

# Submission to the Consultation on Modernizing the Employment Equity Act

August 2024

The Canadian Association of University Teachers (CAUT) is pleased to submit to the federal government's consultation on the modernization of the Employment Equity Act (EEA). Founded in 1951, CAUT is the national voice for academic staff representing 72,000 teachers, librarians, researchers, general staff and other academic professionals at 125 universities and colleges across the country.

As noted in our [Policy Statement on Equity](#), CAUT "is committed to securing equity for members of historically marginalized groups disproportionately excluded from full participation in the academy. Such groups include but are not limited to women; Aboriginal peoples; persons with disabilities; persons who identify as lesbian, gay, bisexual, trans, queer, or 2-spirited; racialized persons; and persons discriminated against based on creed or cultural and ethnic origin. These identities intersect and may further compound marginalization."

Modernization of the EEA and the Federal Contractors Program (FCP) will inform equity policies and practices at post-secondary institutions across the country. Since the FCP was established, a substantial number of universities and colleges have qualified as federal contractors, making them subject to employer obligations under the EEA. The FCP is an especially important avenue to determine and assess the barriers facing academic staff who are members of equity-deserving groups. Recommendations for needed improvements to the FCP and EEA are made in our responses to the questions posed within the consultation paper.

## 1. Updating the purpose, designated groups and collection of survey data

### Purpose of the Act:

1. *Would you have concerns with updating the purpose of the Act as the Task Force recommends? If so, how could we address them?*

CAUT would welcome an update to the purpose of the Act as recommended by the Task Force which is to "achieve and sustain substantive equality in the workplace through effective employer implementation, meaningful consultations and regulatory oversight of employment equity". The modernization process must go beyond diversity to advance equity of employment including employment status, compensation, opportunities for promotion, advancement and professional development.

We also support the Canadian Labour Congress' recommendation that the Act recognize and support the important role that [social dialogue](#) and collective bargaining can play in identifying and removing systemic barriers for members of equity-deserving groups.

The recommended language from the Task Force would be strengthened by defining decent work to include the International Labour Organization (ILO)'s four pillars which are: promoting jobs and enterprise, guaranteeing rights at work, extending social protection and promoting social dialogue, with gender as a cross-cutting theme.

2. *Should other elements be captured in an updated purpose? If so, what elements and why?*

In addition to the Task Force's recommendations, we recommend the following elements be added to the purpose clause:

- Reference to redressing systemic discrimination. CAUT's Policy Statement on Equity notes: "The commitment to equity begins with the acknowledgement of inequity and demands proactive redress for the effects of systemic discrimination."
- Explicit reference to "employment equity groups" as opposed to "designated groups" (per Task Force Recommendation 3.1).

### **Designated groups and related definitions and terminology**

3. *Would you have concerns with replacing the term "Aboriginal peoples" with "Indigenous Peoples"? If so, how could we address them? Would you have concerns with replacing the current definition with First Nations, Inuit and Métis? If so, how could we address them? How would you define this designated group?*

CAUT's supports the disaggregation of equity-deserving group information as much as feasible. CAUT's Aboriginal Post-Secondary Education Working Group has consistently requested to retain the use of the term Aboriginal to reflect the language in the Constitution. Extensive consultation with First Nations, Inuit and Métis peoples is needed on this question.

4. *Would you have concerns with replacing the term "members of visible minorities," with "racialized people"? If so, how could we address them? How would you define this designated group?*

Over 40 collective agreements in post-secondary education already use the term racialized. For example, Brock University Faculty Association's collective agreement's article on employment equity reads: "For the purposes of this Article, the Parties recognize women, Indigenous (First Nations, Métis, Inuit) peoples, Black people, persons with disabilities, members of visible minorities/racialized groups, and Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional sexually and gender diverse (2SLGBTQI+) persons as designated groups."

We believe the term should be updated and the new term and its definition should be adopted in consultation with affected communities. The definition must be clear that it applies to people who have experienced historical under-representation because of racialization. Any religious minority groups that might potentially be added as new employment equity groups should be separate from the racialized equity groups, as that is a different and distinct form of discrimination that may be intersectional with racialization.

5. *Would you have concerns with using the definition of disability in the Accessible Canada Act to replace the definition for "persons with disabilities"? If so, how could we address them? How would you define this designated group?*

This is a welcome recommendation.

6. *Would you have concerns with maintaining women as a designated group? If so, how could we address them? How would you define this designated group?*

CAUT supports maintaining women as a designated group. As gender is more than binary, additional categories should be added for gender-diverse people.

The concept of intersectionality is particularly important when examining gender inequality, as women and gender-diverse people with multiple and intersecting identities experience discrimination in employment in very different ways. For this reason, we strongly support the concept of intersectionality being integrated into the Act and a framework to acknowledge the subgroups within broader categories.

Disaggregated data must be collected and analyzed to best understand, and address barriers experienced by specific communities. Most post-secondary institutions endorsed the federal Dimensions Charter, launched in 2019, which stated: “Institutions require qualitative and quantitative data to measure, monitor, understand and publicly report on challenges and progress made. The analysis of the data should inform a comprehensive, in-depth, intersectional understanding of the contexts, manifestations and experiences that result from inequities, underrepresentation and exclusion among all post-secondary community members.”

*7. Would you have concerns with adding a new designated group for “Black people” separate from the “racialized people” designated group? If so, how could we address them? How would you define this designated group?*

We agree with the recommendation to include Black people as a group. To counter anti-Black racism, some post-secondary academic staff associations have already negotiated to have Black people named as a discrete group from racialized people. As well, many post-secondary institutions have signed onto the Scarborough Charter, co-created through a process involving extensive consultations and collaboration with Black communities, academic institutions, and various institutional partners. The Charter includes the goal of “mapping, retrieving, maintaining and to the extent permitted by law, sharing reliable, disaggregated data on Black representation over defined periods of time.”

*8. Would you have concerns with adding a new designated group for “2SLGBTQIA+ people”? If so, how could we address them? How would you define this designated group?*

Many academic staff associations are also ahead of the EEA in identifying 2SLGBTQIA+ as an equity-deserving group. We support this addition, noting the need for data collection that is inclusive of 2SLGBTQIA+ communities and that accurately reflects the lived employment realities of 2SLGBTQIA+ people across the country. Recognizing that this community is not homogeneous, data must be disaggregated to allow for intersectional analyses to better understand the specific employment barriers facing each subgroup within the 2SLGBTQIA+ category.

Further, the gender identities, sexual orientations and sex characteristics encompassed within the 2SLGBTQIA+ acronym are not a monolith. Each group within this umbrella experiences unique and varied challenges and barriers in the workplace. Given this diversity of experience, the naming of this category must be developed in consultation with the affected communities.

*9. Would you have concerns with allowing for flexibility in the Act or Regulations to allow for evolving language to refer to 2SLGBTQIA+ communities, as the Task Force recommends? If so, how could we address them?*

Language is evolving and this should be considered in consultation with affected communities. We would also recommend that flexible language be allowed for all the employment equity groups for this same reason.

10. *Would you keep the definitions of the designated groups in the Act, where they currently are, or would you move them to the Regulations? Why?*

It is important to recognize categories through the Act, and keeping definitions in the Act allows for some measure of transparency. There are fewer checks and balances in the regulatory process and changes in legislation provide affected communities a chance to provide testimony at various stages of the legislative process. The Act already includes a requirement for regular review, which should provide opportunities to revisit categories, definitions and terminology.

11. *Would you have concerns with mandating an independent body, such as the Law Commission of Canada, to conduct a comprehensive study on the inclusion of religious minorities as a new designated group under the Act, as the Task Force recommends? If so, how could we address them?*

The Task Force's recommendation of an independent review makes sense as a next step. The independent body should include representation from the communities, bargaining agents/labour representation, and experts on inclusion for religious minorities.

12. *Are there other groups that should be further studied and considered for inclusion as designated groups under the Act? If so, what groups and why?*

A regular review of the Act will enable further expansion of designated groups, undertaken in consultation with affected communities.

### **Collection of survey data**

13. *Would you have concerns with including women and the proposed two new designated groups (Black people and 2SLGBTQI+ people) in self-identification practices? If so, how could we address them?*

Women should be expanded to include gender-diverse and non-binary people. Similarly, the group 2SLGBTQIA+ should be disaggregated and people allowed to choose all that apply. As noted in CAUT's [checklist for equity data collection](#), self-identification data should be collected to allow for disaggregation and intersectional analysis. People should be allowed to identify in more than one group and sub-groups. It is critical that there be an individual identifier, to mitigate the risk of overcounting.

14. *Would you have concerns with allowing employees to self-identify with as many designated groups and sub-groups that apply? If so, how could we address them?*

As noted above, people who have multiple social identities should be able to identify with multiple groups and subgroups, however data should be tied to a personal identifier to guard against overcounting.

Workers living with disabilities, Indigenous or 2SLBTQIA+ employees, and others may be reluctant to identify to their employer due to historical and ongoing discrimination and marginalization. Employers, employee associations, and unions have a role to play in encouraging self-identification.

We support recommendations 3.10, 3.11 and 3.12 from the Task Force Report regarding the need for meaningful consultation with employers' and workers' representatives and representative organizations of workers with disabilities. These consultations are necessary to develop data on persons with disabilities that are disaggregated and intersectional.

Further, it is important that psychosocial and intellectual disabilities be considered from a disaggregated and intersectional manner, and that the Employment Equity Act framework should look to the Accessible Canada Act and the Canadian Survey on Disability to identify appropriate subgroups.

Additionally, Aboriginal self-identification should be encouraged, with a substantiation process in place that is guided by Indigenous community members both inside and outside the workplace. Due to the residential school crisis, the Sixties Scoop, and other colonizing efforts, many Aboriginal people today are without community, and many are in the process of reclaiming identity, community, culture, language and rights.

*15. What specific supports or guidance would help facilitate the collection and analysis of survey data on members of more than one designated group and/or sub-groups?*

To improve the quality of survey data, issues around self-identification should be addressed through education, outreach, and clarity around why this data is collected, what confidentiality measures are in place, where data is stored, who can access this information, and its intended use. Further measures should be considered in consultation with affected communities. CAUT has developed resources on self-identification survey best practices, addressing privacy, legal and confidentiality concerns to encourage a high response rate.

Access to information in the aggregate to protect privacy should be required for unions and worker representatives participating in employment equity committees.

*16. Would you have concerns with employees completing self-identification surveys on initial hiring, on an annual basis, and when leaving an organization, as the Task Force recommends? If so, how could we address them?*

We recommend self-identification survey as part of the hiring process, not only on initial hiring, as well as annually. We also agree that employees should be able to update their self-identification at any time, per Task Force recommendation 2.19.

*17. Would you have concerns with employees being required to complete self-identification surveys, but continuing to allow self-identification questions to remain voluntary (i.e., including the option of “prefer not to state” or the option to submit the survey with the employee’s name only)? If so, how could we address them?*

We support the Task Force recommendations regarding self-identification in chapter 2 of their report. As they recommend, completing the self-identification form should be mandatory, but how people answer those questions is optional (i.e. they can opt out of self-identifying under each question related to membership in an employment equity group or sub-group.)

*18. Would you have concerns with making self-identification surveys available in accessible formats (e.g., Braille, large print, audio, tactile graphics, electronic and/or hardcopy etc.), as the Task Force recommends? If so, how could we address them?*

Accessible formats should be made available for different accessibility needs.

19. *Would you have concerns with amending the Act to require employers to obtain employee consent to collect and use information gathered through self-identification surveys? If so, how could we address them? This approach is in alignment with broader Task Force report arguments to strengthen trust among employees while continuing to ensure privacy protection is maintained.*

This aligns with our recommendations regarding clarity and transparency around why data is being collected, confidentiality, where data is stored, who can access this information and its intended use (also mentioned in #15 above). CAUT resources on best practices for equity data are available in [our Equity Toolkit](#).

20. *How would you address challenges associated with employee self-identification? Are there other legislative amendments and/or employer initiatives that could be implemented to improve employee trust and increase self-identification survey response rates?*

The strengthening of the Federal Contractors Program, as well as expanding Statistics Canada data collection through the University and College Academic Staff Survey (UCASS) would help address challenges. These surveys should clearly state the purposes of data collection.

Promising practices to increase response rates include an effective communications strategy; involving bargaining agents and other employee representatives in the survey process, especially in the communications strategy; and requesting all employees return a completed form, whether they identify themselves as members of a designated group.

## 2. Supporting employees and employers

### Meaningful consultations:

1. *Would you have concerns with including a requirement to create Joint Employment Equity Committees under the Act? If so, how could we address them?*

CAUT would welcome a requirement to create Joint Employment Equity Committees, and that this be extended to federal contractors. CAUT's Auditing a Collective Agreement for Equity Checklist recommends the creation of a standing joint employment equity committee to support data collection, analysis, and action, where the employee association or union select or jointly select the representation.

- a) *What role/function could a Joint Employment Equity Committee serve to have a meaningful impact on employment equity in the workplace (e.g., identification of employment barriers and barrier removal, meaningful consultation body in the development of annual reports, employment systems reviews and employment equity plans?)*

These committees are a forum for workers, bargaining agents, and employers to discuss, strategize and make recommendations on employment equity plans, related policies, practices and processes, including preparation, development, implementation, monitoring, evaluation, reporting, and revision at each stage of the employment equity process. Properly structured joint committees can also perform the following functions:

- Collaborate on communications, self-identification surveys, employment engagement surveys, workforce analysis, employment systems reviews, and compensation studies;
- Undertake timely review and analysis from an employment equity lens, including identifying employment barriers and strategizing on ways to eliminate barriers, through analysis of impacts and implications of workplace policies, practices and processes on employment equity groups; and,



- Ensure that employers address intersecting systems and barriers encountered by employment equity groups.

The Carleton University Academic Staff Association, for example, has bargained for a Joint Committee on Equity, Diversity and Inclusion (EDI) to advise on the advancement of EDI in the full employment spectrum from appointment to retirement, including retention, and training. The committee will be guided by the principles of human rights, equity and inclusion, and consider anti-bias, and anti-racism frameworks. The committee's mandate consists of reviewing and making recommendations for best practices on academic recruitment, identifying potential trainers and educators, and advising on other related special projects including a project on equitable compensation.

- b) Would you have concerns with requiring a minimum number of five Joint Employment Equity Committee members, at least half of whom would not exercise managerial functions, as the Task Force recommends? If so, how could we address them?*

The appropriate size of the committee should depend on the number of employees and bargaining agents involved as well as other considerations. We agree that at least half of the committee members should not exercise managerial functions.

- c) Would you have concerns with Joint Employment Equity Committees striving to represent each designated group, where possible, as the Task Force recommends? If so, how could we address them?*

It should be the role of the union or employee association and not the employer to decide who are worker representatives, recognizing the importance of diversity. Representation from designated groups should not be used to bypass the obligations of consulting unions under the current Act.

- d) Would you have concerns with allowing Joint Employment Equity Committees to collect, analyze and review relevant data (qualitative and/or quantitative) to assist the employer with implementing employment equity?*

The Act should include requirements for employers to provide equity related information to the bargaining agents to enable them to fulfill their obligations to their members and uphold the collective agreement, human rights and employment equity legislation. This could be done through a Joint Committee. This information should include all aspects of employment equity, including employment status, compensation, opportunities for promotion, advancement and professional development. In some workplaces, privacy concerns are sometimes used to prevent the disclosure of salary information, which can lead to discrimination against members of equity-deserving groups. CAUT's preferred approach in line with Task Force recommendation 5.18: The relevant privacy legislation should be revised following meaningful consultations with representative trade unions to ensure effective trade union participation in the implementation of employment equity.

Salary information should be available for pay equity and equal pay analysis. Pay equity and pay transparency regulations should be reviewed considering other changes to the Act and should apply to federal contractors.

- e) How frequently would you recommend that these Joint Employment Equity Committees meet?*

Different workplaces will have different needs and capacities. However, to be effective, it is essential that Joint Employment Equity Committees (JEECs) be required to meet a minimum of four times per year. When there are survey reviews, systems reviews or other initiatives, more frequent meetings may be necessary.



For meetings to be successful, JEEC must have secretarial support and committee members must be able to get the necessary time to do the work on JEEC. It should not be a committee where members do the work for JEEC “off the side of their desk” in addition to their current workload.

*f) Would you implement a maximum term of office for Joint Employment Equity Committee members?*

It may not be possible to rotate people in smaller workplaces. This is something to be determined workplace by workplace and not in federal legislation or regulation.

*g) Would you require mandatory training for Joint Employment Equity Committee members?*

Training should be available for committee members. CAUT’s Equity Committee has developed a checklist of [promising practices in EDI training](#).

*h) Under what circumstances, if any, would you exempt an employer from having to create a Joint Employment Equity Committee?*

For the academic sector, no employer should be exempt.

*i) Would you create a Joint Employment Equity Committee structure and composition that differs between unionized and non-unionized workplaces? Should it differ according to the size of the employer (number of employees)?*

Joint Employment Equity Committees should take place in unionized and non-unionized workplaces. Employee groups—including those without bargaining agents—should choose their own representatives. The size of the Committee should be representative of the workplace.

*2. What type of supports would be needed to set up a Joint Employment Equity Committee in your workplace?*

Joint health and safety committees or pay equity committees offer comparable models for the participation of bargaining agents and employee groups in the development and monitoring of employment equity plans. As noted in CAUT’s policy statement on Recognition of Increased Workload Staff Members in Equity-Deserving Groups in a Minority Context, “Work to support and advance equity is part of the necessary and essential work of the institution and should be included, recognized, and compensated as such.”

*3. If Joint Employment Equity Committees were not established, how could meaningful consultations between employers and designated groups occur under the Act? What approaches could be taken to ensure meaningful consultations include members of more than one designated group and members of sub-groups?*

The creation of Joint Employment Equity Committees is the best mechanism for meaningful consultation and sustained action.

*4. How could employers collect qualitative information on the lived employment experiences of members of designated groups and sub-groups?*

There are various mechanisms to address this. The Scarborough Charter Action Plan on anti-Black racism and Black Inclusion in Canadian Higher Education recommends, among other things, undertaking periodic climate surveys. The process of collecting, analyzing and implementing qualitative information should be determined at a JEEC.

Further tripartite discussion on this issue should be part of the process of developing guidelines, tools and resources to support the Act implementation.

### Supports:

5. *What has been your experience in using existing resources and tools on employment equity? What do you need as supports?*

The Workplace Equity Information Management System (WEIMS) online application, while useful for reporting, should be revised to include subgroups and reflect intersectionality. This tool should be made available to any sector, whether private or public.

Other tools provided by ESDC on their website are very helpful, including guides on Employment Systems Reviews.

Enhanced transparency of reporting for employers in the Federal Contractors Program would be helpful to support workplace equity.

6. *What educational materials have been the most effective? What specific types of educational materials would you like to see developed (i.e., specific topics that should be covered through employment equity training)?*

In addition to increasing understanding of the various dimensions of employment equity, how-to education is essential. Support should be given to JEEC on how to measure, analyze and implement all aspects of employment equity from hiring and promotion to compensation and employment status.

7. *Would you implement employment equity training for the following groups: a) managers and individuals with supervisory responsibilities? b) senior managers or executives? c) members of Joint Employment Equity Committees or other forms of consultation bodies? d) all employees? e) other groups not included in the above list? If yes, please list the group(s).*

There is not a one-size-fits-all approach to training, as different audiences or situations might require different training resources and approaches. In addition to the possible training listed above, union-led training for members and union representatives, including stewards, should be encouraged and supported. Training should not be limited to senior managers and executives. All managers and workers in supervisory roles as well as human resources staff, should receive training.

8. *Would you have concerns with making training mandatory? If so, how could we address them?*

Employers and bargaining agents should jointly develop and deliver training. Training should be compensated for, including time off to attend union-provided training. If training is mandatory, employers must pay for it, and training providers should be approved by the Joint Employment Equity Committee. CAUT has elaborated on [promising practices for EDI training](#).

9. *How could the Labour Program improve the Workplace Opportunities: Removing Barriers to Equity program to better support employers in the federally regulated private sector (see Annex B for details on eligible organizations)?*

Non-federally regulated employers who are federal contractors should be consulted on this question.

### 3. Strengthening accountability, compliance, and enforcement

#### Barrier removal and reasonable progress:

1. *Would you prefer that “employment barrier” be defined as proposed by the Task Force, or as it is currently defined in the Interpretations, Policies and Guidelines? If you would prefer an alternate definition, please provide that definition and an explanation.*

The definition should be incorporated into the Act as proposed by the Task Force. This would help reinforce the purpose of the Act and support the needed shift from number counting toward requiring employers to proactively identify and remove employment barriers.

2. *Would you see value in including the definition of “employment barrier” in the Act or Regulations, so that it is enforceable? If yes, would you prefer that the definition be included in the Act or in the Regulations? Please explain.*

The definition of “employment barrier” should be included in the Act, as per Task Force recommendation 4.2:

The Employment Equity Act should

- Define barriers as practices that affect equity groups in a disproportionately negative way;
- Specify that barrier removal applies across each stage of the employment lifecycle, and should be reported upon in the employment systems review; and,
- Provide for the Employment Equity Regulations or guidelines prepared under them to support comprehensive barrier removal and reporting.

Employment equity reflects the constitutional imperative to achieve substantive equality. The Task Force emphasized that barrier removal is the first of three pillars that will create and sustain employment equity. Accordingly, what constitutes a barrier is an essential matter of public policy that should only be subject to change with rigorous parliamentary debate and public input.

3. *What proactive approaches could be taken to identify, remove and prevent barriers to strengthen employment equity?*

Disaggregated and intersectional data collection on the various aspects of employment equity such as employment status and level, and comprehensive resources and support for bargaining agents and employers are essential proactive steps to strengthen employment equity.

Regarding data collection, as noted by the Task Force, data justice helps identify barriers to equitable inclusion within the world of work. The EEA should specify that the collection and sharing with bargaining agents of distinctions-based, disaggregated and intersectional data is authorized to achieve and sustain substantive equality for members of employment equity groups. This data should be at all stages of employment and allow analysis of employment status and compensation.

The Task Force's recommendation to create an Employment Equity Data Steering Committee under the EEA, should be implemented. The Steering Committee should have a mandate that includes:

- Recommending appropriate expansions or merging of data sources that affect the ability of relevant employers to report on the representation of employment equity groups and subgroups;

- Prioritizing the identification and removal of barriers in data benchmarks that affect discouraged and overqualified workers;
- Collaboratively researching with academics and broader communities that are meaningfully representative of employment equity groups; and,
- Collaborating with Statistics Canada to ensure that labour market and other surveys, such as the Survey on Disability and sector studies such as the University and College Academic Staff System Survey include questions to assist in local and national measurement of employment equity.

A Data Steering Committee would support implementation, meaningful consultations, and regulatory oversight to achieve and sustain employment equity in tandem with other enhancements to the modernized employment equity framework.

Employers must also collect data to reinforce the EEA's proactive aims. In this regard, we support recommendations 2.14 to 2.16. Employers should be required to have workers complete a mandatory self-identification survey on initial recruitment and hiring, annually, and on separation from the employer. Although compulsory, identifying with any or all equity groups should be optional. Finally, regulations under the EEA should require employers to report on employment status, disability and family status accommodations requested and provided in the workplace to be included in employment systems reviews.

#### *Providing support to bargaining agents and employers*

Clear guidance and support for bargaining agents and employers will strengthen proactive employment equity measures. In addition to creating an Employment Equity Commissioner (within an Equity Commissioners' Office), the EEA's regulations should include schedules that help employers prepare employment equity plans.

Finally, the Employment Equity Commissioner should be responsible for developing guidelines that include promising practices for identifying and eliminating workplace barriers. These include conducting employment systems reviews that identify and eliminate barriers across the work lifecycle and incorporating climate surveys.

#### *4. In your view, what would constitute "reasonable progress" towards achieving employment equity under the Act? How should such progress be assessed?*

Clear timelines and quantifiable short and long-term benchmarks and goals are needed regarding monitoring and reporting on employment equity plans. The Act itself should include a suggested accountability framework for employment equity plans including enhanced transparency.

We support the Task Force recommendation 4.1 to sustain employment equity once it has been achieved.

The now discontinued federal [Dimensions pilot program](#) developed a useful framework for measuring reasonable progress on EDI and included a recognition program. There are lessons to be learned from the pilot which received a positive evaluation prior to its non-renewal.

5. *Would you have concerns if employment systems reviews were required to be completed regardless of underrepresentation? If so, how could we address them?*

Employment systems reviews must move beyond representation to include compensation and promotion. The identification of potential barriers is an ongoing need to maintain employment equity.

6. *Would you have concerns with requiring employers to establish accountability mechanisms for senior executives (i.e., through performance evaluations) to ensure implementation of their employment equity plan and that reasonable progress is made to achieve and sustain employment equity? If so, how could we address them?*

As noted by the Task Force: senior management must be held responsible for achieving employment equity within an organization. The strengthening of the Federal Contractors Program to include more employers will assist in ensuring accountability in non-federally regulated workplaces for employment equity.

7. *Would you have concerns with requiring employers to include special measures in their employment equity plan to address notable underrepresentation gaps for designated groups and sub-groups? If so, how could we address them?*

Special measures should be implemented through meaningful consultation and social dialogue, including collective bargaining, with relevant bargaining agents. Education materials on the legality of targeted recruitment and promising practices will be helpful to support special measures.

8. *Would you have any suggestions or comments to improve employment systems reviews and employment equity plans (e.g., frequency, content, etc.)?*

Employment Systems Reviews (ESRs) and Employment Equity Plans (EEPs) should be revised periodically. Organizations with more than 100 employees should be required to undertake an ESR and review the EEPs every three years, and organizations with less than 100 employees should be required to do so every five years, maximum.

ESRs should be completed by external experts and not by any department or individuals within an organization to reduce biases and conflicts of interest. The Joint Employment Equity Committee (JEEC) should review experts who are qualified to complete ESRs and be part of the ESR processes.

ESRs must be comprehensive and include all informal and formal policies, practices, and processes within an organization. They should not be limited to the underrepresentation of equity groups because ESRs can also uncover barriers not directly related to the underrepresentation of employment equity groups, such as workplace environment and culture.

EEPs should include the results of self-identification surveys, workforce analysis and the ESR. Based on these results, an action plan must indicate the roles, responsibilities, measurable outcomes, and specific timelines. The action plan must be detailed, not just a list of broad actions. For example, the action plan should not just state “Complete review of policies”; it should specify what policies to review and include all review details, including the who, what, why, when, and how.

### The data benchmark:

9. *Would you have concerns if a new data benchmark was created based on representation in the Canadian workforce? If so, how could we address them?*

Targets should be based on the Canadian population rather than the workforce to reflect the diversity of Canada. Population targets acknowledge the historic and persistent disadvantages facing the proposed expanded employment equity groups. Population-based targets were agreed to as part of Canadian [Human Rights Settlement Agreement](#) in 2019 regarding targets in the federal Canada Research Chairs program in recognition of problems with determining the size of the workforce.

- a) *What general parameters should and should not be considered in determining the population that is available to work (e.g., divided by geography, by sector, by occupation classification, etc.)?*

There are several problems with the availability pool model. This includes, but is not limited to, its reproduction of systemic exclusionary practices. A population model may also encourage actions to address barriers to employment including access to job training.

### Regulatory oversight, penalties and complaints:

10. *Would you have concerns with establishing an Employment Equity Commissioner to administer and enforce the Act independently from the Minister of Labour? If so, how could we address them?*

The appointment of a commissioner would help align the application of the Act with the Pay Equity and Accessible Canada Acts. We recommend that a dedicated Employment Equity Commissioner should report to Parliament, have a trained staff complement, and proper ongoing statutory funding. They should be tasked with developing and conducting programs to better foster understanding of the Act, providing training and information on promising practices, ensuring employers are compliant, and mediating disputes.

We further support the Task Force's recommendation that the Employment Equity Commissioner be housed within an Office of Equity Commissioners that also includes the Pay Equity Commissioner and Accessibility Commissioner. Harmonizing these mandates into one office, with appropriate funding, would ensure effective equity oversight and parliamentary reporting in the federal jurisdiction.

11. *Would you have concerns if the Canadian Human Rights Commission (CHRC) 's role expanded in administering and enforcing the Act? If so, how could we address them?*

The main concern would be capacity. The Task Force noted that the CHRC lacks the staffing capacity to undertake audits that go beyond a documentary review and has been unable to provide employers with guidance on how to conduct consultations and other actions necessary to comply with the Employment Equity Act.

The Commission needs sufficient funding to fulfill this role, develop training and resources and enforce the Act.

We underscore the Task Force's concern with the current regulatory approach to employment equity. It is bifurcated and siloed and has fostered opacity between the CHRC and the Labour Program.

We emphasize that an Employment Equity Commissioner should be assigned powers to administer and enforce the Act, fulfilling the goals of barrier removal and substantive equality.

However, if the government assigns expanded roles to the CHRC under the EEA, it must adequately fund and staff the CHRC to fulfil those duties. Furthermore, the CHRC's and Labour Program's functions must meaningfully complement each other. Particularly, the current lack of integration and transparency among these institutions must be resolved.

*12. Would you have concerns if employees were allowed to file complaints if they believed their employer was not fulfilling their obligations under the Act? If so, how could we address them?*

As unions are essential partners in both identifying and addressing systemic barriers to employment equity, we recommend a strengthened role for bargaining agents in the Act and in the Federal Contractors Program. Bargaining agents should be able to bring complaints forward to the Employment Equity Tribunal and/or Employment Equity Commissioner if required. This section of the Act should be strengthened to determine how Tribunals can be set up meaningfully to hold employers to account. Further, bargaining agents should be informed when processes are underway, with clear and explicit requirements for notice.

Moreover, we support the Task Force's recommendation that notice be given to the Employment Equity Commissioner when a grievance and a party to the grievance raises an issue involving the interpretation or application of the Employment Equity Act. The Employment Equity Commissioner should have standing to make submissions on the issues in the policy grievance.

*13. Would you have concerns if the current administrative monetary penalty regime expanded so that it applies to more than just reporting obligations under the Act (i.e., non-reporting obligations)? If so, how could we address them?*

We would welcome an expansion of the penalty regime. For the Federal Contractors Program this should include equivalency with the EEA.

*14. What positive measures could be implemented to encourage employers to comply with the Act?*

Training and support from the Employment Equity Commissioner could encourage compliance and build a better understanding about what "reasonable progress looks like". Clear timelines and quantifiable short and long-term benchmarks and goals are needed regarding monitoring and reporting on employment equity plans. The Act itself should include a suggested accountability framework for employment equity plans.

*EEA compliance will be fostered by:*

- A robust Office of Equity Commissioners;
- Vigorous enforcement mechanisms that deter non-compliance;
- Enhanced transparency of data, and reporting by employers to governments, bargaining agents and in cooperation with Statistics Canada; and,
- Social dialogue with unions, equity groups, workers and employers.



*Office of Equity Commissioners*

The Task Force provided several examples where the CHRC did not provide employers with specific guidance on how to comply with the EEA. A well-funded and robustly supported Employment Equity Commissioner housed within an Office of Equity Commissioners would have the focus, capacity and expertise to provide information, guidance and education to employers, unions, joint equity committees and the public on consultations, employment systems reviews, reasonable progress, and other compliance matters. However, it would be essential for the government to provide the Employment Equity Commissioner with the resources, including funding and personnel, to fulfil the breadth of their mandate.

*Vigorous Enforcement*

The government's strategy for EEA compliance must address the various reasons for non-compliance, including instances of bad faith. As the Task Force noted, “the success of Canada’s employment equity framework depends on significant measure on ‘increased and vigorous enforcement.’” CHRC audits revealed that employers often neglected to complete necessary steps before being audited. This resulted in employers being granted additional time to fulfill their obligations. The government must bolster sanctions for non-compliance to ensure the seriousness of substantive equality is upheld.

We further reiterate that strengthening the role of unions in the EEA, through allowing bargaining agents to bring forward complaints and requiring notice, would have a positive effect on deterring non-compliance.

Equivalency between the FCP and the EEA must be restored to pre-2012 requirements.

*Social Dialogue with the Employment Equity Commissioner*

Meaningful consultation is key to identifying and eliminating barriers, including those to EEA compliance. As the Task Force emphasized: “Studies also underscore the importance of unions in promoting and fostering compliance with employment law, including by multinational enterprises located in Canada.” Structured, regular social dialogue is, therefore, a vital tool in fostering compliance and should be prioritized.

We support the Task Force's recommendation for the government to create an independent advisory panel. The panel should meet twice per year and inform the Employment Equity Commissioner's work. In addition, it should be responsible for conducting public reviews of the EEA. The panel should include a broad spectrum of representation including unions and workers. The panel should also include a diverse representation of each employment equity group.

## 4. Improving public reporting

### Reporting frequency and data transparency:

1. *How would you define and measure success in employment equity? Currently, the Act requires employers to complete annual reports that include both quantitative and narrative components. Only certain components of the annual reports are made publicly available.*

Both quantitative and narrative components are useful in measuring success. Success should not be measured in numbers only, but rather on progress in removing or addressing systemic barriers and other measures taken. For example, one of the Task Force recommendations includes indicating whether harassment and violence policies are in place and what preventative measures have been taken.

2. *What elements or sections (qualitative and narrative) of the annual report do you find especially valuable?*

Reports from employers in the Federal Contractors program must be made publicly available.

3. *Do you find any components to be unnecessary, time-consuming or burdensome?*

Based on the experiences shared informally about efforts to collect data on employment status and salary tied to equity identity data through the UCASS pilot and the Dimensions pilot, we believe some support for employers to improve their data systems while meeting privacy requirements would be helpful.

4. *Would you have concerns with reducing the frequency of reporting (quantitative and/or narrative components) for federally regulated private sector employers from annually to once every three years? If so, how could we address them?*

The federally regulated private sector and employers under the Federal Contractors Program should have similar reporting requirements. If the idea is to reduce the burden on small employers, then the government should adopt different reporting periods based on the size of the employer.

5. *Would you have concerns if the narrative information that all covered employers provide in their annual reports were made public?*

This would be welcomed transparency.

6. *Overall are there any parts of the annual report that you believe should not be made public? If you have concerns, how could we address them?*

More transparency would be welcomed, including on pay.

7. *Would you have concerns with permitting that data collected on members of more than one designated group and sub-groups be included into reporting, in support of an intersectional lens? If so, how could we address them?*

Reporting on subgroups and intersections is essential to better understand barriers and progress made toward employment equity.

8. *Would you have concerns if employment equity plans were published in annual reports? If so, how could we address them? Are there components of employment equity plans that you believe should not be made publicly available?*

Reports from federal contractors should also be made public.

9. *Would you have concerns if reporting obligations were different for various employers covered under the Act (e.g., federally regulated private sector versus the federal public sector, smaller versus larger employers, etc.)? If so, how could we address them?*

Larger organizations and the federal public service may find it less burdensome to report more frequently.

## 5. Other Questions for Consideration

1. *Do you have any other suggestions for the Government of Canada regarding the modernization of the Employment Equity Act framework?*

The federally regulated workforce is 1/20th of the Canadian labour force. To have an impact on employment equity in Canada, the Federal Contractors Program (FCP) must also be strengthened as per the Task Force recommendations. In 2006, the last review of the EEA, the FCP captured approximately 7% of the labour force.

The FCP should be specifically included in the EEA and the same requirements that apply to other employers should be applied to the FCP including the threshold and eligibility to reporting and recourse opportunities to the Employment Equity Commissioner.

2. *What change or changes would be most important to achieving concrete progress on employment equity in the coming years?*

Modernization of the Employment Equity Act must go beyond the expansion of the designated groups, disaggregation of data, and recognition of intersectionality. It must also include the Task Force's proposed purpose clause and measures to enhance accountability such as increased transparency, the establishment of the Commissioner and strengthened relationships with bargaining agents.

The federal government must also strengthen the Federal Contractors Program. Reforming the Federal Contractors Program will support the implementation of the federal [Policy on Social Procurement](#) which states, "How we spend money involves choices, not just the choice of what to buy, but whether our purchases serve a greater good."

CAUT fully supports the Task Force recommendations for improvements to the Federal Contractors Program including a lower threshold, enhanced transparency and accountability and an expanded definition of federal contracts to include federal grants.