SUBMISSION TO THE

LEGISLATIVE COMMITTEE ON BILL C-62
(AN ACT RESPECTING EMPLOYMENT EQUITY)

BY THE

CANADIAN LABOUR CONGRESS

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Ottawa, Ontario

I - Introduction

The Canadian Labour Congress appreciates this opportunity to appear before the committee on Bill C-62 - an Act respecting Employment Equity.

There has been pressure to expedite the work of this committee in order that the Bill can finally be enacted. Although we share the frustration that it has taken so long for legislation, we sincerely feel that it is worth the committee's time and energy to look very seriously at the Bill's content in order to ensure that it adequately provides for the full and equal participation of the designated group members in the Canadian workplace.

We have been involved in discussions with Canada Employment and Immigration Commission on the proposed legislation since last April and have the same major objections to the Bill today that we raised at the outset, and have continued to raise throughout the last eight months.

The Canadian Labour Congress believes that without major amendments to the Bill, Canada will still be without legislation requiring mandatory affirmative action. We are of the opinion

that a reporting system on its own will do little to rectify the discrimination that has been experienced for years by women, native people, disabled persons and visible minorities.

This submission will first propose recommendations for amending Bill C-62, which we believe are essential to ensure that Employment Equity Programs are introduced in workplaces throughout the country.

It will then deal with the proposed content of the regulations for Bill C-62 that were released on November 27, 1985 in the form of a Discussion Paper.

II - Proposed Amendment

To ensure programs in each workplace, we would call for the following changes in Bill C-62:

a) Minimum Standards & Enforcement

There has been much controversy to-date as to whether Section 4 actually requires employers to set up Employment Equity programs. Although the Bill states that "an employer shall implement", there is no corresponding penalty for failure to do so. Surely, if this Bill is to require the implementation of employment equity programs, it is only reasonable to impose penalties for non-compliance.

Although our preference would have been for an independent, new agency, we are not opposed to the Canadian Human Rights Commission assuming the enforcement role for this legislation, and we hope that it is in this context that the Minister intends to add a reference to the Human Rights Commission in the Bill. The real issue is the role of the enforcement agency and the scope of its power to force implementation of Section 4 of the Bill either in its present or amended form.

The legislation must give the enforcement agency the responsibility for approving plans, assessing programs regularly and monitoring results in order to ensure the full implementation of Section 4.

Although we support the concept that different workplaces must have flexibility in the design of their programs, we take the position that there should be minimum standards laid down in the legislation for program approval by the enforcement agency.

Section 4 must contain a list of employment practices or procedures to be reviewed by the employer, such as methods of hiring, promotion, transfer and training. The legislation must state that approved plans are to contain targets and timetables and the positive policies and practices that will be implemented.

Plans should also show how the employer has guaranteed, or intends to guarantee, the implementation of equal pay for work of equal value for women presently employed or hired within their operations. The Royal Commission Report on "Equality in Employment", which recommended the concept of Employment Equity, stated that equal pay for work of equal value should be part of all Employment Equity programs. Since it has been recognized for some time that both special measures and equal pay for work of

equal value are essential to shrink the wage gap which presently exists between men and women in Canada, the Canadian Labour Congress wholeheartedly endorses this recommendation of the Commission and strongly urges that Bill C-62 be amended to require this as a necessary component of Employment Equity plans.

The necessity of addressing equal pay for work of equal value cannot be overstated. If this legislation adopts a limited definition of employment equity that does not specifically include equal pay for work of equal value, it simply will not be part of employers' employment equity programs.

A second consideration in support of the inclusion of equal pay for work of equal value is that it addresses the reality that most women are employed in traditional women's work. If employment equity programs only stress the need for change in the traditional patterns of hiring and promoting women, the contribution which women now make in their jobs will have been ignored. Equal pay for work of equal value provides a mechanism to assess the work now performed by women and to establish a non-sex biased rate of pay. This opportunity must not be missed.

b) Union Participation

Since April 1985 the Canadian Labour Congress has participated in discussions with Canada Employment and Immigration Commission concerning the content of the Employment Equity legislation. We were, therefore, dismayed to find no provision in the Bill introduced in June that obliged employers to negotiate Employment Equity programs with the bargaining agents that are certified to represent their employees. Though we are now encouraged to hear that the Minister has indicated that she will move an amendment to provide for union involvement, we are nevertheless concerned about the content her proposed amendment.

If the purpose of the Bill is to achieve equality in the workplace so that no person is denied employment opportunities or benefits, surely it is necessary to negotiate such programs as part of collective agreements. In addition to negotiated programs, we propose the immediate setting up of joint union-management committees to begin the development of Employment Equity programs and to ensure ongoing monitoring of such programs. We agree with the concern raised by the Minister at the committee hearing on December 5, 1985, when she expressed the view that joint committees do not allow for a method of final resolution of any stalemate that occurs. This is one of the key

reasons why we are adamant that the collective bargaining process be an integral part of this legislation.

Unions should and must be equal partners in the design, implementation and monitoring of these programs. To achieve this we propose that Section 4 of Bill C-62 contain provision for:

a) the negotiation of Employment Equity programs with bargaining agents certified under the Canada Labour Code or the Public Service Staff Relations Act, as part of the collective bargaining process.

b) the establishment of a joint-union management committee in each bargaining unit certified under the Canada Labour Code or the Public Service Staff Relations Act, which shall consist of an equal number of representatives of the bargaining agent and the employer, and the purpose of which shall be at a minimum, to ensure compliance with the provisions of Section 4.

Such an amendment will require some specifications under the Regulations. We will deal with this later in our presentation when we discuss the entire package of proposed regulations.

c) Inclusion of the Federal Government

The exclusion of federal government departments from the Bill is inexplicable.

It is only logical and consistent that parliament should place the same employment equity demands on public service managers as are expected from federally regulated industries. To demand less of public service managers, raises the question of the government's commitment to the employment equity principle.

Announcements that Treasury Board will develop employment equity policies do not mitigate the need for their legal enforcement through law. Treasury Board policies with respect to Affirmative Action have existed for several years and have been notable only for their lack of success. Our objections to addressing employment equity through government policies are as follows:

(i) policies are totally management controlled and thereby do not reflect employees views and needs;

(ii) many important aspects of employment equity are not subject to collective bargaining due to legislative constraints;

(iii) in the past, priorities have been placed on promoting a minority of women into higher management levels, ignoring the vast majority of women workers;

(iv) there have been no initiatives to identify and eliminate systemic discrimination in all aspects of public service employment practices;

(v) policies lack the force and commitment of law.

If the government is serious about employment equity it must set an example with its own workforce.

d) Contract Compliance

Contract compliance should be part of this legislation by requiring that all employers doing business with the federal government have approved affirmative action programs. These employers should be required to set up programs in the same manner as is proposed for federally regulated businesses.

Although we understand that the government's contract compliance program, released in June 1985, has either been withdrawn or is on "hold", we wish to make the following observations on it:

1) there is no requirement for employers to file Employment Equity programs and no requirement for the filing of reports;

2) there appears to be a never-ending appeal procedure;

3) employers will never lose a present contract. Sanctions, if applied, will only affect future contracts;

4) we have been told that the wording "for supplies and services" means that any <u>construction</u> is excluded from this program; and

5) employers may receive many contracts in the same year and if <u>each</u> of them is below $200,000, the program will not apply.

We believe that these five points represent serious deficiencies in this program, and would <u>again</u> emphasize that, in order for contract compliance to be meaningful, it must be legislated.

e) Reporting

As indicated earlier, we support workplace flexibility in the design and implementation of programs over and above a set of minimum standards, and we hope that it is this flexibility to which the government is referring when it states that it is not prepared to address process. We do however, believe that the workplace process is extremely important and for this reason recommend that Section 5 of the Bill require reporting on the following issues:

1) workplace training - this would indicate the amount and type of training that employers have provided in their workplace and in particular for members of the designated groups by occupational grouping; institutional or on-the-job

2) equal pay for work of equal value - this would indicate what measures have been taken by employers to ensure that equal pay for work of equal value is being implemented in the workplace;

3) joint union-management committee - a report on the formation and proceedings of this committee;

4) employment practices, barriers and special measures - a list of employment practices that have been reviewed, the barriers identified and the special measures that have been put in place, including the targets and timetables that have been set;

5) applicant information - the number of applicants and the degree of representation of persons in designated groups within the applicants.

In addition, we ask that Section 5 be amended to require employers to provide each bargaining agent with a copy of their report.

f) Guidelines

Section 10 of the Bill appears to be a provision for the Minister to issue guidelines. It is our understanding that these guidelines are not mandatory, but simply provide additional information and suggestions about how to implement Employment Equity programs. We would ask that such guidelines be available for unions as well as employers.

Moreover, we question why this section appears in the Bill. We are of the opinion that the Minister does not need legislative authority to issue guidelines. We, therefore, wonder if this section is intended to provide the Minister with some additional power. If so, we would like a clarification on the scope of the additional power or suggest that Section 10 be deleted from the Bill.

g) French Text

We wish to draw the committee's attention to several areas that need to be addressed in the French text of the Bill to ensure consistency with the English text:

1) The first line of the Bill reads "an Act respecting employment equity" and the French text corresponds with the words "Loi concernant l'équité en matière d'emploi". However, Section 1 in English reads "this Act may be cited as the Employment Equity Act" while the French says "Loi sur l'équité professionnelle". The latter should be amended in this section and in all subsequent sections of the Bill.

✓ amendement préparé

2) In Section 3, the definition of employee in the French text is the word "salariés". We maintain that this can result in some confusion since it may not have as broad a meaning as employees. We suggest that the word "employé(e)s" should replace "salariés".

NOT TRUE

Le petit Robert dit le contraire

3) Section 4 in English states that "an employer shall implement" while the French states "l'employeur vise à". "Vise à" translates as "with the aim of" and therefore does not carry the same weight as the English text. ✓ Correct

4) In Section 4 (b) "instauration des règles et usages" is used while the English text states "instituting such positive policies and practices". This presents two problems; first,"positive" is not contained at all in the French text and, second "des règles et usages" does not have the same meaning as "policies and practices." ✗ Vérifier

III - Regulations

Section 4

With respect to the amendment we have proposed for Section 4 to provide for joint union-management committees, the following provisions should be outlined in the regulations requiring, a) the committee to be co-chaired by a representative of the employer and a representative of the union, b) that the union representation on the committee to be chosen by the union, c) the minimum size of the committee to be four persons, d) the committee to meet regularly (at least quarterly).

Further to this, where more than one certified bargaining unit exists within the employer's operation, some or all of the bargaining agents should be permitted to participate jointly in the committee, if they so wish and advise the employer of their intention to do so. This would serve to reduce the number of committees within the employer's operation and at the same time allow for the flexibility that is necessary to meet regional and operational realities.

We wish to raise several concerns dealing with the proportionate representation referred to in Section 4 (b).

Targets based on representation in the workforce could indeed be set if our understanding of the Minister's comments are correct. That is, if Statistics Canada will be undertaking and disseminating relevant statistical information on the number of designated group members in the Canadian workforce. We are less certain how targets will be set for proportionate representation when qualifications, eligibility and geography are factored in. If this is to be done by Statistics Canada, how will these terms be defined? If it is the intention of the Government to have employers identify those persons who are qualified and eligible, and to define their own geographic area, then we believe that all of these terms must be defined within the regulations.

Section 5(1)a

With respect to the "Business reporting unit," the regulations should specify that metropolitan areas will be as defined by Statistics Canada.

Although we agree that there should be reporting on three types of employment -- full-time, part-time and seasonal or other -- we have serious concerns about the definition of seasonal or others. By excluding temporary or casual employees from this category, and thereby excluding them entirely from the reports, loopholes will be created.

In far too many instances temporary and casual employees may work for the same employer for years but never receive what the employer terms "permanent status". Through our labour relations experience, we have learned that any attempt to define these categories by length of time worked, can very easily lead to manipulation of the time requirements. Very often these jobs are filled by women, native people, visible minorities and disabled persons and a failure to require reporting on temporary and casual employees will result in reports that do not show a clear picture of the designated group members in the employer's operation.

However, we recognize that it may be unrealistic to expect employers to report on every individual, regardless of time worked. We, therefore, propose that the category "Seasonal and other" include all employees, other than regular full and regular part-time, who have received earnings of $2,000 or more from the employer during the calendar year being reported.

Section 5(1)b

The salary ranges reported on the occupational breakdown should be the same as the ranges required under Section 5(1)c in order to establish an adequate picture of where the designated groups representation is within the workplace.

Section 5(1)c

We strongly recommend that the salary ranges proposed for all three categories of workers be reduced. Under the suggested salary bands, the vast majority of workers will fall into three or four of the ranges and therefore it will be extremely difficult to see any clear picture of the status of the employees who are members of the designated groups.

Our understanding is that the ranges were proposed in this way for two major reasons: to limit the numbers of ranges; and to ensure that an individual could not be identified from the report.

In order to meet these concerns we recommend that the ranges be changed to the following:

Full-time: under 8,000
8,000 - 9,999
10,000 - 11,999
12,000 - 14,999
15,000 - 17,999
18,000 - 20,999
21,000 - 24,999

Full-time: 25,000 - 29,999
(Cont'd) 35,000 - 39,999
40,000 - 49,000
50,000 - 65,000
65,000 - over

Part-time: This would be the same as full-time, with the exception that the three ranges proposed for "under $8,000" would be retained.

Seasonal or other: This would be the same as part-time, except that, in line with our proposed definition for this category, the "under $2,000" range would be deleted.

Although we favour the definition of "salary" as proposed under Section 9(1)a, as opposed to the option presented in the Minister's June discussion paper, we believe that a report on benefits is also necessary. The June discussion paper suggested that benefit costs be included in the definition of salary. We maintain that this may distort the picture and would only create disagreements over the cost of benefits. The issue here is not what benefits cost, but more directly, who receives them. Therefore, we recommend that employers report a list of all of their benefits and indicate which of the benefits apply universally, which apply partially and which do not apply to each of the occupational groups.

Earlier in our presentation, we proposed several amendments to this Section of the Bill and regulations would be required to provide more details on the information that would be required to comply with these sections, i.e. prescribed forms for reporting on training and applicants.

Section 7

We welcomed the Minister's statement to the committee that she will propose an amendment that clearly requires a ministerial analysis of the reports. In line with this we recommend that the contents of the analysis, such as presented in the outline of the Bill contained in the introduction to the proposed regulations, be contained in the regulations.

In addition, such proposed contents should be analysed with regard to the degree of proportional representation achieved as it relates to Section 4(b) of the Bill.

Section 9

Definitions:

As indicated earlier in our presentation, we believe that additional definitions are required, particularly in relation

to Section 4(b)ii; that is definitions of eligibility, qualifications and geographic area. In terms of the definitions proposed, we recommend that the reference to the "employer's payroll" be deleted from both the definition of "hired" and "terminated" as this could lead to some conflict with the definition of employee that has been put forward.

The reference to "higher status" in the definition of promoted should be deleted as this is a subjective term. For example, it fails to take into account the promotion of a woman from a traditional to a non-traditional job, which may be considered a higher status job in some people's view, but may be deemed to be of "lower status" by others. For this reason we propose that "promotion" should be determined by upward movement from one of the employer's established salary ranges to another of the employer's established salary ranges.

IV - Conclusion

The foregoing recommendations are made with a view to improving Bill C-62 in the interests of women, the disabled, visible minorities and natives. We trust the committee will examine these recommendations seriously in order to ensure that the Bill, when enacted, will provide an effective instrument and model for long overdue employment equity in the Canadian work-force.

On behalf of Canadian Labour Congess,

Respectfully submitted by

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opeiu-225