
EMPLOYMENT EQUITY IS NOT AFFIRMATIVE ACTION

Marjorie Cohen

Depuis la publication du rapport Abella, "L'egalite dans l'emploi", le terme 'equite dans l'emploi' a ete adopte de preference au terme 'action positive'. Marjorie Cohen affirme que ce changement dans la terminologie est plus qu'une question semantique: il represente l'evasion des principes fondamentaux qu'impliquent 'l'action positive'. Son article examine cet important changement dans la signification de ces mots.

EMPLOYMENT EQUITY OR AFFIRMATIVE ACTION?

The idea of *Affirmative Action* should not be confused with the idea of *Equity*. The term *employment equity* has been adopted recently in preference to *affirmative action* because the latter is deemed too strong and politically too dangerous to use. The question now is whether or not the substitution of the term *equity* is a backing off from the basic principles which *affirmative action* implies. I maintain that it is.

Affirmative action means a lot more than simply giving people equal opportunity and equal pay. The principle of affirmative action recognizes that the market mechanisms which control the work people do and how they are paid will never, by themselves, bring about conditions of equality. Making specific acts of discrimination illegal is a necessary step, but not a *sufficient* one to change basic structures in the way the labour of certain groups is treated.

Equity implies impartiality and fairness - it is a good term, but it is limited. The MacDonald Commission, for example, is quite explicit in its understanding of this when it says "equity is not identical with equality." To people who believe that everything is truly fair when laws treat everyone equally, equity is a sufficient concept. Differences in the rewards and

treatment of various groups, then, are viewed as arising from some kind of natural difference in ability or personal choice in a way of life. When things are fair, the individual is personally liable for the way things turn out. Equity does not require that people be equal - only that they are treated in the same fair way.

The concept of affirmative action views fairness in a much broader sense. The focus is not only on equality in *treatment*, but equality in *results*. It recognizes that treating a disadvantaged group the same as a privileged group is not equality: the disadvantages or privileges of the past will have a bearing on the present and will render the results unequal. Affirmative action calls for positive steps to rectify past discrimination and inequalities which have become a structured part of the system. Rather than relying on inefficient, cumbersome complaint mechanisms, as currently exist (mechanisms which place the onus for change on the victims of discrimination), affirmative action programs would require that employers actively reverse their discriminatory practices.

Affirmative Action has been a dirty word in Canada. Employers have hated it because it would cost them money. For a long time, even some feminist groups were afraid of the negative public reaction it would arouse. The particular stumbling block was the use of quotas to achieve the objectives of affirmative action programs. There was a fear of being unfair to white males - a fear that "reverse discrimination" would threaten the foundation of a just society. Governments would sometimes use the term, not in legislation of course, but in advocating "voluntary" programs in the public sector. In reality this was a brave term for meagre programs. Certainly there was no notion of quotas or compulsion in the government's use of the term.

The Abella Commission on Equality in Employment, which issued its report in October 1984, backed away from the use of the term *affirmative action* because of its association with the use of quotas, and used instead *employment equity*. The Commission advocated goals and targets, rather than quotas, but insisted that effective enforcement was essential for any improvement in the current situation. While many groups felt that the notion of goals and targets was rather weak and did not give sufficient guidance to employers about what to do, the call for *mandatory* rather than *voluntary* action was supported fully. Altogether the Abella Commission recommended 117 measures for change, including federal legislation which would require that employers implement employment equity, that the government provide a sufficient enforcement mechanism, and that employers report annually on their progress.

"EMPLOYMENT EQUITY" - BILL C-62

Last June the government issued its response to the Abella Commission in the form of a bill on employment equity, Bill C-62. It is a miserably inadequate bill and bears virtually no resemblance to the measures advocated in the Abella Report, yet it is termed "employment equity legislation."

In the press release which accompanied the introduction of the Conservative government's bill on employment equity, Flora MacDonald, the Minister of Employment and Immigration said: "The Employment Equity Bill is a landmark piece of legislation. Past governments have paid lip-service to the idea of equality in employment - this government has taken action within the first nine months of its mandate." Even allowing for the usual hyperbole ministers tend to use when describing the significance of their



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own work, most groups who were waiting for the Bill were not quite prepared for the extent to which it differed from the minister's claim.

The Bill itself is a sham. It contains dazzling rhetoric with regard to purpose:

The purpose of this Act is to achieve equality in the work place so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability, and in the fulfillment of that goal, to ameliorate the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and persons who are, because of their race or colour, in a visible minority in Canada by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences.

But one does not have to read very far before realizing that the only special measure this Bill would require of employers in the federal sector is that some of them report annually to the government. The reporting for those who employ more than one hundred people would begin in 1988 and would give information about the proportion of women and other minorities hired or fired in each firm, their representation in specific occupational categories, and their salary ranges. If employers fail to report they could be liable to a "fine not exceeding fifty thousand dollars." But that's it. If the report shows that the designated groups are grossly discriminated against, nothing happens. If the employer shows no change in employment practices year after year, or if things actually get worse for the target groups, there will be no penalties.

There is simply no enforcement mechanism in the bill to require that the employer implement employment equity. Public humiliation and shame are considered by the Minister to be sufficient enforcement tools: "The employment practices and policies of federally regulated businesses will go on public record, and these companies will have to answer to the people of Canada if they fail to achieve equality in employment."

As much as the notion of an enraged public beating down the doors of discriminating companies like CN Rail has a certain appeal, experience reminds us that public outrage tends to get diffused and ultimately cannot confront the extraordinarily widespread nature of systemic discrimination. Once again, the onus for any kind of enforcement would be placed on disadvantaged groups. Volumes of

data would need to be sifted through, analyzed, and argued about. Heroic efforts would be needed to draw the media's attention to the issue, and years and years would be spent filing complaints with the Canadian Human Rights Commission.

But even assuming that public humiliation could be effective, it is not at all clear that the information the government receives will be at all useful or will be available to the public in any meaningful way. The Minister of Employment and Immigration has indicated that she will "consolidate the information submitted; analyze employment trends of the designated groups; and assess the overall achievement of Employment Equity on a national and sectoral basis." The consolidation of information could effectively hide any real information about how individual firms perform. But also, as guidelines about reporting are being drawn up, employers are actively lobbying so that categories of salaries, for example, are very broad. Their reasoning is that narrow categories would make it too easy for the incomes of their chief executives to become public knowledge and this would constitute an invasion of privacy. We know that broad salary categories, not incidentally, would also conceal a great deal about how specific groups of workers are paid.

The government would now like the focus of discussion to be on the *form* reporting should take. Fortunately, there is a broad coalition of groups which is not letting the major issue of the gross inadequacy of this bill die. The coalition includes the National Action Committee on the Status of Women, the Coalition of Provincial Organizations of the Handicapped, the National Ethnocultural Council, the Canadian Association for Community Living (formerly the Canadian Association for the Mentally Retarded), the Canadian Labour Congress, the Urban Alliance on Race Relations, the Canadian Congress for Learning Opportunities for Women, and the Coalition for Equity. These groups are demanding that the bill be substantially amended to require specific affirmative action goals, timetables for results, and penalties for firms which fail to comply. They also insist that certain promises made during the election - particularly those which would require that private companies doing business with the government adopt the principle of equal pay for work of equal value be included in any employment equity package. Brian Mulroney specifically assured the public that contract compliance would be a priority for his party:

A Progressive Conservative Government will ensure that all companies seeking to provide services to the Government of

Canada hire increasing numbers of women to perform those services as a condition of getting the job ... We will ask these firms to show us, as part of their tendering responsibilities, how many women will be hired to fulfill those contracts. There's nothing alien about that. It's just good old business sense.

Some groups, such as the National Action Committee on the Status of Women, are specifically calling for Bill C-62 to be defeated if it is not drastically altered. Their reasoning is that the bill is so ineffective and so far removed from the promises made by the Conservatives during the last election, that it cannot in any measure be called an *employment equity* bill. Passing it would simply let this government claim it has done something for disadvantaged workers when, in fact, nothing will change as a result of its passage.

Mandatory reporting is not mandatory affirmative action. Clearly the government could not call this bill an affirmative action bill, but they could call it "an act respecting employment equity." The term employment equity is weak and can mean anything. If what we want is affirmative action we should not call it employment equity.

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