



THE CANADIAN  
BAR ASSOCIATION  
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BARREAU CANADIEN

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Via email: [EDSC.LEE-EEA.ESDC@labour-travail.gc.ca](mailto:EDSC.LEE-EEA.ESDC@labour-travail.gc.ca)

Employment Equity Act Review Task Force  
C/O Employment Equity Act Review Secretariat  
(mailstop # 911)  
ESDC, 140 Promenade du Portage, Phase IV  
Gatineau, QC, K1A 0J9

Dear Employment Equity Act Review Task Force:

**Re: Employment Equity Act Review Consultation**

We are writing on behalf of the Canadian Bar Association's Sexual Orientation and Gender Identity Community Section (SOGIC), Equality Subcommittee, Labour and Employment Section, and Women Lawyers Forum (collectively, the CBA Sections) to share our views on the Employment Equity Act (EEA) Review Consultation.

The CBA is a national association of 36,000 members, including lawyers, notaries, academics and law students, with a mandate to seek improvements in the law and the administration of justice. SOGIC addresses the concerns of LGBTQI2S members in the CBA and provides a forum for the exchange of information, ideas and action on legal issues relating to sexual orientation and gender identity. The Equality Subcommittee is dedicated to achieving equality in the legal profession, in particular on the basis of sex, gender, sexual orientation, gender identity, race, national or ethnic origin, colour, religion, language, age or disability. The Labour and Employment Section looks at labour relations, trade unions, boards and tribunals, employment standards, collective agreements and arbitration of labour disputes from all sides – management, union and neutrals. The Women Lawyers Forum promotes women's stature and influence in the legal profession in Canada.

The CBA Sections commend the federal government for its commitment to enhance employment equity, to make workplaces barrier-free where everyone has equal opportunities to grow and thrive. Our comments address the three policy briefs released for consultation in February 2022. We appreciate the opportunity to make these preliminary comments and look forward to consulting further as draft amendments to the legislation take shape.

## Policy brief 1: Defining and expanding equity groups

The current EEA identifies four groups as targets of systemic disadvantage in the workforce: women; Aboriginal peoples; persons with disabilities; and visible minorities.

The CBA Sections recognize the need to update and modernize the EEA to reflect current understandings of these groups. We also urge the federal government to expand the list of protected groups and subgroups. The revised EEA should account for intersectionality<sup>1</sup> and how individuals with intersecting identities are disadvantaged in the workforce, and should protect them from those disadvantages.

We recommend amending the list of designated groups to account for the following:

- a) The category “women” should be replaced or expanded to include all people who face gender-based marginalization.**

Women are not alone to face gender-based marginalization, and gender is more diverse than a binary of woman and man. Most people who are not cisgender men experience systemic disadvantage. This includes, but is not limited to, cisgender women, transgender women, transgender men, non-binary people, intersex people, some two-spirit people, and people with non-normative gender expression.

- b) The resulting category, which would include gender identity,<sup>2</sup> gender expression,<sup>3</sup> and sex characteristics, should be split into subgroups that encompass every group that is not cis-male such that each subgroup is individually named.**

Each identity group faces differing barriers in the workforce. Aggregating these groups under umbrella acronyms such as LGBTQ2SI+ ignores that discrimination, systemic barriers and solutions differ for each group. Whether the EEA specifically names each gender identity or uses a broader definition that can evolve over time, the following identities should be captured:

- i. All non-binary people (Some non-binary people also identify as trans, while some do not. This category would include people who are agender, genderfluid, genderqueer and demigender, among others)
- ii. All transgender people (be they women, men, or non-binary)
- iii. All women (cisgender and transgender women)
- iv. Intersex people
- v. Two Spirit people.

The list of subgroups and definitions should be developed in collaboration with researchers and stakeholders with knowledge in this area.

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<sup>1</sup> Intersectionality is an analytical framework for understanding how aspects of a person's social and political identities combine to create different modes of discrimination and privilege. Intersectionality identifies multiple factors of advantage and disadvantage based on intersecting impacts of sexual orientation, gender identity and expression, sexual characteristics, race, nationality, immigration status, class, physical ability, mental health etc.

<sup>2</sup> Gender identity is a person's internal and individual experience of gender.

<sup>3</sup> Gender expression is how a person publicly presents gender.

**c) “Sexual orientation” should be added as a new category that is distinct from the gender category.**

The barriers and discrimination based on sexual orientation differ from those related to gender identity and other identity factors. The category “sexual orientation” should account for subgroups that encompass every group that is not heterosexual. Whether the EEA specifically names each sexual orientation group or uses a broader definition that can evolve over time, the following identities should be captured:

- i. Asexual (a sexual orientation generally characterized by not feeling sexual attraction or desire for to be partnered sexually; it is expressed on a spectrum)
- ii. Aromantic (an orientation generally characterized by not feeling romantic attraction or desire for to be partnered romantically; it is expressed on a spectrum)
- iii. Bisexual (an individual who is physically, romantically and/or emotionally attracted to men and women)
- iv. Pansexual (not limited in sexual choice with regard to biological sex, gender, or gender identity)
- v. Polyamorous (persons involved in the practice of engaging in multiple romantic (and typically sexual) relationships, with the consent of all the people involved)
- vi. Queer
- vii. Same-sex orientation (Gay is the adjective used to describe people whose enduring physical, romantic and/or emotional attractions are to people of the same sex (e.g., gay man, gay people). In contemporary contexts, lesbian (n. or adj.) is often a preferred term for women whose enduring physical, romantic and/or emotional attractions are to people of the same sex)
- viii. Two-spirit.

The list of subgroups and definitions should be developed in collaboration with researchers and stakeholders with knowledge in this area.

**d) The category “visible minority” should be replaced with “racialized groups.”**

The terms “visible minority” and “BIPOC” are catchall terms that aggregate all non-white and non-Aboriginal people into categories, ignoring that discrimination, systemic barriers, and solutions differ for each racialized group.<sup>4</sup> Diluting these differences makes it impossible to address the barriers each group face in the workplace.

The term “racialized groups” is preferable as it reminds us that race is a social construct and is created through the process of racialization – not a biological distinction – where groups are categorized as being a particular “race” in a manner that leads to associated disadvantages for racialized groups and privilege for White people. The revised EEA should define “racialized groups” in a way that highlights to those who apply the legislation *why* this term is preferable.

As stated above, the category “racialized groups” should name every racial subgroup. The Census categorizations of “visible minority groups” may be a starting point, but should be expanded and reworded based on consultation with stakeholders and researchers in this area.

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<sup>4</sup> Its-time-to-abolish-the-absurd-and-slightly-racist-concept-of-visible-minorities [Online:](#)

The subgroups could also be expanded to include those with differing immigration status, differing nationality and minority religions.

**e) Indigenous peoples should be consulted on renaming the Aboriginal peoples category and noting subgroups within.**

Using an umbrella term such as “Aboriginal peoples” ignores that discrimination, systemic barriers and solutions differ for each group, including First Nations, Inuit and Métis.

The revised definition of the group should address the confusion about whether someone can be both an Aboriginal person and a member of the currently named ‘visible minority’ group. It should be possible for someone to self-identify as both based on their own personal characteristics.

**f) Persons with disabilities should be consulted on any renaming of that category and noting subgroups (physical ability, mental ability, visible disability, nonvisible disability, etc) in that category so that differing barriers and solutions are not missed for that group.**

**g) “Individuals with intersectional identities” should be added to the protected groups to begin to address and raise awareness on intersectionality and intersectional disadvantages in the workplace.**

We recommend expanding this category into subgroups of intersecting identities, building on consultations with intersectionality researchers.

A person’s experience of discrimination is often linked to the compounding effects of multiple grounds. Based on their unique combination of identities, people may be exposed to particular forms of discrimination and may experience differing barriers in the workforce. Equity won’t be achieved if this is ignored, and we only look at barriers and solutions for singular identity’s impacts. The EEA should extend protection to people actually or perceived as having association with one of the above-mentioned groups or subgroups.

## **Policy brief 2: Better supporting equity groups**

There should be more government-funded research and adoption of existing research on the barriers faced by the above-noted groups and on intersectionality. These findings should be leveraged in a plan to better support these equity groups.

## **Policy brief 3: Accountability, compliance, enforcement and public reporting of employment equity**

The current framework requires that employers:

- analyze the degree of underrepresentation of persons in designated groups in their workforce
- analyze their employment systems, policies and practices to identify all employment barriers against persons in designated groups
- develop and implement a plan to remove these barriers and correct underrepresentation
- improve representation of the 4 designated groups in their workforce, and
- report on efforts made and results achieved.

There needs to be an improved system of data collection and a framework for analysis. The collected data is often unsearchable or unusable, which defeats the purpose of collecting the information.

We recommend the following improvements to data collection:

- a) Research factors underlying under-reporting of self-identification, and implement policies to combat under-reporting.
- b) Census data should cover the above noted equity groups and account for intersectionality, and there needs to be some method of collection between censuses.

Changes to the Workplace Equity Information Management System (WEIMS) could improve public reporting of data already collected that is now inaccessible to businesses and researchers.

We recommend the following changes, none of which necessitate legislative amendments:

- a) **Release of Narrative Reports:** Narrative Reports by employers engaged in the Legislated Employment Equity Program (LEEP) should be released to the public. At present employers are required to create a narrative report (for instance [Individual Employer Data Page](#) that is inaccessible online. Granting access to narrative reports would allow the public to review the subjective actions taken by companies relating to Employment Equity and promote innovative ways to increase employment equity.
- b) **Release of RCI scores or similar scores:** The LEEP ranks employers by a Report Compliance Index (RCI) score, which indicates compliance with the Employment Equity Regulations converted into a five-mark index. For instance, a company may receive a 3/5 score. These scores should be released so compliance of LEEP employers can be viewed publicly.
- c) **Increased Searchability of Data:** The data shared [online](#) should be easily searchable in a dashboard with editable parameters.<sup>5</sup> For instance, the WEIMS system should allow searches to find companies that employ, for instance, zero women or zero visible minorities by searching all companies for these flags. To find this information now one would have to physically view all of the forms for individual employers from the WEIMS link.
- d) **Increased Disclosure Relating to Employment Equity Champion Awards:** There should be more transparency on the criteria used to determine Employment Equity Champion awards, and the process should allow for public feedback prior to awarding these designations. Government of Canada recognitions such as these, are perceived as endorsement of these companies. Independent criteria and an arms' length determination process would ensure the decisions are not politically motivated.
- e) **Access to Full Dataset for Searches:** There should be an easy way to allow requests for, and to give a copy of all data from the annual Employment Equity Report to researchers interested in the information. For instance, this could be provided through a data output of Microsoft Access or using a dashboard with editable parameters.
- f) **Options to search Individual Employer Data by Common Name instead of Legal Name:** Many companies in the individual employer dataset are numbered companies.<sup>6</sup> It is difficult for the public to find commonly used company names. We recommend displaying both.

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<sup>5</sup> Some governmental departments and agencies, such as the Social Sciences and Humanities Research Council, use dashboards to report on Representation data. See [online](#).

<sup>6</sup> For instance, the first company listed is 1329481 Ontario Inc., which is the common name of C & C Transportation.

- g) **Public List of Companies:** The website or dashboard should include a list of companies and access to their employment equity data, making it easy to search and find, rather than listing companies as part of a pull-down menu from WEIMS. Listing all companies in the text of the website will increase accessibility and make reports easier to find because users don't always know about the 'individual reports' section of the ESDC website, where this data is currently available.<sup>7</sup> We recommend posting these on the [List of federally regulated industries and workplaces](#) page.

The CBA Sections appreciate the opportunity to offer feedback on revisions to the EEA. We trust our comments are helpful and would be pleased to offer further clarification.

Sincerely,

*(original letter signed by Véronique Morissette for Jonathan Griffith, Eden F. Alexander, Valerie Dixon and Carly C. Romanow)*

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<sup>7</sup> A similar list using access to information data from the employment [equity database is maintained](#).