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Judge Rosalie Silberman Abella
Commissioner

Equality in Employment: A Royal Commission Report

General Summary

Mandate of the Commission

By the Terms of Reference of this Commission, Judge Rosalie Silberman Abella was appointed to inquire into the most efficient, effective, and equitable means of promoting employment opportunities for and eliminating systemic discrimination against four designated groups: women, native people, disabled persons, and visible minorities. The process was to include an examination of the employment practices of 11 designated crown and government-owned corporations representing a broad range of Canadian enterprise. These corporations are Petro-Canada, Air Canada, Canadian National Railway Company, Canada Mortgage and Housing Corporation, Canada Post Corporation, Canadian Broadcasting Corporation, Atomic Energy of Canada Limited, Export Development Corporation, Teleglobe of Canada Limited, The de Havilland Aircraft of Canada Limited, and the Federal Business Development Bank.

It was clear at the outset that only a broad approach would serve, and the Commission therefore treated the 11 designated corporations as illustrative models of the issues under study. No corporation's employment practices can be assessed fairly in a cultural vacuum. It would be difficult at best to make judgements about the adequacy of the practices of crown and government-owned corporations without placing these practices in the context of what other Canadians do, believe, or expect.

Moreover, without an overall analysis of the multi-dimensional nature of the barriers facing the four designated groups, a distorted perspective emerges. The climate in any given corporation reflects the social, economic, and political environment in which the corporation functions. To study a corporation's employment practices, therefore, it is also necessary to study the realities of the wider community. To recommend effective remedial measures to neutralize obstacles to equality, it is necessary to concentrate at least as intensively on the societal as on the corporate reflection of the problem.

The Commission concluded, based on its investigation of the employment practices of the 11 crown and government-owned corporations, that the rate of improvement for women, the only group for which these corporations had data, had been minimal over the five-year period studied. Women remain overwhelmingly concentrated in the lowest-paid occupations in every corporation. They hold few managerial or supervisory positions.

Only in those corporations where measures have been implemented to eliminate discriminatory barriers in employment, such as Canada Mortgage and Housing Corporation, have opportunities for

women genuinely improved. All 11 corporations agreed that without legislation and a reporting requirement substantial change was unlikely.

The Designated Groups

The Commission's consultations with women, native people, disabled persons, and visible minorities were an integral part of its decision-making. It is clear that their involvement is necessary in the design and delivery of programs intended for their benefit.

Most representatives with whom the Commission met considered further government intervention necessary to ensure their equitable participation in the workplace. These representatives considered traditional anti-discrimination statutes, enacted to deal with individual cases of intentional discrimination, inadequate for the magnitude of systemic discrimination.

The Commission examined the labour force profiles for three of the designated groups, there being no comprehensive national data available on disabled persons. It observed that four factors are statistical indicators of possible systemic discrimination: participation rates, unemployment rates, income levels, and occupational segregation.

The most recent and comprehensive data on these four factors are available from the 1981 Census of Canada, and additional data for women are available from the monthly Labour Force Survey and its supplements.

It is critical that Census data relating to the quality of the labour force participation of the four designated groups be collected every five years.

In 1982, 52 per cent of all women were labour force participants. They constituted 41 per cent of the workforce. Between 1966 and 1982 the male labour force increased by 35 per cent and the female labour force by 119 per cent.

From 1969 to 1981, women had higher unemployment rates than men. Women working full-time full-year in 1982 earned on average 64 cents for every dollar earned by men working full-time full-year, while working women generally earned on average 55 cents for every dollar earned by men. The wage gap between women and men narrowed by no more than 11 per cent in 70 years.

Women are substantially under-represented in high-income occupations. In 1981, as in 1971, they were concentrated in clerical, sales, and service occupations. Women constitute about 72 per cent of all part-time workers, though one in four in 1981-1982 would have preferred a full-time job.

Native people generally have low participation rates, high unemployment rates, and low income levels. The most recent data available on native people was collected by the 1981 Census. It showed that the participation rate for native men in 1981 was 60.7 per cent, compared to 78.2 per cent for the total male labour force. The participation rate for native women was 36.7 per cent, compared to 51.8 per cent for the total female labour force. The unemployment rate for native men in 1981 was 16.5 per cent, compared to 6.5 per cent for the total male labour force. For native women it was 17.3 per cent, compared to 8.7 per cent for the total female labour force.

The average earnings of native males were 63 per cent of the average earnings of non-native males. Native women averaged 72 per cent of the earnings of non-native females.

For disabled persons and visible minorities, the data are incomplete. It has been estimated, however, that the unemployment rate of disabled adults may be 50 per cent or more. The available data on visible minority groups show differences in their employment characteristics, but it is clear that many groups face systemic discrimination.

A number of employment barriers were articulated by all groups: insufficient or inappropriate education and training facilities; inadequate information systems about training and employment opportunities; no voice in the decision-making process in programs affecting them; employers' restrictive recruitment, hiring, and promotion practices; and discriminatory assumptions.

Every government study relevant to these groups in the past five years has urged the implementation of some form of interventionist measures in order to assist them to compete fairly for employment opportunities. In response, only minor adjustments have been made to the system. The progress for these groups has ranged from negligible to slow, yet there is an unexplained apparent reluctance to address comprehensively the conclusions of the research.

Notwithstanding the range of differences within and among the four designated groups, the consensus at practically every meeting the Commission held across Canada with women, native people, disabled persons, and visible minorities was that there was a need for government intervention to ensure their equitable participation in the workforce. Their hope was that, as quickly as possible, they would be transformed from being objects in the political laboratory to being subjects of political action.

Mandatory Measures: Employment Equity

The Commission has concluded that voluntary measures are an unsatisfactory response to the pervasiveness of systemic discrimination in Canadian workplaces and has therefore recommended that all federally regulated employers be required by legislation to implement employment equity.

The Commission was told repeatedly that the phrase "affirmative action" was ambiguous and confusing. People generally have a sense that "affirmative action" refers to interventionist government policies, and that is enough to prompt a negative reaction from many. For others, however, much depends on the degree and quality of the intervention. In other words, there may be a willingness to discuss eliminating discriminatory employment barriers but not to debate "affirmative action" as it is currently misunderstood.

The Commission notes this in order to propose that a new term, "employment equity", be adopted to describe programs of positive remedy for discrimination in the Canadian workplace. No great principle is sacrificed in exchanging phrases of disputed definition for newer ones that may be more accurate and less destructive of reasoned debate.

The statutory requirement to implement employment equity in Canada would oblige employers to develop and maintain practices designed to eliminate discriminatory barriers in the workplace. Imposed quotas are not being recommended.

The Commission views employment equity as a function of an employer's human resource and strategic planning operations and has recommended that employers be given flexibility in the redesign of their employment practices. Relevant statistical information and employment equity guidelines formulated by the agency enforcing employment equity legislation would be available to assist employers in their planning processes. These guidelines would be developed through ongoing regional and national consultations with representatives of business, labour, and the four designated groups.

Although it is unnecessary to list in employment equity legislation all the areas in which employers and unions would be expected, where necessary, to adjust their practices, the main ones should be itemized. These areas include recruitment and hiring practices; promotion practices; equal pay for work of equal value; pension and benefit plans; reasonable accommodation and workplace accessibility; occupational testing and evaluation; occupational qualifications and requirements; parental leave provisions; and opportunities for education and training leaves.

The success of an employment equity program is measured by results: expansion of the employment opportunities of qualified individuals in designated groups. Measurement of results requires data. The Commission recommends that employers be required to request and collect from their employees information on the participation in their workforces of women, native people (Status Indian, non-Status Indian, Métis, and Inuit), disabled persons, and specified ethnic and racial groups by occupational categories, and by salary range and quartile. An employee's self-identification of gender, race, ethnicity, or disability would be voluntary and confidential. The Commission also recommends that data be collected on the representation of individuals from these groups in hirings, promotions, terminations, lay-offs, part-time work, contract work, internal task forces or committees, and training and educational leave opportunities.

This data would be filed annually with the enforcement agency and assessed by the agency after analysis by Statistics Canada. If the results are found to be unreasonably low, taking into account the employer's job openings, prior record, and the realities of the local labour market, the enforcement agency would determine whether or not the results reflect discriminatory practices.

The enforcement agency would make available publicly the employers' data, the analysis by Statistics Canada, and the enforcement agency's assessment by tabling annually a report in Parliament.

Although the Commission recommends that the requirement to implement employment equity take effect immediately, the obligation to file data with the enforcement agency would not come into force for three years in order to permit the development and coordination of standardized data requirements, the reorganization of employers' information systems, and the necessary restructuring of human resource and strategic planning systems.

The Commission's review of the American experience with mandatory affirmative action confirmed that legislated, enforceable requirements are essential to the success of affirmative action programs. The Commission concluded that the enforcement of employment equity requires an agency that is independent; has a qualified staff familiar with labour relations, employment systems, and human rights issues; has sufficient resources to discharge its mandate; and has an ongoing consultative relationship in the development of employment equity guidelines with national and regional representatives of business, labour, and the designated groups.

Enforcement Models

The Commission proposes several alternative enforcement models for the government's consideration. The first model expands the jurisdiction of the Canadian Human Rights Commission to make it responsible for employment equity — including issuing guidelines, collecting, reviewing, and assessing data, and enforcing employment equity — and for contract compliance. There would, in addition, be a new, independent agency whose function would primarily be facilitative, providing expertise on a confidential basis to employers on how to implement employment equity. It would also provide to the Canadian Human Rights Commission assistance in the development of employment equity guidelines and in the conciliation of complaints.

The second model proposes that a new, independent agency be entirely responsible for employment equity and for contract compliance.

The third model follows the first model, providing, however, that the existing Canadian Labour Market and Productivity Centre, rather than a new facilitative agency, assist the Canadian Human Rights Commission in the development of employment equity guidelines with the benefit of input from the designated groups and from business and labour.

The last model also gives jurisdiction to the Canadian Human Rights Commission over employment equity and contract compliance and provides for amendment to the Canada Labour Code to require labour inspectors to supplement investigations by the Canadian Human Rights Commission by monitoring and referring possible violations of employment equity to the Canadian Human Rights Commission for enforcement.

Contract Compliance

Because of the pervasiveness of systemic discrimination and in the belief that fairness demands a general application of the law, the Commission has recommended that all federally regulated employers be subject to employment equity legislation. For these same reasons, this Commission urges provincial and territorial governments to pass employment equity legislation, with requirements being, insofar as is possible, consistent with federal legislation.

In the absence of legislation requiring all employers to implement employment equity, the federal government should encourage employment equity in the private sector by the use of contract compliance.

Contract compliance means government will agree to purchase goods and services only from businesses that agree to implement employment equity and to abide by other provisions negotiated to reflect local needs, such as the provision of training, transportation, or accommodation in northern or remote areas.

To avoid duplication, enforcement of contract compliance should be by the same agency that enforces employment equity.

Equal Pay

Equal pay for work of equal value is an essential element of both employment equity and contract compliance.

At present, the Canadian Human Rights Act specifically requires equal pay for work of equal value. But this legislation applies only to 11 per cent of the Canadian workforce. Although Canada has ratified international agreements supporting equal pay for work of equal value, provincial laws do not reflect these commitments. Most provincial laws are limited to equal pay for equal work and are therefore applicable only to men and women in the same or similar jobs in the same firm.

Education and Training

Recognizing that a strategy designed to increase the employment opportunities of particular individuals cannot work unless those individuals have the skills to do the job, the Commission reviewed the educational and training opportunities available to members of the designated groups. This review included an examination of the role of counsellors in educational institutions, the impact of role models and sexual stereotyping in the schools, the availability of part-time and adult education, literacy and language training, and access by members of the four designated groups to National Training Act programs.

The Commission concluded that the educational and training problems of each of the designated groups vary so significantly that no one strategy is suitable for all the groups. The Commission, therefore, has made recommendations based on the needs of each group.

The Commission has also made recommendations of general application. These include the recommendation that training programs, in order to be relevant, effective, and accessible, be developed in consultation with local advisory panels consisting of labour force analysts and representatives of the designated groups, business, labour, educational institutions, and federal, provincial, and territorial governments.

The Commission believes that employers must ensure that qualified members of the designated groups at all occupational levels receive a fair proportion of education and skill training leaves. Access to these leaves is an important part of any employment equity program.

Childcare

The Commission concluded that a major barrier to equality in the workplace for women who are mothers is the absence of affordable childcare of adequate quality.

In 1981, more than 950,000 pre-school age children in Canada had working mothers. Yet in 1982, there were only 124,000 licensed childcare spaces. Last year, more than half of all mothers of pre-school age children worked. Although by Canadian law both parents have a duty to care for their children, by custom this responsibility has generally fallen to the mother. Women are both inhibited from working and the quality of their participation is impaired by the absence of adequate childcare.

The term "childcare" is preferable to "daycare" because it describes a more comprehensive system intended to provide care for children whenever the absence of a parent requires this alternative. Ideally, a childcare system should be publicly funded, of acceptable quality, universally accessible though not compulsory, and available to children from birth at least until the age at which they are legally permitted to remain home unattended by an adult.

The Commission recommends that a National Childcare Act be passed, based on consultation with the provinces, territories, and interest groups, in order to ensure consistent standards and to take into account urban and rural needs and the special needs of children who are native, members of minority groups, or disabled. Until a universal system is available, childcare should be available at least for children whose parents are unable to care for them on a full-time basis and for children with special needs arising from a disability.

To ensure quality childcare, specialized training should be more generally available for childcare providers, and they should be better paid.

Conclusion

Employment equity is a strategy designed to obliterate the effects of discrimination and to open equitably the competition for employment opportunities to those arbitrarily excluded. It requires a "special blend of what is necessary, what is fair and what is workable".

To ensure freedom from discrimination requires government intervention through law. It is not a question of whether we need regulation in this area, but of where and how to apply it.

We need equal opportunity to achieve fairness in the process, and we need employment equity to achieve justice in the outcome.

Law in a democracy is the collective expression of the public will. We are a society ruled by law — it is our most positive mechanism for protecting and maintaining what we value. Few matters deserve the attention of law more than the right of every individual to have access to the opportunity of demonstrating full potential.

What is needed to achieve equality in employment is a massive policy response to systemic discrimination. This requires taking steps to bring each group to a point of fair competition. It means making the workplace respond by eliminating barriers that interfere unreasonably with employment options.

It is not that individuals in the designated groups are inherently unable to achieve equality on their own, it is that the obstacles in their way are so formidable and self-perpetuating that they cannot be overcome without intervention. It is both intolerable and insensitive if we simply wait and hope that the barriers will disappear with time. Equality in employment will not happen unless we make it happen.

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Volume II of the Commission's Report, a selection of research studies prepared for the Commission, will be published early in 1985.