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A submission to Employment and Social Development Canada on the Modernization of the Federal *Employment Equity Act* targeted consultations following the release of the EEA Review Task Force's Report

Submitted by Egale Canada

July 31, 2024

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Introduction

Egale is Canada's leading organization for 2SLGBTQI people and issues. We improve and save lives through research, education, awareness, and by advocating for human rights and equality in Canada and around the world. Our work helps create societies and systems that reflect the universal truth that all persons are equal and none is other.

In April 2024, Employment and Social Development Canada invited Egale Canada to participate in a consultation regarding the release of the *Employment Equity Act* Review Task Force's Report. The goal of this consultation is to understand from community organizations, among others, how best to effectively implement possible changes to the *Act*. The consultation paper seeks input in four areas. Egale Canada's responses to select questions are below.

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Responses

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

Question 8: Would you have concerns with adding a new designated group for "2SLGBTQI+ people"? If so, how could we address them? How would you define this designated group?

As 2SLGBTQI+ people in Canada continue to face employment disparities[1], we fully support the addition of "2SLGBTQI+ people" as a new designated group within the *Employment Equity Act*. This addition recognizes the systemic and structural barriers that 2SLGBTQI+ face when seeking and retaining employment, such as bias, stigma, and prejudice; unsafe and identity-invalidating work environments; and difficulty obtaining full-time employment as temporary (precarious, gig) work rises in Canada[2].

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

We know that terminology changes over time. It is important that the Government of Canada, and its *Acts*, remain responsive to changing language. However, we recommend that these changes are always made in consultation with Two Spirit, queer, and trans communities, organizations, and individuals.

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[1] Kinitz, D. J., Shahidi, F. V., Kia, H., MacKinnon, K., MacEachen, E., Gesink, D., & Ross, L. E. (2024). Precarious employment: A neglected issue among lesbian, gay, bisexual, and transgender workers. *Sexuality Research and Social Policy*. https://doi.org/10.1007/s13178-024-00950-3
Kinitz, D. J., Shahidi, F. V., & Ross, L. E. (2023). Job quality and precarious employment among lesbian, gay, and bisexual workers: A national study. *SSM – Population Health, 24,* 101535. https://doi.org/10.1016/j.ssmph.2023.101535
Rodomar, N., Irving, D., Jakubiec, B., Desmeules-Trudel, F., & Maclennan, E. (2024). *Working for change: Understanding the employment experiences of Two Spirit, trans, and nonbinary people in Canada: A reserach report.* Egale Canada. https://egale.ca/awareness/wfc/
[2] Kinitz, D. J., MacKinnon, K. R., Kia, H., MacEachen, E., Gesink, D., & Ross, L. R. (2022). Mapping low-wage and precarious employment among lesbian, gay, bisexual, and transgender people in Organization for Economic Co-operation and Development countries: A scoping review protocol. *Journal of Public Health, 3*(2). https://doi.org/10.33137/utjph.v3i2.37455

Question 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?

As self-identification practices are voluntary, we have no concern with including women, Black people, and 2SLGBTQI+ people in this practice. However, there are two points worth considering. First is data security and storage. Any workplace collecting private information—including employee gender identities and sexual orientations—must protect and store this data carefully. This information should not be shared broadly, unless anonymized for the purpose of submitting an *Annual Report*[3]. Second, it is worth noting that 2SLGBTQI+ people may choose not to self-identify their gender identity or sexual orientation to their employer for various reasons such as perceived or experienced lack of safety; privacy concerns around data; or perhaps they are still questioning. It is important for a workplace to strive for 2SLGBTQI+ inclusion and safety regardless of proportions of openly self-identifying 2SLGBTQI+ workers.

Question 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?

It is imperative that the self-identification questions about gender identity and sexual orientation are voluntary.

Question 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?

As noted, 2SLGBTQI+ people may choose not to self-identify their gender identity or sexual orientation to their employer for various reasons such as perceived or experienced lack of safety; privacy concerns around data; or perhaps they are still

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[3] [3] This Annual Report refers to the reports completed by federally regulated sectors (for example, see https://www.canada.ca/en/employment-social-development/corporate/portfolio/labour/programs/employment-equity/reports/2022-annual.html).

questioning. To improve responses and trust, workplaces must strive towards 2SLGBTQI+ inclusion and foster a safe and affirming workplace culture. This requires (a) updating policies and procedures with an equity, diversity, and inclusion (EDI) lens and there are clear pathways for timely complaint resolution, (b) investing in benefits plans that support trans and nonbinary employees seeking to transition or access gender-affirming care, (c) ensuring safe, accessible, and gender neutral washrooms are on site and operational, (d) managers, supervisors, and all staff receiving regular, in-depth training on 2SLGBTQI inclusion and safety, and (e) employers fostering inclusive environments where all people are respected and there is zero tolerance for ableism, racism, homophobia, transphobia, and hate.

Section 2: Supporting employees and employers

Question 1g: Would you require mandatory training for Joint Employment Equity Committee members?

Yes, mandatory training for the Joint Employment Equity Committee would be beneficial. We recommend the following training areas for consideration: anti-oppression training, anti-racism training, and 2SLGTBQI inclusion and safety.

Question 7: Would you implement employment equity training for the following groups: managers and individuals with supervisory responsibilities; senior managers or executives; members of Joint Employment Equity Committees or other forms of consultation bodies; all employees; other groups not included in the list.

We recommend that all groups listed receive employment equity training during onboarding and at regular intervals during their employment term. All individuals and groups listed play a role in reducing barriers to employment and improving recruitment and retention of equity-deserving groups. We recommend that (a) managers and individuals with supervisory responsibilities and (b) senior managers or executives receive training first, followed by the other groups listed. We also recommend that employment equity training be included in the onboarding process for all new employees.

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Section 3: Strengthening accountability, compliance and enforcement

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

The *Act* recognizes that employment barriers can exist in employer systems, policies, and practices and suggests that employers institute positive policies and practices. With the recommendation that "2SLGBTQI+ people" is added as a designated group recognized under the *Act*, employers must ensure changes and improvements to policies and practices to reduce barriers to employment for 2SLGBTQI+ job seekers and improve workplace conditions and culture for 2SLGBTQI+ employees. See the answer to section 1 question 20 for concrete examples of positive changes employers can implement.

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

We support the recommendation that the government establish an independent employment equity commissioner that reports directly to parliament. However, we have a few concerns about the CHRC's expanded role. First, as noted in a consultation call, the Senate Committee on Human Rights undertook a study on anti-Black racism, sexism, and systemic discrimination in the CHRC. The final report notes that "the CHRC must do more than change its workplace culture and practices to regain the trust of its own Black and racialized employees, as well as the trust of communities that rely upon it for justice."[4] If the CHRC is to play an expanded role in administering and enforcing the *Act*, we must be confident that the CHRC has taken meaningful actions based on the report results and recommendations. Second, the CHRC is overburdened, and the process is too long as it stands. If the CHRC's role is expanded, it will require additional financial support.

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[4] The Standing Senate Committee on Human Rights Committee. (2023). *Anti-Black racism, sexism & systemic discrimination in the Canadian Human Rights Commission.* https://sencanada.ca/en/info-page/parl-44-1/ridr-anti-black-racism/

Section 4: Improving public reporting

Question 2: What elements or sections of the annual report do you find especially valuable?

The *Annual Report* has two sections: (a) a quantitative section outlining the sector, location, number of employees, wage gaps, and representation of members of designated groups, and (b) a narrative section outlining measures taken to implement employment equity and results achieved, as well as employer-employee consultations on employment equity. Some of this data is now accessible on the Government of Canada's *Equi'Vision* data visualization dashboard. As both sections of the *Annual Reports* include incredibly valuable data and information, they should both be retained.

Question 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?

We recommend continuing with yearly reporting. If the frequency of reporting changed from yearly to every three years, it would be more difficult to hold employers accountable for a lack of progress in employment equity efforts.

Question 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?

We support an intersectional analysis and presentation of data pertaining to members of more than one designated group and sub-groups, while ensuring that data is non-identifiable (i.e., anonymized, aggregated).