that period.<sup>55</sup>

With respect to persons with disabilities, while representation rates remained steady in 2008 – 2009, the figure for new hires of persons with disabilities remained lower than workforce availability numbers for this group.<sup>56</sup> More recently, in the PSC's 2008 – 2009 Annual Report, which became available in October 2009, the PSC echoed concerns regarding hiring or recruitment rates for persons with disabilities, stating:

. . . [B]oth the percentage of applicants and the percentage of appointments to the public service [for persons with disabilities] were below the WFA [workforce

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<sup>54</sup> Treasury Board Secretariat, *Employment Equity in the Public Service of Canada: 2008–2009*, 31 March 2010, *supra* note 1 at Chapter 3.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Ibid.*

availability] of 4.0%.... Persons with disabilities in the public service tend to be older than the average public service employee and are therefore more likely to retire in the near future. Concerted efforts to market the public service to, and recruit from, this segment of the population, as well as providing accommodation to meet their needs in the appointment process and in the workplace, is required to maintain their existing representation levels.<sup>57</sup>

For Aboriginal peoples, the OCHRO's 2008 – 2009 report on Employment Equity in the Federal Public Service showed that 41.7% of Aboriginal employees worked for just three federal departments: Indian and Northern Affairs Canada, Correctional Services Canada and Human Resources and Social Development Canada.<sup>58</sup> The PSC's 2008 – 2009 Annual Report stated that continues to be the case.<sup>59</sup> While it may be natural for Aboriginal peoples to seek employment in these three departments due to the impact these departments have on the lives of Aboriginal peoples, the committee would like to see this designated group represented more broadly throughout the public service.

Notwithstanding the important challenges which remain in relation to recruitment or hiring rates, government-wide representation, and executive level representation in relation to these latter three designated groups, the committee continued to focus its attention during its 2009 hearings on visible minority representation. The committee took this approach because it believed that the data available continued to suggest that visible minorities were the only group for which the most basic goal of the equity regime established under the *Employment Equity Act* (representation rates equivalent to workforce availability numbers) remained unmet.

v. *The Public Service Commission's New Method for Calculating Recruitment Rates and What It Might Mean Regarding Recruitment Rates for Visible Minorities in Particular*

It is important to note that representation rates and recruitment rates are entirely different things and are measured by two entirely different agencies. Representation rate figures are provided by the OCHRO. They demonstrate the rate at which employees

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<sup>57</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2 at para 3.81.

<sup>58</sup> Treasury Board Secretariat, *Employment Equity in the Public Service of Canada: 2008–2009*, 31 March 2010, supra note 1 at Chapter 3.

<sup>59</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2 at para 3.82.

from the four employment equity groups are represented in the workforce of the core public administration of the federal public service. The OCHRO is responsible for gathering data regarding overall representation of employment equity groups within the core public administration through a process known as self-identification, mandated by the *Employment Equity Act* and the regulations made under it.<sup>60</sup> Basically, individual departments or agencies are required to send out surveys to their employees providing them the opportunity to self-identify as members of one of the four employment equity groups. Employers can make it mandatory to return the survey form, but since the decision to self identify is voluntary, they cannot force employees to fill it out. Surveys must be sent to all indeterminate employees and to all term employees who are hired for periods of three months or more, regardless of whether or not these employees were hired through advertised or non-advertised processes. This data is collected by individual federal departments and agencies and forwarded to the OCHRO, which then uploads it to the Employment Equity Data Bank (EEDB) of the Treasury Board Secretariat. The OCHRO uses the information in the EEDB to determine representation rates for the four employment equity groups in the core public administration of the federal public service.<sup>61</sup> A copy of the self-identification survey form used by federal government departments has been included as Appendix B to this report.

Although it is the responsibility of the OCHRO to determine overall representation rates for the four employment equity groups, it is the responsibility of the PSC to determine recruitment or hiring rates for these groups. In past years, the PSC used the same data source as the OCHRO to calculate recruitment rates for three out of the four designated groups (Aboriginal persons, persons with disabilities and visible minorities);<sup>62</sup> namely, self-identification surveys conducted by individual departments and agencies in

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<sup>60</sup> See sections 5, 9 and 17 of the *Employment Equity Act* and sections 3 and 11, as well as Schedule IV of the *Employment Equity Regulations*, SOR/96-470.

<sup>61</sup> Maria Barrados, President, Public Service Commission of Canada, testimony before the committee 23 March 2009; Michelle d'Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada, testimony before the committee 27 April 2009; and Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, from Michelle d'Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights, *supra* note 51.

<sup>62</sup> For women, pay data was used to determine recruitment rates. See testimony of Maria Barrados, President, Public Service Commission of Canada, *supra* note 61.



the core public administration. The figures represented all indeterminate hires and all term hires of three months or more, regardless of whether or not these employees were hired through advertised or non-advertised processes.<sup>63</sup>

In 2009, however, the PSC began to measure recruitment rates differently, at least as they pertain to visible minorities, Aboriginal peoples and persons with disabilities. It signalled its intention to do so in its 2007 – 2008 Annual Report, where it declined to provide statistics on recruitment rates of visible minorities for that year. In this report, the PSC stated:

**Representation of visible minorities** – Having a public service that is representative of Canada’s diversity is enshrined in the preamble of the PSEA. Representativeness is also one of the PSC’s guiding values for managers to consider throughout appointment processes. In last year’s report, the PSC raised concerns about the proportion of visible minorities in the appointments being made to the public service. However, recent changes to the PSC’s database of applicant information have provided further information that suggests that the appointments of visible minorities to the public service may have been underestimated. The PSC is presently working with the Canada Public Service Agency, the Privy Council Office, the Canadian Human Rights Commission and Statistics Canada to address this important issue. As soon as this work is completed, we will report to Parliament.<sup>64</sup>

When Maria Barrados, President of the Public Service Commission, appeared before the committee on 23 March 2009, she clarified what was meant by this section of the Commission’s 2007 – 2008 Annual Report. She indicated that the PSC had developed an alternative methodology for collecting data on recruitment rates for Aboriginal persons, persons with disabilities and visible minorities (recruitment data for women continues to be collected from the Public Works and Government Services Canada's pay file). Rather than using the data obtained through self-identification surveys, the Public Service Commission is now obtaining recruitment data for these three groups from self-declaration forms completed by applicants who apply for public service jobs on the Jobs

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<sup>63</sup> Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, Michelle d’Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights, supra note 51.

<sup>64</sup> Public Service Commission of Canada, *2007 -- 2008 Annual Report*, 2008, supra note 44 at para. 1.16.

Canada website. Every application advertised on this website contains an on-line link to an automated self-declaration form, which applicants from the four employment equity groups can complete on a voluntary basis. The self-declaration form is virtually identical to the self-identification survey completed by individuals who have already been hired. A copy of the self-declaration form has been attached to this report as Appendix C.

Once individuals have applied for jobs on the Jobs Canada website, the self-declaration form, along with other application data, is then forwarded to the Public Service Resourcing System (PSRS), a web-based tool that automatically refers applications made on the Jobs Canada website to hiring managers. The PSC then matches the data obtained from the automated self-declaration form to appointment data. Based on the data obtained and matched in this manner, the recruitment rates for visible minorities for 2006 – 2007, 2007 – 2008, and 2008 – 2009 were 15.6%, 17.3%, and 18.8% respectively, as opposed to recruitment rates of 8.2% for 2006 – 2007 and 9.5% for 2007 – 2008 for visible minorities, which were the rates obtained by the PSC using data obtained by self-identification surveys.<sup>65</sup> Recruitment rate numbers for visible minorities calculated using the new method were significantly higher than the workforce availability numbers for visible minorities from the 2006 census (12.4%). Recruitment rates for Aboriginal persons were also higher than when calculated using data obtained from the self-declaration forms, rather than from self-identification surveys.<sup>66</sup> Although not all applicants to the public service are hired through advertised or automated processes, the PSC advised that 72% of individuals hired by the federal public service were hired through advertised processes in 2007 – 2008 and 74% were hired through advertised processes in 2008 – 2009.<sup>67</sup> It would appear, therefore, that Aboriginal

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<sup>65</sup> No recruitment rate using self-identification surveys is available in the PSC 2008 – 2009 Annual Report, as it appears that the PSC is no longer using self-identification surveys to calculate recruitment rates for designated groups.

<sup>66</sup> Using data from the self-identification surveys, recruitment rates for Aboriginal persons in 2006 – 2007 and 2007 – 2008 were 3.3% and 3.4% respectively. Using data obtained from self-declaration forms completed on the Jobs Canada website, recruitment rates for Aboriginal persons were 4.2% for 2006 – 2007, 4.3% for 2007 – 2008 and 4.2% for 2008 – 2009. Similarly, using data from self-identification surveys, recruitment rates for persons with disabilities were 2.8% in 2006 – 2007 and 2.5% in 2007 – 2008. Using data obtained from self-declaration forms, recruitment rates for persons with disabilities were 3.9% in 2006 – 2007, 3.3% in 2007 – 2008 and 3.3% in 2008 – 2009.

<sup>67</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, *supra* note 2 at para. 3.75.

persons, persons with disabilities and visible minorities may be better represented in the federal public service than was previously thought.<sup>68</sup>

In its 2008 – 2009 Annual Report, the PSC suggested that the difference between the recruitment rates arrived at using the old method (self-identification surveys that are also used to calculate representation rates) and the new method (self-declaration forms), which was particularly significant in the case of visible minorities, could “be partially attributed to difficulties encountered by departments and agencies in administering the self-identification process.”<sup>69</sup> The PSC also indicated that individual departments and agencies might be able to reduce the differences between representation rate numbers calculated using self-identification survey results and recruitment rates calculated using self-declaration forms by “using guidelines and tools from the OCHRO and the PSC to ensure integration of self-declaration and self-identifications information by all organizations”<sup>70</sup> and by “communication to help applicants and employees understand the purpose and significance of EE [employment equity] and the differences between self-declaration and self-identification.”<sup>71</sup> To this end, the PSC indicated in its 2008 – 2009 Annual Report that:

[T]he PSC and the OCHRO are working together to examine and compare organizational systems, approaches and practices for gathering EE self-identification data. Seven organizations have been selected to be part of this exercise: Environment Canada, Health Canada, Justice Canada, Natural Resources Canada, the Public Service Commission, Public Works and Government Services Canada and Veterans Affairs Canada.<sup>72</sup>

With respect to how this new method of collecting recruitment rate data will be used by the Public Service Commission and other agencies responsible for monitoring and achieving hiring and representation targets for the federal public service in the future, Ms. Barrados had indicated when she appeared before the committee in March 2009 that the PSC would be working with its partner agencies and others to develop a common

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<sup>68</sup>Testimony of Maria Barrados, President, Public Service Commission of Canada, *supra* note 61.

<sup>69</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, *supra* note 2 at para. 3.77.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.* at para. 3.76.

method for calculating both representation and recruitment rates in the federal public service, and that it was committed to reporting the results of these consultations, as well as releasing recruitment rates for all four employment equity groups in its 2009 – 2010 Annual Report.<sup>73</sup> According to the 2008 – 2009 Annual Report, consultations with the OCHRO, the CHRC and the Human Resources and Skills Development Canada’s Labour Program to develop a common methodology to calculate representation and recruitment rates has already begun.<sup>74</sup> The committee eagerly looks forward to a progress report on efforts to develop this common methodology in the PSC’s 2009 – 2010 Annual Report, which will presumably detail what progress has been made through these consultations.

*vi. Reactions to and Concerns Expressed Regarding the Public Service Commission’s New Method for Calculating Recruitment Rates*

During its 2009 hearings, reactions to the new method used by the PSC to calculate recruitment rates for three of the four employment equity groups were mixed. Michelle d’Auray, former Chief Human Resources Officer of the OHCRO, indicated that the data collected via the self-declaration and the self-identification forms was identical. However, she highlighted that what was being measured by the CPSA and its successor agency, the OCHRO, and what was being measured by the PSC were strikingly different. Not only was the PSC measuring recruitment rates upon being hired, while the OCHRO was measuring representation rates after being hired, but the PSC data reflected only recruitment through advertised processes. By contrast, the data obtained through self-identification surveys by the OCHRO reflected those individuals in the federal public service hired through both advertised and non-advertised processes.<sup>75</sup> Having said this, the OCHRO appeared to view the data obtained via the PSC’s new methodology as valuable, stating that they, the Public Service Commission and other interested stakeholders, “are working together to determine how this alternative method of capturing data can be used in the future.”<sup>76</sup>

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<sup>73</sup> Testimony of Maria Barrados, President, Public Service Commission of Canada, *supra* note 61.

<sup>74</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, *supra* note 2 at para. 3.78.

<sup>75</sup> Testimony of Michelle d’Auray, former Chief Human Resources Officer, OCHRO, *supra* note 62,

<sup>76</sup> Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, Michelle d’Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights, *supra* note 51.

The National Council on Visible Minorities in the Federal Public Service (NCVM), by contrast, expressed serious concerns about the PSC's use of self-declaration forms, rather than self-identification surveys, to obtain recruitment rate data for employment equity groups. In part, these concerns were founded on the fact that the PSC had not shared its methodology with the NCVM ahead of time.<sup>77</sup>

However, a larger concern appeared to be whether the use of data from the self-declaration form was legal. In the NCVM's view, the *Employment Equity Act* speaks in terms of self-identification, not self-declaration, so it felt there was a question of legality in that regard. The NCVM also indicated that it was unclear whether all applicants, including white males, were asked to fill out the self-declaration form on the automated application website when applying for jobs in the federal public service, stating that, if not, "then self-declaration is in violation of equality rights as defined in section 15.1 of the *Canadian Charter of Rights and Freedoms*."<sup>78</sup>

For their part, representatives from the Public Service Alliance of Canada (PSAC) indicated that, at least when the automated self-declaration form was initially introduced, its content was not identical to the content of the self-identification survey, and therefore PSAC questioned how much reliance could be placed on the new methodology used by the PSC to calculate recruitment rates for 2007 – 2008.<sup>79</sup> Furthermore, just as the OCHRO had, PSAC representatives also highlighted the fact that the new methodology used by the PSC only captured data for advertised processes, which accounted for only 72% of new hires to the federal public service in 2007 – 2008 (now 74% in 2008 – 2009). In their view, using non-advertised processes 28% of the time to hire new employees was ill-advised, and was too frequent a use of this hiring mechanism. They stated that "[h]iring through this means can often be a case of "who you know, not what you know,"

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<sup>77</sup> Igho Natufe, President, National Council of Visible Minorities in the Federal Public Service (NCVM), testimony before the committee, 20 April 2009. The National Council of Visible Minorities further proposed that the Privacy Commissioner be asked to audit the legality of this new means of collecting data, and the methodology used, as this would "underline the transparency, legality and credibility" of the Public Service Commission's approach.

<sup>78</sup> Ibid.

<sup>79</sup> Patty Ducharme, National Vice-President, Public Service Alliance of Canada (PSAC), testimony before the committee, 8 June 2009.

and marginalized groups are less likely to have the right “connections” to be appointed this way.”<sup>80</sup> They urged the PSC to also publish statistics on the number of employees from employment equity groups hired through non-advertised processes in order to substantiate the validity of its new methodology for calculating recruitment rates.<sup>81</sup>

The committee believes that the new method used by the Public Service Commission to collect recruitment rate data will be a useful additional source of information for organizations and agencies that monitor employment equity matters. It is also encouraged to see that the data provided by this new method appears to indicate that the recruitment rates of Aboriginal persons, persons with disabilities, and particularly, visible minorities, to positions in the federal public service are higher than they were thought to be in the past. However, it is the opinion of the committee that concerns expressed by the NCVM and the PSAC warrant further investigation by the Public Service Commission, the OCHRO, the Clerk of the Privy Council and others who play a role in monitoring employment equity matters. The committee is also disturbed by the fact that there is such a wide disparity between the recruitment figures for visible minorities obtained through self-identification surveys and that obtained through self-declaration forms when people apply for jobs. Such disparity seems to indicate that applicants are much more comfortable self-identifying when they initially apply for jobs than they are after they are hired.

As noted by the OCHRO, the NCVM and the PSAC, both in their testimony before the committee and in written submissions thereafter, a reluctance to self identify as a

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<sup>80</sup> Letter from PSAC providing additional information to the Standing Senate Committee on Human Rights, 21 July 2009.

<sup>81</sup> It appears from data contained in the Public Service Commission’s 2008 – 2009 Annual Report that the PSC has been attempting to collect better data regarding term and casual hires, but has been somewhat frustrated in this regard. While federal government departments and agencies are required to report to the PSC regarding their use of casual hires, issues have arisen as to the timeliness and quality of organizational reporting, such that the PSC was only able to match 68% of the data provided by departments and agencies with data in the PSC’s hiring and staffing files. As a result, the PSC is currently investigating whether or not it would be possible to collect data on non-advertised hiring through some form of automated system. See the Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2 at paras. 3.46 to 3.51, and Public Service Commission of Canada, *Study on the data collection of non-advertised appointment processes*, October 2009, available on-line at: <http://www.psc-cfp.gc.ca/adt-vrf/rprt/2009/dcnaap-cdrapna/index-eng.htm>.

member of an employment equity group can have many causes, including fear of being considered a statistic, fear of being labelled, fear of being discriminated against as a result of self-identifying, wishing to be promoted based on qualifications for the position rather than being a member of a designated group, failure of individual government departments to send out self-identification surveys regularly, or to properly explain the importance of self identifying to their staff.<sup>82</sup> Unfortunately, however, to date, there have been no government-wide studies conducted inquiring into why individuals choose not to self-identify.<sup>83</sup> While the committee is of the view that the PSC and OCHRO's recent efforts to compare systems used by seven federal government departments and agencies to gather self-identification data represents a good start, the committee believes that a concerted, government-wide study of the root causes of the failure to self-identify would be of great benefit to federal departments and agencies in developing strategies to eliminate barriers, encouraging self-identification and adopting concrete and realistic employment equity targets.

*vii. Some Improvement, but Continuing Scarcity, of Members of Visible Minority Groups in Executive (EX) Positions*

As was the case in 2008, witnesses who appeared before the committee in 2009 continued to highlight the scarcity of members of visible minority groups in EX positions in the federal public service. It appears, however, that some progress is being made on this front. For example, the Public Service Commission advised that in February 2008, 27 prequalified visible minority candidates were placed in EX positions, and that in 2009, the commission established an additional pool of 30 qualified visible minority candidates at the EX-1 level. Maria Barrados, President of the Public Service Commission had written to deputy heads of departments to let them know that these candidates are

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<sup>82</sup> Testimony of Michelle d'Auray, former Chief Human Resources Officer, OCHRO, supra note 61; testimony of Igho Natufe, President, National Council of Visible Minorities in the Federal Public Service (NCVM), supra note 77; testimony of Patty Ducharme, National Vice-President, Public Service Alliance of Canada (PSAC), supra note 79; Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, from Michelle d'Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights, supra note 51.

<sup>83</sup> Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, from Michelle d'Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights, supra note 51.

available.<sup>84</sup> As of 31 March 2009, 13 of these 30 candidates had been placed with federal government departments.<sup>85</sup> Efforts also appear to have been made within the federal public service to promote individuals from all four employment equity groups. The OCHRO informed the committee in April 2009 that based on self-identification data, women had received 61.6% of promotions in the federal public service in 2007 – 2008, Aboriginal persons had received 4.3% of promotions, persons with disabilities had received 5.3% and visible minorities had received 10.6%.<sup>86</sup>

Having said this, it appears that progress in hiring visible minorities at the EX level varies greatly from department to department. During its most recent appearance before the committee, the NCVM indicated that 15.8% of individuals at the EX level at Health Canada were visible minorities, and 7.5% of individuals at the EX level at Natural Resources Canada were visible minorities. Natural Resources Canada also had 24 visible minorities in its Leadership Development Program (the total number of employees in this program was 57) as of 27 March 2009. These departments were therefore doing quite well in hiring visible minorities at the EX level and promoting them from within. By contrast, however, of the 81 EX positions at the Privy Council Office, none were occupied by members of visible minorities groups as of 1 April 2009. The Department of Justice also had no visible minorities in EX positions as of 30 November 2008.<sup>87</sup> Although Department of Justice officials recently advised the committee that they now have a visible minority employee in one of the department's 35 EX positions,<sup>88</sup> these latter two departments seem to have made less progress in this area than some others. The committee would like to see progress in hiring and promoting individuals from visible minority groups to senior positions in government proceed more uniformly across departments.

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<sup>84</sup> Testimony of Maria Barrados, President, Public Service Commission of Canada, *supra* note 61.

<sup>85</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, *supra* note 2 at para. 3.101.

<sup>86</sup> Testimony of Michelle d'Auray, former Chief Human Resources Officer, OCHRO, *supra* note 61.

<sup>87</sup> Submissions provided by NCVM to the committee on 20 April 2009.

<sup>88</sup> Letter from John H. Sims, Deputy Minister of Justice and Deputy Attorney General of Canada to Senator Raynell Andreychuk, Chair of the Standing Senate Committee of Human Rights, 13 July 2009.



*viii. Drop Off Rate for Visible Minority Applicants and Requirement to Affirm Aboriginal Affiliation for Jobs Targeted to Aboriginal Peoples*

In addition to the concerns noted above, the PSC's 2008 – 2009 Annual Report also identified two additional emerging trends that would likely be worthy of future investigation and follow-up both by the PSC, CHRC and the OCHRO, the central monitoring agencies charged with ensuring the requirements of the *Employment Equity Act* are met, as well as by this committee. The first of these is the drop-off rates for visible minorities in the federal public service and the second is the fact that the PSC is now requiring Aboriginal applicants for public service jobs targeted specifically to Aboriginal peoples to affirm their Aboriginal affiliation at the time that they apply.

As indicated above in Part A, Sections 1 and 6 of this Chapter, this committee has been concerned about previous reports from the PSC that the drop-off rate (the rate at which people who voluntarily self-identify as members of one of the four designated groups when they apply for jobs in the federal public service are eliminated or screened out of the competitive process) for visible minority applicants has been significantly higher than the rate for the three other designated groups. In October 2009, the PSC published a result of a study it recently undertook into this phenomenon which compared the drop-off rates for Aboriginal and visible minority applicants as well as applicants with disabilities. The study indicated that persons with disabilities and Aboriginal peoples did not show a drop-off rate at all, while visible minority applicants continued to show a drop-off.<sup>89</sup> While the study suggests that visible minorities may apply to a higher number of job postings than members of other designated groups or the average job seeker (this may factor into the higher drop off rate),<sup>90</sup> the study also suggests that since this group is the only one to experience this type of drop-off, further investigation is warranted to ensure that “there are no selection biases in the appointment process.”<sup>91</sup>

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<sup>89</sup> Public Service Commission of Canada, *Drop-off of employment equity groups in recruitment*, October 2009, available on-line at: <http://www.psc-cfp.gc.ca/plcy-pltq/eead-eeed/rprt/ee/index-eng.htm>.

<sup>90</sup> Ibid. and Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2 at paras. 3.89 to 3.93.

<sup>91</sup> Public Service Commission of Canada, *Drop-off of employment equity groups in recruitment*, October 2009, supra note 89 at p. 3.

The second issue is the new requirement for Aboriginal peoples to complete a form to affirm their aboriginal identity when they apply for jobs where the area of selection has been limited to Aboriginal peoples. Effective 1 January 2010, all Aboriginal applicants are being required to complete one of these forms when they apply for the types of jobs described above. A copy of this form has been added to this report as Appendix D. According to the PSC's 2008 – 2009 Annual Report, the PSC made the decision to require Aboriginal applicants to complete this form in response to concerns raised by the Committee for Advancement of Native Employment (CANE) at Indian and Northern Affairs Canada (INAC) that “some individuals were self-declaring as Aboriginal to gain access to employment opportunities intended only for Aboriginal peoples.”<sup>92</sup> The PSC developed the content of the form in consultation with “HR [human resources] advisors and hiring managers, . . . key deputy ministers, CANE, the National Council of Aboriginal Federal Employees, departments and agencies, bargaining agents and other EE [employment equity] employee councils.”<sup>93</sup> The form requires Aboriginal peoples applying for such jobs to specifically indicate the basis of their Aboriginal affiliation (such as Band or Treaty number, First Nation or Métis Nation affiliation, or what land claim agreement they benefit from). The form also contains a statement indicating that providing false or misleading information on this form could lead to rejection of the application or revocation of appointment to the position if discovered after the fact.

While the goal of ensuring that positions created and targeted specifically to Aboriginal peoples actually go to people who qualify under this category is a laudable one, the committee has some concerns about how this new requirement will play out in practice. For example, although the PSC's 2008 – 2009 Annual report indicates that completing this form will be required only when the job in question is targeted to Aboriginal peoples,<sup>94</sup> wording on the form indicates that it may be used for jobs targeted to designated groups generally. This may raise questions of fairness in having Aboriginal peoples subject to a different level of scrutiny than other employment equity groups. It also may result in employers deciding not to target jobs specifically to Aboriginal

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<sup>92</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, *supra* note 2 at para. 3.95.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.* at para 3.96.

applicants; the requirement to complete this form, and possibly to verify the veracity of the Aboriginal person's qualifications as an Aboriginal applicants, may be viewed as too onerous (i.e., another procedural human resources step that an employer might wish to avoid). While the PSC's 2008 – 2009 Annual Report indicates that it will continue to encourage departments and agencies to create positions specifically targeted to Aboriginal peoples in appropriate circumstances,<sup>95</sup> it is equally possible that adding these additional requirements will, contrary to the intention behind it, have a chilling effect on the creation of jobs targeted to such applicants. The committee therefore urges the PSC to continue to monitor the impact these new requirements have on Aboriginal applicants and the creation of new positions targeted to Aboriginal peoples.

*ix. Creation of the New Office of the Chief Human Resources Officer and Increased Responsibility for Human Resources Management for Deputy Ministers*

Finally, as stated previously in this report, one of the key developments in the area of employment equity in the federal public service during 2009 was the creation of the OCHRO. On 2 March 2009, this new office, located in the Treasury Board Secretariat, took over both the business and policy functions of the CPSA. The Prime Minister's 6 February 2009 news release respecting the creation of the OCHRO stated that this new agency is intended to:

[s]implify the organizational structure for human resources management [in the federal public service], reduce overlap and duplication and provide Deputy Ministers with the primary responsibility for managing the people in their own departments and agencies.<sup>96</sup>

The OCHRO was created in response to observations and recommendation made by the Prime Minister's Advisory Committee on the Public Service (the Advisory Committee) in its Second Annual Report.<sup>97</sup> In that report, released in March 2008, the

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<sup>95</sup> Ibid.

<sup>96</sup> News Release, "Prime Minister Harper announces changes to streamline human resources management in the Public Service of Canada," 6 February 2009, available on the Prime Minister's website at: <http://pm.gc.ca/eng/media.asp?category=1&id=2413>.

<sup>97</sup> The *Second Annual Report of the Prime Minister's Advisory Committee on the Public Service* is included as Annex 3 to the Clerk of the Privy Council's *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada*, dated 15 March 2008. The Clerk of the Privy Council's Fifteenth Annual Report is available online, <http://www.pco-bcp.gc.ca/docs/information/Publications/ar-ra/15-2008/pdf/rpt-eng.pdf>.

Advisory Committee described the human resources regime for the federal public service as “overly complex” and “duplicative.”<sup>98</sup> It noted that at that time, four central agencies, the Canada Public Service Agency, the Canada School of Public Service, the Treasury Board Secretariat, and the Privy Council Office, as well as one independent agency, the Public Service Commission, all played a role in human resources management, and that there was considerable overlap between their roles.<sup>99</sup> As a result, at least in part, of this overlap and duplication, the Advisory Committee observed that it takes an average of 22.4 weeks to staff an indeterminate position in the federal public service. In its view, this could be corrected if the deputy ministers were the ones primarily responsible and accountable for human resources management, with the central agencies tasked with establishing “expectations and provid[ing] policy and frameworks and guidance to departments, without the heavy hand of executive control.”<sup>100</sup> The Advisory Committee saw replacing the CPSA with a new central agency as the appropriate means through which to achieve this change.

While the Advisory Committee suggested that the Prime Minister and his officials might wish to consider formalizing these changes to human resources governance and mandates through legislation, they believed that this could be done in the fullness of time, and there was an urgent need for the Prime Minister to move forward with these changes now.<sup>101</sup>

In terms of the specific role the OCHRO is intended to play in human resources management in the federal public service, Kevin Lynch, former Clerk of the Privy Council, described its role, and the role of the other agencies involved in human resources management, in his Sixteenth Annual Report to the Prime Minister as follows:

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The Prime Minister’s Advisory Committee on the Public Service was created in November of 2006. Co-Chaired by former Deputy Prime Minister, the Right Honourable Don Mazankowski and former Clerk of the Privy Council, the Honourable Paul Tellier, the Advisory Committee provides counsel and advice to the Prime Minister and the Clerk of the Privy Council on matters related to the future development of the Public Service of Canada.

<sup>98</sup> Ibid. Annex 3, p. 6.

<sup>99</sup> Ibid., pp. 5 and 6.

<sup>100</sup> Ibid., p. 7.

<sup>101</sup> Ibid., p. 8.

... [E]ffective March 2, 2009, the Canada Public Service Agency and the parts of the Treasury Board Secretariat that deal with pensions and benefits, labour relations and compensation were consolidated into a new Office of the Chief Human Resources Officer. It is housed within the Treasury Board Secretariat, similar to the Office of the Comptroller General.

As part of these changes, the central agencies will now focus only on those activities that must be carried out corporately.

The Chief Human Resources Officer (CHRO) will represent the Government of Canada as the “employer” on human resources issues and provide strategic leadership on human resources management. The CHRO will chair a restructured Human Resources Management Advisory Committee, will become the chair of the Canada School of Public Service Board of Governors, and will provide leadership to the human resources community.<sup>102</sup>

When Michelle d’Auray, the former Chief Human Resources Officer, appeared before the committee in April 2009, she explained the difference between the role her office is expected to perform, and the role formerly performed by the CPSA, this way:

These changes ... recognize that the Office of the Chief Human Resources Officer should only undertake those roles that must be carried out on a corporate- or government-wide basis — for example, define the broad framework for people management, promote excellence in people management, track and assess overall performance and the state of the public service, establish common processes and systems, and be responsible for the compensation framework. In a nutshell, that is the scope and mandate of my organization.<sup>103</sup>

Essentially, therefore, it appears the OCHRO was created to give deputy ministers more control over their own hiring and staffing, as well as greater accountability for the choices and decisions that they make in this area.<sup>104</sup> Some witnesses expressed unease

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<sup>102</sup> Clerk of the Privy Council, *Sixteenth Annual Report to the Prime Minister on the Public Service of Canada*, 20 March 2009, at pp. 33 – 34, available at: <http://www.pco-bcp.gc.ca/docs/information/Publications/ar-ra/16-2009/pdf/rpt-eng.pdf>.

<sup>103</sup> Testimony of Michelle d’Auray, former Chief Human Resources Officer, OCHRO, *supra* note 61.

<sup>104</sup> This impression appears to be confirmed by the *Fourth Annual Report of the Prime Minister’s Advisory Committee on the Public Service*, 25 February 2010, available on the Privy Council Office website at: <http://www.pco-bcp.gc.ca/docs/information/publications/ar-ra/17-2010/4th-4eme/pdf/rpt-eng.pdf>. At page 3, the Advisory Committee states: “The CHRO [Chief Human Resources Officer] has moved quickly to reduce unnecessary central policy and oversight controls. Concurrently, deputies are taking charge of their respective responsibilities for managing people. While it is still too early to assess the success of the new model, we are encouraged by the progress reported to us. . . .”

regarding this change. For example, Patty Ducharme, National Vice-President of the PSAC, stated:

[T]he Clerk of the Privy Council's 2009 Annual Report on the Public Service indicates that departments will have the primary responsibility for human resource functions and "the central agencies will now focus *only* on these activities that must be carried out corporately." The Report does not reference whether or not employment equity is one of those activities that "must be carried out corporately" or whether it will be completely devolved to departments. Although currently, departments are responsible for implementing employment equity, the central agencies have played a key role in monitoring and reporting on progress, and in setting goals and policies for the public service on employment equity. PSAC is concerned that this may no longer be the case.<sup>105</sup>

The committee wishes to echo the concerns of PSAC, and express the hope that the OCHRO, along with the other central agencies, will continue to play a role in monitoring and reporting on departmental progress on achieving employment equity, as well as setting goals and policies for the departments. Furthermore, if, indeed, these central agencies will be less involved with these matters than they have been previously, the committee is of the view that it is even more important to make deputy ministers or deputy heads accountable for meeting their employment equity targets by making their performance pay or bonuses contingent upon doing so. Currently, this is not the case. The OCHRO has advised that while meeting one's employment equity targets is definitely part of the Management Accountability Framework used to assess the performance of deputy ministers, "[b]ecause of the multiple factors taken into consideration in assessing deputy ministers' performance, it is not possible to make a direct correlation between the employment equity results achieved in their departments and the amount of performance pay received."<sup>106</sup>

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<sup>105</sup> Letter from PSAC providing additional Information to the Standing Senate Committee on Human Rights, 21 July 2009.

<sup>106</sup> Letter entitled *Follow-Up Response to Questions from Senate Standing Committee*, from Michelle d'Auray, former Chief Human Resources Officer, OCHRO, Treasury Board of Canada to Adam Thompson, Committee Clerk, Standing Senate Committee on Human Rights, *supra* note 51.

### C. Government Initiatives Undertaken in 2007-2008

While clearly pointing out the serious gaps that still remain with respect to employment equity in the federal public service, the committee also wishes to acknowledge the work being undertaken at the federal level to create an equitable workplace. Funding for the Embracing Change initiative may have ended in 2006, but focus on employment equity remains an important goal. This is clear from the number of initiatives highlighted in testimony before the committee in 2007, 2008 and 2009.

With respect to initiatives undertaken in 2007 – 2008, one of the most important has been the Public Service Renewal Process. The Clerk of the Privy Council launched this process in 2006, with the CPSA (now the OCHRO) providing policy and operational support. As outlined by Karen Ellis of the CPSA, as well as the Privy Council Office's 2008 Annual Report,<sup>107</sup> this renewal process has four key priorities: planning (in part, to achieve employment equity objectives), recruitment (creating higher targets and a Public Service Brand), employee development (fostering development), and enabling infrastructure. Diversity is one of the renewal process' primary areas of focus, and it sparked the establishment of the Public Service Renewal and Diversity Branch at the CPSA in May 2006. It is unclear at this time, however, whether or not this branch continues to exist within the newly created OCHRO.

Beyond that renewal process, the committee heard that one of the most important employment equity initiatives being developed is a revision of the Treasury Board's 1999 employment equity policy.<sup>108</sup> Government witnesses told the committee that this initiative is aimed at making the policy clearer, simpler, and results-based, in order to support the integration of employment equity goals into all aspects of human resources management and business planning, as well as to facilitate accountability for results. The policy will set out requirements for deputy ministers to comply with the *Employment Equity Act* and the employment equity policy, and will describe performance indicators and identify consequences for non-compliance. Deputy ministers will be responsible for

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<sup>107</sup> Privy Council Office, *Fifteenth Annual Report to the Prime Minister on the Public Service of Canada*, 2008, supra note 97.

<sup>108</sup> Available at: [http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/tb\\_852/ee\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/tb_852/ee_e.asp).

holding managers accountable for employment equity. A People Component of Management Accountability Framework has also been developed, setting out indicators against which organizational performance, including those relating to the employment of visible minorities, will be assessed. Unfortunately, this new policy has yet to be made publicly available, possibly because the CPSA was replaced with the OCHRO in 2009. However, the committee hopes that this new policy is still in the works, will still be introduced, and will indeed serve to make deputy ministers responsible for holding managers accountable for employment equity. Doing so would appear to be consistent with the intent behind the creation of the OCHRO, which was to give deputy ministers greater responsibility, but also greater accountability, in the arena of human resources management.<sup>109</sup>

In addition to the renewed employment equity policy, Ms. Ellis indicated that the CPSA was developing a new policy on the duty to accommodate to prevent discrimination on the grounds enumerated in the *Canadian Human Rights Act*.<sup>110</sup> This policy will require deputy heads to incorporate accommodation principles into the design and planning of policies, practices, procedures, systems, events and facilities to prevent discrimination. The expectation is that by the time these policies become effective, federal government departments and agencies will have the tools necessary to fulfill their obligations under them.<sup>111</sup>

Maria Barrados also told the committee about a number of initiatives being undertaken within her mandate. She said that the Public Service Commission has published a policy on employment equity in the appointment process, accompanied by a

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<sup>109</sup> It does appear that there is currently some new movement on the policy development front by the OCHRO. While there is no indication that the employment equity policy is yet publicly available, the OCHRO appears to have been working on a People Management Policy Review Project, designed to more clearly define people management roles for deputy heads of departments and reduce the number of policy instruments they need to refer to in performing their people management responsibilities. Further information on the People Management Policy Review Project is available on the OCHRO portion of the Treasury Board Secretariat's website at: <http://www.tbs-sct.gc.ca/chro-dprh/pmprp-faq-epgp-eng.asp>.

<sup>110</sup> R.S.C. 1985, c. H-6.

<sup>111</sup> According to the Public Service Commission's 2008 – 2009 Annual Report, the PSC has also been doing some recent work on duty to accommodate policies. See the Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, supra note 2 at paras. 3.97 to 3.99.



guide to help departments implement employment equity. In March 2008, the Commission also published a statement to clarify the concept of merit, how it is to be applied to achieve representativeness in the federal public service, and some of the tools that deputy heads of government departments can use to integrate employment equity into the appointment process.<sup>112</sup> The PSC has also been carrying out a number of studies and conducting analyses in an attempt to better understand obstacles faced by visible minorities in the workplace. In 2007, for example, Ms. Barrados provided the committee with the Commission's report on drop off which analyzed key patterns of drop off for designated groups between 2000 and 2005.<sup>113</sup> As noted elsewhere in the report, the PSC has been conducting additional research into the drop-off phenomenon, and published its most recent findings on this matter in October 2009.<sup>114</sup>

Two other initiatives were also launched during the 2007 – 2008 period to respond to broad employment equity issues in the federal public service. Jennifer Lynch, Chief Commissioner of the Canadian Human Rights Commission, informed the committee that the Human Rights Commission has recently initiated a new audit process, noting the number of employers subject to the *Canadian Human Rights Act* has gone up almost 50% since 1997, although the Commission now has fewer resources. The Commission is currently reviewing its resource structure to ensure the body's maximum effectiveness. The committee also heard about the creation of a visible minority champions committee under the leadership of Morris Rosenberg, the Deputy Minister of Health. As this committee has been in existence for approximately three years now, the committee would be anxious to hear more in the future about this body, the initiatives it has undertaken to date and those that it plans to undertake.

In addition to the specific initiatives highlighted above, the federal government also made progress during 2007 – 2008 with respect to a number of other projects that have

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<sup>112</sup> This statement is available on the Public Service Commission's website at: <http://www.psc-cfp.gc.ca/plcy-pltq/eead-eeed/rprt/rprs/mar-lmar-eng.htm>.

<sup>113</sup> Public Service Commission, *Drop-Off Rates for Employment Equity Groups: Automated Screening Reports and Appointments 2000 – 2005*, December 2006, available at: <http://www.psc-cfp.gc.ca/plcy-pltq/eead-eeed/rprt/drp-dcln/drp-dcln-eng.pdf>.

<sup>114</sup> Public Service Commission, *Drop-off of employment equity groups in recruitment*, October 2009, supra note 89.

ramifications for more specific aspects of employment equity in the federal public service. Confirming observations made by the committee in its February 2007 report, government officials emphasized that the CPSA had been working to ensure equal access to executive level positions by supporting a wide variety of executive oriented recruitment programs. In particular, Karen Ellis of the CPSA told the committee that the Management Trainee Program, the Accelerated Economist Training Program, and the Accelerated Executive Development Program currently have visible minorities represented at above their workforce availability. The PSC also advised us of plans to create a pool of 27 visible minority EX candidates and place them with government departments.

The committee was also provided with information about the Foreign Credentials Referral Office created in May 2007 by Citizenship and Immigration Canada. Although not providing any direct credentials assistance to new Canadians, it does provide information to direct individuals to appropriate regulatory bodies.

In terms of issues of employment equity in the Department of Justice, departmental officials indicated that steps were being taken in 2007 and 2008 to address the fact that the department was not meeting Embracing Change targets for three of the four employment equity groups at the EX level. These measures included a new program called Justice Leaders of Tomorrow Program (JLTP), which was launched in 2006 to admit 20 junior lawyers (with a designated group representation rate of 50% in 2007) to a management and leadership development program, in order to make them ready for the executive cadre when opportunities for promotion arise. Officials also referenced the Privy Council Office's program, Career on the Move, which recruits visible minority employees for two year assignments to the Privy Council Office. Officials advised that, as of December 2007, they had four employees from the Department of Justice participating in this program. Finally, they referred to recommendations they received from the Department of Justice's Advisory Committee on Visible Minorities to create a

mentoring program for visible minority employees. Officials indicated that this program would commence before 31 March 2008.<sup>115</sup>

#### **D. Government Initiatives Undertaken in 2008 – 2009**

In 2009, some of the government initiatives described by officials appearing before the committee in 2007 – 2008 were followed through to completion, while others were not. Significant new policies that do not appear to have been followed through to completion include, as described above, the revision of the Treasury Board's 1999 employment equity policy. This policy is still not publicly available, perhaps because the CPSA was replaced by the OCHRO in March 2009. Similarly, it is unclear whether or not the Public Service Renewal and Diversity Branch, that was supposed to be created within the CPSA, has been or will be created within the OCHRO.

Initiatives that have been followed through to completion include the Public Service Commission's creation of a first pool of visible minority EX candidates, 27 of which were placed with various government departments. A second pool of 30 candidates was created, as promised, and these candidates are beginning to be placed within departments. In addition, efforts are continuing to achieve greater representation of visible minority groups in the Management Trainee Program and the Accelerated Executive Development Program. When she appeared before the committee in April 2009, Michelle d'Auray informed the committee that the Management Trainee Program had 30.6% representation of visible minorities and the Accelerated Executive Development Program had 27.5% representation of visible minorities.<sup>116</sup>

Several new initiatives were described by the witnesses who appeared before the committee in 2009. For example, Michelle d'Auray advised the committee that, in the context of the Clerk of the Privy Council's commitment to public service renewal, deputy heads were tasked in 2008 – 2009 to recruit post-secondary graduates from visible minorities in excess of workforce availability. Through this directive, 550 of the 4,200

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<sup>115</sup> Testimony of Camille Therriault-Power, Director General, Director General's Office, Department of Justice Canada, *supra* note 28.

<sup>116</sup> Testimony of Michelle d'Auray, former Chief Human Resources Officer, OCHRO, *supra* note 61. *Ibid.*

newly hired graduates were individuals who self-identified as members of visible minority groups.

The Public Service Commission, for its part, indicated that by December of 2008, it had extended National Area of Selection to almost all externally advertised jobs,<sup>117</sup> including clerical and secretarial jobs, and jobs in the Federal Student Work Experience Program, meaning that people from all regions of Canada are able to apply for most federal public service jobs that are open to the public, regardless of where they live. These efforts appear to be improving access to federal government jobs for individuals living in different parts of Canada. The PSC 2008 – 2009 Annual report indicates, for example, that “in 2007-2008, 91 996 (38%) of 242 096 applications for jobs in the NCR [National Capital Region] were from other regions. In 2008-2009, this rose to 88 050 (41%) of 214 756 applications.”<sup>118</sup>

Another new initiative that is of interest to the committee is the Objective Eye Initiative, an interdepartmental initiative led by Citizenship and Immigration Canada. This initiative is designed “to foster bias-free appointment processes in the federal public service by providing an inventory of trained EE-group public servants who have volunteered to acquire training and to serve on selection boards.”<sup>119</sup> According to the PSC’s 2008 – 2009 Annual Report, “the PSC and CIC [Citizenship and Immigration Canada] are discussing whether the PSC should assume leadership for the Objective Eye as part of its efforts to facilitate diversity on selection boards and to provide a better service to departments and agencies.”<sup>120</sup> Such efforts may be very useful in reducing the drop-off rate for visible minorities identified by the PSC in its October 2009 study of that issue.

Perhaps the most striking number of new initiatives, however, were announced by the Department of Justice. During his appearance before the committee in June 2009, and in supplementary material provided to the committee before and after that date, John Sims,

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<sup>117</sup> Testimony of Maria Barrados, President, Public Service Commission of Canada, *supra* note 61.

<sup>118</sup> Public Service Commission of Canada, *2008 – 2009 Annual Report*, 2009, *supra* note 2 at para. 3.43.

<sup>119</sup> *Ibid.* at para. 3.101.

<sup>120</sup> *Ibid.*

Deputy Minister of Justice and Deputy Attorney General of Canada announced that, following the appearance of Department of Justice officials before the committee in 2007 the Department of Justice has been making a concerted effort to improve representation of all four employment equity groups, but particularly visible minorities. Efforts that the department has made in 2008 – 2009 include:

- increasing representation for visible minorities, persons with disabilities and Aboriginal persons at the Department of Justice in excess of 2006 workforce availability numbers;<sup>121</sup>
- enhancing representation for visible minorities, particularly at the LA-2B senior lawyer level;
- hiring one individual from a visible minority group at the EX level; ensuring that 25% of new hires for the year were from three of the four employment equity groups (Aboriginal persons, persons with disabilities, and visible minorities);
- creating a National Diversity Awareness Training Initiative, a two-day diversity training workshop, for which attendance will be mandatory for managers, and which will be made available to other employees as well, to be offered in locations across the country during the next three years;
- launching a self-identification campaign across the department; and
- taking steps to increase participation of Aboriginal persons, persons with disabilities and visible minorities in their National Mentoring Program, Talent Management Program and Justice Leaders of Tomorrow Program, designed to be feeder programs for senior level positions within the department.<sup>122</sup>

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<sup>121</sup> Visible minority representation at the Department of Justice increased from 11.6% (547 employees) to 13.9% (683 employees) between 1 April 2008 and 31 March 2009. Representation for persons with disabilities increased from 5.1% (238 employees) to 6.0% (297 employees), and representation for Aboriginal persons increased from 3.3% (156 employees) to 3.7% (184 employees) during the same period.

<sup>122</sup> Letter from John H. Sims, Deputy Minister of Justice and Deputy Attorney General of Canada to Senator Raynell Andreychuk, Chair of the Standing Senate Committee of Human Rights, 2 June 2009; John Sims, Deputy Minister of Justice and Deputy Attorney General of Canada, testimony before the committee on 8 June 2008; and Letter from John H. Sims, Deputy Minister of Justice and Deputy Attorney General of Canada to Senator Raynell Andreychuk, Chair of the Standing Senate Committee of Human Rights, *supra* note 88.

The committee is encouraged to see the numerous positive steps taken by the Department of Justice to increase employment equity and the diversity of representation in its work force at both senior and junior levels in 2008 – 2009. While some of the initiatives undertaken by this department are undoubtedly particular to it, the committee would like to see similar initiatives undertaken by other federal departments and agencies, and indeed by the federal service as a whole.

## CHAPTER 3: THE COMMITTEE'S RECOMMENDATIONS

**“The federal public service and Canada has been fighting for 20 years to get bad numbers on the table. We are in serious trouble.”<sup>123</sup>**

As the largest employer in the country, the federal public service should be representative of the public it serves, and should be providing leadership for businesses in other sectors rather than struggling to be representative enough for an increasingly diverse population. The committee's first report on employment equity was entitled *Not There Yet*. As noted by Jennifer Lynch, “indeed, we are not even near there yet.”<sup>124</sup> Maria Barrados conceded that: “While we continue to believe that the gap can be closed, we are concerned with how long it will take us to get there.”<sup>125</sup> The committee notes that other federally regulated sectors, such as the banking industry, are there. Why not the federal public service?

The following chapter expands on several of the committee's 2007 recommendations, which have not yet been adopted (recommendations 1, 10, 11, and 12), in an attempt to provide some direction to the agencies working to attain employment equity in the federal public service. It also introduces several new recommendations to address new issue and concerns that have arisen since the committee last reported on employment equity matters.

### **A. Enhancing Concrete Movement on Employment Equity Goals**

Now that the Embracing Change policy has come to a close, the committee urges the federal government to re-evaluate the targets established in that initiative – targets that ultimately proved far from attainable. The committee believes that it would be more effective to approach employment equity goals from a more practical angle – unattainable targets help no one, particularly when they are premised on 2001 census estimates of

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<sup>123</sup> Karl Flecker, National Director of Anti-Racism and Human Rights Department, Canadian Labour Congress, testimony before the committee, 10 December 2007.

<sup>124</sup> Jennifer Lynch, Chief Commissioner, Canadian Human Rights Commission, testimony before the committee, 4 February 2008.

<sup>125</sup> Testimony of Maria Barrados, President, Public Service Commission, testimony before the committee, 23 April 2007.

workforce availability that are no longer of any relevance. Instead, the committee emphasizes that the OCHRO, as the successor agency to the CPSA, must focus on concrete initiatives such as the publication and effective implementation of the renewed employment equity policy promised for April 2008, which still has not been published. The policy will hopefully contain renewed commitment and strategies to obtain employment equity goals – the committee is eager to see this policy in order to assess its potential. In addition, the committee wishes to urge government departments and agencies to move on the publication and implementation of staffing strategies that support the inclusion of employment equity considerations in the merit criteria for jobs and the targeting of hiring processes to one or more employment equity groups in order to achieve a representative public service. The 12 departments cited in December 2007 are not enough – the committee hopes that by the end of 2010, all federal organizations will have submitted strategies that include plans to address gaps in employment equity representation, through merit criteria or other means.

The committee also sees other concrete ways in which employment equity goals can be pursued. The eternal problem of short term and casual hires is one that must still be addressed. The federal public service needs to find ways in which to avoid immediate-needs hires that directly and indirectly circumvent employment equity goals. Another area in need of attention is the need for language training, as emphasized by Gary Corbett of the Professional Institute of the Public Service of Canada and Ed Cashman of the PSAC. The committee fully understands the need for a bilingual public service, but wishes to highlight the possibilities that exist for on the job language training specifically targeted to assist the career advancement goals of individuals that enter the public service with only one language. An increased focus on language training, rather than requiring applicants to be bilingual from the time that they are hired, might also assist the government in developing a public service that is more regionally representative than is currently the case.

In terms of foreign credentials, the committee is fully aware that the federal government has no powers to affect the work of professional regulatory bodies; however,



Gary Corbett had suggested that the federal government can nevertheless provide funding to assist foreign professionals to earn their accreditation in Canada. The committee acknowledges that federal initiatives to improve foreign credential recognition for new immigrants have been commenced, as the November 2009 report on foreign credential recognition by the House of Commons Standing Committee on Citizenship and Immigration<sup>126</sup> indicates, however, more could be done. The federal government could, for example, introduce internship programs or financial assistance for professional studies or accreditation exams. The committee also notes that the federal government can also move towards its employment equity goals by re-evaluating its general approach that places a particularly high value on Canadian experience. In some areas such experience is less relevant and managers should be asking themselves when such criteria is critical and when it is not.

Finally, the committee wishes to place emphasis on the need for funding in order to allow government agencies and departments to fulfill their objectives. The Embracing Change funds no longer exist, and although some of this funding was used to establish initiatives that remain in operation today, the committee urges the federal government to invest in employment equity today so that the federal public service can put its best face forward into the future.

## **RECOMMENDATION 1**

**The committee recommends that the federal government focus on concrete initiatives in order to achieve its employment equity goals. Such initiatives should include:**

- **Swift publication and effective implementation of the Office of the Chief Human Resources Officer's updated employment equity policy;**
- **Providing strong incentives for government agencies and departments to develop and submit staffing strategies that include plans to address gaps in employment equity representation by the end of 2010;**

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<sup>126</sup> House of Commons, Standing Committee on Citizenship and Immigration, *Recognizing Success: A Report on Foreign Credential Recognition*, 2<sup>nd</sup> Session, 40<sup>th</sup> Parliament, November 2009, supra note 27.

- **Instituting processes which avoid immediate-needs hires that directly and indirectly circumvent employment equity goals;**
- **Providing on-the-job language training specifically targeted to assist the career advancement goals of individuals that enter the public service with only one official language;**
- **Providing funding to assist public service employees to earn their accreditation in Canada;**
- **Encouraging managers to balance the high value that they place on Canadian experience with employment equity priorities; and**
- **Renewing core funding, in order to allow all government agencies and departments to fulfill their employment equity objectives.**

#### **B. The Need for Accurate Information**

Another change that would likely assist individual federal government departments and agencies in achieving employment equity goals would be the use of the most accurate and up-to-date workforce availability numbers possible. Use of such numbers would also assist agencies such as the Public Service Commission, Canadian Human Rights Commission and the OCHRO in monitoring departmental success or failure in meeting such goals. As mentioned previously in this report, despite the fact that we are now in 2009, the most recent Annual Reports of the Public Service Commission, Canadian Human Rights Commission and the CPSA (now replaced by the OCHRO) continued to use workforce availability numbers from the 2001 census, rather than from the 2006 census, to evaluate whether or not the federal public service as a whole, as well as individual government departments, were meeting their employment equity hiring and recruitment targets.

While the committee understands that it can take some time to evaluate, compile and analyse data obtained from a national census, a delay of three years is too long. The committee therefore recommends that Statistics Canada work cooperatively with the Public Service Commission, the Canadian Human Rights Commission and the OCHRO to ensure that workforce availability numbers from the most recent national census are made available to both the public and to individual federal departments and agencies. Such numbers will allow individual government departments to assess their own

performance in meeting employment equity targets, allow the monitoring agencies to perform independent assessments in this regard, and allow for departments and agencies to set more accurate and realistic goals for their future performance in this area. The workforce availability numbers used should reflect the workforce availability of Canadian citizens, since they are given preference, in terms of hiring, in the federal public service.

## **RECOMMENDATION 2**

**The committee recommends that Statistics Canada work cooperatively with the Public Service Commission, the Canadian Human Rights Commission and the Office of the Chief Human Resources Officer to ensure that workforce availability numbers from the most recent national census, reflecting the workforce availability of Canadian citizens, are made available to both the public and to individual federal departments and agencies as soon as they are published.**

## **RECOMMENDATION 3**

**The committee recommends that individual departments and agencies in the core public administration of the federal public service, as well as monitoring agencies such as the Public Service Commission, Canadian Human Rights Commission and the Office of the Chief Human Resources Officer, make use of the most recent census data as soon as it is published, for the purpose of assessing departmental and agency performance in meeting employment equity targets and setting accurate and realistic goals for the future.**

As well, the new methodology used by the Public Service Commission in 2009 to develop recruitment rates for the federal public service warrants further investigation. As stated previously in this report, the committee is of the view that the new method used by the Public Service Commission to collect recruitment rate data is a useful additional source of information, and we are encouraged to see that the data provided by this new method of analysis seems to indicate that the recruitment rates of Aboriginal persons, persons with disabilities, and particularly, visible minorities to the positions in the federal

public service is higher than it was thought to be in the past. However, the Public Service Commission should clarify that all individuals who apply for jobs using the automated system on the Jobs Canada website are directed to the self-declaration form and encouraged to complete it. Such clarification would help to address the concerns expressed by the NCVM outlined in an earlier section of this report. The PSC should also explain whether or not the self-declaration form one fills out on the Jobs Canada website has always been identical, in terms of content, to the self-identification survey employees fill out once they have been hired. In addition, because only 74% of positions offered by the federal public service are publicly advertised, according to the PSC's 2008 – 2009 Annual Report, federal government departments and agencies should find better ways to provide, and the PSC should find better ways to collect, statistics on recruitment rates for employment equity groups for the 26% of jobs that are not publicly advertised. This latter information would hopefully demonstrate whether members of employment equity groups are hired for non-advertised positions at a much lower rate than for advertised positions, as the PSAC has suggested. It would also be helpful if the PSC could include not only data on recruitment rates, but also on executive advancement rates, and on trends in recruitment and executive advancement over time in its Annual Reports. Such information would make it much easier for key agencies, stakeholders and parliamentarians that monitor the federal government's performance in employment equity matters to assess whether or not progress is truly being made.

#### **RECOMMENDATION 4**

**The committee recommends that, in its 2009 – 2010 Annual Report, the Public Service Commission publish the results of its consultations on developing a common method for calculating representation and recruitment rates in the federal public service.**

#### **RECOMMENDATION 5**

**The committee recommends that, in its future Annual Reports, the Public Service Commission:**

- **Release recruitment rates for all four employment equity groups, as it has recently done in its 2008 – 2009 Annual Report;**
- **Provide statistics on recruitment rates for employment equity groups for the percentage of jobs that are not publicly advertised;**
- **Publish statistics on executive advancement rates; and**
- **Make information available regarding trends in recruitment, for both advertised and non-advertised positions.**

Further, as was outlined elsewhere in this report, there is a wide disparity between recruitment rates for visible minorities obtained through self-identification surveys completed by federal government employees after they are hired and recruitment rates for visible minorities obtained through self-declaration forms completed by individuals at the time they apply for a job, with the latter figures being much higher than the former. The committee views this discrepancy as an indication that members of visible minority groups may be more comfortable self-identifying as a member of a visible minority group at the time they apply for a job than they do after they are hired. The committee was advised by witnesses that a decision not to self-identify after one has been hired may be attributable to a variety of causes, but that no systemic government-wide study has yet been undertaken with respect to why federal government employees choose not to self-identify as a members of an employment equity group once hired. The committee believes that such a study should be conducted. Results of such a study would not only increase both the government's and the public's understanding of the root causes of decisions not to self-identify, but might also assist federal government departments and agencies in developing strategies to eliminate barriers to and encourage self-identification and in developing concrete and realistic employment equity targets. It would also be helpful if the Public Service Commission and the Office of the Chief Human Resources Officer could publish statistics on retention rates, and retention rate trends, for each of the four employment equity groups in their respective annual reports. Such information would assist both federal government departments and agencies, and well as monitoring agencies, stakeholders and parliamentarians, in determining whether members of designated groups remain in the public service for long periods of once hired, or

alternatively, whether the federal public service has a retention problem with respect to one or more of the designated groups.

#### **RECOMMENDATION 6**

**The committee recommends that, in 2010, the federal government undertake a systemic, government-wide study as to the reasons why federal government employees choose not to self-identify as members of employment equity groups once they have been hired to positions in the federal public service, and that it make the results of this study publicly available as soon as possible following the conclusion of the study.**

#### **RECOMMENDATION 7**

**The committee recommends that in its future Annual Reports, the Public Service Commission and the Office of the Chief Human Resources Officer publish statistics on retention rates and retention rate trends for all four designated employment equity groups.**

Finally, the committee wishes to highlight two additional issues regarding data and statistics that have been of concern to committee members during the course of its hearings. The first issue is the fact that although individuals may be members of more than one designated group, and in fact, in the case Aboriginal peoples, persons with disabilities and visible minorities who are also women, will always be members of at least two designated employment equity groups, little data is available to indicate whether or not recruitment rates, representation rates, retention rates, or executive advancement rates are different for men and women within these three designated groups. The committee believes that it would be useful if key monitoring agencies, such as the Public Service Commission and the Office of the Chief Human Resources Officer would, when providing statistics regarding employment equity matters in their Annual Reports, break down the data regarding Aboriginal peoples, persons with disabilities and visible minorities by gender. Such a breakdown would hopefully reveal whether the recruitment, representation, retention and executive advancement pose different problems for

members of these three designated groups, depending upon whether or not the members of these groups are male or female.

#### **RECOMMENDATION 8**

**The committee recommends that, in their Annual Reports, the Public Service Commission and the Office of the Chief Human Resources Officer break down data for Aboriginal peoples, persons with disabilities and visible minorities by gender when providing statistics regarding employment equity matters in their Annual Reports.**

The second issue has to do with the drop-off rate for individuals from visible minority groups who apply for positions in the federal public service. As stated previously in this report, the Public Service Commission's October 2009 report demonstrates the problem of visible minority drop-off continues to persist. Further investigation is required to determine the causes of visible minority drop-off, and to take appropriate remedial action, if required, to ensure that barriers to employment of members of visible minority groups are removed. Once a thorough examination of the possible causes of visible minority drop-off has been completed, a strategy can hopefully be designed to address this problem. The committee therefore recommends that the Public Service Commission continue to investigate the phenomenon of visible minority drop-off, and table a report in Parliament in 2010 – 2011, outlining its finding with respect to the causes of this drop-off and a strategy designed to address and eliminate it.

#### **RECOMMENDATION 9**

**The committee recommends that in 2010-2011, the Public Service Commission undertake further study of appointment rates of employment equity groups, in order to identify reasons why visible minorities are “dropped-off” or eliminated from competitions for jobs in the federal public service at a rate that is higher than that of other designated groups, and that the Public Service Commission table a report in Parliament, outlining both the results of its study and a proposed strategy designed to address and eliminate the causes of visible minority “drop-off”.**

### **C. Enforcement and Accountability**

Despite its support for the CPSA's renewal of the federal government's employment equity policy, the committee wishes to re-iterate comments made in its 2007 report highlighting that what is more important for the promotion of employment equity goals is not further laws and policies, but more effective and accountable implementation of the laws and policies that already exist. This is particularly important now that deputy ministers have been given even greater responsibility for human resources management in their respective departments and agencies. As noted by Fo Niemi of the Center for Research-Action on Race Relations when he appeared before this committee, the tools that we need exist – what is most important is executive and managerial accountability. Igho Natufe of the NCVM bolstered this perspective, emphasizing the current overriding need for enforcement and accountability for credibility in the modern federal public service. As noted by this committee in February 2007 when it called for the deputy head bonuses to be tied to their employment equity performance assessments, employment equity is unlikely to advance concretely until measures are in place that can be used to ensure compliance. Igho Natufe, Fo Niemi, Karl Flecker and Ed Cashman all emphasized that carrots are not enough: sticks are also needed. In other words, there need to be consequences for managers who consistently fail to live up to their employment equity obligations. This may require that bonuses are tied to employment equity performance assessments and it could also mean publishing names or statistics with respect to failure to meet employment equity objectives.

#### **RECOMMENDATION 10**

**The committee recommends that the federal government develop concrete means of seeking accountability from managers in the federal public service for their responsibilities in enforcing the standards outlined in the *Employment Equity Act*. Mechanisms to make managers more accountable could include:**

- **Tying deputy head bonuses to employment equity performance assessments, especially in those departments and agencies where special remedial measures have been put in place due to past difficulties in meeting employment equity targets;**



- **Enhanced and specific human rights training for deputy heads; and**
- **Publishing the names of departments and agencies or statistics with respect to failure to meet employment equity objectives.**

#### **D. Organizational Culture and Strong Leadership**

Stemming from these recommendations and the committee’s February 2007 report is the underlying and all-important issue of organizational culture. The committee clearly recognizes that the most significant means of ensuring that employment equity goals are met is through organizational culture and strong leadership. Maria Barrados placed special emphasis on this issue, noting from experience that where concerted effort is made, improvement can generally be found. No progress is generally due to bad habits: “[w]here there is special effort and leadership, we get the numbers; where there is not, we do not.”<sup>127</sup> Jennifer Lynch echoed this perspective, stating that:

far too often we have to lead employers reluctantly along the path of employment equity. Rather than seeing employment equity as integral to values and strategic outcome, too often departments see it as another burdensome requirement that has to be met.

Employment equity should not be seen as something within the job description of an employment equity manager to be monitored as a statistic. Rather, achieving employment equity should be articulated in the organization’s vision, values and objectives.<sup>128</sup>

The committee emphasizes that leadership appears to be the component of the equation that ensures the other pieces fall into place.

With effective leadership comes a welcoming organizational culture, which allows departments and agencies to go beyond a static focus on numbers and legalities to bring more weight to bear on the importance of fostering “belonging, reciprocity and engagement.”<sup>129</sup> Building a welcoming organizational culture means ensuring that

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<sup>127</sup> Testimony of Maria Barrados, President, Public Service Commission, supra note 20.

<sup>128</sup> Testimony of Jennifer Lynch, Chief Commissioner, Canadian Human Rights Commission, supra note 124.

<sup>129</sup> Fo Niemi, Director General, Center for Research-Action on Race Relations, brief submitted to the committee 3 December 2007.

employment equity language is built into daily practice in the federal public service. As noted by Jennifer Lynch:

Organizations need to integrate culture, diversity and the creativity it brings throughout the entire organization, not just at the front line and not just at the deputy minister level, but at all line levels. When this alignment and integration is achieved, then the organization has the highest likelihood of success with its corporate objectives. When it is not achieved, the front line senses this. It senses misalignment, becomes disenchanted and demoralized and goes back to its old ways or quits, and we have a problem with retention.<sup>130</sup>

In order to do this, the committee urges the federal public service to enhance programs that already exist that involve speaking directly to managers and teaching them about employment equity. These managers can then bring what they learn to the staff in their departments. Karen Ellis noted the effectiveness of such techniques:

When you spend the time, people come away changed and able to grab hold of it, try to apply what they learned back in the workplace. That is how change comes about. Change does not come about by endless emails. You do it by talking about and sharing what has worked for you. For me, it is about teaching the importance of the planning and starting to change culture.<sup>131</sup>

The committee emphasizes that this push for employment equity needs to permeate the federal public service, starting at the highest levels in order to inspire leadership.

Jennifer Lynch also pointed to the riddle that currently faces the public service – many private sector industries have recognized and internalized the true importance of a representative workforce. Why, then, has the federal public service been unable to come to the same realization. Lynch commented that:

Some private sector employers see employment equity not as an imposition but rather as good business. They realize that having a work force that represents the diversity of their customers helps them to better serve the clientele and maximize profits.<sup>132</sup>

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<sup>130</sup> Testimony of Jennifer Lynch, Chief Commissioner, Canadian Human Rights Commission, supra note 124.

<sup>131</sup> Karen Ellis, Senior Vice-President, Workforce and Workplace Renewal, Canada Public Service Agency, testimony before the committee, 10 December 2007.

<sup>132</sup> Testimony of Jennifer Lynch, Chief Commissioner, Canadian Human Rights Commission, supra note 124.

Re-iterating and expanding upon one of its earlier recommendations, the committee warmed to the idea proposed by Karl Flecker regarding the need for an “honest, yet saucy”<sup>133</sup> communications strategy. Mr. Flecker emphasized the need for the federal government to reach out to under-represented communities by being honest about the existence of systemic barriers within the federal public service. He said that a good communications strategy would seek to admit to the government’s failures without camouflaging them in bureaucratic equity language. This admission should be accompanied by a strong message selling the importance of working in the federal public service and the government’s renewed commitment to openness.

Finally, in order to foster an appropriate organizational culture, the committee calls on the government to ensure its ability to protect individuals from discrimination and harassment in a concrete way by making the human rights protection system more effective and accessible. Fo Niemi and Jennifer Lynch spoke to the committee of the need for adequate resources for the Canadian Human Rights Commission, Mr. Niemi focussing on the need for complaints involving systemic barriers and discrimination not to be overshadowed by attempts to resolve such disputes at the individual level. He also pointed out the need for unions to re-examine their receptiveness and ability to deal with such complaints and called on the committee to encourage unions to take on a more proactive role with respect to employment equity. The committee appreciated Karl Flecker’s response to these concerns, highlighting the importance of training union stewards to deal with and be receptive to such issues. The committee urges unions to heed these concerns and suggestions.

## **RECOMMENDATION 11**

**The committee urges the federal government to place special emphasis on the need for leadership and a strong organization culture when seeking to achieve its employment equity goals. This should be done for all four employment equity groups collectively, as well as for each employment equity group individually. The push for employment equity must begin at the highest levels – including the**

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<sup>133</sup> Testimony of Karl Flecker, National Director of Anti-Racism and Human Rights Department, Canadian Labour Congress, supra note 123.

**Prime Minister’s Office – and should encourage a policy of speaking directly to managers to teach them the importance of employment equity to the future of the federal public service.**

#### **RECOMMENDATION 12**

**The committee recommends that the federal government implement a communication strategy to promote its employment equity goals. This strategy should seek to honestly admit the challenges the government has faced in achieving these goals, and the steps it intends to take to create a public service that fully reflects the composition of Canadian society. The strategy should also send a strong message selling the importance of working in the federal public service and the government’s renewed commitment to openness in the meeting of its employment equity objectives.**

#### **RECOMMENDATION 13**

**The committee recommends that the government seek to make Canada’s human rights protection system under the *Canadian Human Rights Act* more effective and accessible, in order to ensure its ability to protect individuals from discrimination in a concrete way.**

#### **E. Concluding Comments**

The committee notes that 40 years ago, only 2% of Canada’s population could be classified as a visible minority living in Canada, but by the 2001 census, this number had increased to approximately one eighth of the Canadian population. By 2017 projections place the number of visible minorities in Canada at one fifth of the population. Canada’s foreign born population is increasing at greater speed than Canadian born – immigration accounts for approximately two thirds of population growth in Canada.<sup>134</sup> The Privy Council Office’s Fifteenth Annual Report to the Prime Minister on the Public Service of

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<sup>134</sup> Igho Natufe, President, National Council of Visible Minorities in the Federal Public Service, testimony before the committee, 3 December 2007; Ed Cashman, Regional Executive Vice-President, Public Service Alliance of Canada, testimony before the committee, 4 February 2008; testimony of Karl Flecker, National Director of Anti-Racism and Human Rights Department, Canadian Labour Congress, supra note 123, testimony before the committee, 10 December 2007; Gary Corbett, Vice-President, Professional Institute of the Public Service of Canada, testimony before the committee, 3 February 2008.

Canada (2008) also noted that Canada has a pronounced aging workforce – 66% of the workforce is aged 40 and over. These facts led Karl Flecker to emphasize that

This country, and the federal public service, is in a serious competition for talent. Seventy per cent of the job openings between now and 2017 will be as a result of retirement. The crowd that is coming up must feel that they are interested, welcome and capable to do the job.<sup>135</sup>

The critical mass needed for change is “very much around us.”<sup>136</sup> It is clear to the committee that the power for change is here. The federal government just needs to learn how to harness that power, turning its employment equity goals into realities.

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<sup>135</sup> Testimony of Karl Flecker, National Director of Anti-Racism and Human Rights Department, Canadian Labour Congress, *supra* note 123.

<sup>136</sup> *Ibid.*



**APPENDIX A: WITNESSES FROM WHOM THE COMMITTEE HEARD**

**WITNESSES FROM WHOM THE COMMITTEE HEARD DURING  
THE 1ST SESSION OF THE 39TH PARLIAMENT**

**Monday, April 23, 2007**

*Public Service Commission of Canada:*

Maria Barrados, President  
Linda Gobeil, Vice-President, Policy Branch  
Paula Green, Director General, Equity and Diversity

**WITNESSES FROM WHOM THE COMMITTEE HEARD DURING  
THE 2ND SESSION OF THE 39TH PARLIAMENT**

**Monday, December 3, 2007**

*Public Service Commission of Canada:*

Maria Barrados, President  
Joanne Lalonde, Acting Director General, National Client Services Directorate  
Paula Green, Director General, Equity and Diversity

*Center for Research-Action on Race Relations:*

Fo Niemi, Director General

*National Council of Visible Minorities in the Federal Public Service:*

Igho Natufe, President.  
Adelaida Bustamante, Chief Administrative Officer

**Monday, December 10, 2007**

*Canada Public Service Agency:*

Karen Ellis, Senior Vice-President, Workforce and Workplace Renewal  
Angela Henry, Acting Director, Diversity Policy, Public Service Renewal and  
Diversity Branch.

*Department of Justice Canada:*

Camille Therriault-Power, Director General, Director General's Office

Zina Glinski, Senior Policy Advisor, Employment Equity, Human Resources Planning, Employment Equity and HR Systems

Pamela Woods, Manager, Staffing, Official Languages and Awards, Staffing, Official Languages and Recognition Section

*Canadian Labour Congress:*

Karl Flecker, National Director of Anti-Racism and Human Rights Department

**Monday, February 4, 2008**

*Canadian Human Rights Commission:*

Jennifer Lynch, Chief Commissioner

Hélène Goulet, Secretary General

Philippe Dufresne, Director and Senior Counsel, Litigation Services Division

Natalie Dagenais, Director, Investigations Division;

Alex Dei, Director, Employment Equity Compliance Division.

*Public Service Alliance of Canada*

Lisa Addario, Employment Equity Officer

Ed Cashman, Regional Executive Vice-President

*Professional Institute of the Public Service of Canada*

Gary Corbett, Vice-President

Al Ravjiani, Ontario Regional Director and Chair of the Human Rights in the Workplace Committee

Allison Pilon, Research Officer

*As individuals:*

Mark Persaud

James C. Morton

**Monday, March 10, 2008**

*Statistics Canada:*

Christel Le Petit, Chief, Analysis and Special Projects, Labour Statistics Division

Geoff Bowlby, Director, Labour Statistics Division

Tracey Leesti, Assistant Director, Labour Statistics Division.



*As an individual:*

Ravi Jain, Immigration Lawyer

*British Columbia College of Teachers:*

Marie Crowther, Registrar.

*Ontario College of Teachers:*

Lise Roy-Kolbusz, Deputy Registrar

Frank McIntyre, Manager of Human Resources

**WITNESSES FROM WHOM THE COMMITTEE HEARD DURING  
THE 2ND SESSION OF THE 40TH PARLIAMENT**

**Monday, March 23, 2009**

*Statistics Canada:*

Geoff Bowlby, Director, Labour Statistics Division

Jane Badets, Director, Social and Aboriginal Statistics Division

Tina Chui, Chief, Immigration and Ethno-cultural Analysis, Social and Aboriginal  
Statistics Division

*Public Service Commission of Canada:*

Maria Barrados, President;

Donald Lemaire, Senior Vice-President, Policy Branch

Paula Green, Director General, Equity and Diversity.

**Monday, April 20, 2009**

*National Council of Visible Minorities in the Federal Public Service (NCVM):*

Igho Natufe, President;

Catherine Kizito, Chief Administrative Officer

Marcel Kabundi, Chair of the NCVM Committee at the Correctional Service of  
Canada

Waheed Khan, Member of the Visible Minority Advisory Committee at Environment  
Canada

**Monday, April 27, 2009**

*Treasury Board of Canada — Office of the Chief Human Resources Officer:*

Michelle d'Auray, former Chief Human Resources Officer

Marc O'Sullivan, A/Senior Vice-President, Workforce and Workplace Renewal

**Monday, June 8, 2009**

*Department of Justice Canada:*

John Sims, Deputy Minister and Deputy Attorney General of Canada

Donna Miller, Associate Deputy Minister

Joan Pratt, Acting Director General, Human Resources and Professional Development Directorate.

*Public Service Alliance of Canada:*

Patty Ducharme, National Vice-President

Allison Pilon, Human Rights/Employment Equity Officer.

**APPENDIX B: VOLUNTARY SELF-IDENTIFICATION FORM USED BY DEPARTMENTS AND AGENCIES IN THE CORE PUBLIC ADMINISTRATION OF THE FEDERAL PUBLIC SERVICE**

**Employee self-identification form**

*(Confidential when completed)*

- This form is designed to collect information on the composition of the Public Service workforce to comply with legislation on employment equity and to facilitate the planning and implementation of employment equity activities. Your response is **voluntary** and you may identify in more than one designated group.
- The information you provide will be used in compiling statistics on employment equity in the federal Public Service. With your consent (see Box E), it may also be used by the employment equity co-ordinator of your department for human resource management purposes. This includes referral for training and developmental assignments and, in the case of persons with disabilities, facilitating appropriate accommodation in the workplace.
- Employment equity information will be retained in the Employment Equity Data Bank (EEDB) of the Treasury Board Secretariat and its confidentiality is protected under the *Privacy Act*. You have the right to review and correct information about yourself and can be assured that it will not be used for unauthorised purposes.

**Step 1:** Complete boxes A to E. In boxes B, C and D, refer to the definitions provided.

**Step 2:** Sign and date the form and return it to your department's EE coordinator.

**Thank you for your cooperation**

TBS/PPB 300-02432  
TBS/SCT 330-78 (Rev. 1999-02)

**A.**

**Family Name**

**Given Name and Initial**

**Department or Agency/Branch**

**Telephone # (office)**

Female

**Personal Record Identifier (PRI)**

Male

## B. A person with a disability... (i)

...has a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and

1. consider himself / herself to be disadvantaged in employment by reason of that impairment, or,
2. believes that an employer or potential employer is likely to consider him/her to be disadvantaged in employment by reason of that impairment,

and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.

## Are you a person with a disability?

No

Yes, check all that apply

11  **Co-ordination or dexterity** (*difficulty using hands or arms, for example, grasping or handling a stapler or using a keyboard*)

12  **Mobility** (*difficulty moving around, for example, from one office to another or up and down stairs*)

16  **Blind or visual impairment** (*unable to see or difficulty seeing*)

19  **Deaf or hard of hearing** (*unable to hear or difficulty hearing*)

13  **Speech impairment** (*unable to speak or difficulty speaking and being understood*)

23  **Other disability** (*including learning disabilities, developmental disabilities and all other types of disabilities*)

(Please specify) \_\_\_\_\_

## C. An Aboriginal person...

...is a North American Indian or a member of a First Nation or who is Métis, or Inuit. North American Indians or members of a First Nation include status, treaty or registered Indians, as well as non-status and non-registered Indians.

## Are you an Aboriginal person

No

Yes, check the appropriate circle

03  North American Indian/First Nation

02  Métis

01  Inuit

**D. A person in a visible minority...**

...in Canada is someone (other than an Aboriginal person as defined in C above) who is non-white in colour/race, regardless of place of birth.

**Are you in a visible group**

No

Yes, check the circle which best describes your visible minority group or origin

41  Black

45  Chinese

51  Filipino

47  Japanese

48  Korean

56  South Asian/East Indian (*including Indian from India; Bangladeshi; Pakistani; East Indian from Guyana, Trinidad, East Africa; etc.*)

58  Southeast Asian (*including Burmese; Cambodian; Laotian; Thai; Vietnamese; etc.*)

57  Non-White West Asian, North African or Arab (*including Egyptian; Libyan; Lebanese; Iranian; etc.*)

42  Non-White Latin American (*including indigenous persons from Central and South America, etc.*)

44  Person of Mixed Origin (*with one parent in one of the visible minority groups listed above*)

59  Other Visible Minority Group  
(Please specify) \_\_\_\_\_

**E.**

99  The information in this form may be used for human resources management

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
(DD/MM/YY)



## **APPENDIX C: VOLUNTARY SELF-DECLARATION FORM COMPLETED BY APPLICANTS WHO APPLY FOR JOBS IN THE FEDERAL PUBLIC SERVICE ON THE JOBS CANADA WEBSITE**

### **Employment Equity (EE) – Online Application Form**

#### **General Information**

Information in this section is collected under the authority of the Employment Equity Act, Section 9, and its confidentiality is protected under the Privacy Act. Your response to these questions is **completely voluntary**.

#### **Entry Fields**

**Use of this Information** - All self-identification information will be used for statistical purposes. It may also, with your consent, be used for purposes of Employment Equity recruitment, training, and other developmental opportunities.

Note: If you indicate that you do not wish this information to be used for EE recruitment, you cannot be considered for job opportunities limited to members of a specific designated group, even if you are a member of that group

**Aboriginal Persons** - An Aboriginal person is a North American Indian or a member of a First Nation, Métis or Inuit. North American Indians or members of a First Nation include status, treaty or registered Indians, as well as non-status and non-registered Indians.

**Persons in a visible minority group** - A person in a visible minority group in Canada is someone (other than an Aboriginal person as defined above) who is non-white in colour/race, regardless of place of birth and is from one of the following groups: Black; non-white Latin American (including indigenous persons from Central and South America, etc.); Chinese; Japanese; Korean; Filipino; South Asian/East Indian (including Indian from India; Bangladeshi; Pakistani; East Indian from Guyana, Trinidad, East Africa, etc.); non-white West Asian, North African or Arab (including Egyptian, Libyan, Lebanese, etc.); Southeast Asian (including Burmese, Cambodian, Laotian, Thai, Vietnamese, etc.); persons of mixed origin (with one parent in one of the visible minority groups listed above); other visible minority groups.

**Persons with a disability** - A person with a disability has a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and:  
a) considers himself/herself to be disadvantaged in employment by reason of that impairment; OR  
b) believes that an employer or potential employer is likely to consider him/her to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace. Disabilities include: co-ordination or dexterity (difficulty using

hands or arms, for example, grasping or handling a stapler or using a keyboard), mobility (difficulty moving around, for example, from one office to another or up and down stairs), blind or visual impairment (unable to see or difficulty seeing), deaf or hard of hearing (unable to hear or difficulty in hearing), speech impairment (unable to speak or difficulty speaking and being understood), other disability (including learning disabilities, developmental disabilities and all other types of disabilities).

## Buttons

**Save** - If you do not save information entered, it will be lost when you move to a new screen.

**Back** - Will return you to the previous screen. Information you have entered on this screen **will not** be saved.

## Employment Equity (EE)

The Public Service of Canada is committed to selection based on merit by ensuring full participation of women, Aboriginal Persons, persons with disabilities, and members of visible minority groups. Your response to these questions is **voluntary**, and will be used for statistical purposes and in considering your application for recruitment, training, and other development opportunities.

For more detailed information, please refer to HELP text.

### Please indicate how this EE information may be used:

Statistical purposes only:

Statistical purposes and EE Recruitment:

### 1. Gender:

(Options: Female; Male)

### 2. If you are an Aboriginal person, please specify the group to which you belong:

(Options: Inuit; Métis; North-American Indian / First Nation)

### 3. If you are a member of a visible minority group, please specify the group that best describes your origin (exception being an Aboriginal person as defined above):

(Options: Black; Chinese; Filipino; Japanese; Korean; Non-White Latin American; Non-White Asian, North African or Arab; Other Visible Minority Groups; Person of Mixed Origin; South Asian / East Indian; Southeast Asian)



**4. If you are a person with a disability, please specify your disability or disabilities:**

Blind or Visual impairment :

Co-ordination or dexterity :

Deaf or hard of hearing :

Mobility :

Speech impairment :

Other Disability:

Save	Back
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**APPENDIX D: AFFIRMATION OF ABORIGINAL AFFILIATION FORM USED BY THE PUBLIC SERVICE COMMISSION**

PROTECTED B when completed

**AFFIRMATION OF ABORIGINAL AFFILIATION FORM**

**Appointment Process Number:** \_\_\_\_\_ **Group:** \_\_\_\_\_ **Level:** \_\_\_\_\_

**Position Title:** \_\_\_\_\_

**Purpose**

The Affirmation of Aboriginal Affiliation Form (AAAF) must be completed and signed prior to appointment by the Aboriginal person proposed to be appointed for any process where the area of selection has been limited to Aboriginal peoples, or limited to members of employment equity groups that included Aboriginal peoples. This information is being collected by (insert name of department/agency) for the purpose of confirming the eligibility of the person proposed for appointment and safeguarding the integrity of the appointment authorities which have been delegated by the Public Service Commission (PSC) to (insert name of department/agency).

- Providing false or misleading information on the AAAF may result in rejection of this application or corrective action such as revocation of the appointment, following an investigation by the PSC or its delegate.
- In the event of an investigation pursuant to sections 15, 66, 67 or 69 of the *Public Service Employment Act*, the person proposed for appointment will be required to provide documentation to substantiate the information provided on the AAAF.
- Completed forms will be kept on the department/agency staffing file. The PSC will gather information from departments and agencies on the use of the form and its impact on the appointment system.
- The person proposed for appointment may be asked to provide substantiating documentation in support of the information provided on the AAAF.
- A person who fails to complete and sign this AAAF cannot be appointed as a result of this appointment process.

**Please complete the appropriate section below to affirm your Aboriginal affiliation.**

The term "Aboriginal peoples", as defined by the *Employment Equity Act*, includes Indians, Inuit and Métis.

I declare that I am:

- G A Status/Registered/Treaty Indian because of my Aboriginal affiliation with the \_\_\_\_\_ Nation and my Band/Treaty number is \_\_\_\_\_.
- G A non-Status Indian because of my Aboriginal affiliation with the \_\_\_\_\_ Nation.
- G Métis because
- I am enrolled as a beneficiary of the \_\_\_\_\_ land claim agreement, or
  - of my Aboriginal affiliation with the \_\_\_\_\_ Nation, and I am a member of the following Métis Association: \_\_\_\_\_, or
  - I am affiliated with the following Métis community: \_\_\_\_\_.
- G An Inuk because I am enrolled as a beneficiary of the \_\_\_\_\_ land claim agreement.

I understand that providing false or misleading information on this form will be cause for rejection of my application, or cause for revocation of my appointment, following an investigation by the PSC or its delegate.

Candidate name (Print)	Signature	Date (YYYY-MM-DD)
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**Privacy Notice Statement**

The personal information provided in this document is collected under the authority of the *Public Service Employment Act* and will be protected under the *Privacy Act*. The information collected will be kept on the staffing file by the hiring department or agency under the Treasury Board Secretariat standard personal information bank – registration number PSE 902, which is detailed at: [www.infosource.gc.ca](http://www.infosource.gc.ca). Under the *Privacy Act*, you have the right to request access to your personal information held by a federal government institution, and to request corrections, should you believe the information contains errors or omissions.