

COMPARISONS BETWEEN CANADIAN (FEDERAL) AND SOUTH AFRICAN EMPLOYMENT EQUITY LAWS: POLICIES AND ISSUES

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Introduction

Canada and South Africa are both members of the Commonwealth; have Parliamentary, democratic governments; and have adopted policies that involve government intervention for the prevention and elimination of employment discrimination against racial groups, women and persons with disabilities. Each country has developed a shared approach to employment equity.

Canada has had human rights statutes across all jurisdictions to prevent and eliminate discrimination on numerous prohibited grounds such as race, sex, disability, sexual orientation etc. since, at a minimum, the early 1960s as well provisions (in these statutes) to allow employers to mount voluntary employment equity programs (usually called special programs) for the disadvantaged groups.

At the federal level, the government has had Employment Equity (EE) legislation since 1986. This legislation amended in 1995 and extended to almost all federal government departments and agencies; the latter were excluded from this legislation in 1986. In addition, the federal government has had the Federal Contractors Program since 1986 which applies to large provincially regulated employers who supply good and services to the federal government departments and agencies.

In the 1990s, South Africa enacted some of the most progressive legislative measures including Labour Relations Act, Employment Equity Act, Skills Development Act and Promotion of Equality Act. South Africa has patterned its Employment Equity Act and a part of the Constitution Act, such as section 9(2) of the Bill of Rights in its Constitution of 1996 after Canada.

This paper provides the demographics of the labour market in the two countries, a comparison of the main features of the legislative framework for EE in Canada and South Africa, the effectiveness of the legislation, including some of the pros and cons and an evaluation.

Demographic Information

In Canada, according to the latest Census information in 1996 racial minorities (visible minorities (VMs as they are called in the EEA and official statistics), made up 11.2 % of the Canadian population. They are a growing proportion of the population in Canada's principal cities. For instance, they made up 32% of the population of Toronto, 31% in Vancouver, as well as 16 % in Calgary, 14% in Edmonton, 12 % in Ottawa/Hull, and 11 % in Winnipeg. Women made up a majority of the Canadian population and 46.4 percent of the workforce. Unemployment rates for both the designated groups (DGs) are higher than the average unemployment rate and as the distribution of VMs above indicates, they are concentrated primarily in major metropolitan areas across Canada (Jain et al. 2000).

In addition, Canada's population and workforce is becoming increasingly pluralistic. Forty-two per cent of Canadians report origins other than French or British, while 16 per cent of Canadians are foreign born (Heritage Canada, 1996: 2). Women are projected to be one-half of the workforce soon.

Table 1 shows the representation of women and racial minorities in the Canadian workforce from 1981 to 1996. Their proportion of VMs has more than doubled from 4.9 percent to 10.3 percent.

Table 1
Percentage of Workforce Representation of Women and Visible Minorities
in Canada (1981, 1986, 1991 and 1996)

	1981	1986	1991	1996
Females	42.1	44.0	45.9	46.4
Visible minorities	4.9	6.3	9.1	10.3

Source: 1981, 1986, 1991, 1996 census data of Canada, Statistics Guide

South Africa

According to the 1996 Census, South African population is approximately 40.5 million, with 77% Africans, 11 percent White, 9 percent Coloured and 3 percent Indians (Statistics South Africa, 2001). It was estimated that 52 percent of the total population was female. In 1999, 17 million people were in the labour force (World Bank, April 2001, p. 50) while 34% of the economically active population (in 1996) were found to be unemployed.

Historically, apartheid created inequality in access to education, skills, professional and managerial work for blacks (including for coloureds and Indians). Job discrimination in South Africa was institutionalized by laws including job reservation clauses and restricted access to skilled jobs, preserving them for white employees under the Mines and Works Act and the Industrial Conciliation Act of 1904 and 1952 respectively. All such legislation was abolished following recommendations by the Wiehahn Commission of Inquiry in 1979. The Labour Relations Act (1988) made discrimination on the grounds of race or gender an unfair labour practice.

Common features of the Canadian and South African Employment Equity Statutes

Some of the common employer obligations under the two statutes are to:

1. A.. Identify and eliminate job barriers by undertaking a thorough review of its staffing policies. These practices might include word of mouth recruitment, credentialism, height and weight restrictions unrelated to job performance, inflated job experience, possible bias in psychological tests, job interviews, glass ceilings in promotion etc.

B. Develop EE plans which include:

a) Positive measures. These involve remedying the effects of past discrimination through proactive recruitment selection, training and promotion of the DGs;

b) Reasonable accommodation measures such as accommodation of religious observances, offering flexible working hours, maternity leave and washroom facilities for women, developing and enforcing racial and sexual harassment policies and the like.

c) Internal and external workforce analysis such as stock and flow analysis of its workforce and qualified “economically active population” in all occupational categories and levels in the context of South Africa and Census labour force figures in the Canadian context by industrial and occupational level.

d and e) Measures to recruit, retain, train, develop and promote qualified designated groups throughout the organization.

2. Set numerical goals and timetables according to external availability figures and devise strategies to address under-representation of DGs in all occupations.

3. Devise EE plans for the short and the long term. In Canada, the EE Act requires that employers have short (1 to 3 years) and long term (3 to 5 years) EE plans while in S.A. the requirement is 1 to 5 years.

4. Employers in both countries are required to consult with employee representative or bargaining agents in case of unionized employees.

Employers are also required to provide information re. their EE plan to all employees.

5. In Canada, EE does not require an employer to take a measure that might cause undue hardship; neither to hire and promote an unqualified DGs nor create new positions in its workforce.

In South Africa an employer is prohibited to make any decision that will establish an absolute barrier to the prospective or continued employment of non-DGs.

6. Both statutes require employers to keep records.

7. In both countries, compliance and monitoring is mandated in the respective statutes. In Canada, it is the Canadian Human Rights Commission that conducts employer audits while in South Africa, it is the labour inspectors of the Department of Labour that do employer audits.

In addition, both the laws apply to government agencies and private sector employers. In Canada the coverage is restricted to employers with 100 or more employees in the private sector, federal Crown Corporations and federal government departments and agencies while in South Africa the EE Act applies to companies employing 50 or more employees or those with a specified financial turnover as well the government departments and agencies throughout the country.

Both countries also have contract compliance provisions; in Canada they reside within the Human resource Development Canada and are by executive policy, applying to mostly large provincially regulated employers with 100 or more employees and with \$250,000 plus contract of supplying goods and services to the federal government while in south Africa contract compliance is required by the EEA.

Evaluation of Progress

The Commission for Employment Equity (CEE) recently released its first annual report covering the period 1999-2001 (CEE Report, 2001). The Commission's report for 2001 is based on 8250 employers with 3,336,784 employees and shows mixed results.

On the plus side, it indicates that employers, in general, are taking their responsibility seriously for eroding the effects of apartheid labour market which had left most black workers inadequately trained and dis-empowered. For instance, the CEE report indicates that Black (African, Coloureds, and Indians) workers improved their labour market position from 1998 baseline survey (conducted by Jain and Bowmaker-Falconer in 1998 for the SA Department of Labour) to 2001 as Professionals, Technicians and Associate Professionals from 25 to 38 percent respectively in 1998 to 55 and 48 percent in 2001 respectively, (see table 3). The Professionals' position also compares favourably to Statistics South Africa's Household Survey data for 1999. Blacks lost ground from 1998 as legislators, senior officials and managers when their representation in these occupational categories was 28 percent to 26 percent in 2001; this is even more pronounced compared to their representation of 45 percent in the Household survey of 1999. They are primarily concentrated in elementary occupations (98% in 2001), plant and machine operators (94% in 2001), skilled agricultural and fishery workers (86% in 2001) and service and sales workers (72% in 2001), as shown in table 3 (Commission for EE Report, 2001 page 30).

Women (Black and White) hold a minority of positions, that is 22 percent, as legislators, senior officials and managers; of the 22 percent, White women hold 15 percent, Indian females 1 percent, African females 3 percent, and Coloured females 2 percent in this category (CEC Report, 2001, Page 30).

Table 2 indicates that women (both White and Black) currently hold only 13% of all top management and 21% of all senior management positions in SA. However, (not shown in the table) African women hold only 1.2% of all top management positions, (CEC 2001 page 19). Women represent 38 % of total employment, and are clearly under-represented in all management occupational levels (Commission for EE Report, 2001, pages 19 and 24).

Black employees consisted of 31% of all levels of management (see table 2). Therefore, an overwhelming majority of managers across all levels of management were white. Employees with disabilities represented only 1% of all management levels.

In Canada, data on the representation of the DGs is available from 1987 to 1999, as shown in table 4. The table provides representation rates of each of the DG by each of the three industrial sectors for selected years: 1987, 1994, 1996 and 1999 and prominent, large (number of employees) employers in each sector. In the last thirteen years for which data are available, women and visible minorities have done very well and are ahead of Census availability figures for the banking sector on an overall basis. However, in transportation and communications sector, they lag behind the external availability data of 10.3 % for VMs and 46.4 percent for women.

If anything, all six chartered banks still have a concentration of women way above the availability figures of 46.4% in the 1996 Census. Except for the National Bank of Canada, all the other 5 Chartered banks also have a higher percentage of VMs than the Census availability data.

In the transportation sector, except for Canadian Airlines International, which has gone bankrupt and has been absorbed by Air Canada, all the other prominent transportation companies are way behind the Census availability for women. In the same sector, only Greyhound even comes close to the external availability of women. In the Communications sector, only Purolator and CTV are above the availability data while Bell Canada, CTV and CHUM Ltd. are either above or close to external availability of women.

In all the three sectors, however, there is still a glass ceiling for both women and VMs for when it comes to senior level managers; they seem to be doing well in the professional and middle management categories, but not as senior level managers, as noted above.

For instance, a study of 116 companies from 1987 to 1999, covered by the EEA (Jain & Lawler, Dec. 2001) found that VM staffing levels as a percentage of total employment were only about three-quarters of what would be needed to achieve equity based on the Census (1996) data. This is because the distribution of VMs are skewed in that there are a few situations where very high VM employee representation tends to pull up average VM employment, while there are a relatively large number of cases in the lower end of the distribution. We found that VMs seem to be most disadvantaged in management, sales and service occupations. In addition, we found that employment opportunities for VM workers are relatively high in the finance sector, while quite low in the Communications and Transportation sectors.

Pros of Employers Equity:

Employers Equity is helping employers to focus not only on African blacks but also on coloureds, Indians and other designated groups such as women and persons with disabilities (Jain, 1993).

It is encouraging more and more employers to devise new and innovative measures to pro-actively recruit, promote and train the designated groups. It goes beyond poaching of African blacks by one employer from another to plan staffing in a systematic and planned manner.

It is motivating employers to develop human resources information systems (Jain, 1993).

It is sensitizing employers to labour market demographics of the designated groups while developing their EE plan (Jain, 1993).

Cons of the EEA

The employment equity legislation in South Africa has been criticized, especially by business groups. They are concerned about over-regulation of the labour market, coupled with its role as a 'watchdog'; the costs to government and hence the taxpayer; heavy administrative costs in the private sector relating to compliance with the legislation; shortage of skills in some sectors making black skills more expensive and unaffordable to smaller companies, thereby providing disincentives for investment and expansion (Thomas, in press).

These arguments are by no means novel to South Africa. They have also been noted in other countries where employment equity initiatives have been adopted for many years (Béteille, 1993; Fernandez, 1993; Puthuchery, 1993; Samarasinghe, 1993)

According to the latest evaluation of the state of EE in SA by the Commission of Gender Equality (CGE) there is mixed progress. The CGE survey of employers (1999) found that there were significant job barriers in the recruitment and promotion of women. It seems employers in SA have a long way to go.

Other criticisms of the EEA indicate that the legislation treats women as a homogeneous category. White and black women currently have extremely different levels of education and training, job opportunities and wages. Even among black women, there are significant differences. This presents the possibility that targets for women may be met by advancing the already privileged thereby denying black women access to training and traditionally male jobs (Samson, 1999).

Companies below the threshold limit of 50 employees are not covered by the EEA. Since the vast majority of African women work in the informal sector or as domestic workers, most of them will remain uncovered by EEA in their workplaces (Samson, 1999).

The fines for non-compliance may not be a sufficient deterrent. The first time offenders could be fined up to R500, 000 but they could also be charged anything much less as well.

An evaluation of the compliance with the EEA must take into consideration: a) the economic and financial factors relevant to the sector in which the employer operates; b) present and anticipated economic and financial circumstances of the employer; (c) progress in implementing EE by other employers; d) reasonable efforts made by the employer to implement EE (Samson, 1999). This will make EE planning flexible according to the needs of an employer rather than a fixed target in terms of numerical goals.

Conclusion : It must be kept in mind that the EEA in SA has been in effect only two years and the legacy of apartheid will take some time to overcome. In Canada even after 13 years, as indicated by the data, VMs and women still face glass ceiling in higher level occupations.

Although progress has been made in enhancing racial and gender representation in the workplace in SA, this is an incremental process which has to be supported by coherent human resource development priorities through the implementation of the Skills Development legislation and changes in the organizational culture. This is vital at both public policy and organizational levels. An increasing earnings gap has an adverse impact on mainly Black people. This, in spite of the increasing diversity and multi-racial character of a growing middle class. The biggest priority must be human resource development and education in skills and competencies needed in a society in transition.

This reality has been recognized by the government and the Black Economic Empowerment Commission. The Commission has made important recommendations to the government to 'kick-start' the economy and enhance economic growth through state-driven measures to ensure Black participation in the mainstream economy. Proposed measures include a national integrated human resource development strategy, legislated deracialisation of business ownership in the private sector, national targets-which include land distribution and ownership, equity participation in economic sectors. The Commission further recommends targets for senior and executive management in private sector firms of more than 50 employees to be Black. The commission's proposals, which have been accepted by the government in principle, are a significant policy basis for improving access to capital and skills and economic empowerment for the majority of South Africans. These overall measures, along with the progress in implementing employment equity, will greatly improve the chances of majority Blacks to have their just share in the South African economy.

In Canada, the following need serious attention: 1) increased and vigorous enforcement by the Canadian Human Rights Commission (CHRC); 2) more focus on occupational inequities. Organizations must create a climate of acceptance and tolerance by sensitizing top management to the need to eliminate glass ceiling for both women and VMs; 3) more focus on sectoral differences as in the communications and transportation sectors where women and VMs are under-represented; more and vigorous monitoring of under-representation of the two DGs in smaller companies by the CHRC (Jain and Lawler, December 2001).

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Table 2**Summary of occupational level representation by designated groups in South Africa, 2001**

Occupational level	Black %	Female %	Disability %
Top management	12.6	12.5	1.2
Senior management	18.4	21	1.1
Professionally qualified, experienced specialists and middle-management	44	43.1	0.9
Skilled technical, academically qualified and junior management	56.4	40	0.8
Semi-skilled and discretionary decision making	82.2	38.6	1
Unskilled and defined decision making	98	28.6	1

Source: *Commission for Employment Equity Report, 1999-2001. South Africa, Department of Labour.*

Table 3**Black representation per occupational category**

Occupational category by percent	EE report 2001 Black	OHS '99 Black	Baseline '98 Black
Legislator, senior officials and managers	26.1	45.07	27.88
Professionals	55.1	48.64	24.7
Technicians and associate professionals	47.5	66.89	37.84
Clerks	59.4	64.2	57.71
Service and sales workers	72	83.31	62.07
Skilled agricultural and fishery workers	85.6	90.64	90.79
Craft and related trades workers	61.7	84.94	65.88
Plant and machine operators and assemblers	93.7	94.59	92.22
Elementary occupations	97.5	97.67	98.3
Non-permanent works	84.1	N/A	N/A
Total	75.2	80.77	66.11

Source: *Employment Equity 2001: Executive Summary of the first Annual Report of the Commission for Employment Equity, South Africa, Department of Labour, Page 10.*

Table 4**Representation of Designated Groups in Major Companies in Canada - 1987, 1994, 1996, 1999 and by Census Labour Force, 1996**

Designated Groups Sector and Company	Women				Members of Visible Minorities			
	1987 (%)	1994 (%)	1996 (%)	1999 (%)	1987 (%)	1994 (%)	1996 (%)	1999 (%)
Sector: Banking	76	76	75	73	9.5	14	14	14.9
Royal Bank of Canada	77.2	77.2	76.3	74.5	7.5	10.8	10.5	13.7
Canadian Imperial Bank of Commerce	78.2	76.5	75.0	72.8	12.2	14.3	13.9	14.6
Bank of Montreal	74.6	75.1	73.2	70.6	9.6	14.1	15.8	17.7
Bank of Nova Scotia	76.9	77.3	76.1	73.0	10.6	16.6	17.0	16.2
Toronto-Dominion Bank	77.4	74.3	72.6	69.1	10.9	17.6	18.4	18.8
National Bank of Canada	77.2	81.5	44.8	77.4	1.3	3.1	9.2	4.5
Sector: Transportation	17	21	22	25	2.6	4.2	4.8	8.6
Canadian National Railway Company	7.7	7.2	8.4	8.6	2.8	7.0	4.7	4.7
Air Canada	33.5	34.8	36.5	37.1	2.9	4.1	5.8	7.6
CP Rail, Division of Canadian Pacific Ltd.	6.43	7.64	6.9	8.4	1.8	2.5	2.5	7.6
Canadian Airlines International Ltd.	7.11	0.02	40.9	42.9	2.9	6.0	6.6	15.9
Greyhound	6.71	0.91	24.2	22.5	1.6	2.1	1.6	9.1
Via Voyageur	9.01	9.02	20.6	24.3	4.8	8.0	8.5	7.4
	3.2	1.2	26.6	-	1.5	3.1	4.7	-
Sector: Communications	40	42	42	42	4.1	7.2	8.8	9
Canada Post Corporation	36.2	37.5	38.1	39.5	4.0	6.3	8.6	9.2
Bell Canada	50.4	47.2	57.3	54.7	4.1	5.5	8.4	8.0
Canadian Broadcasting Corporation	35.2	40.3	41.3	39.4	2.1	5.1	5.0	4.8
Purolator Courier Ltd.	22.6	24.5	23.1	24.4	1.2	4.6	12.6	13.0
CTV	46.2	59.6	45.6	43.7	5.7	14.0	8.3	12.1
CHUM Limited	32.6	33.8	35.9	40.7	1.3	3.8	4.7	5.6

Note 1: Representation of the designated groups in labour force 1996 (%): women = 46.4; aboriginal peoples = 2.1; persons with disabilities = 6.5; members of visible minorities = 10.3

Note 2: 1999 company representation percentages for permanent full-time and part-time employees combined

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He has also been a policy advisor to the Organization for Economic Cooperation and Development (OECD) in Paris, France and to the Federal and Provincial government agencies and human rights commissions in Canada.

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