BRIEF TO THE COMMITTEE TO REVIEW THE EMPLOYMENT EQUITY ACT
FROM

WITT NATIONAL NETWORK/INDUSTRIAL ADJUSTMENT COMMITTEE

I would like begin by sharing with you part of a dialogue I have been engaging in with an individual who has been involved with the US Civil Rights Act since prior to its inception in 1964. Many of the themes addressed here are familiar to us in Canada, and form an analysis on which I would like to reflect in this brief.

"In 1964, I served on the Task Force which established the Community Relations Service of the U. S. Department of Justice. The CRS was an entity mandated by the Civil Rights Act of 1964. It's purpose was to reduce the tensions and to resolve conflicts which the U.S. Congress anticipated would result from federal efforts to enforce the newly enacted civil rights law. In the four years that I worked as Chief Intergroup Relations Officer of the CRS, none of us anticipated that Affirmative Action regulations would become on of the most controversial issues to be faced in administering the '64 law, and the other civil rights laws which followed.

In employment, affirmative action requires employers to develop and implement programs which favor members of designated minority groups and women in decisions on employment and promotions. In practice, this has caused consternation among some employers who have claimed that the available qualified pool of workers was and is inadequately filled with designated group representatives. The key word there is "qualified".

Faced with the demand that minorities and women be represented in the workforce at all work levels from unskilled to managerial responsibilities, employers, within both the government and private sectors, have ben accused of hiring and promoting unqualified workers. Their defense is that this is the only way to obtain government contracts and meet the requirements of oversight inspectors.

It is clear that a significant number of adults now reach their working years inadequately equipped with the skills required to participate successfully in America's workforce. Employers, anxious to fulfill their non-discrimination obligations, report that despite extensive and expensive outreach programs, they are still unable to meet government demands for statistical evidence that designated groups have not been discriminated against. As a result, "warm bodies" from these groups have become almost as important as qualified bodies.

Another result has been the false but widespread belief that employed minorities and women are all or mostly incompetents who are working only because of racial favoritism required by the government. In addition, majority group members believe that

they are now being discriminated against. Elected officials report that they are besieged by constituencies that have found in affirmative action programs a scapegoat for their feelings of economic insecurity, particularly during this current recession.

Most Americans agree that African-Americans, in particular, have been the past victims of discrimination, inferior education and, disproportionately, the ravages of poverty. As one result, they often enter the job market with fewer or less developed skills than those who did not suffer these restrictions. Yet, many have been employed and voluntarily given on-the-job training. However, often such training has been perfunctory or inadequate for anything other than entry level work.

What is needed are governmental regulations which require affirmative action training as well as employment programs. Such programs, if properly administered and vigorously checked by contract compliance officers could have the affect of increasing the qualified pool of designated group workers. In so doing, they would conform to the intent of Congress to have employers seek out and prepare previously discriminated against individuals for more equitable participation in the workplace.

The current system of enforcement of laws against discrimination focus on statistical results. If a targeted community fails to be represented in numbers considered to be proportionally representative of their numbers within a total population than it is assumed that a form of discrimination is operative. Little, if any, attempt is made to determine what the reasons are for this condition. Pre-employment tests that screen out too many minority participants are automatically presumed to be unfair. Performance ratings and promotions which reflect negatively on minorities and women are looked upon as evidence of prejudice and demands are made that the rating system be changed rather than developing training procedures to improve skills.

There is no question that prejudice and discrimination play an significant role. However, this is not universally the case. All too often the statistics are presumed to be prima facie evidence of malpractice.

At a time when our economy faces challenges from outside our boarders, we are will advised to examine and reform our system of education which produces such a large population that is willing to work but is inadequately trained to do so. While this is being done, we should require our business and industrial community to use their considerable resources and skills to train or retrain minorities and women and in doing so, to bring them within a system of true equal opportunity regardless of race, creed color or sex."

Seymour Samet is President of HR Factor Associates, a human relations consulting company. The associates provide guidance and leadership training to corporations, educational institutions,

non-profit organizations and government agencies in the prevention or resolution of intergroup tensions. After 40 years of work in the Civil Rights field, he currently serves as a member of the New Jersey Advisory Committee to the US Commission on Civil Rights.

There are many familiar themes highlighted in Mr. Samet's comments. I would like to focus particularly on the issues of training.

In Canada, we wanted to avoid some of the perceived difficulties in the US experience. We chose not to call for "quotas", we told our employers they need hire only "qualified" workers. We developed complicated and not always very accurate "availability data" to assist employers to set their goals on the basis of the "available" labour pool with the requisite skills from the appropriate recruitment area. In other words, we spent thousands of dollars enabling employers to meet the current level of discrimination in Canada.

We must be very careful to ensure that this data does not become a ceiling, but rather is viewed as a basic minimum. In other words, we will never progress very far if we continue to only meet the current level of availability, and do nothing to increase that level with special measures for the designated groups.

At the same time, we have within our legislation our own Canadian perspective on ameliorating the disadvantages in the workplace. Our language differs significantly from the language used in the US Contract Compliance program, which states "contractors will...ensure that applicants are employed....and treated during employment <u>without regard</u> to race, color, religion, sex or national origin." (Italics mine)

The Canadian Employment Equity Act says, we are to "correct the conditions of disadvantage" which "requires special measures and the accommodation of differences" "giving effect to the principle that EE means more than treating persons in the same way" to achieve equality of result. To do this, we must consider the effects of past discrimination or exclusionary practices in determining what those measures might need to be. The specifics of discrimination of a particular designated group will help us determine the quality and quantity of special measures necessary to achieve equality of result.

Section 4b states that this includes "instituting positive policies and practices and making such reasonable accommodation..." In many cases, that would need to mean the provision of training, sometimes even special training programs of <u>qualifiable</u> workers to assist them to become qualified workers. Our current emphasis on only hiring "qualified" workers leaves out many women who have been denied previous exposure or experience in technical fields and who have, through additional

training, shown to be very capable workers in these fields. These training initiatives would need to become an integral part of an employer's Employment Equity Plan. Training would need to mandated as one of the elements of those plans.

Section 5 states, "An employer shall, in respect of each year, prepare a plan setting out goals." Guidelines include the requirement of timetables. They must include both quantitative and qualitative measures. Some employers describe the programs and practices through which they hope to achieve their goals. If more emphasis was put on a requirement for this information, and if it was also required to include clear training components, we might see the achievement of more effective result. (Whether these plans should be made public or available only to the auditing agency, and who that agency might be is not a topic for this brief.)

Plans, goals and time tables must be based, to some extent, on the human resource requirements of a particular company. At the same time, any company, even if it is in a downsizing mode, has openings, at both the entry level and within other levels of the organization, created by attrition and ordinary promotions and terminations. Plans must reflect affirmative movement of the designated groups into those positions using percentage goals, recruitment strategies, the elimination of systemic barriers and training plans for designated group members, as well as integration and retention strategies which include training for co-workers, managers, first line supervisors and trainers.

Training that doesn't emanate from or result in being hired into a real job is an empty display. Too many employers utilize government training programs and do not provide ongoing or continuing employment thereafter. There must be a clear link to employment for those EIC programs that are being utilized by employers as a demonstration of their commitment to implementing Employment Equity. This would not eliminate the possibility of exploratory course run by community based agencies or community colleges, but would effect only those programs being sponsored by an employer or union.

Thank you for you consideration of these matters, and we hope that you will recommend the inclusion of training as part of industrial requirements under the Act and within the regulations.

Respectfully submitted,

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BRIEF TO THE COMMITTEE TO REVIEW THE EMPLOYMENT EQUITY ACT

FROM

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Advocates for women in trades, technology, operations and blue collar work

Thank you for this opportunity to provide a brief to this committee. There are many perspectives from which you must draw in your deliberations, employers, labour, the designated groups, those who have been administering the current programs, researchers and legal experts. We hope that WITT's unique perspective can assist you in modifying, refining and reinforcing the Employment Equity Act to the betterment of all Canadians.

Employment Equity must mean more than the inclusion of a few more women in senior management positions, though clearly that is one aspect that may benefit us all over the long term. The fact is, there are only so many jobs at the top. The insignificant improvements in representation of women in the professional and particularly the technical and operational categories, from which senior management is often drawn, demonstrates the lack of success this legislation has had for the large majority of women. The "representation" or "participation" they have achieved is in the lower levels of clerical, sales and service occupations.

Recently, we have been hearing more often that women have had their day or year, and that the focus should be on people with disabilities or aboriginal people or visible minorities. Those categories are not made up of just men, as some might have us think. Women also make up over 51% of all of those categories.

If one were cynical, one might think that this more limited description, of who was being discriminated against, was useful because there are many fewer people to focus on when you limit consideration of equity concerns to only members of one or two of the designated groups. Success might be easier to achieve. But the facts are that women, in all designated groups, make up 44% of the Canadian workforce, and that they are segregated, for the most part, into only 5 occupational categories and at the lowest salary levels in those occupational categories. Women in the other designated groups are often doubly and triply discriminated against and find themselves at the very bottom of the salary scales and promotion levels. Their opportunities to be exposed to the potential of other kinds of work is limited by society's definition of what is appropriate.

WOMEN IN TECHNICAL AND OPERATIONAL FIELDS

Even so, WITT has members and member groups in every province and territory in Canada. We have published a broad range of their stories and experience in "Surviving and Thriving - Women In

Trades and Technology and Employment Equity." I have conducted research for EIC with women training and working in technical and blue collar fields all over the country. Many say the same things. They may have struggled against prejudice and harassment to get into and complete technical training, and they have to struggle against the same factors to find an employer who will hire them and continue their training so they can effectively contribute to building and maintaining the world in which we live. Their satisfaction and joy in doing the work is unbounded. Their opportunities could be increased through effective Employment Equity requirements.

COVERAGE AND UNIONS

First of all, coverage: 100 employees or when accumulated contracts reach $100,000. We understand that NEEN has indicated a somewhat different approach, and that we are a signatory to that presentation. The above figure was recommended at our 1988 national conference and has not yet been changed. It is an effective proposal. We also support the NEEN proposal.

All grants and contributions, including EIC training programs should be within the jurisdiction of the Act.

Construction contractors and sub-contractors must be included under the Federal Contractor's Program, and this must mean more than just running training programs. Those programs must lead to jobs in the industry.

Unions must participate actively in developing Employment Equity Plans, Goals and Timetables. This should not be a part of the regular bargaining process because it is inappropriate to use Employment Equity as a bargaining chip to be bargained away for a gain in another area by either side. After the EE negotiations take place, the agreements should be rolled into the regular collective agreement and regular or special grievance procedures should be followed as negotiated. If there is no union, workers should participate on the committee. It is only through this process that the broad education of all concerned can be effected.

If employees are dispatched from unions operating under a "hiring hall" situation, the unions must be required to participate in developing an Employment Equity Plan as part of the preliminary negotiations of a job contract. (It was most interesting to hear from the US Department of Labour at our recent conference in Ottawa that while women in industrial apprenticeships was up at 15%, their apprenticeships in the building trades were down at 2%, after 25 years of the US Civil Rights Act.)

STEPS TO EFFECTIVE IMPLEMENTATION

Currently, each CEO who wishes to do business with the government must sign their willingness to implement Employment Equity under the Federal Contractor's Program. Eleven steps are outlined to be undertaken to achieve this implementation. It would be useful

if those steps could be laid out that clearly to those covered under the Act, and that the auditing body would have similar access to all records and personnel in their review processes. While the FCP plans are not public, clearly, some of them have taken their CEO's signature seriously and have made some significant inroads in achieving at least some of their goals.

In developing plans, for both the FCP and those Legislated, (I will not comment on whether the FCP should be under the legislation) there must be some clear outline of minimum standards of goals and progress, or we will continue to discriminate to the level to which we currently discriminate. It is very important that the Plans include accountability procedures and how those will be measured. Inclusion in all levels of performance reviews for both supervisors and line managers should be a minimum. The potential for making budgetary allocations or additions on the basis of those reviews might be considered as both an incentive and a penalty. Sufficient funds for review and audit must be made available to the monitoring and enforcement agencies.

FEDERAL GOVERNMENT'S INCLUSION UNDER THE ACT

The Federal Government should be incorporated under the Act. I sat on the Federal external Advisory Committee to the President of the Treasury Board on Employment Equity for Women in the Public Service for four years and was chair of the sub-committee on training. We reviewed the plans (some thick, saying little; some thin; some saying more) spoke with Deputy Ministers, asked for and received studies of promotion patterns for female dominated occupational categories, made recommendations for adjustments and structural change. That committee, along with the one for the Disabled and the one for Visible Minorities, was disbanded by the President 15 months ago, in favour of joint committee which has never met. When asked about the status of the recommendations we made regarding training and apprenticeship for women in September 1990, the reply is that 'it is nice to have our letter'. After the disturbing Task Force report on women's employment in the Public Service, Beneath the Veneer, it is essential that the Federal Government be held accountable, and be required to perform in such a way that they can begin to act as a role model for the private sector.

(WITT no longer uses the term "non-traditional". These jobs are not non-traditional, men have been doing them for a long time. When they are referred to as non-traditional only when women do them, the women are isolated and considered somewhat out of place. Young women don't want to be "non-traditional", they just want to do interesting work and make a good living. We call the jobs what they are: trades, technical and operations (TTO), professional and management - not described by some characteristic of the individuals doing them. We would like the Federal Government to change their use of this term.)

ENFORCEMENT

In 1985/86, legislated employers and federal contractors were given 2-3 years to prepare their workforce and their reporting systems for the implementation of Employment Equity. Many of us thought they would use that time to get their numbers up in some of the designated group categories so they would not be too embarrassed. In most cases, this did not occur. In many cases, it was not until the review officer walked through the door or a complaint was filed with the Canadian Human Rights Commission, that there was a recognition that there was anymore to this than signing a piece of paper or filing a report.

Women with TTO experience have been banging on the doors and only sometimes getting in to be able to prove themselves. They have often proven to be the best, the most accomplished and willing workers. We will know we are accomplishing something when even just the average of us gets the same access to the jobs that less effective men do.

In order to move in that direction, mandatory plans, targets and timetables set by the companies, in accordance with their industrial requirements are essential, in collaboration with the agency whose task it is to assist, educate and monitor.

EIC has been doing some of this work quite effectively, though their efforts have been hampered by their lack of resources and lack of a clear mandate as to what direction their efforts should take. As well, the possibility of integrating Employment Equity initiatives with EIC training programs etc is a plus for continuing their active role.

It would seem, though, rather inappropriate to have the same agency assisting in the development and implementation of plans and challenging the effectiveness of efforts and applying sanctions. Perhaps another body should be in charge of that component, with additional advice from EIC.

We heard recently, at our national conference in Ottawa, that in the US, the most effective method of enforcement is something called a "consent decree". This appears to similar to what the Canadian Human Rights Commission set out for CN Rail as a result of the Action Travail des Femmes case. A US case example was described to your committee by Professor Jain. It is a clear and practical prescription for action to be undertaken to immediately remedy the situation found wanting, with a significant burden of penalties attached for failure to perform. The imposition of these orders needs to be in the hands of a semi-judiciary/legal body mandated to operate in this fashion.

TRAINING

Our thoughts on training have been included with the brief from our WITT National Network/Industrial Adjustment Committee. Because members of that committee differ even among themselves on the wide range of issues addressed here, it was decided that we would submit two briefs, one from our organization, and a joint one from our committee on which sit a number of employers, unions, government representatives and educators. The brief you have in you hand represents the positions expressed by our organization.

And finally,

Gay Stinson suggested in her presetation that Section 4 bii of the Act "described the requirement for government and employers alike to have very detailed information on the availability of members of the designated groups." Due to Privacy legislation, that information can only be in the aggregate form, not in a form that might allow employers to contact the individuals represented.

In 1988, Women in Trades and Technology held a national conference. There were 120 TTO women (trades, technical and operational) and 130 employers, unions, government and educators present from all over Canada. The conference was held because the women were saying that, though they had their initial training, no one would hire them. The employers were saying they couldn't find any women workers. Governments were saying that women just weren't interested in that kind of work. By the end of the four days of enlightened interaction, the group unanimously recommended that a national databank inventory be created that would enable employers and TTO women at varying skill levels to get in touch with each other. WITT might undertake this because it does not fall under Privacy legislation, although it morally must maintain some discretion.

WITT National Network, formed at that conference, worked for the next 3 and a half years to bring that databank into being. After EIC provided significant funds to design it and lay the groundwork for the data collection across the country, including additional funds to work in Quebec, and we submitted a highly supported proposal, we were told they wouldn't support the databank implementation because the other designated groups might want one.

We must encourage this potential relationship with employers. We have recently been informed that perhaps the department might consider a pilot project in one province. Clearly, the "availability data" that has been developed is inaccurate, and does not provide access to real individuals. Employer often use their lack of access to designated group members as an excuse.

this is a national problem, and one that Max Yalden commented on in his presentation to you. That lack of access to designated group members has been cited several times here before this committee as a barrier to successful recruitment and hiring. It would be important for the legislation to include mandating an agency with a significant budget to work with and support community based organizations efforts to solve this problem.

The designated groups have the potential to be much more effective in building the links between their members and the employer community because they have a vested interest in the success of the program. As EIC has moved out of the counselling and job placement business, that role has been contracted more and more to community based agencies acting for the designated groups through Outreach projects etc. (at a significantly reduced rate of pay). But the success of these efforts cannot be discounted. The importance of making the link between the availability data and potential real workers must be stressed, and the service provided as part of the programs and consultations engaged in with employers in the process of implementing their employment equity plans.

IN CONCLUSION
We wish you well in your difficult deliberations, weighing the many varied positions to which you have been exposed. I would have been delighted to meet with you to discuss some of the issues contained in this brief in more detail, and I regret that your intensely busy schedule has not allowed for this. I remain available if that is useful.

Respectfully submitted,

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