EMPLOYMENT EQUITY AS "FELT FAIRNESS": THE CHALLENGE OF BUILDING AN INCLUSIVE LABOUR MARKET

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ABSTRACT

"...to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons the same way but also requires special measures and the accommodation of differences".

Judge Rosalie Abella, 1986[1]

INTRODUCTION: CHANGING PROFILE OF CANADA

Canada's demographic composition is undergoing a major transformation. Already one-third of Canada's population is made up of immigrants and their children. According to the 2006 Census data, those who self-identified as visible minorities (racialized group members) made up 16.4% of the Canadian population, while immigrants (a highly racialized category) accounted for 19.6%. These figures are projected to rise to 20% and 25% respectively by 2015. By 2031, racialized groups will make up close to one-third of Canada's population – that is, one in three Canadians will be racialized. This is a major transformation from less than 5% of Canada's population in 1980 to 32% (between 11.4 and 14.4 million) twenty years later. The racialized group population grew by 27% between 2001 and 2006, more than five times the increase of the rest of the population, which expanded by 5.4%. South Asians now account for one-quarter of all racialized people in Canada, or 4% of the total population. Chinese comprise about another quarter of the country's visible minority population, with some 1.2 million self-identifying as Chinese. Blacks, Filipinos, Latin Americans, Arabs, Southeast Asians, West Asians, Koreans and Japanese round out the top 10 racialized groups.[2]

A disproportionate percentage of the racialized population in Canada experiences unequal access to the labour market and inequitable income outcomes. This income gap stems from disparities in the distribution of well-paying, more-secure jobs. According to a recent study by Block and Galabuzi (2011), data show that while racialized Canadians have slightly higher levels of labour market participation, they continue to experience higher levels of unemployment and earn less income than non-racialized Canadians. The data show that if there is work to do, racialized Canadians are willing to do it: 67.3% of racialized Canadians are in the labour force – slightly more than non-racialized Canadians (66.7%). However, the work that racialized Canadians attain is much more likely to be insecure, temporary, and low-paying. The study shows that racialized Canadians are over-represented in a range of traditionally low-paying business services, ranging from call centres to security services to janitorial services. In other words, racialized group members are experiencing wage and occupational penalties in the Canadian labour market—something Block and Galabuzi call the racial penalty. To address employment inequity, Canada needs to consider policy approaches that will standardize equity principles in the labour market, creating a common

regime under which all employers and employees can predictably act. Furthermore, it is important that the outcomes of these policies be demonstrated using quantitative measures as well as qualitative characteristics of workplaces. In other words, for employment equity to be realized, it must not only be seen in quantitative measures, but must also be perceived and felt. It is with this in mind that we now focus our attention on distributive justice and the concept of "felt fairness."

CONTEXT: CANADA AS A MULTICULTURAL SOCIETY THAT VALUES DIVERSITY

Canada is a multicultural society that subscribes to inclusive notions of citizenship and values diversity and cultural pluralism. Canada's multicultural policies encourage ethnic and religious groups to form bonds that are consistent with the ideal of social inclusion. Research shows that the threats to social cohesion in Canada relate to impediments to the equal participation of diverse communities as opposed to the existence of diversity in society.

THE CENTRALITY OF THE LABOUR MARKET

The labour market determines the level and distribution of incomes in society. In Canada, 70% of market income is distributed through wages and salaries. Thus, employment and income largely determine levels of social inequality. Furthermore, we know that good quality jobs are essential to social well-being. Numerous studies show that employment inequality is a feature of the Canadian labour market and that the economic status of Aboriginal peoples and racialized group members is determined by their Aboriginal, racialized and immigrant status.[3] Racial discrimination continues to deny these citizens from reaching their full career potential. This inequality is exacerbated by deregulation of the labour market and increasing demands for flexible labour. This has led to a growth of precarious forms of work, conditions that are increasingly prevalent in sectors of the economy where Aboriginal people, racialized groups and women are disproportionately represented.

INEQUALITY IN EMPLOYMENT: SOME EVIDENCE

Employment inequity and precarious work have had an impact on the socio-economic status of Aboriginal peoples, racialized groups and women, including:

- unequal employment income
- higher levels of low income
- higher unemployment
- sectoral concentration relative to the rest of the Canadian population

Racialized individuals and groups are excluded, implicitly or explicitly, from job opportunities, key information networks, human resource investments, professional development opportunities, team membership, and decision-making roles because of their ethnic backgrounds. Between 2000 and 2005, although Canada was in one of its strongest periods of economic growth, racialized workers experienced high levels of unemployment, far above non-racialized Canadians. Racialized men were 24% more likely to be unemployed than non-racialized men. Racialized women fared even worse: they were 48% more likely to be unemployed than non-racialized men. This may have contributed to the fact that racialized women earned 59.5% of the income of non-racialized men. While on average, the earnings of non-racialized Canadians grew by 2.7% during this period—tepid income gains considering the economy grew by 13.1%—the average income of racialized Canadians *declined* by 0.2%.[4]

The data also show that when controlled for age and education, first generation racialized Canadian men earn only 68.7% of what non-racialized first-generation Canadian men earn, and racialized women 81.9% of the incomes of non-racialized women. Similarly for the second generation, there is a wage gap of 75.6% for men and 92.3% for women. The gap persists into the third generation, although it is diminished to 93% for men and 99% for women. Ironically, in the second and third generations, racilized groups have significant educational attainment advantages that are not translating into income advantages, but rather income gaps.[5]

In 2006, the median income for Aboriginal peoples was 30% lower than that of other Canadians. While Aboriginal unemployment was 14.8%, it was just 6.3% for other Canadians. Aboriginal peoples also lagged behind other Canadians in educational attainment,with only 8% holding at least a Bachelor's degree compared to 22% of the rest of Canadians.[6]

According to the 2009 Annual Employment Equity report, in 2008, the representation of Aboriginal peoples remained at 2.5% in the private and public sectors together, below the labour market availability of 3.1%. However, there was a significant difference between the two sectors, with Aboriginal peoples better represented in the federal public sector at 3.7% compared to just 1.9% in the private sector.

According to the 2009 Annual Employment Equity report, between 2007 and 2008, representation of members of racialized groups rose in the federally regulated private sector from 15.9% to 16.6%, a representation rate above the availability rate of 15.3% in the same sector. However, in the federal public sector, representation of racialized groups rose marginally from 7.6% to 8.0% and remained

TABLE 1: Inequality in Employment: Employment, unemployment and participation rates, 2006

	RACIALIZED			NON-RACIALIZED	
	MEN	WOMEN	TOTAL	MEN	WOMEN
Participation rate	73.1	62.0	67.3	72.2	61.5
Employment rate	67.3	56.3	61.5	67.7	57.8
Unemployment rate	7.8	9.3	8.6	6.3	6.1

Source: Census, 2006

significantly below the availability rate of 13.0%. A point of caution is that these figures are measured against availability data from 2005, likely depressing the actual numbers, due to increased racialized immigration and graduation.[7]

Data on the participation of immigrants in the labour market show that in 1980, recent immigrant men earned 85 cents for every dollar of their Canadian-born counterparts. In 2005, that number was 63 cents. The drop was more pronounced for immigrant women, who went from earning 85 cents for every dollar of their Canadian-born counterparts in 1980 to only 56 cents in 2005. Recent immigrant men holding a degree earned only 48 cents for each dollar their university educated, Canadian-born counterparts did. The earning gap was less for non-university educated immigrants, who earned 61 cents to every dollar earned by their Canadian-born counterparts. In 2006, immigrants were more likely to have a university education than the Canadian-born. About 30% of male immigrants with a university degree worked in jobs that required less than a high-school education — twice the rate of those born in Canada who had university degrees.[8]

ACCESS TO PROFESSIONS AND TRADES

Skilled immigrants face multiple barriers when seeking employment in their fields, including non-recognition of international credentials, devaluation of human capital based on source country, and demands for Canadian experience. These immigrants are often relegated into low wage and precarious employment while their skills degrade overtime.

DISCRIMINATION IN EMPLOYMENT

The Abella Commission Report defines discrimination as:

> *"practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual characteristics... It is not a question of whether this discrimination is motivated by an intentional desire to obstruct someone's potential, or whether it is the accidental by-product of innocently motivated practices or systems. If the barrier is affecting certain groups in a disproportionately negative way, it is a signal that the practices that lead to this adverse impact may be discriminatory" (Abella, 1984:2).*

Employment discrimination occurs in Canada along two axes:

- *economic* discrimination—when employers make generalized assumptions about the worth of employees from an excluded group; and
- *exclusionary* discrimination—when members of an excluded group are not hired, paid equally or promoted for reasons unrelated to skill level or experience.

Discriminatory employment practices do not operate in a vacuum, but rather are part of more widespread forms of exclusion in society. To fully understand discriminatory employment practices, it is important to understand that discrimination, disadvantage, inequality and exclusion are intimately linked together and that they are firmly embedded in the socio-economic and political structures of society.

RACIAL DISCRIMINATION IN EMPLOYMENT

There is a vast literature pointing to historical racism and gendered racism in access to employment practices in Canada. Most jobs are filled through word of mouth, thus reinforcing existing networks and privileged access. There are barriers to occupational mobility within the workplace and between sectors, and barriers to access to professions and trades for internationally educated immigrants.

IMPLICATIONS FOR RACIALIZED GROUPS AND CANADIAN SOCIETY

Employment discrimination undermines the ability of individuals to realize their full potential and participate fully in Canadian society. It denies any benefits arising from

economic potential to both individuals and their families as well as to the Canadian economy. It impairs the ability of Canadian employers to make the most optimal human resource decisions. And last but not least, it creates a condition of racialized poverty. In addition to its impact on the economy and Canadian society, employment discrimination also affects the workplace, negatively impacting employee performance; undermining trust relationships, motivation and productivity; and increasing tendencies towards resistance. The rejection and exclusion often experienced by members of racialized groups tends to lead to stress and can depress learning and creativity, ultimately creating a toxic working environment for both victims of discrimination and their coworkers.

POLICY RESPONSES: EQUITABLE LABOUR MARKET ACCESS

Appropriate policy response should include measures to identify and remove barriers to labour market access. This response should involve multiple sectors, including various levels of government, employers and civil society. It should also include adopting equity principles, such as transparency and competency-based evaluation of human capital. In addition, a policy response should include consideration of support for the creation of well-paying jobs with standard employment contracts, regulation of working conditions, especially in sectors where precarious employment is prevalent, and appropriate policies and programs to ensure a smooth transition for internationally trained professionals and trades people into their fields of expertise.

LABOUR MARKET POLICY RESPONSES

A menu of policy responses includes, among others, legislative responses, such as equal opportunity and employment equity; workplace-based initiatives, such as inclusive workplace and diversity management; as well as broader public policy instruments, like education, training, bridging, and job creation.[9] Key policy responses to employment inequity include Employment Equity. Employment equity seeks to achieve equal outcomes or fair distribution of opportunities through equal representation of racialized and non-racialized groups in the workplace. It represents a distributive approach: fairness in outcomes of process of distribution of opportunities, resources and rewards. The theory is that absence of fair distribution constitutes discrimination and that equality is achieved through acknowledging difference. Employment equity often requires a legislative mandate, such as the Federal Employment Equity Act, 1995. It requires a review of barriers to equal employment and an examination of how these barriers can be removed in order to achieve a representative workforce. Where employment equity practices have been implemented, they have often led to backlash and resistance in organizations. Moreover, employment equity tends to be reduced to a numbers driven process.[10] As such, there is no solid consensus regarding the program's success.

Employment policies, programs, and practices designed to achieve employment equity for Aboriginal peoples and visible minorities are implemented in private and public sectors in Canada. They involve four major types of activities:

- legislative-mandated policies for employment equity in the federal and public sectors
- external facilitative policies for employment equity in Canadian workplaces
- internal policies for employment equity in the federal public service itself
- other internal federal policies that may have an impact on employment equity

FEDERAL EMPLOYMENT EQUITY ACT, 1996[11]

Attempts to deal with systemic discrimination through human rights legislation have not been very successful because such legislation has not been structured to deal with the characteristic of systemic discrimination. The Employment Equity Act is designed to overcome the limitations of complaints-based procedures in dealing with systemic discrimination in the workplace. The Act focuses on four groups that have been historically discriminated against: Aboriginal peoples, persons with disabilities, visible minorities and women. It is based on the understanding that systemic discrimination has an adverse impact on certain groups through the operation of employment systems that were not designed nor intended to discriminate, but which do so. Thus, the Act is the primary legislation mechanism to redress discrimination and eliminate barriers against certain designated groups.

The legislation mandates employers to establish positive policies and practices towards the achievement of "a degree of representation in the various positions of employment with the employer that is at least proportionate to their representation

(i) in the workforce; or (ii) in those segments of the workforce that are identifiable by qualification, eligibility or geography and from which the employer may reasonably be expected to draw or promote employees" (EEA, Sec.4).

FEDERAL CONTRACT COMPLIANCE PROGRAM

The Federal Contract Compliance Program covers organizations of more than 100 employees under federal jurisdiction, with minor exceptions. Employers are required to submit annual reports on:

- the industrial sector in which employees are employed, the location of the employer and employees, the number of employees and the number of designated group members
- the degree of representation of persons in designated groups in each occupational group
- the salary ranges of employees and the degree of representation of designated group members in each range and prescribed sub-division
- the number of employees hired, promoted, and terminated and the degree of representation in those numbers of persons in the designated groups

ANALYSIS OF IMPACT OF FEDERAL LEGISLATION

Numerical progress has been made for all target groups in the public and private sector. However, racialized groups are still underrepresented in the federal public service. Ironically, racialized groups are better represented within federally regulated employers than within the public service. The outcomes have been better for Aboriginal peoples within the federal public service than for racialized groups. This is due to high representation of Aboriginal peoples in the Department of Indian and Northern Affairs Canada.

Where numerical progress has been made, it has led to occupational clustering, usually at the low end of the organization, in low pay and low status jobs, leading to a condition of "ghettoization:"

> *"simply put, numbers are necessary but not a sufficient measure of equality – it is not just a matter of increasing the numbers... but also...changing the systems and culture of the workplace.... To be present but unable to progress in organizational careers is not equality" (Agocs, 2002)*[12]

PROVINCIAL EMPLOYMENT EQUITY PROGRAMS

Seven provinces have employment equity policies (British Columbia, Manitoba, Saskatchewan, Quebec, Nova Scotia, New Brunswick, and Prince Edward Island). Most of these policies apply to the public sector and only British Columbia has employment equity legislation. There is wide variation in policies, although most policies require some level of planning and reporting or monitoring that focuses on recruitment, retention, and promotion. Most policies also attempt to address pay equity as an aspect of employment equity, with some provinces having specific legislation addressing pay inequity.

FACILITATIVE EMPLOYMENT EQUITY POLICIES

Facilitative policies are intended to encourage and assist employers, typically outside the federal public service, in the development of employment equity goals. While the legislative tools provide the "thou must," the facilitative policies provide the "here's how." The Racism Free Workplace program is a major example of such support both for internal and external 'clients'.

FEDERAL RACISM FREE WORKPLACE PROGRAM (RFWP)

The RFWP is the labour component of the CAPAR responsible for raising awareness about racism and racism-related issues in the workplace. The main objective of the RFWP is to promote the removal of discriminatory barriers in employment and to support the upward mobility of Aboriginal and racialized group members in Canadian workplaces. The Program seeks to achieve these objectives by developing tools, guidelines and educational materials for employers, practitioners and managers.

MAKING PROGRESS ON EMPLOYMENT EQUITY

Employment equity is a positive measure to end discrimination in employment. It recognizes that some groups are under-represented in the workplace because of historic disadvantages in access to employment. To make progress, organizations require a formal and comprehensive equity plan and support from senior management. Organizations need to undertake an employment systems review to identify barriers in the employment policies and practices. Organizations must then set themselves targets to eliminate those barriers and commit to creating diversity in the workplace. The leadership of each organization must be seen to support the initiative. Employment equity has to be mainstreamed at some point to ensure its institutionalization as the culture of each organization.

BEST PRACTICES: ACHIEVING EMPLOYMENT EQUITY AND WORKPLACE FAIRNESS

Achieving employment equity involves, among other factors, demonstrated leadership; clear organizational commitment to the goals of employment equity; accountability of human resources staff for employment equity results; communication, including education, training and awareness; and supportive organizational climate and union involvement. To operationalize employment equity effectively, the employer should commit to, among other things: reaching out beyond established recruitment networks; conducting continuous organizational self-evaluation to identify barriers; adopting

goals and timetables for attaining equity; monitoring results; ensuring accountability for selection and promotion decisions; utilizing the international credential assessment service; engaging mentoring target group members through work assignments and on the job training opportunities; and recognizing exemplary implementation of equity practices.[13]

MEASURING PROGRESS

It is essential that employers assess progress by developing evidence of outcomes (i.e., representation against availability), processes (i.e., that employment equity programs have been implemented adequately) and impact (i.e., that improvements in outcomes result from programs). Program evaluation and research is an important means of learning what impact policies and programs are having and which aspects make a difference. Better information about employment equity program impacts is required.

ACHIEVING AN INCLUSIVE WORKPLACE: MEETING THE 'FELT FAIRNESS' STANDARD

In order for the employment equity to take root, it must not only be demonstrated by the widely used measurements, such as quantitative indicators, but it must be perceived as representing fairness in employment. The concept of 'felt fairness' has been used in human resources systems in relation to performance evaluation.[14] Others have referred to the need for efforts to infuse equitable principles into workplaces so they can rise to the elt fairness level. We argue that, given the contested nature of employment equity efforts and outcomes, it is essential that a key measure of success be the felt fairness standard. Felt fairness is a distributive approach to workplace affairs that, if realized, would mean those who are historically excluded can both feel the change in the work environment, feel supported and included so that they can prosper and realize their full potential, and feel that they can aspire to every aspect of employment in the organization. It is an employee-centred approach that emphasizes organizational justice. Cornelius (2002) suggests that both *procedural* and *distributive* justice be rendered in the workplace. A high degree of distributive equality requires 'equal outcomes' demonstrating organizational equality. Ultimately, demonstrated formal and informal employment processes would lead to an environment and outcomes that reinforce the notion of fair-felt equality.[15]

An inclusive workplace should recognize that its employees are members of a broader community and should focus on the workplace as a sub-system of broader socio-economic systems. It should exhibit values and utilize inter-group differences. Employers should work with and contribute to the broader social context and community. They should demonstrate commitment to alleviating the needs of disadvantaged groups in the workplace and the broader community. The organization should collaborate with individuals, groups and other organizations to create conditions conducive to social inclusion.[16]

As well, the organization should modify its corporate culture to incorporate the values and customs of the 'other'. It should adapt corporate systems and practices to promote equity and respect diversity. For instance, by considering other world-views; building consensus for a change towards inclusive culture; including all employees in bottom-line efforts; and pursuing effective communication. An inclusive workplace demonstrates the benefits of felt fairness by attracting and retaining the best talent available; increasing organizational flexibility; improving productivity; improving the quality of management; creating and innovating more effectively; solving problems more effectively and contributing to the community.

FINALLY, A ROLE FOR THE LABOUR MOVEMENT

For Canada's Aboriginal and racialized group members to make significant progress in the labour market, they need the union advantage – the power of collective bargaining. The responsibility, therefore, falls on the leadership and members of Canada's organized labour to seize the opportunity and meet the challenge of empowering an increasingly marginalized and socially excluded segment of our society. There is a need for a coordinated effort between organized labour and equity seeking groups to fight for more jobs, higher quality jobs, and employment equity. Organized labour has not always seen a benefit in this approach, sometimes succumbing to the competitive racism of some in its ranks.

This is in essence the extension of the 'union advantage' to racialized workers. Unions can bargain employment equity provisions. They can advocate to better employment standards legislation and help improve workplace conditions. They can also commit themselves to organizing sectors of the economy in which racialized workers are disproportionately represented and precariously employed. In 2001, the proportion of racialized workers among paid workers was 9.3% while union coverage among racialized workers stood at 21.3%, such that racialized worker represented about 6.9% of all unionized workers. This level is significantly lower than the overall rate of union density in the Canadian economy at 32.2%.

CONCLUSION

The country's demographic composition is undergoing a major transformation. A disproportionate number of the racialized population of Canada is subject to unequal access to the labour market and inequitable income outcomes. If the labour market continues to relegate workers from racialized groups to the back of the pack, the number of Canadians left behind will only accelerate – calling into question the promise that Canada is a fair and caring society committed to equal opportunities, no matter who you are and where you come from. A menu of policy responses includes, legislated responses, such as employment equity; workplace-based initiatives, such as diversity management; as well as broader public policy instruments, such as education, training, bridging, and job creation. Employment equity seeks to achieve equal outcomes or fair distribution of opportunities through equal representation in workplace and through the creation of an inclusive workplace. An inclusive workplace can be a vehicle for creating a condition of felt fairness. Finally, for Aboriginal and racialized group members to make significant progress in the labour market, they need the union advantage – the power of collective bargaining.

NOTES

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