ARE WE THERE YET? 40 YEARS OF EMPLOYMENT EQUITY: THE GOOD, THE BAD AND THE UGLY

WENDY CUKIER

Dr. Wendy Cukier is one of Canada's leading experts in disruptive technologies, innovation processes and diversity. She has written more than 200 papers on technology, innovation and management and is coauthor of the bestseller *Innovation Nation: Canadian Leadership from Java to Jurassic Park*. She is the Founder of Ryerson University's Diversity Institute, which she founded in 1999 and has led projects aimed at promoting the participation and advancement of underrepresented groups. Dr. Cukier has assisted organizations in becoming more inclusive through innovative programs such as DiversityLeads funded by the Social Sciences and Humanities Research Council, which tracks the progress, impediments and evidenced-based strategies for promoting diversity in organizations.

Dr. Cukier holds an MA and MBA from the University of Toronto, a PhD from the Schulich School of Business, York University. She has also received an honorary doctorate from Laval University in medicine, dentistry and nursing and an honorary Doctor of Laws from Concordia University.

INTRODUCTION

The *Employment Equity Act*, established in 1986, requires employers of federally regulated organizations with at least 100 employees and federal contractors to identify and address employment barriers for employees from four "designated groups": women, Aboriginal peoples, persons with

disabilities, and members of visible minorities,[1] although the terms have been updated to "racialized people" and Indigenous peoples recognizing shifting norms.[2] The Act also requires disclosure of policies, but reporting and monitoring of the policies is uneven.[3]

PROGRESS AND SHORTCOMINGS – IMPACT

The effects of the *Employment Equity Act* have been the subject of some debate. There is evidence that it has led to greater attention to setting targets, tracking representation, and developing equity, diversity and inclusion strategies and as a result sectors subject to the Act tend to have higher representation of designated groups throughout the organization and in leadership roles than sectors not subject to the Act. For example, the Prosperity Project's 2023 Annual Report Card on Gender Diversity and Leadership[4] found that women had higher representation in leadership roles in the finance and insurance and transportation and warehousing sectors (industries that are subject to the *Employment Equity Act*) compared to the manufacturing sector (which is not subject to the *Employment Equity Act*) (See Table 1).

At the same time, there is evidence that representation is improving but not at the senior most roles; that wage gaps are diminishing but remain, particularly for people with intersectional identities and there are still issues with occupational segregation, with access to resources and services and many of the enablers of generational wealth.[5,6,7,8,9,10] Under-representation is even more pronounced for racialized women. For example, In Toronto, where there are more racialized women than non-racialized women in the general population,

1 Employment Equity Act, SC 1995, c 44. https://laws-lois.justice.gc.ca/eng/acts/e-5.401

2 National Research Council Canada. (2023, April 27). *Employment Equity Annual Report 2021–2022*. Government of Canada. https://nrc.canada.ca/en/corporate/planning-reporting/employment-equity-annual-report-2021-2022

3 Public Service Alliance of Canada. (2022). Employment Equity Act Review Report: What we heard. Public Service Alliance of Canada. https://psacunion.ca/sites/psac/files/2022-psac-employmentequityactreview_en_0.pdf

4 The Prosperity Project. (2023). *2023 Annual Report Card on Gender Diversity and Leadership*. The Prosperity Project. https://blog.canadianprosperityproject.ca/wp-content/uploads/2023/02/TPP_ARC_2023_EN.pdf

5 England, K. (2014). Chapter 4. Women, intersectionality, and employment equity. In Agocs, C. (Ed.), *Employment equity in Canada: The legacy of the abella report* (pp. 71–98). University of Toronto Press.

6 Rioux, M. & Patton, L. (2014). Chapter 6. *Employment equity and disability: Moving forward to achieve employment integration and fulfill promises of inclusion and participation*. In Agocs, C. (Ed.), Employment equity in canada: The legacy of the abella report (pp. 133-155). University of Toronto Press.

7 Devillard, S., Bonin, G., Madgavkar, A., Krishnan, M., Pan, T., Zhang, H., & Ng. M. (2019). *Women matter. The present and future of women at work in Canada*. McKinsey Company. www.mckinsey.com/~/media/mckinsey/featured%20insights/gender%20equality/the%20present%20and%20future%20of%20women%20at%20work%20in%20canada/the-present-and-future-of-women-at-work-in-canada-vf.pdf

8 Canadian Women's Foundation. (2021). *Resetting Normal: Gender, Intersectionality and Leadership*. Canadian Women's Foundation. https://canadianwomen.org/wp-content/uploads/2021/04/Resetting-Normal-Gender-Intersectionality-and-Leadership-Report-Final-EN.pdf

9 UN Women. (2020). COVID-19 and Women's Leadership: From an Effective Response to Building Back Better. UN Women. www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2020/Policy-brief-COVID-19-and-womens-leadership-en.pdf

10 Ng, E., Sultana, A., Wilson, K., Blanchette, S., & Wijesingha, R. (2021). *Building inclusive workplaces*. Public Policy Forum, Diversity Institute, Future Skills Centre. https://fsc-ccf.ca/research/building-inclusive-workplaces

TABLE 1. REPRESENTATION OF WOMEN IN LEADERSHIP ROLES ACROSS INDUSTRIES IN CANADA.

	FINANCES & INSURANCE	MANUFACTURING	MINING, QUARRYING, OIL & GAS EXTRACTION, AND SERVICES	RETAIL TRADE	TRANSPORTATION AND WAREHOUSING	UTILITIES
Board Roles	39%	36%	23%	32%	49%	44%
Executive Officer Roles	35%	25%	18%	33%	34%	37%
Senior Management Roles	42%	20%	31%	47%	37%	42%

Source: The Prosperity Project. (2023). *2023 Annual Report Card on Gender Diversity and Leadership*. The Prosperity Project. https://blog.canadianprosperityproject.ca/wp-content/uploads/2023/02/TPP_ARC_2023_EN.pdf.

non-racialized women outnumber racialized women in corporate leadership roles by a ratio of 12:1.[11]

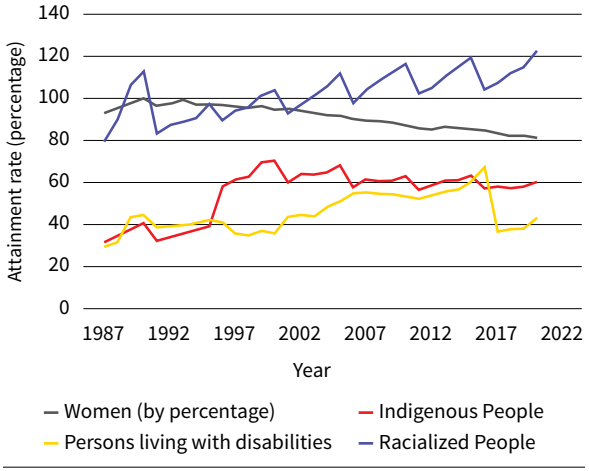
A key indicator of employment equity is the attainment rate, which corresponds to the extent to which the representation of a certain group meets or exceeds the labour market availability (LMA). For example, if the representation of a designated group is below its LMA, the attainment rate will be less than 100%, which indicates the existence of barriers to employment and the need to implement corrective measures. Progress is made when the gap between representation and LMA is narrowed (i.e., when the attainment rate approaches 100%) or when representation equals or exceeds the LMA (i.e. when the attainment rate is equal to or greater than 100 %). However, what is known so far is that the attainment rate of the four designated employment equity groups in the federally regulated private sector (FRPS) at the national level has fluctuated from 1987 to 2020 (see Figure 1). While it has trended upward over this time period for Indigenous peoples, racialized people, and persons living with disabilities, indicating positive developments in employment equity in the FRPS since 1986, it has dropped, especially for women during COVID-19.

A significant gap in the Act also lies in the current definition of "members of visible minorities" who are considered "persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour."[12] According to the 2021 Canadian Census, 26.5% of Canada's population are visible

11 Cukier, W., Latif, R, Atputharajah, A., Parameswaran, H., & Hon, H. (2020). *Diversity Leads - Diverse Representation in Leadership: A Review of Eight Canadian Cities*. Diversity Institute. www.torontomu.ca/diversity/reports/DiversityLeads_2020_Canada.pdf

12 Employment Equity Act, SC 1995, c 44. https://laws-lois.justice.gc.ca/eng/acts/e-5.401/

FIGURE 1. ATTAINMENT RATES FOR DESIGNATED CANADIAN EMPLOYMENT EQUITY GROUPS FROM 1987 TO 2020.



Source: Employment and Social Development Canada. (2022, August 13). Employment Equity Act: Annual Report 2021. www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/employment-equity/reports/2021-annual.html#chart1.

minorities,[13] which includes South Asian, Chinese, Black, Filipino, Arab, Latin American, Southeast Asian, West Asian, Korean, and Japanese people, among other groups. This broad categorization of "visible minority" in the Act masks the significant differences between these groups in terms of demographics, employment, income, and discrimination. For example, there is a significant difference in the recruitment process of Black applicants in the labour market, such as, in terms of applicant success rate in organizational screening, assessment and appointment – all of which adds to the fact that no other visible minorities experiences the same level of attrition (e.g., job application to the appointment stage for Black applicants drops from 10.3% to 6.6%).[14] Besides, there is evidence that suggests that anti-Black racism exists as reports suggest that Black employees over the age of 15 experience unfair discrimination within workplaces.[15]

DEFINITIONS

Criticism of the *Employment Equity Act* has highlighted its failure to update legal definitions of designated groups to reflect current social norms. For example, the United Nations Committee on the Elimination of Racial Discrimination deemed the use of the term "visible minority" as contravening the aims and objectives of the International Convention on the Elimination of All Forms of Racial Discrimination.[16] The category obscures significant differences in the experiences of different groups within the category – for example those who

13 Statistics Canada. (2022, November 26). *Visible minority and population group by generation status: Canada, provinces and territories, census metropolitan areas and census agglomerations with parts*. Statistics Canada. https://doi.org/10.25318/9810032401-eng

14 Public Service Commission of Canada. (n.d.). *Audit of Employment Equity Representation in Recruitment*. Public Service Commission of Canada. www.canada.ca/content/dam/psc-cfp/documents/publications/audit-ee/audit-ee-eng.pdf

15 Statistics Canada. (2020). *Canada's Black Population: Education, labour and resilience*. Statistics Canada. www150.statcan.gc.ca/n1/en/pub/89-657-x/89-657-x2020002-eng.pdf?st=KDHjG178

16 Edwards, S. (2011, July 5). Canada ready to spar with UN over 'visible minorities.' *National Post*. https://nationalpost.com/news/canada/canada-ready-to-spar-with-un-over-visible-minorities

identify as Chinese versus Black, a risk recognized when the Act was written.[17] In addition, reporting under the *Employment Equity Act* considers Indigenous peoples as one group rather than taking a more nuanced distinctions-based approach that recognizes First Nations, the Métis Nation, and Inuit as distinct, rights-bearing communities with their own histories.[18] The Act also does not include 2SLGBTQ+ people even though they earn lower incomes and are more likely to experience discrimination on the job and encounter barriers in finding and advancing in employment, compared to heterosexual individuals.[19]

Until recently, disaggregated data for racialized and Indigenous individuals employed in federal public administration was only available through census data every five years.[20] However, in 2020, the Treasury Board of Canada Secretariat provided disaggregated data (e.g. employment and income statistics for intersectional groups) related to the diversity of the public service as part of its annual *Employment Equity in the Public Service of Canada* report.[21,22]

Definitions must be updated so that categories of equity-deserving groups can be more precise and inclusive to effectively address systemic inequalities.[23]

MONITORING AND IMPLEMENTATION

Critics note that the Act has failed to address implementation of an effective monitoring and enforcement capability and sanctions for organizations' failure to implement employment equity.[24] While companies report there are no consequences if they fail to show progress. For example, a recent survey by The Public Service Alliance of Canada (PSAC) conducted to advise the Task Force on the *Employment Equity Act* Review found that more than 70% of employees displayed a lack of awareness as to what initiatives the employer had in place to promote employment equity in the workplace,

17 Taylor, P.S. (2022, February 19). It's Time to Abolish the Absurd (and Slightly Racist) Concept of "Visible Minorities." *C2C Journal*. https://c2cjournal.ca/2022/02/its-time-to-abolish-the-absurd-and-slightly-racist-concept-of-visible-minorities/

18 Department of Justice Canada. (2021, September 1). *Principles respecting the Government of Canada's relationship with Indigenous peoples*. Government of Canada. www.justice.gc.ca/eng/csj-sjc/principles-principes.html

19 Statistics Canada. (2022, October 4). *Labour and economic characteristics of lesbian, gay and bisexual people in Canada*. Statistics Canada. www150.statcan.gc.ca/n1/pub/89-28-0001/2022001/article/00003-eng.htm

20 Griffith A. (2020). *What new disaggregated data tells us about federal public service diversity*. Policy Options. https://policyoptions.irpp.org/magazines/october-2020/what-new-disaggregated-data-tells-us-about-federal-public-service-diversity

21 Griffith A. (2020). *What new disaggregated data tells us about federal public service diversity*. Policy Options. https://policyoptions.irpp.org/magazines/october-2020/what-new-disaggregated-data-tells-us-about-federal-public-service-diversity

22 Treasury Board of Canada Secretariat. (March 30, 2023). *Employment equity in the public service of Canada for fiscal year 2021 to 2022*. Government of Canada. www.canada.ca/en/government/publicservice/wellness-inclusion-diversity-public-service/diversity-inclusion-public-service/employment-equity-annual-reports/employment-equity-public-service-canada-2021-2022.html#toc-5

23 Boisvert, N. (2021, July 14). For the first time in decades, major changes are coming to Canada's workplace equity laws. *CBC News*. www.cbc.ca/news/politics/employment-equity-task-force-1.6103132

24 Agocs, C. (2002). Canada's employment equity legislation and policy, 1987–2000: The gap between policy and practice. *International Journal of Manpower*, 23(3), 256–276. https://doi.org/10.1108/01437720210432220

and almost 25% were not sure if those initiatives existed.[25] In terms of representation, only 41.3% of racialized respondents felt that their workplaces were representative of racialized workers. The survey also found that Indigenous peoples (33.59%) and persons living with disabilities (34.09%) had low representation.[26] PSAC therefore recommends addressing these shortcomings as well as aligning the Act with other acts such as the Accessible Canada Act and the Financial Administration Act to ensure that all legislation reinforces and supports one another.[27]

The Act has also been critiqued along with other "comply or explain" models for allowing organizations to set targets rather than establishing quotas.[28]

THE WAY FORWARD

Recognizing the need to address these issues, the Government of Canada has established the *Employment Equity Act* Review Task Force to engage with stakeholders to determine how the Act could be modernized to include more equity-deserving groups. However, it remains to be seen how the Act will be formulated upon completion of the review and to what extent individuals from other equity-deserving groups such as those with intersecting identities will be considered.

The *Employment Equity Act* should continue to build on its strengths.[29] For example, in 2021, the Pay Equity Act introduced pay gap reporting measurements to address the pay gaps that still exist for all four designated groups.[30] Despite its effects being restricted to a small share of working Canadians, the earning gap faced by women, for example, will likely be reduced.[31,32]

Ensuring companies subject to the Act have effective strategies is also key. Work to develop comprehensive standards and guidelines in support of the 50–30 Challenge may help. The Challenge brings together more than 2000 businesses, and diversity organizations, to increase representation in workplaces by achieving gender parity (50%

25 Public Service Alliance of Canada. (2022). *Employment Equity Act Review Report: What we heard*. Public Service Alliance of Canada. https://psacunion.ca/sites/psac/files/2022-psac-employmentequityactreview_en_0.pdf

26 Public Service Alliance of Canada. (2022). *Employment Equity Act Review Report: What we heard*. Public Service Alliance of Canada. https://psacunion.ca/sites/psac/files/2022-psac-employmentequityactreview_en_0.pdf

27 Public Service Alliance of Canada. (2022). *Employment Equity Act Review Report: What we heard*. Public Service Alliance of Canada. https://psacunion.ca/sites/psac/files/2022-psac-employmentequityactreview_en_0.pdf

28 Ofrath, N., & Cukier, W. (2021). *Moving Forward: Advancing Diversity on Boards and in Senior Management in the Canadian Financial Sector*. Diversity Institute. Internal Report.

29 Employment and Social Development Canada. (2021). *Employment Equity Act - Annual report 2021*. Government of Canada. www.canada.ca/content/dam/esdc-edsc/documents/corporate/portfolio/labour/programs/employment-equity/reports/2021-annual/EEAR-2021-Report-PDF-3357-EN.pdf

30 Employment and Social Development Canada. (2021). *Employment Equity Act - Annual report 2021*. Government of Canada. www.canada.ca/content/dam/esdc-edsc/documents/corporate/portfolio/labour/programs/employment-equity/reports/2021-annual/EEAR-2021-Report-PDF-3357-EN.pdf

31 Pay Equity Act, S.C., c. 27. (2018). https://laws-lois.justice.gc.ca/eng/acts/P-4.2/

32 Boisvert, N. (2021, July 11). Canadian women make 89 cents for every dollar men earn: Can new federal legislation narrow that gap? *CBC News*. www.cbc.ca/news/politics/pay-equity-legislation-1.6097263

women and/or non-binary people) in board leadership and having 30% of their board leadership and/or senior management from equity-deserving groups.[33] As Canada continues to embrace its diversity, systemic barriers must be addressed and overcome to create equity and to achieve economic benefits for all Canadians.[34]

CONCLUDING REMARKS

Though the *Employment Equity Act* has helped strengthen the position of women, Indigenous Peoples, persons living with disabilities, and racialized people since its implementation in 1986, employment barriers for many Canadians remain. Yet, there are significant opportunities to improve employment equity, educate and build awareness on addressing stereotypes, address misperception on equity-deserving groups, and mitigate conscious and unconscious biases to promote workplace diversity and inclusion into the Canadian labour force.

33 Innovation, Science and Economic Development Canada. (2023, May 4). *The 50–30 Challenge: Your diversity advantage*. Government of Canada. https://ised-isde.canada.ca/site/ised/en/50-30-challenge-your-diversity-advantage

34 Innovation, Science and Economic Development Canada. (2023, May 4). *The 50–30 Challenge: Your diversity advantage*. Government of Canada. https://ised-isde.canada.ca/site/ised/en/50-30-challenge-your-diversity-advantage