Update

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MAY. 1998

FEDERAL *EMPLOYMENT EQUITY ACT (1995)*

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OVERVIEW

The federal *Employment Equity Act (1995)* passed in October, 1996 strengthened previous employment equity legislation in place federally since 1986.

Federal employment equity legislation aims at ensuring the members of four designated groups are treated equitably, namely women, persons with disabilities, Aboriginal peoples or members of visible minorities. The *Act* applies to the federal public service, federal Crown corporations and federally-regulated firms employing 100 or more people. These include the airlines, railroads, interprovincial bus and trucking companies, banks and telephone and broadcasting companies.

The *Act* gave employers one year from October 26, 1996 to establish employment equity plans. The Canadian Human Rights Commission started auditing its first group of employers for compliance on October 24, 1997.

This Update summarizes the *Act's* provisions and refers to the *Act's* Regulations and Guidelines issued by Human Resources Development Canada. The authors also co-authored the Canadian Labour Congress Trade Union Guide to the *Employment Equity Act* and are currently finalizing the Employee Guide to the *Employment Equity Act.*

EMPLOYER RESPONSIBILITIES

The *Act* requires each employer to:

1. provide its employees with a questionnaire which allows them to indicate whether they belong to one of the four designated groups;

2. identify jobs where the percentage of designated group members falls below their availability in the labour market;

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3. communicate information on employment equity to its employees, and consult and collaborate with employee representatives;

4. identify possible barriers in existing employment systems which may be limiting the employment opportunity of designated group members;

5. develop an employment equity plan aimed at promoting a fully equitable workplace (this plan must include positive policies and practices; measures to remove employment barriers, timetables and goals, and must be sufficient to achieve reasonable progress towards a representative workplace);

6. make all reasonable efforts to implement its plan;

7. monitor, review, and revise its plan from time to time; and prepare an annual report on its employment equity data and activities.

Unions' Key Employment Equity Role

The *Act*

- ✔ gives unions a right to be consulted by and to collaborate with employers on the implementation of employment equity. This will enable unions to challenge employers on an ongoing basis to change workplace practices in recruitment, hiring, retention, promotion and working conditions.

- ✔ means that employers have lost the right to rely on their "management rights" to fend off union challenges to their authority to run the workplace. It is hard to think of any workplace practice affecting a union's members which should not come under employment equity scrutiny.

- ✔ gives unions another way to fight the employer's traditional strategy of "divide and conquer". This is where employers try to operate their workplaces so that the designated groups are ghettoized from the white able-bodied male workforce and often pitted against each other to the employer's advantage.

- ✔ will continue the profound change to the process and content of collective bargaining resulting from the enforcement of human rights legislation in unionized workplaces. Unions and their members can no longer look upon the signed collective agreement as the "law of the land" which cannot be questioned until the next round of bargaining.

- ✔ will provide unions in the federal sector with an important opportunity to identify and address their human rights responsibilities as co-signatory of collective agreements.

- ✔ will require union leadership and staff to examine how terms in collective agreements they have signed may be a barrier to their members, and to those who are not yet employees, who are women, aboriginal persons, persons with disabilities and members of visible minorities. If they find they are, the collective agreement may need to be changed or appropriate individual exceptions may need to be made to its application.

NEED FOR EMPLOYMENT EQUITY

The *Act* recognizes that many workplace practices, some of which are contained in collective agreements, have resulted in systemic discrimination by raising barriers to the representation of designated groups at all levels of the workforce.

Some employers have already recognized that employment equity is part of a strategic approach to human resource management and have acknowledged that they must develop policies and practices that take advantage of

Canada's increasingly diverse workforce if they wish to be successful.

The federal public and private sectors continue to have serious underrepresentation of women, aboriginal peoples, visible minorities and persons with disabilities. This is documented in the 1996 and 1997 Annual Reports of the Canadian Human Rights Commission which show the following limited progress of each of these groups since the introduction of the 1986 *Employment Equity Act:*

Women

- The representation of women in the federally regulated workforce improved after 1986, but reached a plateau in 1992 at a level falling slightly short of women's overall availability in the Canadian labour market.

- Despite the gains in overall representation, women's share of the salary pie remained almost unchanged, with women making only 75.9% of the average salary for men when full-time work is the measure. Given that women make up roughly 70% of part time workers the real overall income difference is even greater.

Aboriginal Peoples

- In 1996 the *CHRC* found that the "abysmal" employment picture for Aboriginal peoples in the federally regulated sector had improved very little since 1987.

- The representation of Aboriginal peoples in most areas of the workforce continues to be roughly three times less than their availability in the labour market.

- Although the representation of Aboriginal peoples has increased in some occupational groups such as managers and professionals over the decade up to 1997, they are still largely concentrated in clerical and manual work.

- The salary gap between Aboriginal men and women and all men and women in the workforce under the Act increased during the ten-year period between 1987 and 1996.

Persons with Disabilities

Persons with disabilities represent about 6.5% of the available labour force, but their representation in the workplace is less than half of this, at 2.67% in 1996.

This situation is not improving. The proportion of persons with disabilities who were hired in 1995 was even lower than it was in 1994, when it was an already low at 1.6% of new hires. The 1997 Annual Report indicates that the representation of persons with disabilities in the federal workforce continued to decrease between 1995 and 1996.

Visible Minorities

The *CHRC* reports indicate that the percentage of visible minorities in the federally regulated workforce has steadily increased since 1986 to an overall level of 9.23% in 1996, which was a significant increase from the 1995 figure of 8.84%. However, figures recently released by Statistics Canada from its 1996 census show that visible minorities currently represent 11.2% of Canada's population. Therefore there remains significant underrepresentation of visible minorities in federally regulated employment.

The improvement to the current overall level of representation was also found to mask substantial variations between sectors and between different levels of employment. For example, in 1996 visible minority representation remained extremely low in the federal public service, with representation dropping even further in executive positions. The 1997 Annual Report noted that while visible minority representation was generally increasing, their representation among upper managers did not increase during the period, despite the fact that this occupational group grew in the workforce.

UNION RESPONSIBILITIES

Employer Duty to Consult and Collaborate with Employee Representatives

Every employer must consult with its employees' representatives by inviting the representatives to provide their views concerning:

- the assistance that the representatives could provide to the employer to facilitate the implementation of employment equity in its workplace and the communication to its employees of matters relating to employment equity; and

- the preparation, implementation and revision of the employer's employment equity plan. s.15(1)

Every employer and its employees' representatives shall collaborate in the preparation, implementation and revision of the employer's employment equity plainest(3) The *Act* specifically states that collaboration is not co-management. s.15(4)

Where Employees represented by Bargaining Agents

Where employees are represented by a bargaining agent, the bargaining agent *must* participate in the above-noted consultation. s.15(2)

AUDITS

The Canadian Human Rights Commission has the responsibility for auditing employers' compliance with the *Act.* There are Draft Criteria for Employment Equity Audits, a Draft

Audit Framework and a Questionnaire. The CHRC commenced its Audits in October, 1997.

- If the audit shows that one or more requirements has not been met, the Commission and the employer will work together to negotiate a solution to the problem.

- Under certain circumstances, the Commission may issue directions requiring employers to take measures to improve representation. If directions are issued, employers have the right to appeal them to a Tribunal.

- A Compliance Review Officer of the *CHIC* conducts the audit, including site visits and interviewing employees and the completion of questionnaires by employees and the employer.

- The Officer will then prepare a final report on the overall findings of the audit including an evaluation of the employer's compliance; a description of the undertakings the employer has agreed to, The report is then made public.

UNIONS AND DESIGNATED GROUP MEMBERS WORKING TOGETHER

Both the labour movement and advocacy groups representing disadvantaged groups have worked hard in the past to understand each other's concerns and to present a united front to the employer community. Unions have shown commitment to the principles of employment equity and in many workplaces will be the strongest and most well-equipped force for its achievement. But much work still needs to be done to establish effective working relationships between designated group members and unions. Working to implement the new *Employment Equity Act* can serve to strengthen the labour movement's relationships with the advocacy groups which represent designated groups.

STRUCTURE OF THE *ACT*, THE REGULATIONS AND GUIDELINES

Introduction

It helps when working with the *Act,* the *Regulations* and the Guidelines to understand how they are structured and interact.

- The *Act* sets out the general principles and legislative requirements for achieving employment equity.
- The *Regulations* set out the day-to-day rules and procedures for how employment equity will be achieved.
- The non-binding Guidelines issued by HRDC provide assistance on implementing the *Act*.

The *Act*

The new *Act* clarifies existing core employment equity obligations, set out in general terms in the 1986 Act and gives new regulation-making authority to clarify how employers are to meet these obligations. It is divided into four sections:

Part I

- Sets out the obligations of an employer and outlines reporting requirements. Employers must identify employment barriers against and determine the degree of underrepresentation of certain groups and prepare, implement, review and revise plans to promote employment equity.

Part II

- Sets out mechanisms for enforcing employer obligations under the *Act*.

Part III

- Provides for the assessment of monetary penalties.

Part IV

- Establishes regulation-making authority and provides for other general matters.

The *Act* also makes related amendments to the *Canadian Human Rights Act,* the *Financial Administration Act* and the *Public Service Employment Act.*

THE *EMPLOYMENT EQUITY REGULATIONS*

Introduction

The *Act* gives the Governor in Council the power to make regulations on implementation issues.

The Government enacted the *Employment Equity Regulations* to provide clarity for employers with respect to their employment equity obligations. This clarity is supposed to facilitate audits which are quick and efficient, thereby reducing any potential disruption for an employer during the audit process.

Despite lobbying by the Canadian Labour Congress, the Government has not enacted any regulations to assist unions with carrying out collaboration and consultation responsibilities.

Areas Covered

The *Employment Equity Regulations* cover the following areas provided for in the *Act.*

- collection of workforce information and workforce analysis
- employment systems review
- maintenance of employment equity records; and
- calculation of the number of employees.

A detailed list of the topics covered by the Regulations is set out in Appendix 1.

The *Employment Equity Regulations* also include a set of regulations that existed under the 1986 Act. These cover:

- private sector employers reporting requirements [s.18]; and
- definitions [para. 41(1)(a)].

A few technical amendments are included to modernize the existing Regulations. The occupational classification is updated to allow employers to use Census of Canada information, which, starting in 1996 will be based on the new *National Occupational Classification.* The salary ranges are also updated to reflect the shift in salary distributions over the last ten years.

GUIDELINES

To provide employers with implementation information under the new *Act* non-binding ministerial guidelines have been developed by the HRDC in consultation with the *CHRC*. These guidelines are intended to assist in the application of the *Act*, but are not legally binding. Interpretations or approaches that differ from the guidelines, but which are consistent with the *Act* and Regulations are still legitimate. Ultimately, the *Act* and Regulations govern.

Human Resources Development Canada has announced eleven Guidelines. Those marked with an asterisk are not yet released.

Guideline 1*	Getting Started
Guideline 2	Communications
Guideline 3	Consultation and Collaboration
Guideline 4	Collection of Workforce Information
Guideline 5	Workforce Analysis
Guideline 6	Employment Systems Review
Guideline 7	Employment Equity Plan
Guideline 8*	Aboriginal Peoples
Guideline 9	Monitoring, Review and Revision
Guideline 10	Record Keeping
Guideline 11	Employment Equity Report

The HRDC also plans to distribute two documents with the Guideline binder; an "Overview of Employment Equity" and a document on "Compliance" which will outline the enforcement mechanisms under the *Act*.

Each Guideline consists of a Part A setting out the legal framework, a Part B addressing the practical application of the law and a Part C headed "Information Documents". The Guidelines are lengthy and detailed. We have included a copy of the Table of Contents of the relevant Guideline at the end of the section of this Guide that deals with its contents. HRDC has a web site which it plans to use to keep all interested parties up to date on matters relating to workplace equity. The Workplace Equity Electronic Dissemination Information System (WEEDIS) site can be found at http://info.load-otea.hrdc-drhc.gc.ca/~weedis.

CHRC COMPLIANCE AUDIT FRAMEWORK

This framework document outlines the Commission's audit process required by the *Employment Equity Act* and sets out the factors that the Commission will consider in assessing whether the employer has complied with the Act. The document summarizes the process framework and average time lines related to each phase.

Part 1

- outlines the Commission's approach to the planning of audit cycles, the selection of employers, the audit process and the steps related to the

issuance of a direction or the reference to the Tribunal.

Part 2

- outlines the factors taken from the statutory requirements on which the audits will be based and the general standards against which performance will be measured.

The CHRC web site at http:\\www.chrc.ca has some useful resources, including ad ownloadable copy of this Framework and a bulletin devoted to new publications and developments in employment equity.

THE *ACT* AND THE HUMAN RIGHTS CONTEXT

ANTI-DISCRIMINATION STATUTE

Like the *Employment Equity Act* and the *Canadian Human Rights Act,* human rights legislation is seen by the courts as being almost constitutional in nature.[1] It is given a broad, result-oriented interpretation, designed to make sure it meets its intended aims[2]. It is remedial and not aimed at determining fault or punishing conduct. The focus is rather on discriminatory effects of practices or policies.[3] Its aim is to identify and eliminate discrimination.[4] This approach allows the protection of human rights statutes to be extended to a wide variety of situations, and means that creativity is the key to addressing equity issues.

EXISTING EQUITY RESPONSIBILITIES OF EMPLOYERS

Canadian Human Rights Act

Federally regulated employers under the *Employment Equity Act* already have obligations under the *Canadian Human Rights Act* ["*CHRA*"], which prohibits discrimination on a number of grounds, including the … the designated groups that are also covered by the *Employment Equity Act*. This legislation makes employers responsible for providing a workplace free of discrimination. Under human rights legislation it is not necessary to have an intention to discriminate to be found liable[5]. The focus is rather on the discriminatory effects of practices or policies.

Discrimination takes two basic legal forms, direct and indirect (or adverse impact). Direct discrimination occurs when conduct or a rule expressly singles out a designated group for disadvantageous treatment. Insults based on race or disability are forms of direct discrimination, and employers are responsible to take the necessary steps to ensure that employees are not subjected to such conduct at work. Other examples of direct discrimination are rules based on a prohibited ground, such as a rule that makes a benefit available during medical leaves but not during pregnancy-related leaves.[6]

Indirect discrimination or adverse impact discrimination is what happens when a practice or rule that seems neutral on the surface has a negative impact on designated group members. Classic examples are dress codes that cannot be met by people required to wear certain clothing as a matter of religious observance, or height requirements that disproportionately exclude women. Where an employment rule exists that has this kind of adverse impact, it must first be determined whether the rule is genuinely necessary to the job (a "bona fide occupational requirement"). If it isn't, the rule should be removed. If the rule is legitimate in its general application then employers must consider whether an accommodation is possible that will remove its negative impact on the members of a particular group. If an accommodation is possible it must be implemented, unless doing so would inflict "undue hardship" on the employer[7].

Charter of Rights and Freedoms

A recent decision of the Federal Court Trial Division has held that government employers in the federal sector can be made the subject of *Charter* applications alleging discrimination, in addition to proceedings at the Canadian Human Rights Tribunal (*Perera v. Attorney General of Canada*, unreported decision of the Federal Court Trial Division dated February 27, 1997.

CHRA JURISDICTION AND POWERS AFTER THE *EMPLOYMENT EQUITY ACT*

The new legislative regime suggests that the government intended the *Employment Equity Act* to interact with the *CHRA*. In addition to giving the *CHRA* first level responsibility for administering the *Act,* a number of important amendments to the *CHRA* are made. These amendments on their face are designed to limit the application of the *CHRA* where the *Act* applies.

No Jurisdiction over Complaints "Based Solely on Statistics"

The CHRC can no longer deal with complaints against employers covered by the *Act* under s.7 and s.10(a) of the *CHRA* that allege discrimination in employment "based solely on statistical information that purports to show that members of one or more designated groups are underrepresented in the employer's workforce". *Act*; s.48, *CHRA* s.40.1

There have not been any successful cases under the *CHRA* which have held an employer liable solely because the employer's workforce was not representative of its surrounding community. However, it appears that the Government intended by this amendment to protect employers from claims of discrimination based solely on the quantitative results of the workforce survey.

No Orders of Positive Measures or Numerical Goals

The *CHRC* has broad powers to order remedies to correct discrimination.

The *CHRC* can no longer order an employer covered by the *Employment Equity Act* to adopt a special program, plan or arrangement containing

(*a*) positive policies and practices designed to ensure that members of designated groups achieve increased representation in the employer's workforce; or

(*b*) goals and timetables for achieving that increased representation; Act, s.50, *CHRA*, s.54.1

Instead, employers are required to prepare and implement these plans under the *Employment Equity Act*. This provision does not limit the Tribunal's power to order an employer to cease or <u>otherwise correct</u> a discriminatory practice; Act, s.50, *CHRA*, s.54.1(3).

As a result of this amendment the *CHRC* is only limited from making orders that require employers to set numerical goals or institute positive policies and practices <u>for the purpose of increasing the representation of designated groups in the workplace</u>. "Positive policies and practices" are temporary measures that go beyond the mere elimination of discriminatory barriers and attempt to actively correct the underrepresentation that has resulted from the barrier having been in place. The setting of numerical goals for hiring is an example of a positive policy aimed at increasing representation in the workforce. Permanent measures that target a designated group in order to accommodate a group characteristic should not be barred by this amendment. The Commission can still require an employer to take any and all steps that are necessary to

change their policies or practices or prevent them from having a discriminatory effect.

Commission may decline to deal with matters covered by a Plan

The *CHRC* has been given an additional discretion to decline to deal with complaints about an employment policy or practice where the Commission is of the opinion that the matter has been adequately dealt with in the employer's employment equity plan; *Act*, s.49(2), *CHRA*, s.41(2)

Commission not to initiate complaints based on information obtained under the Act

The *Act* also provides that no complaint may be initiated by the Commission under the *CHRA* as a result of information obtained by the Commission in the course of its administration of the *Employment Equity Act*; *Act*, s. 47, *CHRA* s.40(3.1)

IMPACT OF THE CHANGES TO THE *CHRA* JURISDICTION

The intended result of these changes appears to be that complaints against employers covered by the *Employment Equity Act* that deal with alleged discrimination based solely on statistical inequalities showing underrepresentation, should now be addressed only under that *Act*.

Unions should be aware that the changes to the *CHRA* apply only to complaints against employers covered by the Act. In the result, it would appear a complaint based solely on statistics can still be brought against a union who is a party to a collective agreement containing provisions that are alleged to be discriminatory in their effects.

The result of the federal *Employment Equity Act* is that unions are relieved of having to prove discrimination before the employer is required to take action to correct underrepresentation. However, unions do not have the central role under the *Employment Equity Act* for which they lobbied.

Limitations on the complaint jurisdiction of the *CHRA* are of particular concern because the *Employment Equity Act* is directly enforceable only by the Canadian Human Rights Commission.

IMPORTANT EMPLOYMENT EQUITY DECISIONS

It is helpful to review the reasoning in cases decided under the *CHRA* prior to the introduction of the new *Act* that imposed "employment equity" orders, since those cases set out the rationale for employment equity and set a standard for equity programmes under the new *Act*.

Action Travail de Femmes

The 1987 case of *Action Travail des Femmes*[8] is particularly instructive. In that case the Supreme Court of Canada unanimously ruled that a Human Rights Tribunal could order an employment equity programme under the *Canadian Human Rights Act* if it was necessary to remedy workplace discriminatory practices. The Tribunal's Temporary Measures order required CN to hire one woman in every four new hires into certain jobs where the evidence showed that they had been improperly excluded for many years by systemic discriminatory employment practices.

In the 1997 decision in *National Capital Alliance on Race Relations v. Canada (Health & Welfare)* ["*NCARR*"][9] the *CHRC* followed *Action Travail* to impose an extensive remedial employment equity program on Health Canada. Their order, set out below included permanent measures, such as management training in equity issues and bias-free interviewing techniques, as well as temporary or special measures that included five years of accelerated targets for the promotion of visible minorities into the senior positions from which they had been blocked by discriminatory practices.

Terms of the NCARR Employment Equity Order

In order to eliminate the discriminatory employment barriers facing visible minorities at Health Canada, as well as to redress the effects of past discrimination, the Tribunal ordered a series of seven "Permanent Measures" as well as eighteen "Temporary Corrective Measures". This order is set out in detail because it provides a useful illustration of the features of an employment equity program.

...Permanent Measures...

The Permanent Measures included orders to do the following:

- Set standards to ensure that visible minority employees are evaluated not only on experience, but also on desirable skills in determining suitability for promotion.
- Train selection-board members in bias-free interviewing techniques and, where possible, use selection boards that are diverse in composition.
- Train all managers and human resource specialists on strategies to recruit, promote and retain visible minorities, including sensitization to diversity and employment equity issues, including systemic barriers.
- Conduct workshops on the benefits of a diverse workforce and human rights legislation, with mandatory management attendance.
- Set clearly defined qualifications for all senior managerial positions and ensure that these criteria are known to everyone interested in moving into senior management and to all those involved in the staffing process.
- Develop in advance those parts of the selection process intended to assess

necessary skills and use them when filling acting appointments.

- Develop a computerized inventory of visible minority and white employees in feeder positions who are interested in advancement, so that this information is available to staffing managers when acting positions become available.

...Temporary Corrective Measures...

The "Temporary Corrective Measures" included these orders:

- Appoint visible minorities into the Senior Management category at twice the rate of availability for five years in order to reach 80% proportional representation of this designated group within this time frame.

- Appoint visible minorities into the groups from which management are drawn at twice the rate of availability for five years in order to reach 80% proportional representation in those groups.

- Appoint visible minorities to acting positions for four months or longer, at twice the rate of availability for four to five years (depending on the group) to enable visible minorities to develop the requisite job qualifications needed to be screened into permanent competitions when they become available.

- In any competition where visible minority candidates have been considered but a visible minority candidate was not selected a report is to be provided outlining why the visible minority candidates were not found to be qualified.

- All Staffing Notices are to state that the employer is an "Equal Opportunity Employer" and that the advertisement is aimed at visible minorities.

- Individual career plans are to be developed for all employees (white and visible minority) in feeder group positions who are interested in advancement.

- Outreach recruitment sources for visible minorities are to be developed and used when hiring into feeder groups where the tribunal found significant underrepresentation.

- Mentoring programs are to be established, with training of current Senior Management on methods of mentoring a culturally diverse workforce. Good mentoring is to be rewarded.

- Visible minorities are to be invited to attend management training sessions and courses and 25% of the seats are to be set aside for visible minorities.

- A person is to be appointed with full powers and responsibility for ensuring the implementation of the special temporary corrective measures and to carry out any other duties to implement this order.

- Senior management are to undergo an annual performance assessment regarding full compliance with the order.

- An Internal Review Committee is to be created, to include an equal number of departmental managerial representatives and delegates from the Advisory Committee on Visible Minorities with additional expertise to be made available on an as required basis to monitor the implementation of this plan. The Committee shall meet on a quarterly basis.

Perera v. Canada

A Court has also determined that employment equity measures could be ordered under the *Charter of Rights and Freedoms.* In the 1998 case *Perera v. Canada* [1], the Federal Court of Appeal upheld the right of the visible minority applicants to proceed with a civil claim against their former employer, the Canadian International Development Agency ("CIDA") claiming that CIDA engaged in systemic discrimination against them, including biased promotion procedures and assignment of work which violated their rights to equality under section 15 of the *Charter of Rights and Freedoms.*[2] The Federal Court of Appeal decided that the Trial Division has jurisdiction pursuant to section 24 of the *Charter* to "provide effective remedies for breaches of a citizen's constitutional rights to equality" and where there is "systemic discrimination" and warranting circumstances, it is appropriate to order employment equity plan measures.[3]

Specifically the court upheld the applicants' right to proceed with a request that CIDA be ordered:

(I) to cease forthwith the discriminatory practices and, in order to prevent the occurrence of the same or similar practices, to take measures, within a reasonable time, including the adoption of a special program or plan, designed to rectify the adverse effect of the discriminatory practices on visible minorities in CIDA, particularly the discrimination that prevailed in the period between April 1985 to March 1992;

(ii) to implement an Employment Equity Program which would ensure that in the next five years:

(aa) at least 20% of all new appointments to the senior management category in CIDA, in each year, will be from the visible minority group;

(bb) at least 20% of all new hires in CIDA, in each year, will be from the visible minority group;.....

In upholding this claim, the Court noted that the Supreme Court of Canada in *Action Travaille Des Femmes* and *R. v. Robichaud* had found such measures to be warranted in cases of systemic discrimination.

> ...in cases where attitudes or behaviour need to be changed, an instrumental approach to remedies is necessary in order to enforce compliance with the purposes and objectives of human rights codes or legislations. It necessarily follows, in my view, that the Courts must have, under section 24 of the Charter, the power to impose similar remedies when they deem it appropriate. Indeed, it would be astonishing if the Federal Court, as a Superior Court of record with a supervisory jurisdiction did not have jurisdiction to enforce constitutional equality rights in the federal sphere by providing to an aggrieved citizen an appropriate and just remedy pursuant to section 24 of the Charter. [4]

The *Perera* Court stated that superior courts such as the Federal Court Trial Division "have played and continue to play a role in redressing wrongs committed in the employment context." [5]

CONCLUSION

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1 [1998] F.C.J. No.13 (Court File No. A-146-97).

2 Para. 2

3 Para. 29-30

4 Para. 28-29

5 See above

The federal *Employment Equity Act* is still at the initial stages of implementation. Despite the lack of a co-management role, Unions need to develop their "collaborative" role so as to get the maximum legal benefit for their members from the law.

1. *Brooks v. Canada Safeway* [1989] 1 S.C.R. 1219 at 1245

2. *Action Travail Des Femmes* v. *Canadian National Railway Co.* (1987), 40 D.L.R. (4th) 193 (S.C.C.) at 206-9; *Re Ontario Human Rights Commission and Simpsons-Sears Ltd.* (1985), 23 D.L.R. (4th) 321 (S.C.C.) at 328-9

3. *Robichaud,* above, note 6

4. *Robichaud v. Canada (Treasury Board)* [1987] 2 S.C.R. 84

5. *Ontario Human Rights Commission & Simpson Sears Ltd.* (1985) 23 D.L.R. (4th) 321; 7 C.H.R.R. D/3102

6. *Brooks,* above, note 3, [Note: The Supreme Court of Canada has held that discrimination on the basis of pregnancy is a form of sex discrimination

7. *Central Alberta Dairy Pool v. Alberta (Human Rights Commission)* [1990] 2 S.C.R. 489; 12 C.H.R.R. D/417 at D/444

8. *Canadian National Railway v. Action Travail des Femmes* (1987) 8 C.H.R.R. D/4210

9. *National Capital Alliance on Race Relations v. Canada (Health & Welfare)* (1997) 28 C.H.R.R. D/179