

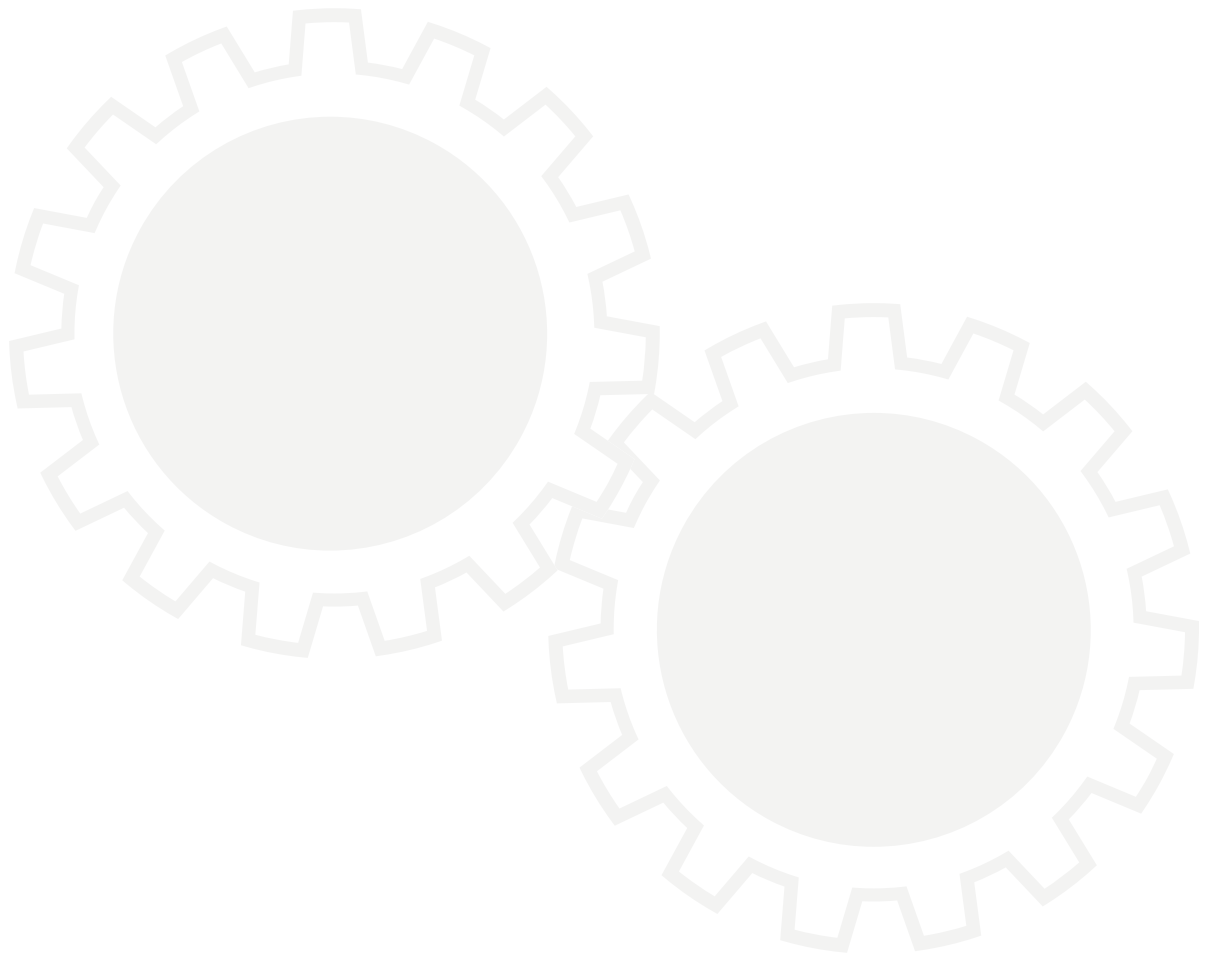
2022

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# Employment Equity Act Review Report: What we heard



Public Service Alliance of Canada  
Alliance de la Fonction publique du Canada



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# Background

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It was not until the seminal report by Justice Rosie Abella, *Equality in Employment: A Royal Commission Report* in 1984 that the federal government examined the idea of creating specific employment equity legislation to address representation of equity groups in the Federal Public Service (FPS). The report concluded that a systemic approach and remedies are required to address the past and ongoing systemic discrimination in the workplace to prevent future discrimination and barriers. The report included recommendations to address the historical disadvantages in employment for women, Indigenous peoples, racialized people and people with disabilities.

The Report led the federal government to enact the *Employment Equity Act* (EEA) in 1986 to ensure that workers would not be denied employment opportunities or benefits for reasons unrelated to ability. The intention was that the EEA would help identify systemic barriers and remove them for designated groups. Although the 1986 EEA did not apply to the federal government, The Treasury Board Secretariat (TBS) issued a Policy on Employment Equity (EE) that applied to the federal public service and the Public Service Commission (PSC) integrated EE into its staffing initiatives. PSAC took the position that this was insufficient and during the first five-year review of the EEA, the union advocated that the Act be applied to the federal public service. In 1996, the EEA was amended to include the federal government workers and the Canadian Human Rights Commission (CHRC) was given the mandate to ensure that employers complied with their obligations.

The Public Service Alliance of Canada (PSAC) has played an active role in providing recommendations to the federal government on ways in which the EEA could be improved whenever the government has initiated a review. Many of the recommendations provided by PSAC over the years has been as a result of the input provided by union activists who are directly involved in employment equity in their workplaces, as well as members of the equity groups in attendance at the PSAC national or regional conferences, the National Human Rights Committee and other avenues of engagement. PSAC members have continued to be consistent in their feedback: that the EEA needs to be updated and “has no teeth”, meaning that there is little enforcement to ensure employment equity is being applied consistently in the workplace or that recourse processes in relation to staffing initiatives are effective.

Over time, departmental joint employment equity committees have become nothing more than a “checkbox” for the employer to minimally comply with the requirements to consult and collaborate with bargaining agents. Although employers may “pass” the Canadian Human Rights Commission audits, feedback from members consistently highlight issues of discrimination in staffing processes in those workplaces.

In the past, PSAC worked in coalition with like-minded workplace networks such as the National Canadian Council of Visible Minorities in the early 2000’s. However, it was dismantled by the federal government. Most recently, PSAC has been working with the Federal Black Employees Caucus, which has advocated for examining racism in staffing processes involving Black federal workers. As well as the Black Class Action, which has advocated against the governments discriminatory hiring and promotion practices and the exclusion of federal Black public service workers.

# Introduction

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The Public Service Alliance of Canada (PSAC) continues to play a vital role in the conversation around Employment Equity. *The Employment Equity Act* is a critical tool in combatting workplace discrimination in federally regulated workplaces. The aim of the EEA is to remove systemic barriers for individuals in the four designated groups under the Act:

- Women
- Indigenous peoples
- Persons with disabilities, and
- Racialized people

These systemic barriers exist in the recruitment, promotion and retention of individuals in the four designated groups.

The EEA imposes a mandatory review of an employers' labour force and provides for measures to ensure better representation of these groups. PSAC has been calling for a review of the Act for the last two decades.

In July 2021, the federal government struck the Task Force on the *Employment Equity Act* Review (The Task Force) with a mandate to study the Act and consult with stakeholders, communities, and Canadians on issues related to employment equity. It has been over 20 years since the EEA has been reviewed, and much has changed since that time. The Task Force is tasked with submitting a final report for consideration by the Minister of Labour that will include:

- results of their research and key findings;
- recommendations based on their own expertise (as well as from engagement session participants and written submissions) and;
- recommendations to modernize and improve the employment equity framework in the federal jurisdiction in Canada.

PSAC has been invited by the Task Force as one of the stakeholder organizations and will provide recommendations to The Task Force on how best to improve the *Employment Equity Act*. PSAC's recommendations are reflective of the current reality faced by marginalized workers that have been, and continue to be, excluded and/or discriminated against in the workplace.

In order to prepare PSAC's submission to the Task Force, a survey was sent to component leaders and members. PSAC also conducted virtual consultations with union activists directly involved in employment equity in their workplaces, as well as members of PSAC's National Human Rights Committee in order to gather qualitative data.

*More information regarding survey methodology can be found in [Appendix A](#).*

*More information regarding virtual consultations can be found in [Appendix B](#).*

# What we heard

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## Awareness and accountability

Results of the PSAC membership survey on employment equity indicate that there is a real lack of awareness of what initiatives the employer has in place to promote employment equity in the workplace. More than 70% of the respondents to PSAC's survey were unsure of whether their workplaces had joint workplace committees on employment equity. This indicates that either the employer has these committees in place and employees are unaware, or that the committees don't even exist. When asked, only 33.5% of respondents to the member survey were aware of employment equity initiatives in their workplace while almost 25% are not sure if those initiatives exist. A dismal 3.1% of respondents said that they belonged to a joint workplace committee.

Of the respondents who were aware of employment equity initiatives and/or committees, 29.8% indicated that they felt there was no clear support for employment equity in their workplace. In contrast, 45.2% of union activists said that there was no clear support for employment equity in their workplaces. Additionally, 42% of union activists indicated that they do not have joint workplace committees that examine employment equity, while 35.5% identified as a member of such a committee.

It is evident that a lack of awareness on employment equity would yield a higher than anticipated number of respondents (42.35%) indicating that accountability and enforcement of the EEA ought to be strengthened. Furthermore, respondents overwhelmingly shared that the roles of Treasury Board and the Public Service Commission ought to be strengthened in relation to accountability, oversight and monitoring of the EEA.

## Representation of equity groups

For years, the federal public service has experienced significant challenges in representation of equity groups in the workforce more generally, but especially in executive positions.<sup>1</sup> Since 2014-2015, the representation of women and racialized employees has increased, whereas the number of Indigenous employees remains the same, and employees with disabilities are further underrepresented.

The following graphs depict responses to PSAC's membership survey on employment equity, specifically regarding representation of equity groups from the perspective of PSAC members.

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<sup>1</sup> TBS (2019) Employment Equity in the Public Service of Canada: 2018-2019

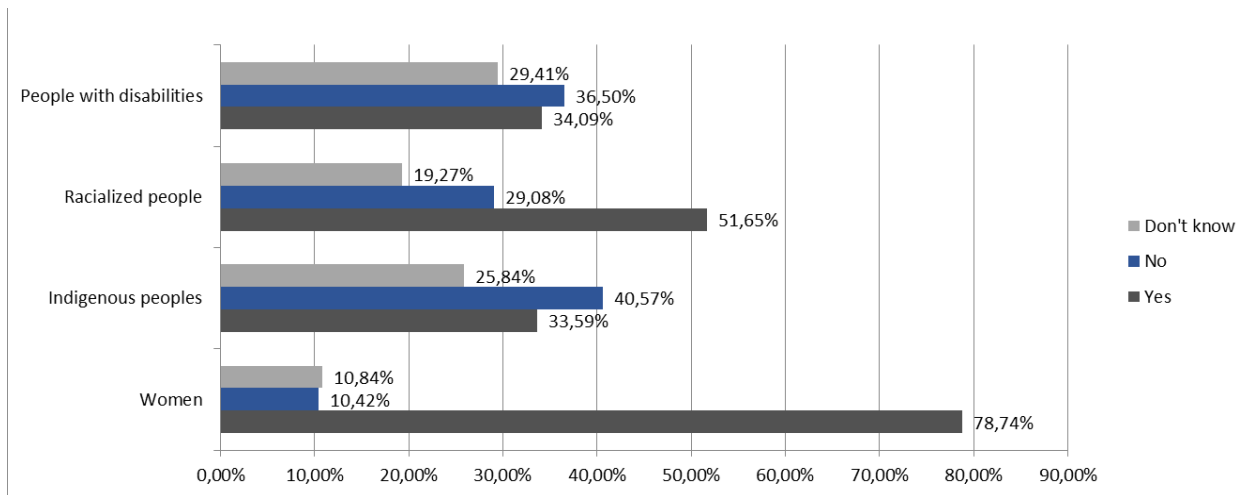


Figure 1.Q11. Do you believe your workplace is representative of the equity groups covered under the EEA, specifically?

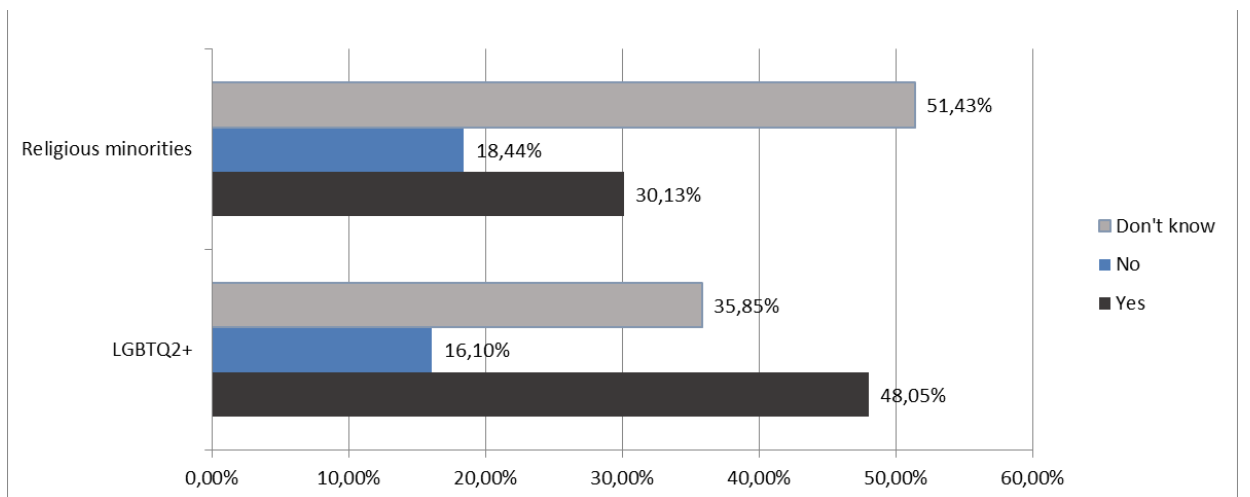


Figure 2.Q12. Do you believe your workplace is representative of other equity groups, such as: religious minorities, LGBTQ2+?

PSAC survey respondents indicated that their workplaces have a higher representation of women (78.74%) and racialized people (51.65%), which follows the statistics gathered in TBS’s report, *Employment Equity in the Public Service of Canada: 2017-2018*. However, only 41.3% of racialized respondents to the PSAC survey felt that their workplaces were representative of racialized workers. Respondents indicated that Indigenous peoples (33.59%) had the least level of representation in their workplace and that persons with disabilities (34.09%) also were not represented appropriately.

The LGBTQ2+ community is currently not included in the *Employment Equity Act*. This is troublesome as we have continued to hear from LGBTQ2+ members that they are underrepresented and that they face discrimination in the workplace. PSAC’s survey results demonstrate that only 48.05% of respondents felt that the LGBTQ2+ community were adequately represented. This is why PSAC’s recommendations includes a push for the inclusion of the LGBTQ2+ community in the *Employment Equity Act* as an equity group.

## Recruitment, hiring, training, promotions & retention

The figure below demonstrates that many of the respondents to PSAC's *Employment Equity Act* Review survey felt that equity groups continue to face barriers in relation to recruitment, hiring, training, promotions and retention.

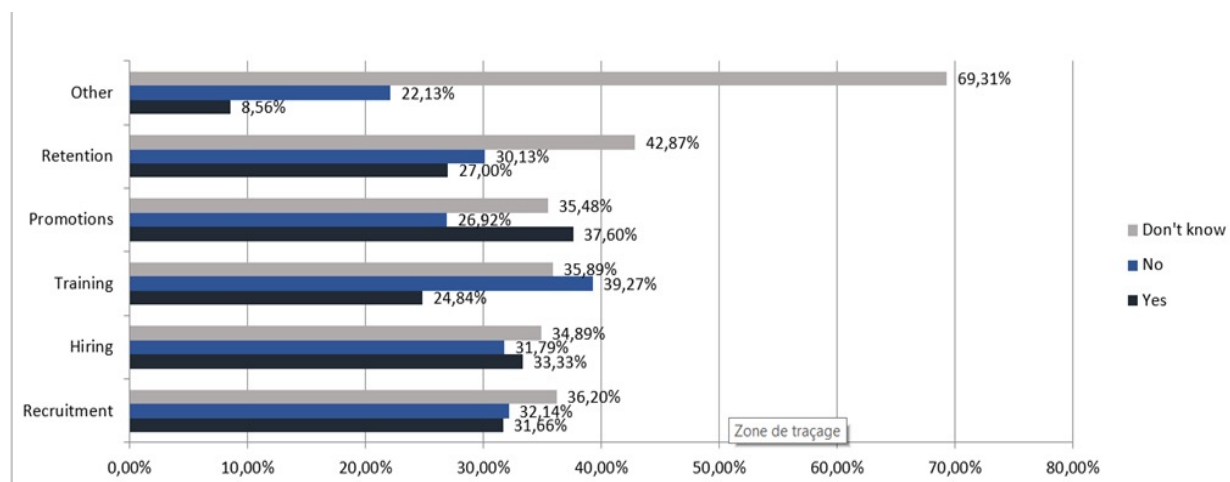


Figure 3.Q13. Are there barriers for equity-seeking groups in the following?

The top three barriers identified by respondents for equity-seeking groups in the workplace were promotions (37.6%), hiring (33.33%) and recruitment (31.66%). Most respondents are unaware of whether the employer has taken any initiatives to reduce or eliminate barriers. Furthermore, racialized respondents demonstrated that they experienced barriers at a higher percentage than all other participants.

## Strengths and weaknesses of the *Employment Equity Act*

Respondents were consulted on the strengths and weaknesses of the *Employment Equity Act*. There was an acknowledgement by the membership that there has been increased representation under the EEA, but there is much more work left to be done. There was an overwhelmingly higher amount of weaknesses versus strengths associated with the *Employment Equity Act*, including:

- the exclusion of the LGBTQ2+ community;
- the lack of requirements for disaggregated data for specific equity groups;
- the lack of accountability;
- the lack of consistent monitoring.

Union activists indicated that:

- the effects of employment equity were not visible;
- there was little progress / advancement;
- there is lack of accountability and enforcement;
- there is inadequate funding for employment equity initiatives;
- there is need for more oversight, education, and information sharing; and
- there is a need to update terminology in the Act and the need to include the LGBTQ2+ community.

# Role of the union

Union activists indicated that there is a significant need for employers to include bargaining agents in the development of policies impacting employment equity, as well as analysis and evaluation. Furthermore, 38.5% of respondents to PSAC’s survey agreed that the role of PSAC and other bargaining agents should be strengthened under the *Employment Equity Act*.

The following table demonstrates responses from union activists on consultations and collaboration initiatives by the employer:

Section 15 of the EEA requires the employer to consult and collaborate with bargaining agents during the employment equity process. Does the employer consult and collaborate with you on the following:

	YES	NO	DON'T KNOW
Voluntary self-identification Survey	41.94%	41.94%	16.13%
Workforce analysis	16.13%	38.71%	45.16%
Employment systems review of formal and informal policies and practices	12.90%	51.61%	35.48%
Development of employment equity plan/initiatives	22.58%	45.16%	32.26%
Monitoring the employment equity plan	3.23%	63.52%	32.26%
Review and revision of employment equity plan	16.13%	48.39%	35.48%
Providing information to employees about employment equity	32.26%	35.48%	32.26%

The employer must make significant improvements in the way that employment equity plans are monitored. When asked, only 3.2% of respondents indicated that they’ve been consulted on the monitoring of employment equity plans. This is troublesome as our activists are on the ground and are often in direct contact with workers regarding issues that matter to them in the workplace, such as employment equity. Although, 22.58% indicated that they have been consulted on the development of these plans, it remains insufficient and demonstrates a significant gap in bargaining agent input when looking at consultation in monitoring vs development.

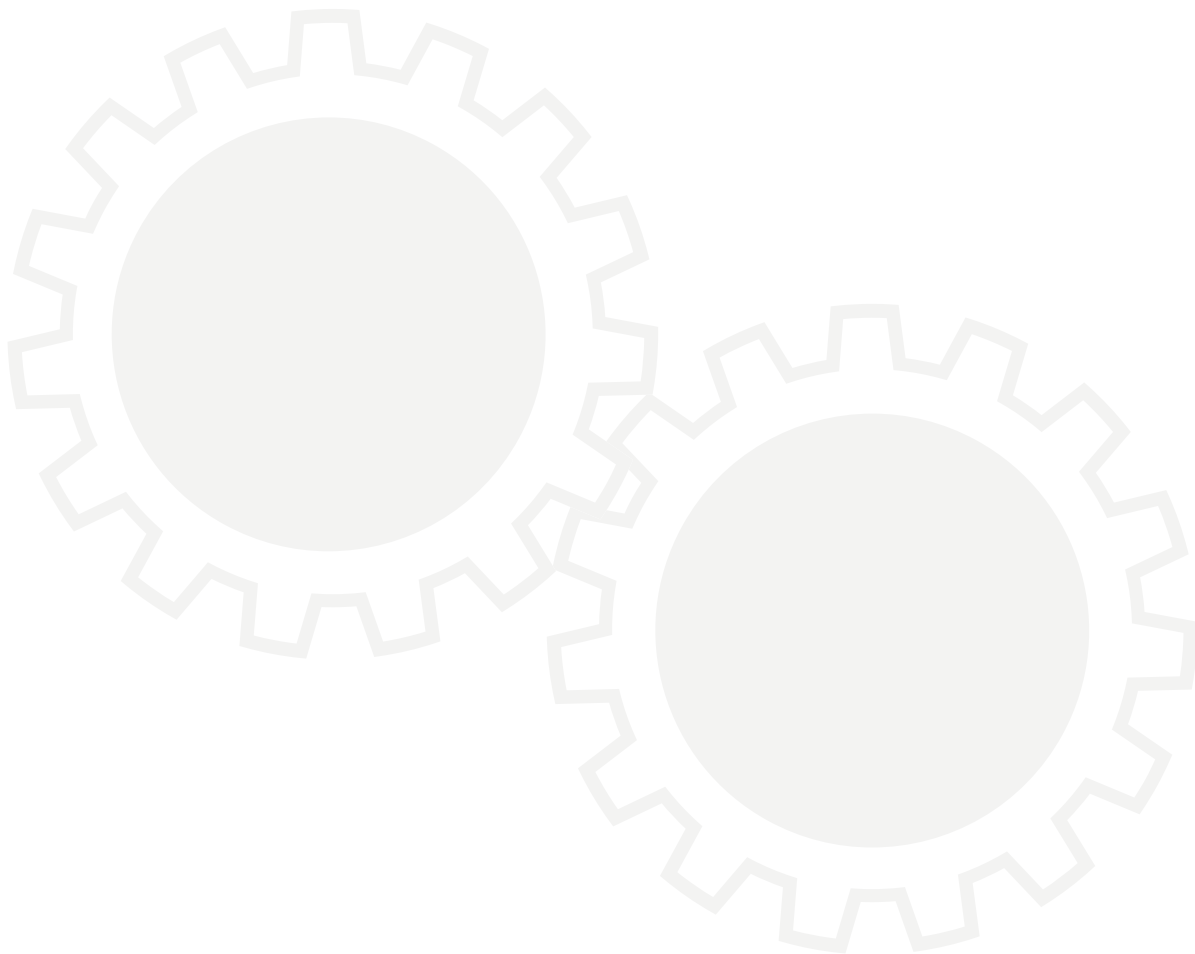
Finally, when employment equity audits are performed in workplaces, the employer must ensure that the Canadian Human Rights Commission is adequately consulting with bargaining agents. Union activists overwhelmingly responded that they are not consulted when employment equity audits are taking place (83.8%).



## Conclusion

Employment equity is pivotal in garnering a workplace that is inclusive and allows workers to feel valued and respected. The *Employment Equity Act* is a vehicle to ensure that workers receive equal opportunities and are treated fairly by their employers. It is a law that provides protection from unfair treatment and discrimination.

For the last twenty years PSAC has been urging the federal government to review the *Employment Equity Act*, and they now have an opportunity to revolutionize the EEA and create real change in the workplace. The PSAC's *Employment Equity Act Review* survey will prove to be instrumental in identifying the significant gaps that remain in the Act, and the ways in which they can be addressed. PSAC is optimistic that the Task Force will consider our recommendations to improve the EEA.



# Recommendations submitted to task force on the *Employment Equity Act* review

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The following are PSAC's recommendations for amendments to the *Employment Equity Act* and related legislation that impact employment equity initiatives in the workplace:

## 1. Terminology

Outdated terminology (i.e. "Aboriginal Peoples", "visible minorities", etc.) in the *Employment Equity Act* must be updated to reflect the language and terminologies currently used by those communities.

## 2. Disaggregated Data for Designated Equity Subgroups and Intersectionality

The *Employment Equity Act* must be amended to collect and analyze disaggregated data for every designated equity group. By so doing, representation rates and barriers faced by distinct groups within designated equity groups can be examined and addressed more appropriately. Each specific designated employment equity group should be broken down (e.g. Black, South Asian, Chinese, Arab, etc.) so that barriers for specific communities can be identified and addressed.

Data should also be collected in a manner that allows for intersectional analysis.

## 3. Inclusion of LGBTQ2+ Community

The *Employment Equity Act* must be amended to include the LGBTQ2+ community as a designated group and the necessary data (census data) must be collected like other designated groups.

Data collected must be disaggregated and allow for an intersectional analysis since the LGBTQ2+ community is not homogenous and does not experience workplace discrimination in the same manner.

## 4. Labour Market Availability / Workforce Availability Rate

The *Employment Equity Act* must be amended to ensure accurate and current labour market availability and workforce availability rates that are reflective of each designated equity group. The labour market availability and workforce availability rates must be regularly updated between censuses to reflect the changes in Canada's population (e.g. recent newcomers/immigrants who have international experience, non-Canadian Citizens).

## **5. Tensions between the *Employment Equity Act*, *Public Service Employment Act* and the *Financial Administration Act***

There must be a thorough review, as well as amendments made to the *Public Service Employment Act* (PSEA) and the *Financial Administration Act* to eliminate systemic barriers faced by equity-seeking groups. The review must include strengthening the role of central agencies, examining any provisions that hinder the objectives of the *Employment Equity Act*, and increasing the accountability of departments and agencies.

Furthermore, in situations of legislative conflict, the *Employment Equity Act* should supersede the *Public Service Employment Act* and the *Financial Administration Act*.

The recommendations in the Final Report of the Joint Management-Union Taskforce on Diversity and Inclusion should also be implemented.

## **6. Complaint Processes**

The Taskforce must review all employment equity related complaint processes, including the Federal Public Service Labour Relations and Employment Board and Canadian Human Rights Commission processes carefully to determine the systemic barriers for equity groups in these processes, including removing provisions that prohibit employment equity related complaints. If there is no meaningful mechanism for recourse, then compliance requirements under the *Employment Equity Act* are meaningless.

The Employment Equity Review Tribunal should be replaced with an Employment Equity Commissioner with similar duties, functions and processes as the Pay Equity Commissioner recently established at the Canadian Human Rights Commission.

The historical underfunding of the Canadian Human Rights Commission must be addressed. The Canadian Human Rights Commission must be properly resourced not only to meet its current mandate but also further resourced to include an Employment Equity Commissioner.

In addition, bargaining agents must be able to bring forward employment equity complaints under the *Employment Equity Act* and trigger an audit, including when they have not been properly consulted. Consultations and Collaboration should be clearly defined in the *Employment Equity Act* and if it does not occur, bargaining agents should be able to make a complaint.

All audit reports should be made public subject to provisions stipulated in Access to Information and Privacy laws.

## **7. Accessible Canada Act**

The Taskforce examine the concurrent jurisdiction between the *Employment Equity Act* and the *Accessible Canada Act* to ensure that each legislation supports and re-enforces the other rather than overlapping each other and leaving gaps in the legislation.

## 8. Strengthening the role of bargaining agents

The role of bargaining agents must be strengthened in the *Employment Equity Act*. The *Employment Equity Act* should clearly outline the obligation for joint national and regional employment equity committees that meet regularly for meaningful consultation and collaboration. Meaningful consultations and collaboration must be defined in the *Employment Equity Act* to ensure that employers do not try to circumvent their obligations by minimizing their “consultation and collaboration” process.

To ensure compliance of consultation and collaboration, bargaining agents should be able to make a complaint if they believe that the employer failed this requirement. Furthermore, if employers are found to have failed to properly consult and collaborate, then there must be a consequence for them that would compel them to meet this requirement.

The following elements should be in the definition:

- 1) establishing joint employment equity committees;
- 2) employers and bargaining agents jointly review, prepare and develop, implement and revise together the employment equity plans; and
- 3) employers and bargaining agents actively participate in all stages of the employment equity process from the start, to continuous reviewing and monitoring progress.

Bargaining agents should be able to negotiate provisions in the collective agreement that would go above and beyond the provisions in the *Employment Equity Act*. The *Employment Equity Act* should be the floor and not the ceiling for employment equity initiatives.

## 9. Federal Contractors Program

Contractors under the Federal Contractors Program must have the same requirements as other employers under the *Employment Equity Act*, including statutory requirements and reporting requirements so that the Minister of Labour cannot make changes arbitrarily.

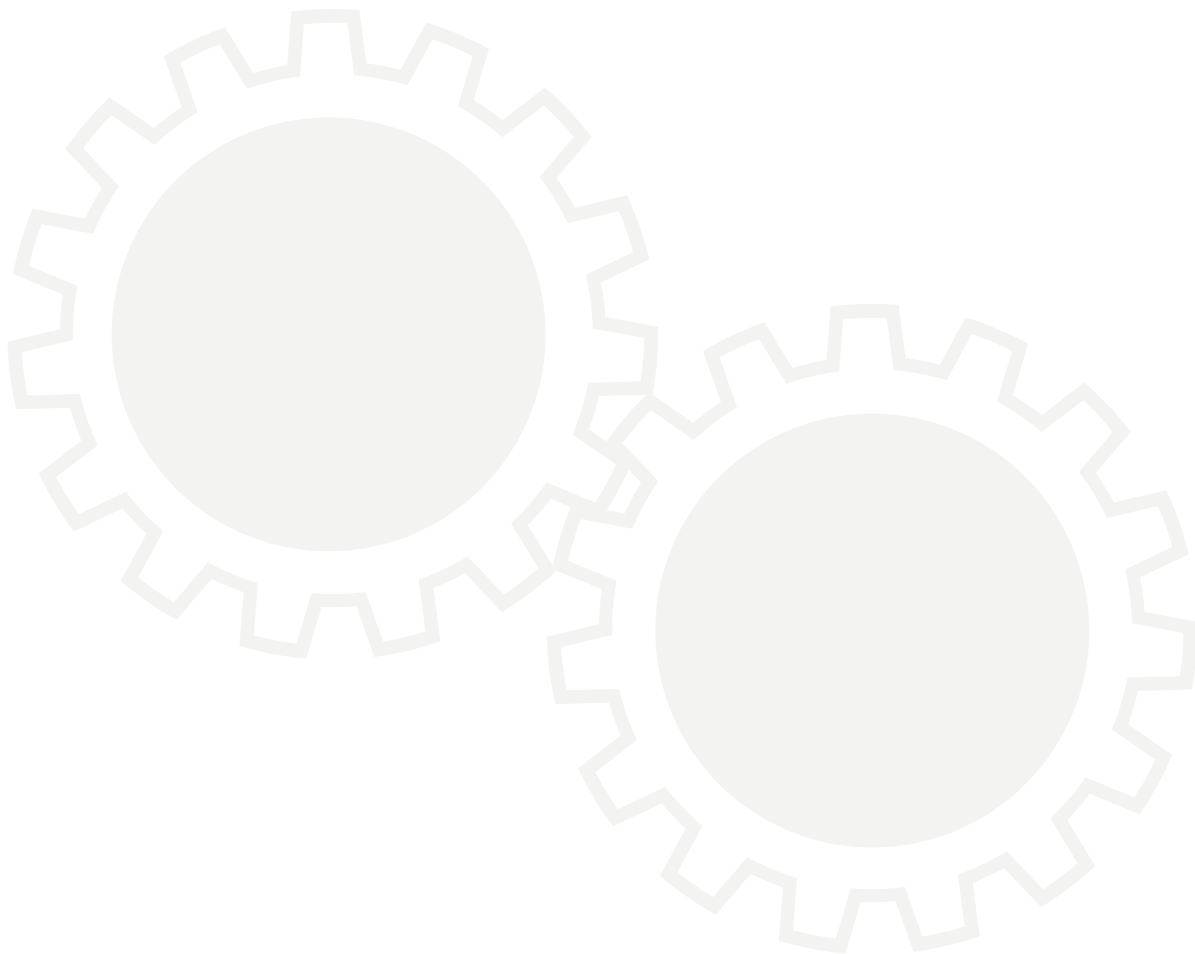
The 2012 amendments to the *Employment Equity Act* must be reversed to decrease the threshold requirement to be under the Federal Contractors Program.

Furthermore, in order to ensure consistency, ESDC should either work with the Canadian Human Rights Commission, or the auditing function should be done solely by one body. Again, this requires the Canadian Human Rights Commission to be adequately resourced.

## 10. Pay Transparency

The *Employment Equity Act* must be amended to ensure wage gaps are addressed throughout the employment equity process and become part of employment equity plans. In addition, any audit or compliance processes must also take into consideration wage gaps in determining if compliant. If wage gaps aren't addressed in plans, then there should be a mechanism to make a complaint.

The pay transparency provisions should apply to both federally regulated private and public sectors, as well as Federal Contractors Program.



# Appendix A

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## Survey methodology

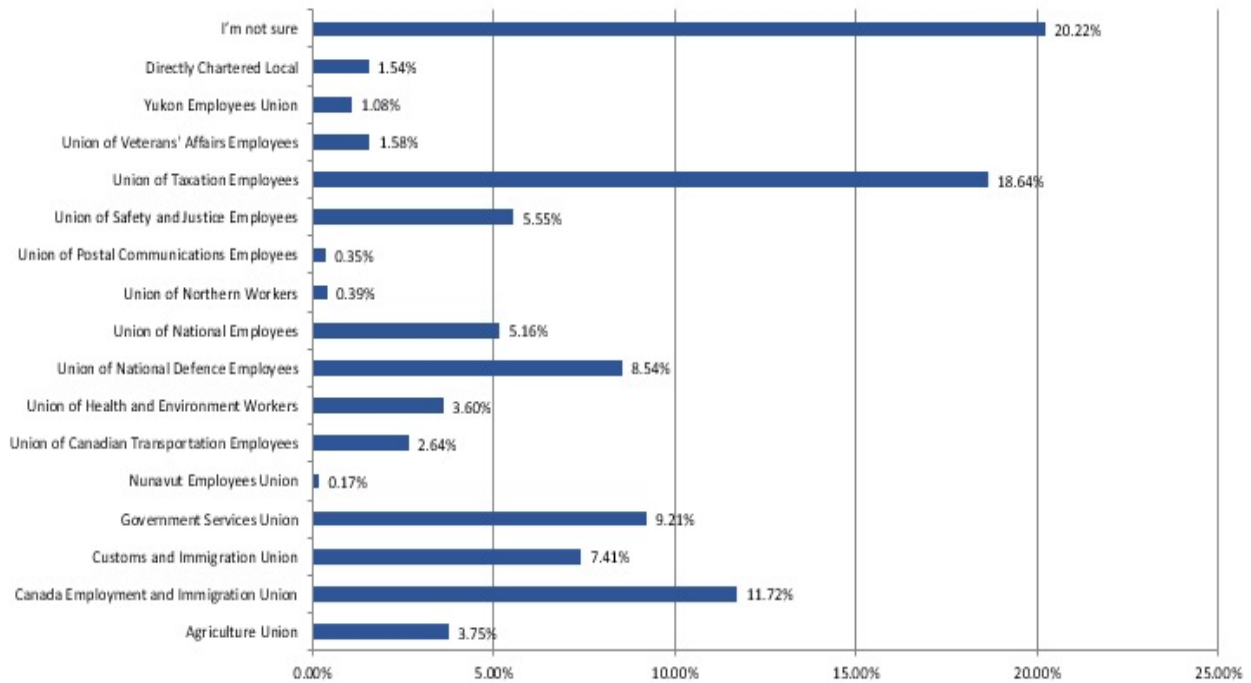
An online bilingual member survey was released on PSAC’s national website on August 26, 2021, and members were given until September 9, 2021 to complete the survey. The survey was promoted through mass e-mails and social media posts. The survey garnered the response of 5,386 people.

The survey consisted of 22 closed-ended questions with the possibility of leaving comments and four open-ended questions. Questions were focused on learning more about the identities of the respondents and their affiliation to the union; their awareness around EEA measures in their workplace; the barriers equity-seeking groups face, accountability and the roles of employers and union; the strengths and weaknesses of the EEA, as well as ways to enforce it. PSAC ensured that the survey provided respondents with the option to self-identify, which further allows for analysis by equity group. The following is a breakdown by self-identification:

- 60.8% of respondents identify as women
- 31.89% of respondents identify as men
- 6.7% of respondents identify as non-binary
- 0.61% of respondents chose the option “other”
- 60.8% of respondents identified as racially visible
- 21% of the respondents identified as a person with a disability
- 11.45% of the respondents identified as being a part of the LGBTQ2+ community
- 9.7% of the respondents identified as Indigenous

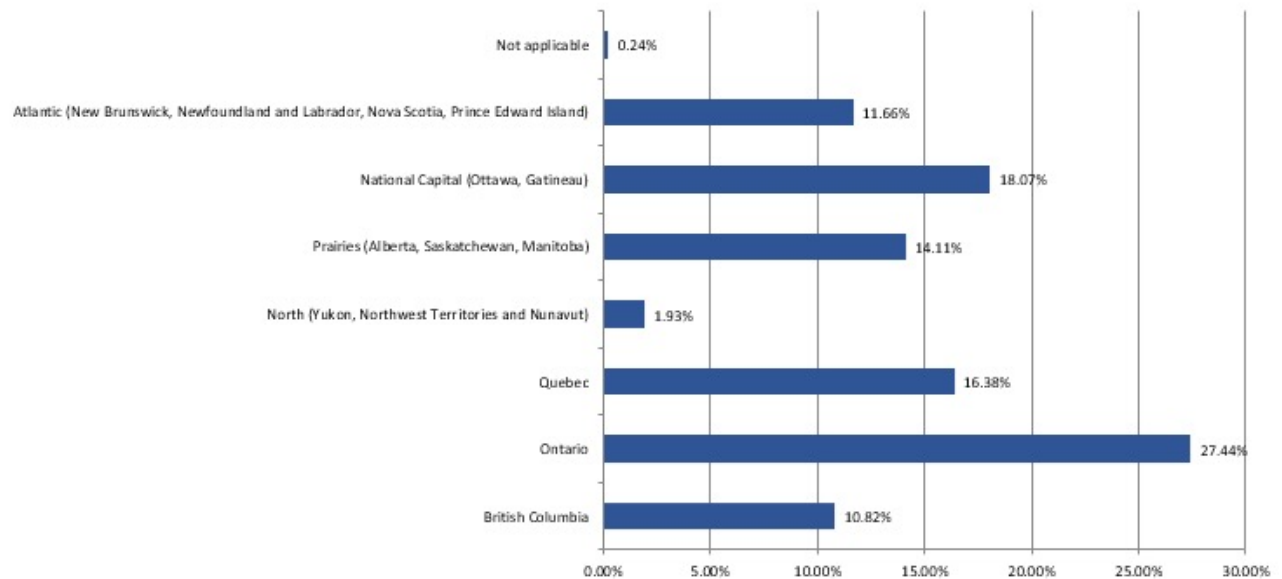
## Component Participation

The following graph depicts member participation by component:

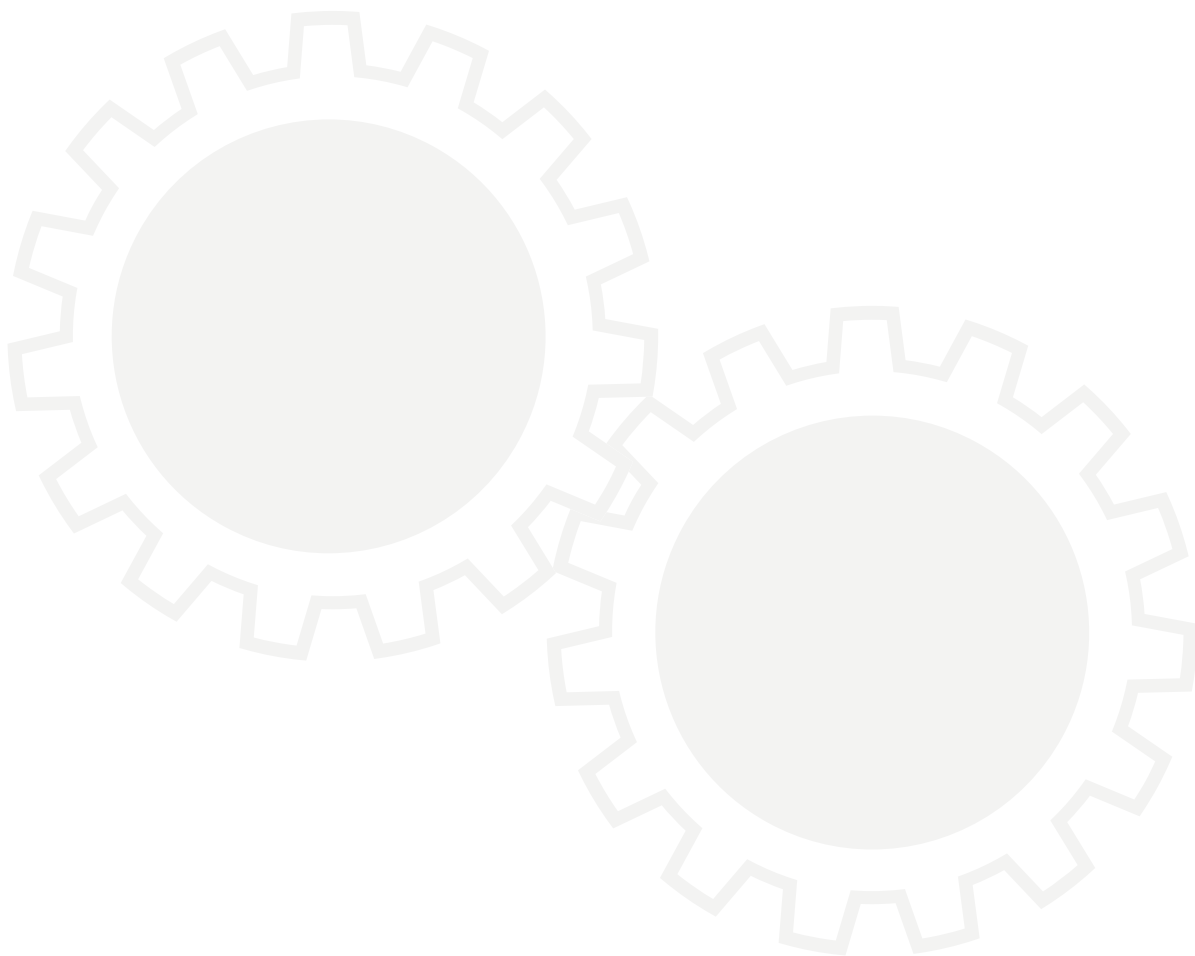


## Regional Participation

The following graph depicts member participation by region:



Out of all the respondents, 62.9% are subject to the EEA and 30.8% were not sure, and 6.3% were not covered by the Act. 49.8% of respondents said they were part of the “Core Public Service (Treasury Board and Public Service Commission as the employer)”, while 24.1% said they were part of a separate agency or organization in the federal public service (not under TBS). Less than 1% said they were either part of the private federally regulated or part of the Federal Contractors Program. 26.5% were unsure which employer category they fell under.





# Appendix B

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## Virtual consultations

Virtual consultations took place with union activists involved in employment equity in the workplaces and with the PSAC Nation Human Rights Committee on Sept 8 & 9, 2021. Participants were asked the following three questions:

1. What is working under the EEA?
2. What is not working under the EEA?
3. What are possible solutions and recommendations to improve the EEA?

The virtual consultations confirmed many of the findings of the survey:

- lack of adequate staffing recourse processes
- lack of meaningful joint consultations throughout employment equity process (e.g. self-ID, workforce analysis, employment systems review, developing an employment equity plan or monitoring it)
- employees have rarely been contacted by the CHRC during an audit to get their input on whether the employer was meeting their obligations under the EEA
- there is little accountability on employment equity, despite the Management Accountability Framework

Recommendations from virtual consultations include:

- requirement for public reporting of data
- update to terminology
- mandatory EE committees
- updating the *Employment Equity Act* to include LGBTQ2+ as an equity group
- having subgroups of the various equity groups
- conduct and implement an intersectional analysis
- clearly define “consult and collaboration of bargaining agents”
- funding and training for mandatory joint committees
- changes to the PSEA and the Federal Public Sector Labour Relations Act to have meaningful recourses
- stronger language on accountability
- adequate funding for the CHRC
- the ability to have bargaining agents involved in the audit and make a complaint