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CURRENTS

READINGS IN RACE RELATIONS

VOLUME 2, NO. 4 WINTER 1984/85

DISCRIMINATION IN EMPLOYMENT

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VOLUME 2, NO. 4 WINTER 1984/85

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The Urban Alliance on Race Relations is an educational agency and an advocate and intermediary for the visible minorities. It works toward encouraging better race relations, increased understanding and awareness among our multicultural, multiracial population through programmes of education directed at both the private and public sectors of the community. It is also focusing its efforts on the institutions of our society including educational systems, employment, government, media, legislation, police, social service agencies and human services, in order to reduce patterns of discrimination and inequality of opportunity which may exist within these institutions.

The work of the organization is carried out through working committees such as: Education Institutions; Legislation; Media; Law Enforcement.

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In Pursuit of Equality

THE EVIDENCE OF RACIAL DISCRIMINATION in Canada has once again been assessed and, in a benchmark study, directly tested: the results of the Henry and Ginzberg study, "Who Gets The Work?" are sadly appalling. Withut wanting to be too shrill in our moral indignation, in our demands for equality and the elimination of discrimination, it is of some comfort that the initial political and media response to the findings was generally an acceptance and obligation that remedies are required.

However, the pursuit of equality has suffered under the weight of too much seductive rhetoric. Although the issue of racial discrimination in employment appears to be, at least temporarily, widely recognized, the implications and appropriate remedies still appear to be shrouded in platitudes.

We are now being asked to respond to the Governments' initial response to the recommendations of "Equality Now", the report of the Special Parliamentary Committee on the Participation of Visible Minorities in Canadian Society, and the recommendations of the Abella Royal Commission on Equality in Employment.

The tasks facing "equality-seekers" appear at times overwhelming. Not only must they achieve a wide public recognition of the issue and ensure that it is part of the political agenda, but secondly, they must ensure that decisions are made, and then thirdly, that the policies are implemented. Defenders of the status quo of course need only achieve, or rather prevent the first stage in this political process from occurring.

It is naive to assume of course that if the problem is clearly identified and accepted that the solution will automatically present itself and in turn will automatically be implemented. And one-liner recommendations that the government "should" do this or "should" do that, are worse than useless. Equality, as a central pillar of our democratic principles, is not so simple a concept in practice. Our goals are still far too general and abstract to expect government or any other institution to interpret and be capable of implementing programmes that will ensure racial equality.

Racism does not stay still: it changes shape, size, contours, purpose, function — with changes in the economy, the social structure, the system and the challenges to that system. In the pursuit of racial equality we still need to work out in a systematic manner, in concrete programme terms, what it should consist of. We must first fully understand the context of racism in Canada, and we must know exactly how and when we want to take race into account. Because the onus in the end is always on those who want to change things to "make the case".

If we expect society to move to positive action it is absolutely essential that it be equipped with a solid foundation of facts — unequivocal data and statistics, clear theories and arguments. The purpose of this issue of Currents is to begin to identify what that information base should consist of. To achieve this requires new coalitions, new alliances with various sectors and disciplines including economists, lawyers, and academics. Without this information base and without these alliances minorities will continue to be left to flounder in ineffectual negative protest.

TIM REES

Equality in Employment A Royal Commission Report

Paul Scott

In November of last year Employment and Immigration Minister Flora MacDonald tabled the Royal Commission Report on Equality in Employment in the House of Commons. Business and labour leaders, as well as the women's, disabled and visible minority communities across the country had been eagerly awaiting the report's release for months and those among them who expected something dramatic were not disappointed. Royal Commissioner Rosalie Abella had made a set of recommendations which, if accepted, would alter personnel and business practices across Canada and would improve the social and economic situation of women, the disabled, Natives and visible minorities for generations to come.

Briefly the Report recommends that the Government of Canada adopt a comprehensive strategy for obliging Canadian employers to undertake a programme of "employment equity." The first step in this process would be a legislated requirement that all federally regulated employers implement employment equity programmes for women, the physically disabled, Native Indians and visible minority workers. Under this statutory requirement employers would be obliged to eliminate discriminatory barriers in the workplace and file workforce data annually; an enforcement agency would be established to receive data and enforce equity programmes. The Commission also urged that the Federal Government encourage provincial and territorial governments to implement equity legislation consistent with the new federal legislation. In the absence of such provincial and territorial legislation the Commission recommended that the Federal Government encourage employment equity in the private sector through the use of contract compliance.

The Abella Commission also recommended the implementation of a wide range of further measures which would improve the employment opportunities of the four designated groups. Fifty-three of the Report's 117 recommendations address the need to develop appropriate training and educational programmes for the designated groups and to ensure that qualified members of these groups receive a fair proportion of opportunities to take the training and education. In acknowledgment of the finding that a major barrier to equality in the workplace for women who are mothers is the absence of affordable childcare of adequate quality, the Commission recommended the passing of a National Childcare Act.

While some reacted in horror to the Report's recommendations — particularly those which called for a bureaucracy to enforce equity in the workplace, calling it more intrusion by government into private business — many lamented that Abella was telling "the same old story, a tale of well-known problems"[1] or that we have already been "waiting too long for equality".[2] Certainly Judge Abella did not exactly sneak up on the Canadian public with her revelations about inequality in the workforce and her recommendations that statutory measures be adopted to remedy the inequality. For over twenty years now we have been hearing about U.S. efforts to combat employment discrimination against Blacks, Hispanics and women through Affirmative Action programmes, and for nearly as long the debate has raged about whether Canada has a similar problem and whether Affirmative Action

measures should be taken to address it. A short review of the American experience and Canadian developments will help us to establish a context for the Abella Commission recommendations.

The American Experience

The United States government has developed over the years two distinct bases for implementing programmes of equality in employment: contract compliance and Affirmative Action based on a finding of discrimination. The contract compliance programme dates back to 1941 when President Roosevelt issued an Executive Order applying to all defense contracts which imposed upon both employers and labour organizations a mandatory non-discrimination requirement applying to blacks. In its first twenty years this programme remained essentially a voluntary, anti-discrimination programme; the government exhorted, encouraged and threatened but did not enforce. In 1961 as a result of increasing concern expressed that there had been inadequate use of sanctions to deal with non-compliance in the programme, President Kennedy issued an Executive Order which established an enforcement agency with responsibility for receiving complaints, conducting compliance reviews and imposing sanctions. Another signficant development at the time was the addition to the non-discrimination requirement of a commitment by contractors to take Affirmative Action to ensure that applicants were employed, and that employees were treated during employment, without regard to their race, creed, colour and national origin.

In the years that followed controversy and criticism surrounded the Office of Federal Contract Compliance as it attempted to define and then enforce Affirmative Action. In its early years it established guidelines which initially prescribed anti-discrimination measures which employers must take but later focussed on the procedures which the employers must follow for establishing and achieving numerical goals.[3] It was, however, the complex reporting requirements and the enforcement and investigative hierarchy which the OFCCP established, not the Affirmative Action measures themselves, which generated the greatest public outcry and certainly influenced the opinion of Canadian employers on contract compliance and Affirmative Action.[4]

The legislative basis for mandatory Affirmative Action outside compliance is Title VII of the Civil Rights Act of 1964 which applies to all employers. The Federal Equal Employment Opportunity Commission (EEOC) is empowered by Title VII to investigate complaints of employment discrimination, redress grievances and prescribe a conciliatory remedy where discrimination is found to have occurred. Affirmative Action is usually the prescribed remedy. Despite the difference in jurisdiction the intent of the Executive Order and Title VII is the same: to ensure that employers' practices neither intentionally discriminate against, nor have an adverse impact on minorities and women. The goal of programmes under both jurisdictions continues to this day to be the elimination of all discriminatory conditions, whether purposeful or inadvertent and to bring the numbers of minorities and women in the employer's workforce more or less up to their percentage representation in the local community.[5] Although both of these programmes are perceived to have been under attack since the election of the Reagan administration in 1980 they remain intact.

The Canadian Experience

Some observers claim that Canada had its first experience with Affirmative Action long before the public debate about its merits began or before any formal apparatus justifying such policies was in place.[6] In 1962 the Royal Commission on Government Organization expressed grave concerns about French Canadians who did not hold jobs in proportion to their numbers and who, when they did hold government jobs, were clustered in lower paying positions.[7] In its report, and later in the *Report of the Royal Commission on Bilingualism and Biculturalism (1969)* it was concluded that French Canadian citizens were probably not receiving adequate service from government officials and that, therefore, steps should probably be taken to increase their representation at all levels of government. In arguing the need to recruit and promote more Francophones the authors of both reports used comparisons of civil service representation to population proportions as a rough guideline. In response to the recommendations the Public Service Commission modified the principle of merit so that it took into account the differing linguistic and cultural attributes of Francophone and Anglophone applicants and also embraced the concept of representativeness: to be effective,

a civil service must be representative. The initiatives which grew from these recommendations were extremely effective in increasing the participation of Francophones throughout the civil service.

In 1970 the Royal Commission on the Status of Women tabled its history making report outlining the seriously disadvantaged position of women in the Canadian workforce. Discrimination, exclusion, job segregation and wage disparity were all said to characterize women's place in the work world. Included in the Report were recommendations calling for equal pay for equal value, the development of equal opportunity programmes for women within the Public service and the establishment of equal opportunities in the Banks and Crown Corporations. As a result of the report the government enacted equal pay for equal value legislation in the 1978 Canadian Human Rights Act. In 1972 the Equal Opportunity for Women (EOW) Office was established in the Public Service Commission. It was responsible for stimulating career opportunities for women as well as maintaining a watching brief of Public Service employment policies, practices and procedures as they relate to women. The value of this and similar equal opportunity programmes for the disabled and Native employees was seriously doubted by the members of the designated groups and in 1983 on the same day as the announcement of the establishment of the Abella Commission the Government announced that an Affirmative Action Programme, under the direction of Treasury Board would be implemented across the public service. The program would be superimposed on existing equal opportunity programmes and would include the establishment of goals and timetables as appropriate for women, the disabled and natives.

In further response to the Royal Commission Report on the Status of Women an Affirmative Action Consulting Service was established to assist organizations such as Crown Corporations and Banks in the establishment of Affirmative Action Programmes. Success with these voluntary programmes as well as those established by other levels of government has been limited.[8]

One of the most important developments in the evolution of equal opportunity and Affirmative Action in Canada was the proclamation of the Canadian Human Rights Act in 1978. Besides prohibiting intentional discrimination on a wide variety of grounds including sex, physical handicap and race the Act explicitly accepts the systemic definition of discrimination which formed the basis of American Affirmative Action and anti-discrimination programmes. Under this definition the Human Rights Commission examines the impact of an employment decision or transaction to determine whether it is discriminatory rather than the employer's intent.

The Canadian Human Rights Act also explicitly permits the implementation of special programmes which will prevent disadvantages to certain designated groups, reduce disadvantage to those groups or remedy the effects of past discrimination against those groups. The Act also gave the Commission the ability to order the implementation of Affirmative Action programmes where discrimination had been found. Canada further confirmed its commitment to the principle of Affirmative Action in the passing of the Constitution Act of 1982. After April 17, 1985 under Section 15(2) of the Charter of Rights and Freedoms the legality of special programmes or Affirmative Action will be unquestioned. In addition the courts will be entitled, pursuant to Section 24 to order ameliorative measures for disadvantaged groups.

The effect of legitimizing Affirmative Action in human rights law has been to accelerate the rate at which remedies for employment discrimination were being demanded by designated groups and advocates. *Obstacles,* the Report of the Special Committee on the Disabled and the Handicapped outlined the severely disadvantaged position of the disabled in the workforce and recommended, among other things the enhancement of the government's internal Affirmative Action Programme, mandatory Affirmative Action for federally regulated employers and contract compliance and the establishment of an enforcement agency. In 1984 the *Equality Now* Report of the Special Committee on Visible Minorities made identical recommendations. Members of these designated groups continue to wait for the implementation of the Affirmative Action/Contract Compliance recommendations of these two Reports.

In 1981 Affirmative Action proponents received a boost when the authors of the Report of the Task Force on Labour Market Development, *Labour Market Development in the 1980's* encouraged Affirmative Action as a good human resource planning tool. Its argument is that

inequities in employment, income and status in Canadian society for women the disabled and minorities will inhibit economic growth by restricting labour force growth. These inequities grow out of the use of various employment systems which disadvantage the designated groups. To eliminate the disadvantages facing these groups will require, according to the Report's authors, the adoption of comprehensive Affirmative Action progammes.[9] In the months which followed the release of this report its arguments about Affirmative Action Programmes helping the country to make the best use of its human resources received support from a number of prominent business organizations including the Canadian Manufacturers' Association.[10]

The Abella Report

It was against the backdrop of the American experience, mounting public pressure for government action, and evolving definitions of discrimination and appropriate remedies that Judge Rosalie Abella was appointed as a one-person Royal Commission on Equality in Employment in June 1983.

Under the terms of reference of the Commission, Judge Abella was appointed to inquire into the most efficient, effective and equitable means of promoting employment opportunities for, and eliminating systemic discrimination against, four designated groups: women, disabled people, Native people and visible minorities. That visible minorities was included in the Commission's mandate was significant in that prior to that date visible or racial minorities had not been designated as a target group for employment programmes on a national basis; Blacks had, of course, been a special target group in Nova Scotia. There was, however, increasing recognition of the evidence that racial minority groups were experiencing more long-term disadvantage in the labour market than could legitimately be attributed to an "adjustment period."

The Abella Commission was able to avoid potential jurisdictional wrangles and widespread private sector indignation by focussing on the employment practices of 11 designated crown and government-owned corporations representing a broad range of Canadian enterprise. These corporations were Petro Canada, Air

Writing in the Foreword of the Report the authors indicate that it was clear to them from the outset that only a broad approach would serve to analyze the multi-dimensional nature of the barriers facing the four designated groups. They write: "The climate in any given corporation reflects the social, cultural, economic and political environment in which the corporation function. To study a corporation's employment practices, therefore, one must also study the realities of the wider community. To recommend effective remedial measures to neutralize obstacles to equality, one must concentrate at least as intensively on the societal as on the corporate reflection of the problem."[11]

The Commission then began in July 1983 an intensive analysis of the employment situation of the four designated groups at the same time as it undertook to study the Corporations. At the invitation of the Commission 274 written submissions were received from individuals, representatives of the designated groups, business, organized labour and Government. The Commission also held 137 informal meetings with interested parties over a 7 month period. There can be no doubt that during its seventeen months of existence the Commission was the subject of intense interest and speculation; the designated groups debated whether it would be sensitive to their needs and concerns; business and labour debated the merits of implementing voluntary programs while they still had the chance; and many policy decisions were said to be put "on hold" pending release of the report.

Simultaneous with its public deliberations the Commission conducted a substantial research programme. Papers on subjects ranging from the nature of discrimination through reviews of existing legislation, programmes and services to contract compliance and equal pay for work of equal value will make an invaluable contribution to this emerging field when they are released as Volume II of the Report. The 11 corporations were asked to complete comprehensive questionnaires which asked detailed information about the representation of the designated groups in all levels of their workforce and elicited comprehensive descriptions of their employment systems. After the questionnaires had been reviewed by Commission staff the Commissioner met with the Chief Executive Officer of each of the corporations to solicit views on possible remedies for the problems which they found in

the corporations and in the workforce at large.

The completed Report is divided into two parts: the findings and the recommendations. The findings, while in no way unexpected, are still very disturbing.[12] A survey of available data reveals that women, the disabled, Natives and visible minority workers continue to experience lower participation rates, higher unemployment rates, occupational segregation and low income levels. Women, although their participation in the labour force has increased dramatically, continue to be viewed as secondary workers. From 1969 to 1981, women had higher unemployment rates than men. Women working full-time, full-year in 1982 earned on average 64 cents for every dollar earned by men working full-time, full-year, while all working women earned on average 55 cents for every dollar earned by men. The wage gap between women and men narrowed by no more than 11 percent in 70 years. Women are substantially under-represented in high-income occupations. In 1981, as in 1971 just after the release of the Royal Commission Report on the Status of Women, they were concentrated in clerical, sales and service occupations. Women constitute about 72 percent of all part-time workers, though one in four in 1981-1982 would have preferred a full-time job.

There is a dearth of statistical information on disabled people, but informants spoke to the Commission of a population which lives outside the economic mainstream. The Canada Health Survey estimates that there were 1.7 million disabled adults of working age living in Canada in 1978-1979. Of these it is estimated that over 50 percent are unemployed.

Native people were discovered to have low participation rates, high unemployment rates and low income levels. Data from the 1981 Census show that the participation rate for Native men was 60.7 percent compared to 78.2 percent for the total male labour force. The participation rate for Native women was 36.7 percent, compared to 51.8 percent for the total female labour force. The unemployment rate for Native men in 1981 was 16.5 percent, compared to 6.5 for the total male labour force. For Native women it was 17.3 percent, compared to 8.7 percent for the total female labour force. The average earnings of Native males in 1981 were 63 percent of the average earnings of non-native males; Native women averaged 72 percent of the earnings of non-native females.

The Commission relied exclusively on the census for employment data on minorities. Such data are weak in that they report ethnicity and immigrant/non-immigrant status rather than racial membership; data on blacks are particularly inadequate. However, despite the paucity of data there is sufficient evidence that certain groups — in particular Blacks, Indo Chinese and Central/South Americans experience high unemployment, are concentrated in low status jobs and under-earn; women in these three groups and the Indo Pakistani group suffered particularly badly according to the data. Studies of the employment experience of minorities carried out in urban centres in Ontario would support the conclusions which the Commission drew from the sketchy data available.[13]

In addition to the statistical evidence, the Commission found the submissions of the designated groups to be very powerful. Representatives of all four groups enumerated employment barriers such as inappropriate education and training facilities, inadequate information about training and employment opportunities, no voice in the decision-making process in programmes affecting them, employers' restrictive recruitment, hiring and promotion practices and discriminatory assumptions. The members of the group had also spoken of their frustration over Government's failure to act on the recommendations of earlier reports such as the *Royal Commission Report on the Status of Women, Obstacles,* and *Equality Now.*

Within the designated crown and government-owned corporations which the Abella Commission studied information was generally available about the distribution and participation rates for women only. Where data on the other three designated groups existed, the information was either specific only to small units of the corporation or represented estimates. It became clear, however, in meetings with senior representatives of the organizations that disabled people, Natives and visible minority group members were not employed in significant numbers in any of these publically owned corporations.

Within the corporations women were represented in significantly smaller proportion than they are found within the labour force. In the nine occupational groupings developed by the Commission staff, women were under-represented in seven: upper management, pro-

fessional, semi-professional and technical operations, supervisor of white collar workers, supervisor of blue collar workers and the skilled crafts and trades. In fact in the upper management category women fill less than 4 percent of the upper manager positions. Of those women employed over seven of every ten are found in the other two occupational groupings: clerical and service. Women are also consistently under paid in the corporations, not only because they are in the lowest paid occupations but because they make salaries above the mid-point for their occupation less often than men do.

Although the situation vis à vis job segregation had changed slightly over the past five years in the eleven corporations, changes in general were so miniscule that it would, in some cases, take several generations for women to reach even a 30 percent level of representation in most occupations. The situation is less grave in those corporations which had implemented human resource planning programmes specifically to counteract inequities at the time of the Abella study.

Although all of the corporations indicated that equal opportunity was one of their corporate objectives, these objectives were usually expressed in anti-discrimination terms. Where there was not special corporate attention paid to equality issues and the natural forces of the market place were left to hold sway, there was generally a perpetuation of the status quo with no improvement for women, the disabled, Natives and visible minorities. Four companies, Canada Mortgage and Housing Corporation, CBC, the Export Development Corporation and Air Canada, had Affirmative Action Programmes at the time of the Commission's investigations; Canada Post, Atomic Energy of Canada, Petro Canada and CN have established programmes since then. What impressed the Commission was the diversity of approach which those corporations had to their Affirmative Action Programmes. There were, however, certain critical elements which each of these corporations had in common including the setting of internal corporate goals, establishment of accountability and holding of periodic reviews of programme progress. All of these corporations also have certain achievements in common such as the appointment of women to their board of directors, and an increase in the number of women in both management and technical areas.

The chief executive officer of each of these eleven corporations acknowledged that legislated mandatory requirements were the most effective path to widespread equitable participation by the designated groups. However, all eleven agreed that achievement should be measured in terms of results rather than activities. They all suggested strongly that the actual practices used to achieve equitable participation be left to each corporation.

In response to the overwhelming data and the presentations of organizations and individuals the Commission concluded that voluntary Affirmative Action measures were inadequate. Despite the existence of human rights laws permitting Affirmative Action, the Charter of Rights and Freedoms provisions in the Constitution Act supporting Affirmative Action which will be implemented in April 1985 and forceful recommendations in *Obstacles, Equality Now* and *Labour Market Development in the 1980's* there is no evidence of any widespread commitment by employers to changing the status of women, the disabled and minorities in the workforce. The Commission therefore recommended that all federally regulated employers be required by legislation to implement programmes of employment equity.

The Commission staff had been told many times that Affirmative Action was a negative term which elicited images of government intervention in business, unwieldy bureaucracies and capriciously imposed employment quotas, all of these resulting from a misunderstanding of the American experience. The Commission seemed to reason that it was easier to change the name than correct the misconception; in their words, "if there is a debate over the implementation of equal opportunity it should be between principles and not reflexes".

The choice of the term employment equity reflects, I believe, more than a convenient alternative to an unpopular term. Traditionally Canadians have used the term "equal opportunity" to identify equity programmes. In its strictest sense equal opportunity refers to a passive strategy of non-discrimination in employment; its focus is on access rather than results.[14]

Affirmative Action as a term refers to a comprehensive planning process for eliminating systemically induced inequities and redressing the historic patterns of employment disadvant-

age suffered by members of designated groups. Affirmative Action is a systemic-based approach. In an Affirmative Action Programme the impact of an employer's systems and practices is measured through the analysis of designated group employment within the organization and a realistic assessment of the number of target group members available in the labour market both in total and in job and skill groups. It also involves an analysis of the function of employment practices in facilitating or inhibiting the employment of the designated groups. Steps are then taken to neutralize discriminatory practices, set goals and timetables for achieving equitable representation of the designated groups within the organization and establish remedial measures which will redress past imbalance and make the achievement of numerical goals possible. Affirmative Action is a dynamic term and there is a heavy emphasis on process. There has been a tendency for Affirmative Action guidelines to be prescriptive, outlining the "key steps" in an Affirmative Action Programme.[15]

The introduction of the term employment equity seems to shift the emphasis from access and process to results. According to the report equity is still a systemically based approach. Its implementation requires no prior finding of discrimination and its goal is the development and maintenance of employment practices which would eliminate discriminatory barriers in the workplace and improve, where necessary, the participation, occupational distribution and income levels of women, the disabled, Natives and individuals in specified ethnic and racial minority groups. Among the areas where practices would be reviewed and adjusted would be recruitment and hiring practices, promotion practices, equal pay for work of equal value, pension and benefit plans, reasonable accommodation, workplace accessibility, occupational qualifications and requirements, parental leave provisions and opportunities for educational and training leaves. By Judge Abella's definition there is no tight prescription for achieving equity; employers are given flexibility in the redesign of their employment practices in order to accommodate the uniqueness of their structure, location and type of business. However employers are asked to establish their own numerical targets taking into account job openings, prior record and the realities of the local labour force. It is on the ability of their revised employment practices to achieve these targets that their equity programme will be judged.

This emphasis on results in the area of participation, distribution and salaries is consistent with developments in the U.S. where enforcement agencies which originally focussed on prescribed program components in their education and enforcement efforts later abandoned these and focussed on the achievement of goals.[16] It is also consistent with the advice of crown and government-owned corporation heads who argued that the corporation management and employees are in a better position than anyone else to know the best way to achieve results in that organization.

Judge Abella explicitly eschews quotas and yet she says that employers implementing employment equity programmes will set numerical goals based on human resource planning projections and achieve these within a specified time frame. This has led to accusations of double talk by the press and members of the public who are reluctant to apply to equity issues the numerical measures of success and failure which are applied to all other business undertakings.[17] In fact, without goals and timetables there is no way of measuring the success of one's equity measures.

The Commission's frustration with inadequate data in the 11 corporations is indicative of the importance of recommendations for more sophisticated data gathering procedures. Employers to whom the legislation applied would be required to collect from their employees information on the participation in their workforces of women, disabled people, Natives and specified ethnic and racial groups by occupational categories and by salary range. The Commission also recommends that data be collected on the representation of individuals from these groups in hirings, promotions, terminations, lay-offs, part-time work, contract-work, internal task forces, training and educational leave. Such data would, according to the recommendations, be filed annually after a three-year waiting period. Such data would, themselves, contribute to the bank of enhanced standardized workforce data on the designated groups which will be necessary for the administration of good-quality equity programmes. These standardized data will be collected in the Census so that in the future more

useful occupational data will be available for all the designated groups.

The Commissioner's decision to recommend Mandatory Equity programmes came as a surprise to many people. There seems little doubt that the American experience contributed to the decision. In the United States there is abundant evidence that women have increased their participation rates and their representation in senior management jobs much more rapidly than they have in Canada where there is no legislation. In the U.S. minority representation in the workforce has increased dramatically as a result of Affirmative Action. There is even evidence that employers have come to support Affirmative Action believing that it enhances their human resource systems and business practices.[18] In Canada it is still only in the rare case of some resource industries where any kind of mandatory program has been implemented. Where it has there is dramatic proof of its effectiveness in increasing the numbers of designated group members employed.[19] The Commission found, by contrast, that the success of voluntary Affirmative Action Programmes which have been promoted by both federal and provincial governments was either limited or impossible to measure.

In making the decision to recommend legislation the Commission claimed to be choosing to ensure the right to freedom from discrimination rather than merely hoping for it. It is argued that laws reflect commitment and clearly define the limits of acceptable behaviour. The authors write: "A government genuinely committed to equality in the workplace will use law to accomplish it and thereby give the concept credibility and integrity".

While the mandate of the Abella Commission limited its recommendations to federally regulated companies, recommendations were made which would ensure that the 89 percent of Canadian workers who work in non-federally regulated companies would benefit. It is urged that provincial and territorial governments pass equity legislation, with requirements being, insofar as is possible, consistent with federal legislation. In the absence of universal legislation the Federal Government is then urged to encourage employment equity in the private sector by the use of contract compliance. We have, of course seen how contract compliance was used to ensure equality for designated groups in the United States. The granting of contracts to enhance equality in employment would be completely consistent with Treasury Board policy which states that contracts will be let in such a manner as to relate to national policies and objectives.[20]

In the history of discussions about mandatory Affirmative Action and Equal Opportunity Programmes a recurring concern has been enforcement. Advocates of mandatory programmes fear that legislation without enforcement will make a mockery of the government's commitment to equality while at the same time eliminating the requirement for further action on behalf of the designated groups because the problem has been dealt with. Business fears intrusive enforcement which will be punitive and insensitive to business objectives and requirements. In her recommendations about enforcement mechanisms Judge Abella has presented four alternatives for enforcement, each of which takes into account the requirements for a good mandatory programme. These requirements include: facilitation and the issuing of guidelines; collecting, reviewing and assessing data; and enforcing equity. It remains, according to the recommendations, the responsibility of government to facilitate the establishment of good equity programmes through the provision of educational materials, guidelines and assistance. Data analysis is the key monitoring activity in a programme where bottom line results have prominence. The responsibility for making decisions about non-compliance with the law and imposing penalties would rest, according to the four alternatives proposed, with the Canadian Human Rights Commission or with a new independent agency. The type of penalties to be imposed on those who fail to comply is not specified in the Report.

While the recommendations about mandatory employment equity have been front and centre in the discussion of the Abella Report it is important to remember that the Commission recognized that a strategy designed to increase the employment opportunities of particular individuals cannot work unless those individuals have the skills to do the job. The Commission therefore reviewed the quality and nature of educational and training opportunities available to the target groups and made recommendations which would ensure that no claim could be made that the reason for the under-representation of