

**EMPLOYMENT EQUITY:
FROM LEGAL EQUALITY
TO EQUALITY IN FACT**

ABRIDGED VERSION

*An advisory opinion submitted to
the ministre des Relations avec les
citoyens et de l'Immigration*

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INTRODUCTION

As early as 1988, the Conseil des relations interculturelles, which at that time was called the 'Conseil des communautés culturelles et de l'immigration', submitted an advisory opinion on the necessity for setting up a program for equality of access to public service employment in Quebec for members of ethnocultural minorities. In that advisory opinion, the Conseil also proposed the adoption of a contractual obligation policy that would apply to companies and organizations having 50 employees or more, and submitting bids for government contracts valued at 100 000 \$ or more. Lastly, the Conseil recommended that the setting up of equal employment opportunity programs (EEOPs) be extended to private businesses and employers in the areas of Communications, Health, Social services, Education, and Municipalities.

Ten years later, few mandatory programs have been set up, and those that have been in operation have shown considerable signs of failure, which have been decried by most of the people concerned with these questions. That is why the Conseil des relations interculturelles wished to review the situation and submit an advisory opinion based on these dual facts of persisting discrimination, on the one hand, and the enduring ineffectiveness of the programs developed over the past ten years as remedies against that discrimination, on the other hand. These two related issues form the object of the first and second chapters.

Faced with that assessment, the Conseil believes that it is indispensable to maintain the existence of equal employment opportunity programs. In order to attain employment equity, however, it will be necessary to completely overhaul the organization, as well as the legal structure, of positive action programs in Quebec. These will be the subjects of the third and fourth chapters. The recommendations that the Conseil derives from its analysis of the situation will be presented at the end of the document, by way of a practical conclusion.

CHAPTER 1

DISCRIMINATION STILL ENDURES DESPITE THE LEGAL STIPULATIONS PROHIBITING IT

After a brief reminder of the concept of systemic discrimination, the first chapter presents various observations indicating the prevalence of discrimination in Quebec's labour market.

Let us begin with the members of the '*visible minorities*'. The census data for 1991 and 1996 confirm that their situation is relatively more precarious, as compared to the rest of the population: a lower rate of activity, higher rates of unemployment, and greater concentrations in the less-qualified jobs. Despite the higher average level of schooling of the members of visible minorities, their more precarious working conditions and lower levels of income testify to the discrimination directed against them in the labour market.

In 1996, the unemployment rate for the members of visible minorities (22.4%) was almost twice that for the whole population (11.8%). While the unemployment rate for the whole population decreased, from 12.1% in 1991 to 11.8% in 1996, the comparable rate for the members of visible minorities increased, from 19.8% to 22.4%. Other labour market indicators, such as the rate of activity and the employment-population ratio, confirm this disadvantaged situation. The rate of activity for the members of visible minorities (59.0%) is lower than that for the whole population (62.3%), and displayed a tendency to decrease more rapidly, between those two census years, than the corresponding rate for the whole population. With respect to the employment-population ratio, the data reveal a still more sizeable difference between the members of visible minorities (45.8%) and the whole population (55.0%).

This under-utilization of human potential also assumes other forms. The percentage of members of visible minorities who work on a year-long, full-time basis (48.4%) is lower than the corresponding percentage for the whole population (52.6%). This situation of under-utilization is further overlaid with a situation of salary inequality, because even the members of visible minorities working on a year-long, full-time basis obtain 82.9% of the average work income for the total employed population working under similar conditions.

This discrimination in salaries is also accompanied by occupational segregation and under-representation. Few members of visible minorities are present in higher-management positions (3.4%), but conversely, they are over-represented in positions requiring few qualifications, such as those in specialized manual jobs (7.1%), other sales and service personnel (6.2%), and in other manual work (7.6%). In public services, such as Government services (2.1%), the members of visible minorities are under-represented.

For the members of *ethnocultural minorities*, the situation is more difficult to delineate, and there are two reasons for this. On the one hand, ethnocultural minorities may be defined in several ways, and the diagnosis will vary according to the definition settled on. On the other hand, because of this semantic variation, the analyses carried out on various

situations tend to reflect those different definitional approaches. Furthermore, these analyses are based on data generated by organizations that have implemented equal employment opportunity programs for the members of ethnocultural minorities.

For *immigrants*, namely, persons born outside of Canada, the phenomenon of under-utilization is obvious. For instance, their unemployment rate (16.4%) is higher than that for the whole population (11.2%), and their rate of activity (58.0%) is lower than the corresponding rate for the whole population (62.3%).

With respect to the situation of members of ethnocultural minorities in the labour market, the information analyzed for 92 groups indicates that, for 48 of those groups, the rate of activity is lower than the Quebec average. With respect to the rate of unemployment, 59 of those groups have a rate higher than the Quebec average. Examining the presence of these groups in the public services also led to the discovery that 79 of them have a representation that is smaller than their numerical weight in the labour market.

Analysis of the general situation unequivocally demonstrates the under-representation of members of ethnocultural minorities in the various sectors examined, and the paucity of results obtained despite the efforts expended to correct the situation, with some notable exceptions such as the Montreal Urban Community – Société de Transport (STCUM) and Police Services (SPCUM) – and the City of Montreal.

With respect to the other groups subjected to discrimination, namely the aboriginal peoples and persons with disabilities, the advisory opinion describes the same type of discrimination in the labour market. Their unemployment levels are higher, and their income levels are lower, than average. In addition, these difficulties are further increased by the lower-than-average levels of schooling within these groups. The situation is different, however, in the case of women who, despite schooling levels on an equal footing with those of men, are subjected to systemic discrimination characterized by very strong occupational concentrations, a high incidence of part-time work, and lower average income levels, even within occupational categories where skill levels are generally considered to be equivalent.

Considering that the level of schooling is, in general, a determining element in social integration and in achieving a more favourable positioning in the labour market, we may conclude that members of visible, and ethnocultural, minorities, based on their higher-than-average levels of schooling as compared to other discriminated groups, will be more often subjected to discrimination in the labour market, and also more likely to benefit from positive action programs.

CHAPTER 2

A DESCRIPTION OF POSITIVE ACTION PROGRAMS CURRENTLY IMPLEMENTED, AND AN ASSESSMENT OF THE SITUATION

This chapter aims at providing a brief survey of the Quebec and Canadian experience with respect to positive action programs, by first presenting the legal and regulatory context and the programs currently in operation, and then deriving an assessment of their implementation and results.

The beginning of this chapter briefly surveys the formal bodies of legal and regulatory principles that prohibit discrimination and prescribe the obligation to remediate its effects, at the international level as well as at the federal level in Canada, and at Quebec's own level. The question is raised as to whether the increasingly constraining character of recent legislation, at the federal level as well as in Quebec, should be considered to be a valid indication that further, more stringent legislation is necessary in order to more effectively counteract the discrimination that can be observed in the labour market.

Existing Programs

In Quebec, there are six main types of equal employment opportunity programs (EEOs), designated by different terms according to their object or the sector involved.

The *voluntary* programs, mainly developed since 1986 in the context of the action plan aimed at starting up voluntary equal access to employment opportunity programs for women, could also be designed to target other groups subjected to discrimination. They were set up in municipalities, school boards, Cegeps, CLSCs, hospitals, and labour unions. Despite the sums invested in them – close to 8 million dollars –, these voluntary programs did not produce the expected results, and were abandoned by most businesses or institutions after the subsidies came to an end.

The *equal access to employment opportunity programs in Quebec's public service* are targeted, though in different ways, at handicapped persons, women, and members of ethnocultural communities, including members of the 'visible minorities'. The Conseil's own observations, as well as those of the Commission des droits de la personne et des droits de la jeunesse, bear witness to the paucity of impact of this program with respect to the members of ethnocultural communities. The latter, as is also the case for Anglophones, are significantly under-represented in Quebec's public service.

There is also a *contractual obligation program* that requires certain private sector businesses in Quebec to implement an equal access to employment opportunity program for women, members of visible minorities, and members of the aboriginal peoples. It is aimed at businesses with 100 employees or more, who submit a tender for a contract with the Quebec Government for goods or services worth 100 000 \$ or more, or who receive a subsidy of 100 000 \$ or more. From December of 1989 to December of 1997, 189 firms

were compelled to develop an equal access to employment opportunity program. The assessment of this program by the Commission des droits de la personne et des droits de la jeunesse showed some progress with respect to women and members of the visible minorities, but with results still far short of equality. On the other hand, the Commission concludes that the aboriginal peoples are the designated group that benefited the least as a result of implementing this program.

According to Quebec's *Charte des droits et libertés de la personne*, after an investigation has shown the presence of discrimination, the Commission des droits de la personne et des droits de la jeunesse may suggest or impose the implementation of an equal access to employment opportunity program. But the fact that this process depends upon a formal individual complaint, as well as the long delays involved, have led to very little results.

The last two programs – the *federal contracts program* and the programs established under the *Employment Equity Act* – actually come under federal jurisdiction but apply in Quebec as elsewhere. On the one hand, there is the federal contracts program, which resembles Quebec's contractual obligation program, but applies to organizations or private businesses with 100 or more employees, submitting a tender for a contract of 200 000 \$ or more with the Government of Canada. The groups targeted by this program are women, members of visible minorities, persons with disabilities, and the aboriginal peoples. Its objective is to improve the situation of the designated groups through recruitment, hiring, promotion, and training practices. It appears that businesses consider the federal method to be easier to apply, more adaptable, and more fruitful in terms of results, than the method used for Quebec's contractual obligation program by the Commission des droits de la personne et des droits de la jeunesse.

On the other hand, there exists, since 1986, an *Employment Equity Act* in the sectors under federal jurisdiction. Since 1995, the scope of this law has been extended to encompass the whole federal public service. The Departments and other organizations must therefore implement equal access to employment opportunity programs for the same four groups designated by the federal contracts program. The law specifies the short- and long-term actions to be taken by employers in matters of recruitment, training, and promotion, as well as means of reasonable adaptation to correct the under-representation of these groups.

No other Canadian province is as advanced as Quebec or the Federal Government with respect to equal access to employment opportunity programs. Of the seven other Provinces that have implemented measures related to employment equity, Nova Scotia is the only one where such a program is compulsory; and this program applies only to the public service. Ontario has abolished its law on employment equity, and there only remains an Equal Opportunity Plan, mainly oriented to giving out information. This assessment of existing programs rests strictly, therefore, on the Quebec experience.

Assessment of the Situation

The problems observed in the application of equal access to employment opportunity programs are related to two types of factors that mutually reinforce each other. On the one

hand, there still subsist several negative perceptions related to the implementation and application of these programs, which tend to hinder their implementation. On the other hand, the lack of coordination and follow-up in these programs tends to influence their effectiveness as well as the perceptions concerning their implementation.

With respect to the resistance generated by negative perceptions, the reasons most frequently evoked are that these programs amount to *reverse discrimination*, that they use *arbitrary quotas*, and that such measures *run against the merit principle*. The Conseil addresses these fears, and argues the view that positive action must be understood as a means used by society for the purpose of correcting inequalities. Positive action must be perceived as a dynamic tool used for countering discrimination by producing a situation of greater proportional equality. And by eliminating the obstacles facing discriminated groups, the merit principle is even more significantly maintained and reinforced. The Conseil also wishes to stress that a quantitative objective is used in such programs to measure the results of efforts expended towards the goal of employment equity, and thus should not be confused with a quota.

With respect to the difficulties of implementation characterizing these programs, the Conseil notes especially the multiplicity of institutional actors and the confusion among their respective roles. Incidentally, in the case of the contractual obligation program, the Conseil questions the dual role played by the Commission des droits de la personne et des droits de la jeunesse, which acts, on the one hand, as an advisor in setting up contractual obligation programs, and also, on the other hand, as an evaluator when assessing the programs' implementation and results. Moreover, the variety of designated groups respectively targeted by the different programs makes the overall process more complex, hinders the dissemination of information, and prevents the generalized use of methods of analysis capable of producing the required comparisons. The accountability of the various institutional or organizational actors is also insufficient, and the Conseil deplores that only the Commission des droits de la personne et des droits de la jeunesse is able to bear witness to the progress accomplished, because it is the only keeper and utilizer of the follow-up data currently available, namely, those related to the contractual obligation program. The Conseil also questions the Treasury Board's laxity in following up the programs implemented in the public service, which leads it to doubt the Government's political will to make appropriate space for members of visible and ethnocultural minorities.

On the other hand, certain features of the situation, such as the fact that the struggle against discrimination is showing, despite everything, a tendency to get stronger in Quebec society, and that certain programs have indeed shown a measure of success – for instance, those of the Montreal Urban Community's Police Service (SPCUM) and Transportation Authority (STCUM), confirm, in the Conseil's judgement, the necessity for maintaining positive action programs, but reframing them in a different perspective.

In order to do that, some actions must be undertaken with respect to the perception of positive action, which is dealt with in Chapter Three, by suggesting a broadened perspective on positive action, and with respect to the organization of positive action

programs, by arguing, in Chapter Four, the need for more comprehensive legislation on employment equity.

CHAPTER 3

BROADENING THE PERSPECTIVE ON POSITIVE ACTION

Positive Action pursues several goals, among which, in particular, those of correcting situations of discrimination and allowing the achievement of conditions of equality. However, because of the efforts required to counteract the historically accrued effects of discrimination, the 'compensatory imperative' component occupied the paramount position at the expense of all the other objectives of positive action. Indeed, positive action programs, to the degree that they succeed in increasing the presence of previously discriminated groups on the job market, will also induce other positive effects, which will exert an impact, in particular, on the social condition of poverty and on the civic quality of intercultural relations.

It is therefore necessary to assign the focal priority to the attainment of equality between individuals of different social groups. That is what positive action attempts to accomplish. It is through actions of this nature that it will become possible to move beyond the legal equality proclaimed by the *Universal Declaration of Human Rights* and the Canadian and Quebec Charters of rights and liberties, towards equality in fact, namely, towards comparable degrees of access to, and rates of success in, the labour market, whatever the group to which one may belong. Positive action, together with its accompanying measures, does not, therefore, go against the principle of equality, any more than it goes against the principle of merit, for that matter. It is, rather, a means designed to remediate a problem of social and economic exclusion, and to make possible a true attainment of equality, while preventing future inequalities.

Viewed from this perspective, employment equity is ultimately a tool for increasing the civic participation of all citizens, by enabling the society to more fully benefit from the diverse competencies of its entire population. Since a sizeable proportion of new immigrants are selected with the goal of improving Quebec's economic strength, and since the members of visible minorities, of whom a growing number are born and educated in Quebec, are characterized by their high levels of formal training, then attaining employment equity for the members of these groups becomes as much an issue of shared economic self-interest as one of social equality. Employment equity, as the Conseil understands it, therefore allows a convergence of the legitimate interests of businesses and citizens, by valuing the full participation of both.

Certain conditions, now better understood, tend to ensure greater effectiveness in positive action programs: for instance, making top managers accountable for implementing the program; a publicly available implementation timetable; numerical objectives; and definite follow-up and control mechanisms. Continuing publicity efforts are also indispensable, as well as appropriate resources and budget. Also, because most experts on these questions agree on the necessity that the whole enterprise strongly adhere to the positive action program's purpose for it to produce tangible results, the Conseil des relations interculturelles takes the position that much of the same phenomenon should also carry over to the level of Quebec society taken as a whole. Thus understood, a law on

employment equity, combined with various transitory or complementary measures, would send an unequivocal signal of a political will to guarantee the best chances of success for the measures to be implemented.

CHAPTER 4

THE NEED FOR NEW LEGISLATION ON EMPLOYMENT EQUITY

This avenue is the one chosen by the Conseil because it presents an encompassing solution, responds to public expectations, has proved effective elsewhere, and is also an investment for society.

After having examined the possibility of reinforcing or revitalizing the existing programs, or even to revise and extend the scope of the present programs, as was recently suggested by the Commission des droits de la personne et des droits de la jeunesse, the Conseil prefers the option of an encompassing solution, general in scope, because this appears to be the only avenue that would make it possible to solve the problems that are constantly decried, such as the lack of coordinated consistency across programs and target groups, and the deficiencies in program follow-up procedures.

Furthermore, such a solution would begin to respond to the frustrations expressed during the series of consultations that led to the advisory opinion, *A Quebec for all of its Citizens – The Present Challenges of a Pluralist Democracy*, with respect to the lack of equality in employment and the lack of representativeness in several institutional sectors of public life. Besides, the federal authorities have also, for their part, come to the conclusion that a law was necessary to provide systemic solutions to fight systemic discrimination: “*Few issues merit the recourse to the Law as much as the right of each individual to gain access to the possibilities for fully realizing his, or her, potential*”.¹

Lastly, by collectively expressing a political will to act on the underlying bases of systemic discrimination, the society will enable egalitarian practises to become long-term investments in its human resources. This approach is becoming an asset of the first order for servicing international markets and responding to the needs of an increasingly diversified internal market.

OBJECTIVES OF THE LAW, ASSOCIATED RECOMMENDATIONS, AND COMPLEMENTARY MEASURES

By proposing a law on employment equity, the Conseil is looking to extend the sectors and groups presently covered, simplify and increase the consistency across the different implemented measures, and increase the effectiveness and follow-up operations of equal employment opportunity programs. The basic principles of the law, which are presented in the recommendations of this advisory opinion, represent an attempt to respond to those objectives.

¹ Quotation taken from the documents of the Royal Commission on Equality in Employment (1984), presided by Madam Judge Rosalie Silberman Abella.

RECOMMENDATIONS CONCERNING THE PROPOSED LAW

The Conseil des relations interculturelles recommends:

- 1. That a law on employment equity be adopted.**
- 2. That the discriminated groups designated by this law include women, persons with disabilities, members of the aboriginal peoples, and members of visible minorities, and that specific objectives be set for recruitment, training, and promotion for each designated group, with priority application for the most under-represented groups. That, for the members of ethnocultural minorities who do not belong to visible minorities, specific targets and procedures be set only for public services such as Government Services, Health and Social Services, and Education Services.**
- 3. That the law apply to all categories of employment, including temporary positions, practical training periods, and student jobs.**
- 4. That this law apply to all sectors in Quebec's economy, and to all employers in businesses or organizations hiring at least fifty (50) employees; to all Government Departments and Agencies in the public service, in Education, Health, State Corporations of any size, as well as Municipalities and supra-municipal, and regional, organizations.**
- 5. That, within the purview of Quebec's new legislation on employment equity, be included the private employers subjected to the federal contracts program, and that the requirements derived from the two legislations be harmonized.**
- 6. That this legislation aim at eliminating obstacles to employment that are irrelevant to an applicant's competence, and promoting equal access to jobs offered, while fully complying with the merit principle, which must remain the cornerstone of the staffing and promotion process.**
- 7. That this legislation induce employers to recognize the value of employment equity and encourage them to undertake or pursue efforts to increase diversity in the workplace while enhancing their competitive position, which will enable them to prosper in the new economy by availing themselves of the full potential of Quebec's manpower in its whole diversity.**
- 8. That this legislation encourage the use of quantitative objectives, while strictly forbidding the imposing of quotas.**
- 9. That the implementation of the measures provided for in the law on employment equity be entrusted to a Commission especially created for that purpose, or to an already existing Commission provided with an accordingly broadened mandate.**

10. That the Commission des droits de la personne et des droits de la jeunesse be vested with the role of verifying the implementation of the legislation to ensure it is respected, so that the obligations of employers become enforceable.
11. That the ministère des Relations avec les citoyens et de l'Immigration be charged with coordinating the stages of the process prior to adoption of the law and its regulations, and that it subsequently remain responsible for maintaining liaison between the different partners actively involved; that it set up a central data bank pooling information on plans of action, measures taken, and agreements settled, and make this information available upon request.
12. That the Departments respectively responsible for Education, Health and Social Services, Municipal Affairs, and the Regions actively support the implementation of the law in their respective institutional networks by offering the necessary tools and providing financial resources to facilitate the implementation of the law.

RECOMMENDATIONS CONCERNING THE COMPLEMENTARY MEASURES

The Conseil des relations interculturelles recommends, as complementary measures:

1. That the Government make a solemn declaration reaffirming its commitment, and that of Quebec society as a whole, to attain employment equity.
2. Pending adoption of the legislation, that the Government adopt some transitional measures designed to reinforce and extend current equal access to employment opportunity programs including, in particular, temporary work positions.
3. That the labour market partners on the Commission be encouraged to make practical commitments with respect to employment equity, to ensure that regional policies and the national labour market policy will contain explicit commitments in this regard.
4. That a sensitization plan, focused on the importance of harmonious intercultural relations and the benefits of positive action programs, be designed and implemented, and aimed at the entire population, including the members of ethnocultural and visible minorities, with a special emphasis on working people and labour unions.
5. That values be promoted, furthering civic participation and the inclusion of groups hitherto discriminated against, and more especially the members of ethnocultural and visible minorities.
6. That more measures be implemented, aimed at managing the critical conditions for integrating diversity, for example, by adapting services to a diversified clientele, improved relationships between employees in a diversified workplace, welcoming programs, integration, mentoring, or practical training programs.

- 7. That recruitment and promotion measures be developed and directed towards Anglophone Quebecers within Quebec's public service.**
- 8. That incentive-based measures be developed to attract applicants from groups hitherto discriminated against, into educational channels leading to occupations where the manpower availability of these groups is currently too small.**
- 9. That, in the professions subject to the regulations of professional corporations, those regulations be made to include provisions facilitating the admittance of applicants belonging to ethnocultural and visible minorities.**
- 10. That it be made mandatory, for organizations and businesses, to include, in their annual report, a progress report on the measures taken to attain employment equity, and on the results obtained.**
- 11. That the Government conduct an analysis of the impact of public expenditures and guidelines on groups who have been discriminated against, in particular the ethnocultural and visible minorities, and make adjustments to those expenditures and guidelines so as to bring them into compliance with the requirements of employment equity.**
- 12. That financial aid be given to groups dedicated to the defence of human rights, when such groups make it their business to document complaints about discrimination or harassment against members of ethnocultural or visible minorities.**
- 13. That a specific fund, dedicated to supporting initiatives related to employment equity, be set up and administered by the ministère des Relations avec les citoyens et de l'Immigration.**
- 14. That the ministère de l'Éducation set up a special fund for study grants intended to encourage applicants from visible and ethnocultural minorities to enter certain fields of training in which these groups are currently under-represented.**

In closing, the Conseil believes that the legislation proposed here, together with its accompanying measures, will be more likely to become reality if a fundamental debate is first held on these issues. The terms of such a debate should necessarily include the other options currently being examined or proposed by the various actors who are concerned about the present situation. The Conseil des relations interculturelles believes that it is highly desirable that all concerned persons who are interested in voicing their views, with respect to its overall analysis and recommendations, should be heard.