

McMaster University

MICHAEL G. DEGROOTE
SCHOOL OF BUSINESS



RESEARCH AND
WORKING PAPER
SERIES

EMPLOYMENT EQUITY / AFFIRMATIVE ACTION CODES OF PRACTICE AND BEST PRACTICES IN USA, BRITAIN, CANADA AND OTHER SELECTED COUNTRIES

By

Harish C. Jain and Angus Bowmaker-Falconer

Michael G. DeGroote School of Business
McMaster University
Hamilton, Ontario

Working Paper # 436

May, 1999

Innis

HB

74.5

.R47

no.436

McMASTER UNIVERSITY

1280 Main Street West

Hamilton, Ontario, Canada L8S 4M4

Telephone (905) 525-9140

JUL 19 1999

NON-CIRCULATING
INNIS LIBRARY

**EMPLOYMENT EQUITY / AFFIRMATIVE ACTION CODES
OF PRACTICE AND BEST PRACTICES IN USA, BRITAIN,
CANADA AND OTHER SELECTED COUNTRIES**

By

Harish C. Jain and Angus Bowmaker-Falconer

Michael G. DeGroot School of Business
McMaster University
Hamilton, Ontario

Working Paper # 436

May, 1999



**EMPLOYMENT EQUITY / AFFIRMATIVE ACTION
CODES OF PRACTICE AND BEST PRACTICES
IN USA, BRITAIN, CANADA AND OTHER SELECTED COUNTRIES**

BY

**HARISH C. JAIN
PROFESSOR OF HUMAN RESOURCES
AND LABOUR RELATIONS
MICHAEL G. DEGROOTE SCHOOL OF BUSINESS
MCMASTER UNIVERSITY
CANADA**

AND

**ANGUS BOWMAKER-FALCONER
GRADUATE SCHOOL OF BUSINESS
UNIVERSITY OF CAPE TOWN
SOUTH AFRICA**

Prepared for the South African Department of Labour, 1998

TABLE OF CONTENTS

Executive Summary

Acknowledgements

1. Introduction
2. The International Codes of Practice and Best Practices Report
3. The United States Uniform Guidelines on Employee Selection Procedures (1978)
 - 3.1 Purpose
 - 3.2 Scope
 - 3.3 Relationship between Selection Procedures and Discrimination
 - 3.4 General Standards of Validity Studies
 - 3.5 Co-operative Studies
 - 3.6 Employment Agencies and Employment Services
 - 3.7 Disparate Treatment
 - 3.8 Other Selection Requirements
 - 3.9 Job Performance Measures
 - 3.10 Affirmative Action
 - 3.11 Record Keeping for Smaller Employees
 - 3.12 US Definitions
4. Office of Federal Contract Compliance Programme
 - 4.1 Sexual Discrimination Guidelines
 - 4.2 Other OFCCP Enforcement and Related Activities
5. EEOC Background Information and Best Practices
 - 5.1 Introduction
6. Best Practices of US Employers
 - 6.1 Background: US Best Practices Study
 - 6.2 Goals of the Study
 - 6.3 Methodology
 - 6.4 Preliminary Findings
 - 6.5 Respondents
7. Britain
 - 7.1 Introduction
 - 7.2 The Commission for Racial Equality (CRE)
 - 7.3 CRE Code of Practice for the Elimination of Racial Discrimination

- 7.4 Equal Opportunities Commission (EOC)
- 7.5 EOC Code of Practice 1985 .
- 7.6 Disability Discrimination Act (1995) and the Code of Practice
- 7.7 Northern Ireland: Fair Employment Commission

- 8. Canada
 - 8.1 Overview
 - 8.2 "Best Practices"
 - 8.3 Best Practices of Selected Canadian Organisations
 - 8.4 Best Practices by Individual Canadian Organisations
 - 8.5 Canadian Human Rights Commission
 - 8.6 The Framework for Compliance Audits under the EEA
 - 1. Workforce Survey and Data System
 - 2. Workforce Analysis
 - 3. Systems Review
 - 4. Elimination of Barriers
 - 5. Accommodation
 - 6. Positive Policies and Practices
 - 7. Hiring and Promotion Goals
 - 8. Representation Goals
 - 9. Monitoring and Revision of Plans
 - 10. Provision of Information
 - 11. Consultation
 - 12. Maintaining Records
 - 8.7 Characteristics of Equal Opportunity/Employment Equity (EO/EE) and Affirmative Action (AA) Programmes in US, Canada and Britain
 - 8.8 Employment Equity Awards

- 9. Namibia Affirmative Action Best Practices
 - 9.1 Introduction
 - 9.2 Suggested Best Practices

- 10. Other Selected Countries

- 11. Conclusions

- 12. References

- 13. Appendix

EXECUTIVE SUMMARY

The report describes and analyses the employee Selection and other guidelines in the United States, the Codes of practice in Britain, and the Employment Equity (EE) Audit Framework issued by the Canadian Human Rights Commission. These are issued by government agencies responsible for administering legislations in their respective jurisdictions and are designed to assist employers, trade unions, employment agencies and others to comply with the legislations.

A field survey was conducted and officials in the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance (OFCCP) in Washington, D.C.; the Commission for Racial Equality (CRE) and Equal Opportunities Commission (EOC) in London, England; the Fair Employment Commission and Other Agencies in Northern Ireland; the Human Resource Development Canada (HRDC) and the Canadian Human Rights Commission (CHRC); were contacted and/or interviewed in person.

We distinguish between the codes of practice and the best practices in the report. Codes of practice are guidelines, codes and the framework for employment equity compliance audits, while the best practices are those that private sector employers and some government agencies have innovated in attempting to comply with the codes and to encourage employers to do so respectively.

An Employment Equity Index developed by Jain (Jain & Hackett, 1985) based on a review of pertinent research in the United States and Canada is presented and the factors described. The United States has had more than three decades of experience with Affirmative Action (AA) while Canada has had slightly more than a decade of experience with Employment Equity programmes. The "Best Practices" in these two countries based on the experiences of employers and government agencies are summarized below. In Britain, where "Positive Action" is encouraged, the CRE and the EOC encourage employers to undertake outreach recruitment, training and promotion activities in those areas where the designated groups are under represented. Northern Ireland has a comprehensive code of practice and guides issued by the Fair Employment Commission which administers the Fair Employment Act. A brief overview of Namibian "Best Practices" is also provided. Other selected countries' legislations and codes are also enumerated.

Some of the "Best Practices" reported by the EEOC survey in the United States and some of the organizations in Canada are reflected in the EE Index above. A summary of additional "Best Practices," since the Jain study was conducted in 1985, included:

- a) mentorship programmes for designated groups in recruitment, promotion and advancement;

- b) advance planning in case of terminations and downsizing in the form of retraining and reskilling employees for new jobs in the same company and keeping redundant employees on the payroll till another job was found;
- c) providing money for education and giving company stocks as incentives;
- d) having an Ombudsperson (as in the case of all the Chartered banks in Canada and some organizations in the EEOC survey) and an Ombuds programme at the OFCCP;
- e) alternate dispute resolution mechanisms (ADR) developed by both the EEOC and the OFCCP as well as some employers in the EEOC survey; in the case of employers ADR included peer review, employee hotline, management review committee, mediation and arbitration;
- f) encouragement of the formation of diversity groups by providing company premises and partnerships with educational institutions such as high schools;
- g) flexible work arrangements included flexible week, flextime, working from home, telecommuting, and job sharing;
- h) requiring managers to have diversity competence; and
- i) establishing task forces consisting of senior managers, women and other minorities to assess the status of EE/AA in the organization.

"Best Practices" by government agencies include the following:

- a) All government agencies in the three countries have instituted awards to encourage voluntary compliance by employers;
- b) Both the EEOC and the OFCCP have initiated programmes to reduce paperwork for employers and have started a tiered system of investigation of employers involving short instead of full audits to make it more efficient and to include more employers;
- c) The EEOC is providing technical assistance to small employers and has set up a technical assistance fund to help train employers regarding EEO policies & practices; and
- d) The OFCCP is holding town hall meetings and conferences to build alliances and to access stakeholders.

A brief chart is also provided listing the characteristics of equal opportunity, affirmative action and employment equity programmes in the three countries.

ACKNOWLEDGEMENTS

We would like to express our gratitude for the assistance provided by Ms. Meryl Hodnett, an MBA student at McMaster University, Mr. Joe Kennedy, Deputy Director of the OFCCP, and Ms. Jocelyn Samuels of the EEOC for informal comments on an earlier draft of this report. We also wish to thank the persons interviewed at all the government agencies in the US, Canada, Britain, and Belfast, Northern Ireland.

EMPLOYMENT EQUITY/ AFFIRMATIVE ACTION CODES OF PRACTICE AND BEST PRACTICES IN USA, BRITAIN, CANADA AND OTHER SELECTED COUNTRIES
BY
HARISH C. JAIN, MCMASTER UNIVERSITY
AND
ANGUS BOWMAKER-FALCONER, UNIVERSITY OF CAPE TOWN

1. INTRODUCTION

Policies and legislation aimed at employment equity have gained their urgency in South Africa from the deep economic and social inequalities that persist. In this context, the Department of Labour has adopted a detailed approach for the development of the employment equity legislative and policy framework.

A US AID funded technical assistance project was established to support the development and implementation of the national employment equity (EE) legislative and policy framework. The project included international team members, South African experts and the Equal Opportunities Directorate of the Department of Labour. The scope of the project covered commentary and input into the development of the legislation: (1) the Employment Equity Bill, launched by the then Minister of Labour in November, 1997, and subsequently revised to take into consideration input from interested parties and NEDLAC, was passed by the Parliament in August 1998 and subsequently signed by President Mandella later in 1998. It will become effective in 1999 (in stages); (2) an evaluation and recommendations regarding appropriate monitoring systems and technical support; and (3) research into Equal Opportunity Codes of Practice and EE best practices aimed at informing the development of a code of good practice in the South African context.

The Codes of Practice and Best Practice research was further divided into 3 components: (1) An International Codes of Practice and the Best Practices Report; (2) A Baseline Survey on the employment equity experiences and practices of a diverse (by size, sector and geography) and a large number of public and private sector employers within South Africa; and (3) A Series of Case Studies illustrating, in context, why certain employment practices enhance employment equity and others are ineffective.

2. THE INTERNATIONAL CODES OF PRACTICE AND THE BEST PRACTICES REPORT

The International Codes of Practice and the Best Practices Report is based on field visits and desk research in Canada, the US, Britain and Northern Ireland. In this respect it attempts to provide a comparative perspective on Equal Opportunities and Employment Equity (EE) codes and best practices in these three countries.

We distinguish between the codes of practice and the best practices in the report. Codes of practice are guidelines, codes and the framework for employment equity compliance audits, while the best practices are those that private sector employers and some government agencies have innovated in attempting to comply with the codes and encouraging employers to do so respectively.

In the US, there are a number of legislations such as the Civil Rights Acts of 1964 and 1991; and the Presidential Executive Orders dating back to 1965. The US has had Uniform Employee Selection Guidelines since 1978. These guidelines apply to selection, promotion, training, transfer and other staffing practices. The guidelines are subscribed to by all the federal government agencies in the US, such as the Equal Employment Opportunity Commission (EEOC), the Civil Service Commission, the Office of Federal Contract Compliance Programmes (OFCCP), and the Justice Department. In Britain there are three separate legislations. The first two are the Race Relations Act (1976) and the Sex Discrimination Act (1975), which are administered by the Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC) respectively. The Commissions have issued codes of practices for employers. The third and the latest is the Disability Discrimination Act (1995). The employment provisions of the Act and the Disability Discrimination (Employment) Regulations 1996 were issued by the Secretary of State for Education and Employment. The employment provisions took effect on December 2, 1996. The Act requires that employers make "reasonable adjustments" if their employment arrangements or premises place disabled people at a substantial disadvantage. Canada has issued EE regulations, etc. in order to assist employers in complying with the new EE legislation enacted by parliament in 1995 and effective as of 1996.

The US government has several agencies that administer various legislations and Presidential Executive Orders. The EEOC protects the private rights of individuals through its administration of Civil Rights Acts and other legislations. The OFCCP protects the employment laws and the rights of the federal government in its contracts with private sector organizations. The balance of federal agencies enforce affirmative action (AA) at federally conducted and federally funded programs, where the primary purpose of the funding is employment.

3. THE UNITED STATES UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES (1978)

3.1 Purpose

These guidelines outline a single set of principles designed to assist employers, labour organizations, employment agencies, and licensing and certification boards in order to comply with federal legislation and executive orders. The federal civil rights legislations prohibit discrimination on grounds of race, colour, religion, sex, and national origin.

3.2 Scope

The guidelines apply to selection procedures for hiring, promotion, demotion, membership (for example in a trade union), referral and retention decisions, including training or transfer.

3.3 Relationship between Selection Procedures and Discrimination

(i) Alternate Selection Procedures

If a selection procedure is considered to have an adverse impact on designated groups covered by the legislation, the employer is required to consider alternate selection procedures. Where two or more selection procedures are available which are substantially equally valid for a given purpose, the employer should use the procedure which has been demonstrated to have the lesser adverse impact.

(ii) Records on Adverse Impact

Employers are required to maintain records in relation to selection procedures by designated groups; where there are large numbers of applicants and such procedures are administered frequently this information may be maintained on a sample basis. The sample must be appropriate in terms of the applicant population and be adequate in size. The employer is required to adopt safeguards to ensure that these records are used for appropriate purposes such as determining adverse impact or for developing and monitoring AA programmes, and that such records are not used improperly.

(iii) Evaluation of Selection Rates and the 'Bottom Line'

If the total selection process for a job has an adverse impact, the individual components (e.g. interviews, tests, reference checks etc.) should be evaluated for adverse impact. Under the guidelines, if the total selection process does not have an adverse impact, the enforcement agencies will not normally expect an employer to validate individual

components. The Supreme Court has, however, called this “bottom line” defence into question.

An agency will recognize the claim of an applicant who is screened out by a procedure having adverse impact against members of his or her group, regardless of whether the employer makes up for that impact by favouring other members of the group at another step in the selection process. This is based on the principle that rights are individual, not collective (Ledvinka & Scarpello, 1991, page 148).

(iv) Adverse impact and the ‘Four-Fifths’ Rule

As a rule of thumb, in order to trigger further investigation, selection rate for any designated group which is less than ‘four-fifths’ (or 80%) of the rate for the group with the highest rate will generally be regarded by the enforcement agencies as evidence of adverse impact. However, a greater than ‘four-fifths’ rate will generally not be regarded by enforcement agencies as evidence of adverse impact.

Smaller differences in selection rates may constitute adverse impact, where they are significant, in both statistical and practical terms, or where an employer’s actions have discouraged designated groups applicants disproportionately. Greater differences in selection rate may not constitute adverse impact where the differences are based on small numbers and are not statistically significant.

If an employer has not maintained data on adverse impact, an enforcement agency may draw an inference of adverse impact in the selection process, if an employer has under-representation internally of a designated group compared to the group’s representation in the relevant external labour market.

3.4 General Standards of Validity Studies

(i) Acceptable Types of Validity Studies

Employers may rely upon criterion-related validity studies, content validity studies or construct validity studies. These strategies for validation are described in detail by the guidelines, which incorporate generally accepted professional standards for evaluating standardized tests and other selection procedures.

The validation evidence must include a representative number of women and minorities. In criterion validation, the issue of “test fairness” or the comparative performance of various groups on the test should be addressed. As Gatewood and Field (1994, page 45) have noted, a large portion of the Uniform Guidelines are devoted to the steps, data, and procedures of validation strategies.

(ii) Use of Selection Procedures which have Not Been Validated

An employer may choose to utilize alternative selection procedures in order to eliminate adverse impact, or as part of an AA programme. Such alternative procedures should eliminate the adverse impact in the total selection process, should be lawful and should be as job related as possible.

There are circumstances in which an employer cannot or need not utilize the validation techniques. In such circumstances the employer should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact.

(iii) Use of Other Validity Studies

Employers may make use of validity studies conducted by other employers or test publishers or distributors or described in test manuals. However, employers are responsible for determining the validation procedures used by others, and should obtain the necessary information to support that validity has been determined. In addition, the employer has to ensure that the incumbents or group of jobs on which the validity study was conducted perform substantially the same major work behaviours, as shown by appropriate job analyses, as the jobs for which the employer is using the selection instrument.

The studies should include a study of test fairness for each of the designated groups.

3.5 Co-operative Studies

The enforcement agencies encourage employers, labour organizations, and employment agencies to co-operate in research, development, search for lawful alternatives and validity studies.

3.6 Employment Agencies and Employment Services

Where private and public employment agencies that supply applicants to employers or labour organizations devise and utilize a selection procedure, they must comply with the standards in these guidelines. An employment agency is not relieved of its obligation because the employer did not request such validation, or has requested the use of some lesser standard of validation than is provided in the guidelines. The employer is also obliged to comply with the guidelines even if it uses an employment agency.

If an employment agency or service is requested to administer a selection procedure devised elsewhere, the agency should maintain and have available evidence of the impact of the selection and referral procedures that it administers. If adverse impact

results the agency should comply with these guidelines. If the agency relies on validity evidence in the possession of the employer it should obtain and have available such information.

3.7 Disparate Treatment

Disparate treatment occurs where members of designated groups have been denied the same employment opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. The designated groups discriminated against should be allowed the opportunity to qualify under less stringent selection procedures than were previously followed. However, this will not apply if the employer can demonstrate that the increased standards are required by business necessity.

3.8 Other Selection Requirements

Other aspects of selection programmes covered by the Uniform Guidelines include the following:

1. Skills and abilities easily learned during a brief training programme are not acceptable as training requirements, and
2. Job requirements based on higher level jobs are permissible only if it can be documented that a majority of individuals moved to such a higher -level job within a reasonable time period. Such a time period is seldom more than five years (Gatewood & Field, 1994, page 46).

3.9 Job Performance Measures

In order to demonstrate validity concerning measures of job performance, a variety of measures are allowed such as supervisor's ratings, turnover and absenteeism records, quantity or quality. However, these measures must represent important work behaviours or outcomes.

3.10 Affirmative Action

The use of selection procedures that have been validated as proposed by these guidelines does not relieve employers of any AA obligations they may have.

3.11 Record Keeping for Smaller Employers

For smaller employers the requirements are to maintain and have available records on an annual basis for the following:

1. Number of persons hired, promoted and terminated for each job by the designated group status.
2. The number of applicants for hire and promotion by designated group status.
3. The selection procedures utilized (either standardized or non-standardized).

These records should be maintained for each designated group constituting more than 2% of the labour force in the relevant labour area. Other requirements apply to record keeping by larger employers.

3.12 Definitions

Adverse Impact – A substantially different rate of selection in hiring, promotion, or other employment decision, which works to the disadvantage of members of designated groups.

Content Validity – Demonstrated by data showing that the content of a selection procedure is representative of important aspects of performance on the job. For example, for a secretarial job the typing speed, accuracy etc. will provide such a demonstration. These are the important aspects of performance in this job.

Construct Validity – Demonstrated by data showing that the selection procedure measures the degree to which candidates have identifiable characteristics which have been determined to be important for successful job performance.

Criterion-Related Validity – Demonstrated by empirical data (for example, the relationship between test scores and job performance scores), showing that the selection procedure is predictive or significantly correlated with important elements of work behaviour.

Job Analysis – A detailed statement of work behaviours and other information relevant to the job.

Job Description – A general statement of job duties and responsibilities.

Knowledge – A body of information applied directly to the performance of the function.

Observable – Able to be seen, heard, or otherwise perceived by a person other than the person performing the action.

Selection Procedure – any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil test, performance tests, training programmes, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and un-scored application forms.

Selection Rate – The proportion of applicants or candidates who are hired, promoted, or otherwise selected.

Skill – A present, observable competence to perform a learned psychomotor act.

Unfairness of Selection Procedure – A condition in which members of one designated group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance.

Work Behaviour – An activity performed to achieve the objectives of the job. Work behaviours involve observable (physical) components and unobservable (mental) components. A work behaviour consists of the performance of one or more tasks. Knowledge, skills, and abilities are not behaviours, although they may be applied in work behaviours.

4. OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMMES

4.1 Sex Discrimination Guidelines

These guidelines apply to the federal government contractors and sub contractors, or to contractors and sub contractors, performing under federally assisted construction contracts.

(i) Recruitment and Advertisements

When recruiting, employers must recruit employees of both sexes for all jobs, unless sex is a bona fide occupational qualification (BFOQ).

Advertisements in newspapers and other media for employment must not express a sex preference, unless sex is a BFOQ.

(ii) Job Policies and Practices

Written personnel policies must expressly indicate that there should be no discrimination against employees on the basis of sex. If there is a collective agreement between the employer and the bargaining representative on the conditions of employment, such an agreement must be consistent with these guidelines.

Employees of both sexes shall have an equal opportunity of any available job that he/she is qualified to perform, unless sex is a BFOQ.

The employer is prohibited to make any distinction based upon sex in employment opportunities, wages, or other conditions of employment. If employer contributions for insurance, pensions, welfare programmes and other fringe benefits are the same for men and women or if the resulting benefits are equal the employer would be considered in compliance with these guidelines.

Any distinction between married and unmarried persons of one sex, that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or women a particular job, because they have no rest rooms or associated facilities; unless the employer is able to show that the facilities would be unreasonable, e.g. due to excessive expense or lack of space.

An employer must not deny a female employee the right to any job that she is qualified to perform due to a State 'protective law". For example, such laws include those that prohibit women from performing in certain types of occupations (bartender); from working at jobs that require more than a certain amount of hours; and from working at jobs that require lifting or carrying more than designated weights.

1. Women shall not be penalized in their conditions of employment because they require time away from work on account of child bearing. If the employer has no leave policy, child bearing must be considered by the employer to be a justification for a leave of absence for a female employee for a reasonable period of time.
2. The employer must not specify any differences between male and female employees on the basis of sex in either mandatory or optional retirement age.

(iii) Seniority System

Where they exist, seniority lines and lists must not be based solely on sex.

(iv) Discriminatory Wages

The employers wage schedules must not be related to, or based on, the sex of the employees.

The employer may not discriminatorily restrict one sex to certain job classification, but rather take steps to make jobs available to all qualified employees in all classifications without regard to sex.

(v) Affirmative Action

The employer shall take AA to recruit women to apply for those jobs where they have been previously excluded. Examples include recruiting trips to women's colleges, and to co-educational institutions and designing advertisements to indicate that women will be considered equally with men for jobs.

Since women have not been typically found in significant numbers in management, employers should use corporate management trainee programmes as one of the ladders to management positions.

Both sexes should have equal access to all training programmes, and AA programmes should require a demonstration by the employer that such access has been provided.

4.2 Other OFCCP Enforcement and Related Activities

(i) Equal Opportunity and Affirmative Action

The Equal Opportunity Clause, which is enforced by OFFCP, is contained in federal contracts and has two basic requirements:

- A. The contractor is not to discriminate
 - B. The contractor must take affirmative action
-
- A. The requirement to maintain a non-discriminatory workplace is an obligation a contractor has to ensure that employees and applicants for employment are not subjected to treatment, application of policies, procedures or practices that are different than applied to others on the basis of race, colour, sex or national origin.
 - B. The requirement to take affirmative action is a contractual obligation to proactively seek to identify and implement strategies to overcome the effect of past discrimination within the workforce in a way that enhances the ability of minorities

and females to obtain employment and thereby enjoy all of the rights and privileges of an employee.

The two requirements (non-discrimination and affirmative action) are inextricably linked within the meaning of federal contract compliance, i.e., one cannot have an effective affirmative action program without having first addressed the degree to which it is maintaining policies, procedures or practices that have a discriminatory effect on its employees.

(ii) *Direct Evidence, Disparate Treatment and Adverse Impact*

The generally accepted investigated approaches used by monitoring agencies to prove potential or real discrimination are:

- Direct Evidence
- Disparate Treatment
- Disparate Impact

Direct evidence is that evidence that reflects, on its face, an act so recognizable and factually explicit that it is readily apparent or it is illustrative of an act that one would view as offensive. It may be manifested in the behaviour of one individual to another, the spoken word or the existence of offensive and illegal rules, laws, or regulations or it may be a written account that expresses animus or preference.

Disparate Treatment is the result of applying a policy, procedure or practice to one person or group in a manner that is different or non-parallel. It may be reflected in the application of a requirement for one group or individual that may not be equally applied to another individual or group.

Disparate Impact is the result of a policy, procedure, or practice that is neutral on its face but the result has a disproportionate adverse impact on a group when compared to a favoured group. In these instances the policy procedure and practices are all the same, but the result is substantially different.

(iii) *Enforcement and Monitoring*

The Uniform Guidelines described and analyzed above form the backbone of the enforcement agencies' approaches to monitoring employers' performance regarding employment equity. In addition, the uniform guidelines have been used to determine the level of inquiry necessary to the determination of compliance with applicable laws and regulations.

However, the regulatory agencies, in pursuing their enforcement and monitoring responsibilities, use a variety of methods to trigger reviews, investigations and other inquiries. The methods used to trigger action may include the filing of a complaint, the receipt of intelligence information or the reliance on a neutral targeting device. Once an inquiry begins, any or all of the aforementioned investigative approaches may be employed to determine employers' compliance.

As used by OFCCP, the presence of adverse impact does not in and of itself result in a finding of discrimination. It results in a further inquiry to determine the cause of the impact. The further inquiry would determine whether the resulting impact is caused by a policy, procedure, or practice.

During the inquiry, OFCCP uses the previously defined investigative approaches to determine whether there is direct evidence of discrimination, whether there is disparate treatment or whether there is disparate impact. Although the language of the Uniform Guidelines sets forth a contractor's obligation once adverse effect is identified, the implications are clear that the commitment to non-discrimination and affirmative action compel employer actions to mitigate the effect of any of the offending elements of the selection (personnel) process. If an employer is not able to comply with the requirement to analyze its policies, procedures and practices, it is viewed as not having satisfied its obligations under the relevant rules and regulations.

(iv) Facts About the OFCCP Programmes

A. OFCCP Mission Description

In the Department of Labor Employment Standards Administration's Office of Federal Contract Compliance Programs (OFCCP) enforces the Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended and the affirmative action provisions (Section 4212) of the Vietnam Era Veterans' Readjustment Assistance Act, as amended. Taken together, these laws ban discrimination and require Federal contractors and sub-contractors to take affirmative action to ensure that all individuals have an equal opportunity for employment, without regard to race, colour, religion, sex, national origin, disability or status as a Vietnam era or special disabled veteran.

OFCCP has 380 compliance officers and a total of 740 employees. Its jurisdiction extends to 26 million workers which is 22% of the civilian workforce in the US. It covers approximately 200 000 contractors and sub contractors which consist of 92 500 supply and service establishments and 100 000 construction establishments. In the fiscal year 1996 (October 1 – September 30) OFCCP conducted 3,476 compliance reviews and 500 complaint investigations. It recovered \$22.2 million in total financial settlements in the same fiscal year. Since 1994 the OFCCP has recovered nearly \$100 million in financial settlements for victims of discrimination.

In the fiscal year 1997 the OFCCP recovered \$31 million in back pay from contractors. This amounts to \$83 000 per compliance officer. Compliance officers have been handling 11.1 cases per year. The new compliance procedures are projected to result in 30% more cases per compliance officer. The OFCCP has 55 offices throughout the country and seven regional offices. The total 1996 fiscal year budget for the OFCCP was \$56 million. The federal government awarded more than \$179 billion in prime contracts in fiscal year 1995. Further information about the OFCCP programmes may be obtained from the Internet: the Department of Labor's address is: <http://www/dol/gov>.

B. Operation of the Executive Order Program: The EEO Clause

Each contracting agency in the Executive Branch of government must include the equal opportunity clause in each of its non-exempt government contracts. The equal opportunity clause requires that "the contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, colour, religion, sex or national origin." American Indian or Alaskan Native, Asian or Pacific Islander, Black, and Hispanic individuals are considered minorities for purposes of the Executive Order. This clause makes equal employment opportunity and affirmative action integral elements of a contractor's agreement with the government. Failure to comply with the non-discrimination or affirmative action provisions is a violation of the contract.

A contractor in violation of E.O. 11246 may have its contracts cancelled, terminated, or suspended in whole or in part, and the contractor may be debarred, i.e., declared ineligible for future Government contracts. However, a contractor cannot be debarred without being afforded the opportunity for a full evidentiary hearing. Debarments may be for an indefinite term or for a fixed term. When an indefinite term debarment is imposed, the contractor may be reinstated as soon as it has demonstrated that the violations have been remedied. A fixed-term debarment establishes a trial period during which a contractor can demonstrate its commitment and ability to establish personnel practices that are in compliance with the Executive Order.

If a matter is not resolved through conciliation, OFCCP may refer the matter to the Office of the Solicitor of Labor, which is authorized to institute administrative enforcement proceedings. After a full evidentiary hearing, a Department of Labor Administrative Law Judge issues recommended findings of fact, conclusions of law, and a recommended order. On the basis of the entire record, the Secretary of Labor issues a final Administrative Order. Cases also may be referred to the Department of Justice for judicial enforcement of E.O. 11246, primarily when use of the sanctions authorized by the Order is impracticable, such as a case involving a sole source supplier.

The regulations implementing the Executive Order establish different affirmative action for non-construction (i.e., service and supply) contractors and for construction contractors.

C. *Executive Order Affirmative Action Requirements*

i. For Supply and Service Contractors

Non-construction (service and supply) contractors with 50 or more employees and government contracts of \$50,000 or more are required, under Executive Order 11246, to develop and implement a written affirmative action program (AAP) for each establishment. The regulations define an AAP as a "set of specific and result-oriented procedures to which a contractor commits itself to apply every good faith effort." The AAP is developed by the contractor (with technical assistance from OFCCP if requested) to assist the contractor in a self-audit of its workforce. The AAP is kept on file and carried out by the contractor; it is submitted to OFCCP only if the agency requests it for the purpose of conducting a compliance review.

The AAP identifies those areas, if any, in the contractor's workforce that reflect under-utilization of women and minorities. The regulations at 41 CFR 60-2.11 (b) define under-utilization as "having fewer minorities or women in a particular job group than would reasonably be expected by their availability." When determining availability of women and minorities, contractors consider, among other factors, the presence of minorities and women having requisite skills in an area in which the contractor can reasonable recruit.

Based on the utilization analyses under Executive Order 11246 and the availability of qualified individuals, the contractors establish goals to reduce or overcome the under-utilization. Good faith efforts may include expanded efforts in outreach, recruitment, training and other activities to increase the pool of qualified minorities and females. The actual selection decision is to be made on a non-discriminatory basis.

ii. For Construction Contractors

OFCCP has established a distinct approach to affirmative action for the construction industry due to the fluid and temporary nature of the construction workforce. In contrast to the service and supply affirmative action program, OFCCP, rather than the contractor, establishes goals and specifies affirmative action which must be undertaken by federal and federally assisted construction contractors. OFCCP issues specific national goals for women. The female goal of 6.9 percent was extended indefinitely in 1980 and remains in effect today. Construction contractors are not required to develop written affirmative action programs. The regulations enumerate the good faith steps construction contractors must take in order to increase the utilization of minorities and women in the skilled trades.

D. Goals, Timetables, and Good Faith Efforts

The numerical goals are established based on the availability of qualified applicants in the job market or qualified candidates in the employer's work force. Executive Order numerical goals do not create set-asides for specific groups, nor are they designed to achieve proportional representation or equal results. Rather, the goal-setting process in affirmative action planning is used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent discrimination. The Executive Order and its supporting regulations do not authorize OFCCP to penalize contractors for not meeting goals. The regulations at 41 CFR 60-2.12(e), 60-2.30 and 60-2.15, specifically prohibit quota and preferential hiring and promotions under the guise of affirmative action numerical goals. In other words, discrimination in the selection decision is prohibited.

(v) OFCCP Strategies

The OFCCP has adopted a three pronged strategy:

1. Reduced burden of paperwork for employers.
2. Requesting employers to provide AA summary.
3. Tiered review process. The Agency has introduced innovations to its investigation procedures. For instance, it has introduced a tiered system of investigation, and has made its contractor monitoring process much more effective. Instead of conducting full reviews which previously tied up a great deal of staff and lengthy investigations, the approach now is to review contractors on the EEO-1 checklist or focus review on one topic such as compensation or do off site analysis.

(vi) OFCCP Awards

The OFCCP makes three awards annually to outstanding contractors in order to encourage voluntary compliance. These are:

1. The Annual Exemplary Voluntary Efforts Award (Eve Award) since 1983. These awards provide a platform to publicly recognize federal contractors and sub-contracts that have consistently demonstrated outstanding commitment to equal opportunity programmes which further the advancement in employment for minorities, women, individuals with disabilities and veterans. The OFCCP is contemplating that the future award holders may not be reviewed for 2 to three years.

One study, using data from 1986 to 1992, examined the impact that announcements of the OFCCP, Department of Labor, awards for exemplary affirmative action programmes had upon the stock returns of winning corporations

and the effect that announcements of damage awards from the settlement of discrimination lawsuits had on stock returns of corporations. The results suggest that announcements of awards were associated with competitive advantage and that discrimination-related announcements have the opposite effect. Wright et al. (1995) found that announcement of such awards by 34 firms were associated with significant and positive excess returns and the announcements of discriminatory settlements (in 35 firms reporting lawsuit settlements) were associated with significant and negative stock prices. Thus, the authors demonstrate that management of diverse human resources makes economic sense. (Wright et al., 1995)

2. The Exemplary Public Interest Contributions Award (Epic Award). This award recognizes community and constituent organizations whose activities support the mission of the OFCCP. These activities include recruitment, referral, training, and employment for minorities, women, individuals with disabilities and Vietnam era veterans.
3. The Secretary's Opportunity 2000 Award. Each year the Secretary of Labor's Opportunity 2000 Award recognizes one federal contractor that has implemented major, comprehensive equal employment programmes which have a dynamic national impact and goes beyond the internal workforce to include community involvement.

Corporate programmes nominated for a Secretary 2000 or Eve Award include innovative outreach and recruitment, employee development, management development and employee support programmes.

(vii) Other Proactive Initiatives by the OFCCP

1. The Agency has concluded a memorandum of understanding with several other federal agencies such as the Department of Justice and the Veteran's Department.
2. It has co-sponsored town hall meetings and conferences, which include display booths, hall rentals etc. in order to build alliances and to reach stakeholders and contractors.
3. The Agency provides information to members of the Congress such as press releases of settlements from their particular States where negotiations have been concluded.
4. It holds monthly brown bag meetings for its staff and brings people from companies, media etc. in order to keep the staff abreast of latest developments.
5. The Agency has an Ombuds programme. It is designed to permit the regulated community (that is, contractors and sub-contractors) to advance its concerns

regarding the programme monitoring and enforcement. Further, it is an extension of the quality assurance programme that is dependent upon customer feedback.

6. It is piloting Alternate Dispute Resolution (ADR). This will apply to technical violations by contractors rather than discrimination.
7. The Agency maintains a world wide web site to update its clients, the regulated community, and the general public.

(viii) OFCCP Successes

OFCCP activities provide benefit to workers through its systemic investigations and linkage agreements (partnerships with private industry and state and local agencies) and the Executive Order 11246 affirmative action requirements for Federal contractors.

For instance:

- 1) In general, OFCCP programs assisted 129 of the Fortune 1,000 companies and other major corporations to break the "glass ceiling" for women and minorities. In 1970, women accounted for 10.2 percent of the officials and managers reported on the EEO-1 form. In 1993, women were 29.9 percent of all officials and managers.
- 2) Many minorities and women have been successfully placed on large construction projects. For example, on the Oakland Federal Building project, 8 percent of the hours worked on the site were performed by women. On the New York Federal courthouse project, 35 percent of the hours were worked by minorities and approximately 6 percent by women. In addition, OFCCP has recognized the affirmative action efforts of award recipient construction contractors like the Hyman Construction of Manhattan, New York and the Law Company of Kansas.
- 3) Working women moved from welfare to forklift operator jobs and other non-traditional construction jobs in Philadelphia and Chicago through OFCCP linkage (outreach) efforts.
- 4) Native Americans are now being employed on Federal highway construction projects in conjunction with the Council for Tribal Employment Rights and the Cheyenne River Sioux Tribe TERO. Both were recognized for Departmental awards in 1994 for their efforts, including the placement of Native Americans on highway construction projects.
- 5) Individuals with disabilities are now being employed in computer positions in Columbus, Ohio. This linkage partner to Goodwill Industries employs more than 70 individuals with special needs and is a prototype of an employer's workplace that

- has been specifically designed to welcome persons with severe disabilities, utilizing great community outreach.
- 6) OFCCP has taken steps to outreach to the veterans' community and has had two highly publicized veterans cases. A Seattle company hired a specialist to address Vietnam era veterans' issues.
 - 7) Several initiatives have benefitted individual women, according to the Council of Presidents "Women Speak Out: Affirmative Action Resource Guide." For example:
 - a) Bernadette of Washington, DC. works as a carpenter because of a federal affirmative action program. She is an African-American single parent with two children.
 - b) Janice became an astronaut with NASA at the Johnson Space Center, in July 1991, because of NASA's EEO/affirmative action program. She has since logged over 438 hours in space.
 - c) Lisa is a labourer in Hammond, Indiana, employed at an expansion project. Before she entered the trades, she worked for \$5.00 an hour, without benefits as a seamstress. She now earns over \$20 an hour with benefits.
 - d) Judy is a Journey Structural Ironworker and single parent of two teenage sons in Chicago, Illinois. Before entering the trades, she worked two jobs, with no room to advance. She was one of 20 women in her union of 2,321 members.
 - e) Kathy is working in the Skilled Trades in Chicago, and earning a higher wage than in her previous service jobs.
 8. According to the OFCCP, affirmative action is necessary to prevent discrimination and to address stereotypical thinking and biases that still impede employment opportunity, such as a list of incidents published in its Egregious Discrimination Case List of November 19, 1996.
 - a) Black welders fired because white welders did not want to use their welding helmets;
 - b) A hostile working environment, including racial slurs, sexually inappropriate statements, graffiti on bathroom walls, offensive drawings in the workplace, racial jokes at an aircraft maintenance facility;
 - c) Black professionals required to scrub toilets and subjected to racial harassment; and

- d) Individual with disability (Native American amputee) subjected to verbal harassment because of his disability, physically assaulted, and denied benefits and opportunities provided to his non-disabled colleagues.
- 9. Overall findings from a 1980 - 1993 survey found that the growth rates are higher for women in contractor firms than for women in non-contractor firms.
- 10. Contractors have also changed the corporate climate in ways that are not statistically measurable because of the requirements of Executive Order 11246. For example, corporations now post job announcements and do not rely solely on word of mouth recruitment. Corporate sensitivity to issues like sex and race harassment have increased, as has the awareness of the benefits of a family friendly environment.

5. EEOC BACKGROUND INFORMATION AND BEST PRACTICES

5.1 Introduction

The EEOC protects the private rights of individuals through its administration of Civil Rights Acts and other legislations. The agency was established by Title VII of the Civil Rights Act of 1964 and began operating on July 2, 1965. The EEOC enforces federal statutes prohibiting employment discrimination, including: 1) Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, colour, religion, sex, or national origin; 2) the Age Discrimination in Employment Act of 1967, as amended (ADEA), which prohibits employment discrimination against individuals 40 years of age and older; 3) the Equal Pay Act of 1963 (EPA), which prohibits discrimination on the basis of gender in compensation for substantially similar work under similar conditions; 4) the Title I of the Americans with Disabilities Act of 1990 (ADA) which prohibits employment discrimination on the basis of disability in both the public and private sector, excluding the federal government; and 5) Section 501 of the Rehabilitation Act of 1973, as amended, which prohibits employment discrimination against federal employees with disabilities. ¹

EEOC's fiscal year 1997 budget was \$239,738,000. In 1997, it had 2,680 full time employees (FTEs). Overall, charge filings were approximately 80,000 in fiscal year 1997. Charges under the ADA accounted for approximately one quarter of the EEOC's caseload. The agency reported that there has been a dramatic rise with regard to sexual harassment charges. ²

¹ The US Equal Employment Opportunity Commission, November 3, 1997, Internet address: <http://www.eeoc.gov>.

² Ibid.

6. BEST PRACTICES BY US EMPLOYERS: EEOC SURVEY

6.1 Background: US Best Practices Study

The US Best Practices Study originated from a charge by the EEOC chair given to Commissioner Reginald Jones to examine employer best practices restricted to private sector organizations in February 1997.

6.2 Best Practice Defined

Best Practice Defined

According to the EEOC Task Force (December, 1997, page 25) a "best" practice has the following characteristics:

1. A "best" practice complies with the law.

A "best" practice is not accomplished by minimal compliance with the law since all employers must meet that standard.

2. A "best" practice promotes equal employment opportunity and addresses one or more barriers that adversely affect equal employment opportunity.

A "best" practice should strive to eliminate both general (that is, societal) and specific (indigenous to the employer) job barriers. Societal job barriers include glass ceilings against designated groups that limit their advancement, perceived cultural differences and ethnocentrism due to the "like me" syndrome; stereotyping; prejudice or outright bigotry; ignorance etc.

Employer specific job barriers include barriers to: a) recruitment and hiring; b) advancement and promotion; c) terms and conditions of employment; termination and downsizing etc.

3. A "best" practice manifests management commitment and accountability.

It involves commitment from top-level management to front-line supervisors. Management commitment must be a driving force. It includes management directives; communication throughout the organization indicating that it is committed to equal opportunities and will not tolerate unlawful discrimination in any form; and an integration of equal opportunity in all aspects of an employer's policies and practices.

Management must also monitor the results of its efforts and decisions. Accountability is important since it goes hand-in hand with commitment.

4. A “best” practice ensures management and employee communication.

Management should participate and interact with employees and employee groups. Communication should be encouraged from the “top-down” and “bottom-up”, including top management speeches and letters from employees to management.

Information about equal opportunities policies, programs, and practices should be distributed to all employees, informing everyone of management’s positions on the various aspects of equal opportunities. This includes career opportunities to all employees including competencies, skills and abilities required.

5. A “best” practice produces noteworthy results.

A practice may look great on paper, but without implementation and results, its value is subject to conjecture and is unrealized.

6. A “best” practice does not cause or result in unfairness.

An AA plan cannot unnecessarily trammel the rights of non-designated groups. For example, it cannot require the discharge of non-designated groups and their replacement with designated employees nor can it create an absolute bar to the advancement of non-designated groups. In addition, an individual benefitting from an AA plan must be qualified for the job at issue.

An AA plan should not use inflexible quotas, but rather justifiable goals and timetables.

The plan must be designed to break down patterns of segregation and to open employment opportunities for the designated groups.

Source: The discussion above is based on the Jones (Chair) Task Force Report on “Best” Equal Employment Opportunity Policies, Programs, and Practices in the Private Sector. Washington, D.C. Equal Employment Opportunity Commission, December 1997.

6.3 Methodology

- a) Reviewed the best practice literature;
- b) Examined the EEOC databases and found that employers with 25,000 plus employees made up 30% of the EEOC sample;

- c) Invitations were sent to 9 associations representing employers and employees to request their members to participate in this study. EEOC did not do a survey of individual employers best practices due to US government's paper restrictions;
- d) Commissioner Jones held round table meetings across the US in major cities such as Chicago, San Francisco, Philadelphia, Houston, etc.;
- e) The commissioner also visited a number of companies.

6.4 Respondents

Sixty companies responded in writing. In addition, notes were kept of oral discussions during round table meetings.

6.5 Findings

Based on the review of the literature and the steps outlined above under methodology, EEOC asked employers to provide information on the following six staffing categories:

- Recruitment and hiring
- Promotions and advancement
- Terms and conditions of employment (i.e. accommodation measures for minorities, etc.).
- Terminations and downsizing.
- ADR – alternate dispute resolution mechanisms.
- Other, such as diversity programmes, scholarships for minorities etc.

The findings, reported below, were provided by private sector companies on a strictly voluntary basis. There were no site visits by the EEOC staff to collect this information.

6.5.1 Recruitment and Selection “Best” Practices:

(a) Principles

- Cultivating relationships early or begun when the potential employees were not yet of age to work for an employer;
- Efforts to expand the pools of qualified minorities, women, persons with disabilities and others as candidates;
- Adequacy of information network for notifying interested persons of opportunities;
- Recruitment practices as related to search firm referrals and initiatives;

- Results of recruitment and selection;
 - Extent of which and how monitoring was accomplished;
 - Recruitment strategy involving an annual needs assessment and a comprehensive multi-faceted plan.
- (b) Specific practices
- Scholarships for education, work/study programs and internships.
 - Corporate mentoring program to work with students in order to identify, recruit, and hire candidates.
 - Participation in job fairs, posting notices on job hotlines, the internet, and in minority publications.
 - Participation in career fairs, having open houses, working with professional associations such as the National Society of Black Engineers and the Society of Women Engineers, working with civic associations, and targeting educational institutions for diverse student population.
 - The use of recruiter, referral, and search firms with instructions to present diverse candidate pools.
 - Bonuses paid for successful referrals that result in hiring.
 - Company partnerships with selected schools and universities to promote the company as a career choice.

6.5.2 Promotion and Career Advancement “Best” Practices

- In one company, as a strategic plan for the company, goals are set for mid-level, upper-level, and executive positions and assessments are conducted on a monthly basis and reported to the President and Vice-Presidents.
- In the same company, for succession planning, upper managers in higher level positions review diverse pools with the participation of the Diversity Director, to ensure diversity as well as the assessment and elimination of potential company cultural barriers.
- Other companies also listed the importance of goals in their promotion and career advancement programs.
- Many companies have job posting programs and use talent pools.

- Others highlighted succession planning, career development plans, training, educational programs and opportunities, mentoring, and pay incentives linked to progress in the career advancement of designated groups.
- Some companies have employee resource centres with information, resources, and tools for continuous learning and optimum job performance.
- Some companies ensure that qualified individuals in the designated groups are made aware of promotion and advancement opportunities and are considered for promotion and advancement.
- Others assist designated group persons in developing and obtaining the required education, training, experience, and other qualifications to be considered for promotion and advancement.

6.5.3 Terms and Conditions of Employment “Best” Practices

These include family and work-friendly policies; disability and religious accommodation; anti-harassment training, prevention, and procedures; anti-discrimination training, prevention and procedures; pay equity evaluations and adjustments; creation and maintenance of good working environment; employee support services; and employee satisfaction.

- Family-friendly initiatives included assistance with such matters as child care, elder care, adoption, family leave, new mothers, and family education expenses.
- Employee assistance programs to help employee and family members cope with personal problems, including financial, mental health, and chemical dependency.
- Work friendly programs included flexibility in working hours and working at home (telecommuting); zero tolerance for any form of harassment and policies against discrimination based on race, colour, sex etc.

6.5.4 Alternate Dispute Resolution (ADR) “Best” Practices

In one company, these included two options: 1. direct dialogue with the immediate supervisor, the supervisor’s supervisor, or with the human resources department ; 2. working with an ombudsman.

In another company, there were five options: 1. discussing the matter with the immediate supervisor or higher levels of management; 2. the employee hotline; 3. a conference with a company representative from the company solution program; 4. mediation; and 5. arbitration.

6.5.5 Management Commitment and Accountability “Best” Practices

Management commitment included CEO-and other high level management-launched and supported equal opportunity , diversity, and affirmative action initiatives such as training, developing goals, and planning and implementing strategies.

Management accountability included executive leadership reviews or progress toward equal opportunity/diversity goals with linkage of incentive pay to the achievement of these goals, the identification of the importance of valuing diversity as a key executive competency, and the evaluation of their success in actively fostering the careers of and retaining high performing women and minority staff.

7. BRITAIN³

7.1 Introduction

As noted earlier, Britain has three separate pieces of legislation. The first two are the Race Relations Act (1976) and the Sex Discrimination Act (1975), which are administered by the Commission for Racial Equality (CRE) and the Equal Opportunities Commission (EOC) respectively. The commissions have issued codes of practice for employers. The third and the latest is the Disability Discrimination Act (1995). The employment provisions of the Act and the Disability Discrimination (Employment) Regulations 1996 were issued by the Secretary of State for Education and Employment. The employment provision took effect on December 2, 1996.

7.2 CRE Code of Practice for the Elimination of Racial Discrimination⁴

(i) Purpose and Status of the Code

The aim of the Code is to give practical guidance to employers, trade unions, employment agencies and employees in order to enhance their understanding of the provisions of the Act (S. 47) and their implications; as well as to provide guidance to implement policies to eliminate racial discrimination and enhance equality of opportunity.

³ The European Economic Community Legislation takes precedence over UK law and has brought about changes in the British legislation, especially relating to women. Britain became a member of the EEC in 1973 and thus subject to the EEC law.

⁴ Race Relations Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment. London: HMSO, April 1, 1984.

The Code does not impose any legal obligations itself. However, if the Code's recommendations are not observed, (1) it can result in breaches of the law; (2) its provisions are admissible in evidence in proceedings under the Race Relations Act before an Industrial Tribunal; (3) if any provision appears to the Tribunal to be relevant to a question in the proceedings it must be taken into account in determining that question; (4) If employers take the steps that are set out in the Code to prevent their employees from breaching the provisions of the Act, they may avoid liability for such acts in legal proceedings brought against them(S. 32).⁵

The Race Relations Act prohibits direct and indirect discrimination on the grounds of race, colour, nationality including citizenship, or ethnic or national origins. Direct discrimination consists of treating a person, on the prohibited grounds as noted above, less favourably than others are or would be treated in the same or similar circumstances. Indirect discrimination consists of applying a requirement or condition, which, although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it and it cannot be shown to be justifiable on other than racial grounds.

(ii) Employer Responsibilities

Employers are responsible to provide equal opportunity to job applicants and employees. The Code recommends that employers should adopt, implement and monitor an equal opportunity policy, and that such a policy should be clearly communicated to employees through notice boards, circulars, contracts of employment or written notifications to individual employees.

(iii) The Aim of EEO Policy

To ensure that no applicant or employee receives less favourable treatment than another on racial grounds.

That there is no disproportionately adverse effect on an employer's racial group which cannot be justified on other than racial grounds.

Employees of under represented racial groups are given training and encouragement to achieve equal opportunity by an employer.

⁵ In a decision released by the Employment Appeal Tribunal, November 21, 1996 Mr. Justice Morrison, President of the Appeal Tribunal, in the case of Mrs. N. Berry vs. the Bethlem and Maudsley NHS Trust that the Industrial Tribunal should have considered a Code of Practice under Section 47(10) in arriving at a decision in this case. Therefore, the Appeal Tribunal in this case seems to have given deference to the Code of Practice issued by the Commission for Racial Equality.

To ensure that EEO is effective, management should allocate overall responsibility to senior management; discuss and agree with trade union or employee representatives policy content and implementation; ensure that policy is known to employees and all job applicants; provide training and guidance for supervisory and other relevant decision making staff such as personnel and line managers, foremen, gatekeepers and receptionists; examine and regularly review existing procedures and criteria and change them where they are potentially discriminatory; and make an initial analysis of the workforce and regularly monitor the application of the policy by analysing ethnic origins of the workforce and job applicants.

(iv) Sources of Recruitment

When advertising job vacancies it is unlawful for employers to publish an advertisement which indicates or could be understood to indicate an intention to discriminate against applicants from a particular racial group.

The Code Recommends That:

Employers advertise widely so as not to exclude or disproportionately reduce the number of applicants of a particular racial group.

Employers should avoid prescribing requirements such as length of residence or experience in the UK. The employer should make it clear that a comparable qualification obtained overseas is also acceptable.

Company literature to applicants should include a statement that they are an equal opportunity employer.

Employment Agencies

When recruiting through employment agencies, job centres, career offices and schools it is unlawful for employers:

- To give instructions to discriminate, for example by indicating that certain groups will or will not be preferred.
- To bring pressure on such agencies to discriminate against members of a particular racial group.
- In order to avoid indirect discrimination, the Code recommends that employers not confine recruitment to those agencies that provide only or mainly applicants of a particular racial group.

Other Sources

It is unlawful to use recruitment methods that exclude or disproportionately reduce the number of applicants of a particular racial group and which cannot be shown to be justifiable. For example, (1) recruitment solely through the recommendations of existing employees (employee referral) where the workforce is wholly or predominantly white or black and the labour market is multi-racial; and (2) procedures by which applicants are mainly or wholly supplied through trade unions where this means that only members of a particular racial group or a disproportionately high number of them come forward.

(v) Sources of Promotion and Training

It is unlawful for employers to restrict access for opportunities for promotion or training in a way that is discriminatory. The code recommends that job and training vacancies and the application procedure be made known to all eligible employees, so as not to exclude a particular racial group.

(vi) Selection Processes

Discrimination in selection to achieve racial balance is not allowed by the Act.

Selection Criteria and Tests

In order to avoid direct or indirect discrimination the Code recommends that selection criteria and tests be job related and not unlawfully discriminatory.

For example:

The level of education needed should be that which is needed for the safe and effective performance of the job or clearly demonstrable career pattern.

Applicants should not be disqualified because they are unable to complete an application form unassisted unless personal completion of the form is a valid test of the safe and effective performance of the job.

Overseas qualifications which are comparable with UK qualifications should be accepted as equivalent.

Selection tests should be relevant and job related and not include irrelevant questions that are familiar to indigenous applicants only.

(vii) Treatment of Applicants

Short-listing, Interviewing and Selection

In order to avoid direct or indirect discrimination, the Code recommends:

That gate reception and personnel staff should be instructed in writing not to treat casual or formal applicants from particular racial groups less favourably than others.

Staff responsible for short-listing, interviewing and selecting candidates should be clearly informed of selection criteria and the consistent application of these.

Need to be given guidance or training on generalized assumptions and prejudices about race and possible misunderstanding that can occur in interviews between persons of different cultural backgrounds.

Short-listing and interviewing should not be done by one person alone, but should at least be checked at a more senior level.

(viii) Genuine Occupational Qualification (GOQ)

Selection on racial grounds is allowed in certain jobs where race is a genuine racial qualification for that job. For example, personal services where these services can most effectively be provided by a person of that group.

(ix) Transfers and Training

In order to avoid direct or indirect discrimination the Code recommends that staff responsible for selecting employees for transfers to other jobs should apply selection criteria without unlawful discrimination.

Industry or company agreements and arrangements of custom and practice on job transfers should be examined for indirect discrimination. For example, for concentration of a particular racial groups in a particular section or sections.

Staff responsible for selecting employees for training, including induction, promotion or skill training should be instructed not to discriminate on racial grounds.

Selection criteria for training opportunities should be examined to ensure that they are not indirectly discriminatory.

(x) Dismissal (Including Redundancy) and Other Detriment

1. Staff responsible should be instructed not to discriminate on racial grounds.
2. Selection criteria for redundancies should be examined to ensure that they are not indirectly discriminatory.

(xi) Performance Appraisals and Terms of Employment, Benefits, Facilities and Services

Staff responsible for these procedures should be instructed not to discriminate on racial grounds.

Assessment criteria and criteria for eligibility for benefits etc. should be examined to ensure that they are not unlawfully discriminatory.

Employees may request extended leave from time to time in order to visit relation in their countries of origin or who have emigrated to other countries. Employers which allow annual leave entitlement to be accumulated or extra unpaid leave should apply such policies consistently and without unlawful discrimination.

(xii) Grievance, Disputes and Disciplinary Procedures

Employers should not discriminate in the operations of grievance, disputes and disciplinary procedures by victimizing an individual through disciplinary procedures because he or she has complained about racial discrimination or given evidence about such a complaint.

Employers should not ignore or treat lightly grievances from a particular racial group on the assumption that they are over sensitive about racial discrimination.

The Code recommends that in applying disciplinary procedures consideration should be given to the possible following effect on an employee's behaviour:

- Racial abuse or other racial provocation
- Communication and comprehension difficulties
- Differences in cultural background or behaviour

(xiii) Cultural and Religious Needs

When employees have particular cultural and religious needs which conflict with existing work requirements, employers should consider whether it is reasonably practicable to vary or adapt these requirements to enable such needs to be met. For

example, the Code recommends that employers should not refuse employment to a Turbaned Sikh due to uniform requirements. Other examples are, observance of prayer times and religious holidays and wearing of dress such as saree and the trousers worn by Asian women.

Work requirements, which conflict with religious observance by a racial minority, would generally be unlawful if they have a disproportionately adverse effect on particular racial groups and cannot be shown to be justifiable.

(xiv) Communications and Language Training for Employees

Although there is no legal requirement to provide language training, difficulties in communication can endanger equal opportunity in the workforce.

Where the workforce includes employees whose English is limited the Code recommends, where reasonably practicable, the following:

Provision of interpretation and translation facilities, e.g. in the communication of grievance and terms of employment.

Training in the English language and communication skills.

Training for managers and supervisors in the background and culture of racial minority groups.

The use of safety signs, translations of safety notices, instructions through interpreters, instruction combined with industrial language training.

(xv) Instructions and Pressures to Discriminate

It is unlawful to issue instructions by personnel or line managers to junior staff to restrict the number of employees from a particular racial group.

An example of pressure to discriminate is an attempt by a shop steward or a group of workers not to recruit members of a particular racial group, for example by threatening industrial action.

The Code recommends that:

Guidance be given to all employees, especially those in positions of authority or influence, on the relevant provisions of the law.

Decision makers should be instructed not to give way to pressure to discriminate.

Giving instructions or bringing pressure to discriminate should be treated as a disciplinary offence.

(xvi) Victimization

It is unlawful to victimize individuals who have made allegations or complaints of racial discrimination, or who provided information about discrimination, for example by disciplining them or dismissal.

Guidance on this aspect of the law should be given to all employees and particularly those in positions of influence or authority.

(xvii) Monitoring Equal Opportunity

The Code recommends that employers should regularly monitor the effects of selection decisions and personnel practices and procedures in order to assess whether equal opportunity is being achieved.

1. Information needed for effective monitoring may be obtained by records showing the ethnic origins of existing employees and job applicants.
2. The employer should adopt the method of monitoring best suited to their needs and circumstances. However, the method adopted should be able to show that it is effective. The chosen methods should be discussed and agreed with the trade union or employee representatives to achieve their full commitment.
3. Employer should ensure that information on individuals ethnic origin is collected for the purpose of monitoring equal opportunity alone, and is protected from misuse.

The CRE recommends a comprehensive method for analyzing:

The ethnic composition of the workforce of each plant, department, section, shift and job category, and changes in distribution over periods of time.

Selection decisions for recruitment, promotion, transfer and training according to the racial group of candidates and reasons for these decisions.

Unless there a large number of applicants, and the burden on resources would be excessive, reasons for selection and rejection should be recorded at each stage of the selection process. Simple categories of reasons for rejection should be adequate.

Selection criteria and personnel procedures should be reviewed for indirect discrimination. This information should be carefully and regularly analyzed.

Is there evidence that individuals from any particular racial group:

Do not apply for employment or promotion, or fewer apply than might be expected?

Are not recruited or promoted at all or are appointed in a significantly lower proportion than the rate of application?

Are under represented in training or in jobs carrying higher pay, status or authority?

Are concentrated in certain shifts, sections or departments?

If the answer to the above questions is yes, the reasons for this should be investigated. If direct or indirect discrimination is found, action must be taken to end it immediately.

Deliberate acts of unlawful discrimination by employees should be treated as disciplinary offences.

(xviii) Positive Action

Positive measures are allowed by law to provide encouragement to racial minorities to apply for jobs, and training for these employees who have been under-represented in particular work.

A racial group is under represented if, at any time during the previous 12 months, either there was no one of that group doing the work in question, or there were disproportionately few in comparison with the group's proportion in the workforce at that establishment, or in the population from which the employer normally recruits for work at that establishment.

Discrimination at the point of selection for work is not permissible.

The Code recommends that where there is under representation of particular racial groups in particular work, the following measures should be taken:

Job advertisements to reach members of these groups and encourage their applications. For example, through the use of ethnic minority press as well as other newspapers.

Use of employment agencies and career officers in areas where these groups are concentrated.

Recruitment and training schemes for school leavers designed to reach members of these groups.

Encouragement to employees from these groups to apply for promotion and transfer opportunities.

Training for promotion or skill training for employees of these groups who lack particular expertise but show potential; supervisory training may include language training.

(xix) Responsibilities of Employees, Trade Unions and Employment Agencies

The Code also spells out the Responsibilities of Individual Employees in Part 2, the Responsibilities of Trade Unions in Part 3, and the Responsibilities of Employment Agencies in Part 4.

While the Code is the basic guidance/best practice document issued by the CRE, it is supported by other more detailed guidance on specific issues, including the Employer Standard, RACIAL EQUALITY MEANS BUSINESS which gives more detailed guidance on the development of the racial equality, diversity and equal opportunity policies.

7.3 Equal Opportunities Commission (EOC)

(i) Overview

EOC administers the Sex Discrimination Act of 1975, as amended and broadened in 1986; and the Equal Pay Act of 1975, as amended in 1984.

It had an annual budget of £6,406,159 in the fiscal year 1996. (Annual Report, EOC, 1996) The EOC has a total of 167 permanent staff, including 34 staff employed on a job share or part time basis. In addition, the equivalent of 14 positions was covered on a temporary basis. This staff strength was in place as of December 31, 1996.

The Sex Discrimination Act makes it unlawful to discriminate on the grounds of sex. Sex discrimination is not allowed in employment, education, advertising, housing, goods, services or facilities. It is also unlawful to discriminate against married persons, in employment or in advertisements for jobs.

The Equal Pay Act requires that women must be paid the same as men when they are doing equal work. The Equal Pay Act applies to:

- Like or similar work
- Work which has been rated as equivalent
- Work of equal value

7.4 EOC Code of Practice 1985

(i) Introduction

The EOC Code of Practice gives guidance to employers, trade unions, and employment agencies on measures to achieve equality on the basis of sex and marital status. As in the CRE Code, it covers:

1. Recruitment.
2. Genuine educational qualification.
3. Sources of recruitment.
4. Advertising.
5. Selection methods (tests, applications and interviewing).
6. Promotion, transfer and training.
7. Terms of employment, benefits, facilities and services.
8. Grievance, disciplinary procedures and victimization.
9. Dismissals, redundancies and other unfavourable treatment of employees.
10. Monitoring.
11. Positive action (recruitment training and promotion; other working arrangements).

In 1-10, the topics covered are almost identical, except that this EOC Code applies to sex and marital status.

Under Positive Action, it may be useful to examine the code's application to sex and marital status.

(ii) Positive Action

Recruitment, Training, and Promotion

The Code recommends giving special encouragement to, and providing specific training for, the minority sex if there have been few or no members of one sex in a particular work in employment for the previous twelve months

Employers are encouraged to train their own employees (male or female) for work, which is traditionally the preserve of the other sex. For example, training women for skilled manual or technical work.

Positive encouragement to women to apply for management positions.

Advertisements which encourage applications from the minority sex, but make it clear that selection will be on merit and without reference to sex.

Encouraging employers to notify in job agencies that they (employers) wish to encourage members of one sex for vacancies, where few or no members of the sex are

doing the work in question. Job agencies should tell both men and women about the position and let the under represented sex know that applications from them are particularly welcome; however it is unlawful to withhold information about job vacancies from one sex.

(iii) Other Working Arrangements

The Code encourages employers to explore with working parents their continuity of employment in the following ways:

Part time or flex-time basis.

Adequate personal leave arrangements available to both sexes, especially domestic responsibility at the time of child birth.

Availability of child care facilities locally, or the feasibility of establishing nursery facilities on employer premises, or combining with other employers to provide these.

Residential training could be facilitated for employees with young children. For instance, employers with their own residential training centres could possibly provide child care facilities.

The statutory maternity leave provisions could be enhanced, for example by reducing the qualifying service period, extending the leave period, or giving access to part time arrangements on return.

The arrangements can be helpful to both sexes but are of particular benefit to women in helping them to remain in gainful employment during the years of child rearing.

7.5 Disability Discrimination Act (1995) and the Code of Practice

A code of practice (see the Code of Practice, 1996 and Employers' Forum briefing paper, undated) has been issued by the Secretary of State for Education and Employment. As noted earlier, the code came into effect December 2, 1996. The employment provisions of the Disability Discrimination Act (1995) and the Disability Discrimination (Employment) Regulations (1996) protect disabled people, and people who have been disabled, from discrimination in the field of employment. The provisions also apply to people who no longer have a disability but have had one in the past. The code of practice gives practical guidance to help employers and others - including trade organizations and people who hire staff from employment businesses - in eliminating discrimination.

The code applies in England, Scotland, and Wales. Similar to other regulations by the CRE and the EOC, the code is admissible in any proceedings under the Act before an industrial tribunal or court.

As noted earlier, the code requires employers to make "reasonable adjustments" if their employment arrangements or premises place disabled people at a substantial

disadvantage compared with non-disabled people. The Act defines a disabled person as someone with a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.

(i) Exceptions

The employment provisions do not apply to employers with fewer than 20 employees. The Act exempts armed forces, fire fighters, prison officers, employees who work outside Great Britain, police officers and employees who work on board ships, aircraft, or hovercraft.

(ii) The Duty of Reasonable Adjustment

The code gives the following 12 examples of adjustment which employers are required to make. These are as follows:

1. Making adjustments to premises.
For example, the direction in which a door opens is altered for a wheelchair-user.
2. Allocating some of the disabled person's duties to another person.
For example, an applicant has a disability which causes vertigo. The job for which he/she is applying occasionally involves going onto an open roof, but he/she can otherwise do the job. The employer reallocates that minor requirement in the job to another employee.
3. Transferring the disabled person to fill an existing vacancy.
For example, a sales representative develops multiple sclerosis and is unable to continue in the job because he/she has to give up driving. He/she is transferred to a vacant marketing post requiring computer skills, for which he/she is given training.
4. Altering work hours.
For example, an employee with a mental health problem takes medication with side-effects which make it difficult for him/her to be alert in the morning. He/she is allowed to start later in the day and to work flex-time.
5. Assigning the disabled person to a different place of work.
For example, an employee develops a disability requiring use of a wheelchair. Her/his workstation on the third floor becomes inaccessible and so he/she is transferred to the ground floor.
6. Allowing absence during working hours for rehabilitation, assessment or treatment.
For example, an employee who develops Parkinson's Disease requires a course on physiotherapy. He/she is given time off to attend for treatment.

7. Giving or arranging training.
For example, a team of computer operators are given training on a new machine. To enable him/her to receive this training a visually impaired person is given additional software so that he/she can use a computer with speech output.
8. Acquiring or modifying equipment.
For example, an employee with severe arthritis in the hands is given a portable computer to enable note-taking during training lectures.
9. Modifying instructions or reference manuals.
For example, a new operating manual is introduced. A braille version is produced for a visually impaired employee. For an employee with a learning difficulty the supervisor provides oral instruction.
10. Modifying procedures for testing or assessment.
For example, a person with restricted manual dexterity might be disadvantaged by a written test, so an employer might have to give that person an oral test.
11. Providing a reader or interpreter.
For example, a deaf employee who is being considered for promotion is to be interviewed by two senior managers. He/she lip-reads slowly which inhibits performance in an interview. To enable him/her to compete fairly with other candidates, a sign language interpreter is provided for the day of the interviews.
12. Providing supervision.
For example, a support worker is made available when needed to help an individual whose disability leads to uncertainty or lack of confidence.

(iii) Recruitment

The Act indicates that it is unlawful for an employer to discriminate against a disabled person:

- 1) in the arrangements made for determining who should be offered employment;⁶
- 2) in the terms on which the disabled person is offered employment;
- 3) by refusing to offer, or deliberately not offering, the disabled person employment.

⁶ According to the code, the word "arrangements" has a wide meaning. Employers should avoid discrimination in, for example, specifying the job, advertising the job, and the processes of selection, including the location and timing of interviews, assessment techniques, interviewing, and selection criteria.

(iv) Job Specification

The code indicates that the inclusion of unnecessary or marginal requirements in a job specification can lead to discrimination. For example, an employer stipulates that employees must be "energetic," when in fact, the job in question is largely sedentary in nature. This requirement could unjustifiably exclude some people with disabilities. Another example is requirement of a driving license when a job requires limited travelling.

The code also prohibits blanket exclusions. An example would be an employer stipulating that candidates for a job must not have a history of mental illness, believing that such candidates will have poor attendance.

(v) Advertising

According to the Act, "advertisement" includes every form of advertisement or notice, whether to the public or not. This includes internal memos.

The code encourages employers: 1) to provide information about jobs in alternate forms such as in large print, in braille, on tape, or on computer disc; 2) to welcome applications from disabled people; 3) asking applicants whether they need an adjustment and what it might be.

(vi) Selection

The code makes suggestions for reasonable adjustments for an employer in order to make arrangements for interviews, such as rearranging the time, ensuring that the interviewer's face is well lit when interviewing someone with a hearing or visual impairment; providing travelling expenses for a support worker or reasonable cost of travel by taxi, rather than by bus or train; holding an interview in alternative accessible room where the normal interviewing room for other candidates is not accessible to disabled people; to allow an applicant to bring a supportive person to assist in answering questions that are not part of tests; and to allow a longer time for an interview for someone with a hearing impairment using a sign language interpreter.

(vii) Aptitude and Other Tests

The employer may need to revise the test, or the way the results of tests are assessed, to take account of specific disabled candidates, such as, accepting a lower pass rate for a person whose disability inhibits performance in such a test.

(viii) *Discrimination in Other Areas of Employment*

An employer is prohibited from discriminating in terms and conditions of service, arrangements made for induction, arrangements made for employees who become disabled, opportunities for promotion, transfer, training or receiving any other benefit, or refusal of such opportunities, pensions, dismissal, or any detriment.

The code also applies to disabled contract workers.

7.6 Anti-Discrimination Legislation and Codes of Practice in Northern Ireland

	Britain	Northern Ireland
Legislation	Sex Discrimination Act 1975; Equal Pay Act, 1970	Sex Discrimination Order 1976; Equal Pay Act
Prohibited	Sex, gender pay discrimination; Grounds marital/family status	sex, gender pay discrimination marital/family status
Legislation	Race Relations Act 1976	Race Relations (NI) Order 1996
Prohibited Grounds	Race, Ethnic origin	Race, Ethnic Origin
Legislation	None	Fair Employment (NI) Act 1989
Prohibited Grounds	None	Religion/Political Belief
Legislation	The Disability Discrimination Act 1995	Same
Prohibited Grounds	Physical and Mental Disability	Same
Legislation	European legislation may also be relevant; especially Article 119 of the Treaty of Rome and the various equality directives	

Source: Adapted from Mackander, Anti Discrimination Law in the United Kingdom
FactSheet, undated.

7.7 Anti-Discrimination Legislation and Codes of Practice in Northern Ireland

Fair Employment Commission

The Fair Employment Agency was established under the first 1976 Fair Employment legislation in Northern Ireland by the UK government. The original Act came about as a result of Civil Rights advocates demands concerning discrimination in employment against Catholics. The Civil Rights advocates asserted that Catholics were badly represented in the middle and senior parts of the public sector, in the professions and in the private sector; in the white collar and skilled manual employment. Catholics were over-represented in unskilled jobs and among the unemployed. It was felt that discrimination in employment arose because of direct discrimination. As per the 1991 Census, there were 238, 274 (39.8%) economically active Roman Catholics and 361, 572 (60.2%) economically active Protestants (SACHR Report, June 1997).

The FEC made recommendations to the government to make the legislation more effective. One of the recommendation was that there should be detailed monitoring of the religious composition of the whole of the Civil Service. The government accepted this recommendation. A number of other recommendations were also made by the Northern Ireland Standing Advisory Commission on Human Rights (SACHR), a body set up under the 1973 Constitution Act to advise the Secretary of State on human rights. The government accepted several of these recommendations made by the (SACHR) and in 1989 a new Fair Employment Act was established which came into force in January 1990.

The 1989 Act introduced compulsory registration of all public employers and private firms with more than 10 employees; compulsory monitoring of the workforce and, for public and large private companies (251 plus employees), compulsory monitoring of applications and appointments regularly (at least three-yearly) formal reviews of recruitment, training and promotion practices to determine if fair participation was being provided; and the use of affirmative action goals and timetables to remedy under-representation.

The FEC deals solely with discrimination on the grounds of religion or politics and inequality in terms of religion. The legislation provided that all employers with more than 10 employees should monitor the religious composition of their work force by 9 standard occupational categories and report this information on an annual basis to the FEC. In addition, the FEC was given wider investigative powers. As noted above, all employers were required every 3 years to carry out a fair employment review to establish whether the company was providing fair participation in employment.

In the Code of Practice drawn up to advise employers on how to implement the legislation, it is stated:

“What is required is that you afford opportunities to both communities and, where a

community is under-represented, you take affirmative action steps to remedy that under-representation. Accordingly, you must ask yourself whether, in the light of all factors known to you, and including advice from the Commission, the composition of the workforce and your recent recruits as revealed by monitoring is broadly in line with what might reasonably be expected. If it is out of line then you must ask yourself why this is so and what affirmative action is needed in order to bring about fair participation by both Protestants and Roman Catholics.”

The FEC issued a general “Code of Practice “ (1989), which came into effect on December 31, 1989. The Code has several sections. It starts with an introduction and includes a section each on the role of employers; duties on employers; indirect discrimination; the role of trade unions, their representatives and their members; the role of employees; and the role of employment agencies. Section 2 contains a synopsis of the background to the Act, section 3 outlines the role of the FEC; and section 4 contains a description of the role of the Fair Employment Tribunal.

The FEC has also issued two different Guides for Employers (both undated) entitled “Section 31 Review: A Guide for Employers” and “Taking Affirmative Action: A Guide for Employers” under Fair Employment (N.I.) Act 1989. Below is a summary of some of the key points in the Section 31 review guide.

1. Introduction

Under the statute, employers registered with the FEC have a statutory duty to carry out a periodic review their workforce compositions and employment practices. The purpose of the review is to enable employers to determine whether or not Protestants and Roman Catholics are enjoying or likely to continue to enjoy fair participation in employment in the employer’s organization.

In addition, the review should assist in identifying appropriate practical AA programs to this end (i.e. equality of opportunity and fair participation); employers are required to set goals and timetables as a means of measuring change and assessing the effectiveness of the employer’s AA measures.

The FEC has a statutory duty to give advice to employers in relation to the conduct of a review.

2. What is a Review?

Scope: Under Section 31 of the Act, all registered employers are required to conduct periodic reviews of the composition of employees; b) the employment practices and procedures of the organization, including recruitment, training for employment in the organization; training within the organization; and promotion.

- i) The review of composition should include an analysis of employees, applicants, appointees and job leavers. Redundancy practices should be included when reviewing employment practices.
- ii) The review must be carried out no more than 3 years after the date of registration with the FEC and subsequently at intervals of no more than 3 years.
- iii) The FEC recommends that employers conduct a review at an early stage and carry out frequent reviews; the FEC has the power to direct an employer to carry out more frequent reviews.
- iv) Code of Practice: In carrying out a review, an employer must take into account the contents of the "Code or Practice".
- v) The review should be conducted in a formal manner with a written report prepared.
- vi) Although, the main responsibility for providing equality of opportunity rests with employers, individual employees and their representatives also have a part to play. Employers should consult with recognized trade unions or employee representatives and provide them with an opportunity to put forward their views.

3.1. Equal Opportunity Policy (EOP):

- i) EOP should include a statement of the organizations's commitment to ensuring fair participation and providing EO to job applicants regardless of religious belief or political opinion;
- ii) A statement that it will ensure that job applicants will not be discriminated against on the grounds of religious belief or political opinion;
- iii) Commitment to consult with recognized trade unions or workers' representatives on the implementation and regular review of the policy and any AA program which may be identified as necessary;
- iv) Appointment of a senior member of staff to be responsible for the implementation and regular review of the policy;
- v) A joint declaration by the employer and appropriate trade union/s or employee representatives to maintain a neutral and harmonious working environment.
- vi) Provision of internal grievance procedure and confirmation that the organization will regard any complaints of discrimination as a matter of utmost gravity and that such complaints will be dealt with sympathetically and confidentially.

- vii) A commitment to make any form of unlawful discriminatory behaviour a serious disciplinary offence.
- viii) A commitment to make the policy known to all employees and to job applicants.

3.2. Composition of the Workforce:

- i) In addition to the overall representation of Protestants and Catholics in the workforce, employers are required to examine the 9 occupational groupings to see if there are concentrations of Protestants and Catholics in certain categories which might indicate an imbalanced workforce within the undertaking. The total workforce and the nine categories should be analysed by male and female and for rates of pay for different jobs.
- ii) It may also be necessary to carry out a workforce analysis of the composition by departments, workshops, or more specific job groupings to examine fair participation and an indication of disproportionate representation of people of one religion.
- iii) If an organization has more than one location, each location must be examined for fair participation as outlined above.

3.3. Monitoring Applicants and Appointees

- i) As a part of a review, an employer should monitor the composition of job applicants and appointees in its organization; this information will assist the employer in examining the current composition of the workforce in the organization.
- ii) All registered employers are required to obtain information and assess the composition of job applicants on a regular (at least, once a year) basis. All public authorities and private sector employers with more than 250 employees are required to submit this information to the FEC on an annual basis.
- iii) In carrying out a review under Section 31, the FEC considers that each stage of the recruitment procedure should be monitored by an employer to identify the success rates of Protestants and Catholics applicants at each stage. This should be done for each separate recruitment exercise. A discrepancy in the rates of applications and appointments of the two religious groups must be examined and reasons for such occurrence sought.
- iv) An employer should analyze applicant flow to determine whether the pool of applicants for that organization contains a fair representation of members of the two religious groups.

- v) If under-representation is found in the applicant flow data and the existing workforce composition, an employer needs to examine its employment practices and procedures for any hiring requirement that may have a disproportionate impact on either of the religious community members. If so, this is unlawful even if it is done unintentionally.
- vi) An employer must examine the employment practices and procedures of the organization to ascertain whether or not equality of opportunity is being provided and where problems are identified, the employer needs to examine staffing practices such as recruitment, training for employment in the organization, training opportunities for employees, promotion, transfers, redundancy, job leavers, and access to benefits.
- vii) In the review, an employer is to assess: the present composition of the workforce, among any group of employees, and the composition of applicants and appointees to the organization. Each of these areas should be compared on the availability of Protestants and Catholics for employment in the catchment area. In the written report to be submitted to the FEC, the employer's conclusions on whether or not the composition of the workforce, applicants and of recent recruits is broadly in line with what might reasonably be expected should be included in the report.

4. Affirmative Action

- i) In the absence of fair participation, employers must undertake AA, including the use of goals and timetables. AA consists of anything necessary to get results, consistent with the legislation.
- ii) Successful implementation of AA requires consultation with recognized trade unions or employee representatives following the review and prior to the introduction of any AA program and at various stages thereafter.
- iii) The type of AA measures which are appropriate will follow from the analysis of the review. Each organization should draw up a program suitable for its particular needs. For instance, where members of one community are applying in fewer numbers than might reasonably be expected, advertisements could include a statement that applicants from that group are particularly welcome; if a lower proportion of members of one community are recruited than a replacement of the recruitment procedures may be necessary; and if fewer members of one community are represented in senior positions than might reasonably be expected, it may be appropriate to devise a training or development program to assist in promotions of the members of that group but would not exclude members of any other group.

- iv) "Chill Factors" occur when members of one community feel discouraged or are prevented from applying for employment in an organization because it is traditionally associated with the other community. Some of the measures include inviting applications from the under-represented group to achieve a more representative pool; provision of training; and amendments to redundancy procedures to ensure that last in first out (LIFO) does not operate to the disadvantage of new hires from the under-represented group.
- v) Goals and timetables should accompany AA measure to measure progress towards the achievement of fair representation. Goals should be both realistic and challenging.

5. Fair Participation

- i) Catholics and Protestants should be represented proportionately in terms of extent of employment, types of employment and levels of employment.

6. Catchment Areas

- ii) A catchment area can be defined as the area from within which an employer would reasonably be expected to recruit for particular jobs in his/her organization. It is rare that an employer's catchment area corresponds exactly to the area in the immediate vicinity of the company's premises.
- iii) The first need is to identify the area from which the current workforce is drawn from by each occupational group and location; the second to examine the home addresses of recent job applicants. The employer is then in a position to define the geographic areas which provide the existing workforce and job applicants. The employer is therefore in a position to identify geographical areas which may be within reach but which are providing very few or no employees or job applicants. Reasons for this should be examined.
- iv) There are a number of factors which help to determine the area from which a company draws its labour: these include a. rates of pay; b. methods of notifying vacancies; specific qualifications or specialized abilities; c. travelling conditions (accessibility in terms of public transportation, travelling time, shift work, etc.); d) alternative employment in terms of proximity of other companies, working conditions, rates of pay etc.
- v) After the appropriate catchment area has been identified for each major job group the employer should seek to assess the availability for employment of members of each community within those catchment area. For each catchment area, the employer should examine the community composition of a. the overall population; b. the unemployed; c. people with skills for the particular job; d. school-leavers.

- vi) In making an assessment re. fair participation, an employer should compare his/her own workforce compositions to these figures.
- vii) Employers should also consider the availability of promotable or trainable members of the under-represented group within his/her own organization.

“Taking Affirmative Action: A Guide For Employers “ issued by the FEC under the Fair Employment (N.I.) 1989 contains, among other things, a helpful checklist or menu on employment practices/ procedures. In order to remove under-representation, it is suggested that employers adopt formal and objective recruitment and selection and :

- 1a. Abandon or modify practices by ending word of mouth recruitment; ending the use of unsolicited applications; removing employment requirements or conditions which are not strictly job related; abandon preferences in recruitment, selection or promotion for friends and relations of existing employees; people with longest service etc.
 - 1b. Take Positive measures by drawing up a clear policy to promote equality of opportunity in recruitment, training, and promotion practices; allocate overall responsibility for EO policies and practices to a senior manager; appoint an EO manager/officer; outline responsibilities relating to EO on job descriptions of managerial and supervisory staff; develop clear objectives and performance indicators relating to EO with managers; ensure that policies and practices are communicated clearly to existing employees, new recruits, job applicants and potential employees; develop a program of training to ensure that all staff are fully aware of the company’s commitment to EO; provide training and guidance for persons in key decision making areas-senior executives, personnel, managerial/supervisory staff, reception; consult with appropriate recognised trade unions, employee representatives or the workforce on the implementation of EO policies and any amendments to practices; make clear that breaches of EO policy will be regarded as misconduct and could lead to disciplinary proceedings; include fair participation, AA and goals and timetables as part of the EO policy; and ensure that individuals in selection are given guidance and training on sound selection procedure.
 - 1c. Workplace environment: Include statements relating to discrimination, intimidation and harassment in disciplinary procedures, including making them a disciplinary offence; develop a separate grievance procedure to deal with cases of discrimination, harassment and victimization; establish joint employee-staff EO committee; and ensure that social and recreational facilities are desegregated and that under-represented employees are encouraged to participate.
2. Outreach measures (to attract applicants):

The goal is to encourage applications from members of the under-represented community and promote a positive image of the company. Even when not engaged in recruitment, a number of the following measures can be helpful in dealing with the "chill factor" problems with under-represented community.

Advertising:

Advertise all vacancies in media that will reach all potential candidates; advertise vacancies in the press read by the under-represented community; insert a phrase in advertisements encouraging applications from members of a minority community for employment, training or promotion; contact schools and build up links to encourage students from the under-represented community to apply for jobs; use employment agencies, community groups, job clubs and career offices in areas where under-represented groups are concentrated; request staff in job markets (T&EA offices) to canvass vacancies through offices in appropriate catchment areas; establish contact with groups representing the under-represented community and arrange plant or office tours for such groups; use work experience, work shadowing, placements etc. to give under-represented groups the opportunity to see the work and workplace for themselves; hold meetings with influential individuals and organizations within the under-represented community in order to encourage applicants from that community; include representatives from the under-represented community on recruitment/selection/promotion panels; encourage employees from the under-represented groups to encourage applicants from their community; encourage representatives from the under-represented community to apply for personnel and management jobs; publicize commitment to fair employment in the local press read by the under-represented community such as feature articles, 'human interest' stories; invite such representatives to open days, factory visits and other promotional events; sponsor sports and especially youth events by giving support to local teams.

3. Promotion

Circulate widely the details of all promotion opportunities; encourage employees from the under-represented groups to apply for promotion opportunities; examine all promotion procedures for direct or indirect discrimination; develop an inventory of minority skills and experience; initiate training programs and encourage under-represented employees to apply for this training if they lack essential skills; formalize promotion procedure and ensure arrangements for promotion are systematic and objective; introduce counselling for career development to encourage under-represented groups to develop their skills and apply for promotion; review seniority practices and existing collective agreements; introduce procedures which allow for accelerated promotion to senior grades where existing middle management applicant groups have a good representation of under-represented group employees; consider the introduction of secondment procedures, early retirement or career breaks to attempt to deal with imbalances in senior grades; and require the personnel department or person responsible for recruitment/promotion to explain why apparently qualified under-

represented candidates are not applying or are failing to secure promotion.

4. Training

4.1. Positive action training for existing employees

Examine all training arrangements to ensure that no directly or indirectly discriminatory requirements or conditions are applied in training; encourage under-represented employees to avail of all training opportunities; audit participation of under-represented groups on training courses; introduce training schemes where specific skills are generally not available among under-represented employees; introduce training schemes which are designed to identify potential in new employees and thereby accelerated promotion.

4.2. Outreach training

Establish training schemes for school leavers and encourage such school leavers from the under-represented community to avail of these schemes; establish special training programs such as technical, work experience or motivation training with schools which serve the under-represented group; establish training programs with particular community groups; establish training programs aimed at training and/or recruiting those not currently employed; target training at a particular geographical location in Northern Ireland; training may be confined to a particular group etc.

5. Redundancy

Abandon any practice or procedure which has an adverse impact upon members of the under-represented community such as length of service (LIFO-last in first out) as a method of selection for redundancy; consult with recognized trade unions or employee representatives on the development of an alternative procedure which does not adversely impact on under-represented employees, that is, non-discriminatory criteria based on objective measures of performance, skills, qualifications and disciplinary records; negotiate a redundancy scheme which may affect a proportionately smaller number of persons from the under-represented community in the workplace.

6. Other measures

Consider transportation difficulties experienced by under-represented applicants or employees and encourage transportation sharing or company transport.

The FEC's Fair Employment Code of Practice and its decisions provide guidance to employers and increased awareness on important areas of systemic discrimination such as sectarian harassment, removal of job barriers, positive and proactive actions.

An increasing number of cases have been settled before reaching the Tribunal. Unlike the Industrial Tribunal in Great Britain, the Fair Employment Tribunal in Northern Ireland is a specialist body. The representatives of Tribunals in Northern Ireland are chosen from panels of people with expertise in fair employment areas; a majority of cases in Industrial Tribunals in Great Britain are industrial rather than discrimination related. However, the Fair Employment Tribunal has a structure similar to the Industrial Tribunal with a lawyer as a chair and representative of each side of industry (Cooper in MacEWEN, 1997; interview March 1998).

The FEC recovered £ 579, 640 total compensation in the 57 settled applications during 1994/95. A total of £87, 294. 70 compensation was recovered in 8 complaints upheld by the FE Tribunal.

The FEC receives annually and publishes the results of returns from all public sector bodies and almost 4,000 private sector companies with a combined total of more than 397,000 workers. According to this monitoring information (supplied to the FEC under the 1989 Act), both the number applicants for, and appointments to, jobs in the public sector and in private sector firms with more than 250 employees, by religion and gender, increased for men and women between 1991 to 1996. There have been also increases in the Catholic shares of appointees to both the public and private sectors; particularly among men in the private sector, where the proportion rose from 34.8% to 45.4% between 1991 and 1996. According to the FEC, based on these figures, there is no evidence that either community (Protestants or Catholics) is experiencing systemic discrimination at the point of selection (SACHR Report, June 1997).

Measurable progress:

In 1994, the FEC analyzed the employment practices of a sample of 268 private sector companies with almost 170,000 employees (FEC, 1995; SACHR, June 1997). The results showed a considerable turnaround from the low rates of equality-based employment practices uncovered in the 1986 survey by the Policy Studies Institute when very few employers had formally put in place a system of monitoring (Policy Studies Institute, 1987; SACHR, June 1997).

In its 6th Annual Report 1994/95 the FEC reported that between 1990 and 1994 the overall proportion of Catholics in every occupational groups had increased with the largest increase being in managerial (3.9 %increase for managers and administrators) and professional occupations (5.4% increase). The Commission concluded that about half the under-representation of Catholics both in employment and in the top two socio-economic groups had been eliminated in employment in four years of monitoring. However, while roughly 40 percent of the economically active were Catholics, this group represented over 50% of the male unemployed and almost 65 % of the long-term unemployed. According to Cooper, the chill factor (that is the hostile work environments inside companies and fear of going to work in hostile areas) is a major cause of inequality. Hence action taken to bring equality and eliminate discriminatory

employment practices, according to the FEC, may be insufficient on its own. Hence the promotion of affirmative action remains the key mechanism for achieving this end. By the year 1994/95 a total of 20 large organizations had written and binding agreements to AA programs and a further 10 were in the process of doing so.

FEC had also sought and obtained Section 31 reviews of recruitment, training and promotion practices from employers with more than 50 employees, representing some 85 percent of the registered workforces. FEC had a major program of follow-up work with these organizations. (Sloane and Mackay, February 1997).

According to Cooper, "a marked weakness of equality legislation the world over is that the benefits of increased opportunity are felt by the most advantaged section of minority communities while the most disadvantaged are left largely untouched...FEC has always argued for a two pronged attack on employment inequality: well enforced fair employment action allied to well-funded government measures directed at areas of high unemployment and social disadvantage...Only by combining government policy to assist the disadvantaged, together with effective fair employment legislation can the unemployment discrepancies be removed." (Cooper in MacEWEN, 1997).

Weaknesses of the FEA

According to Cooper, the 1989 FE Act needs some amendments to : 1. authorize more refined monitoring of the workforce. At present monitoring is limited to employers with 50 or more employees. All employers regardless of size need to be monitored; 2. indirect discrimination should be clearly defined; the definition of monitoring by hours of work should be clarified. For instance, at present, labour force monitoring is confined to workers who worked 16 hours or more. There is no distinction made between 16 hours to 40 hours.

8. CANADA

8.1 Overview

Legislation in most Canadian jurisdictions allows for the development of special programmes to reduce the inequalities experienced by the four groups designated as being disadvantaged in the labour market - women, aboriginal people, visible minorities, and persons with disabilities (Jain and Hackett, 1989). Canadian employers are largely protected from the charge of reverse discrimination. Section 16(1) of the Canadian Human Rights Act explicitly permits the implementation of special programmes that will prevent or reduce disadvantages to minority groups or remedy the effects of past discrimination against these groups.

Canada further confirmed its commitment to the principles of equality rights and employment equity in passing the Constitution Act of 1982. Section 15(2) of the Canadian Charter of Rights and Freedoms, which forms part of the Constitution Act,

explicitly states that the equality rights guaranteed in Section 15(1) “[do] not preclude any law, programme, or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups.”

The most extensive employment equity measures in Canada are in the federal jurisdiction. These include the Employment Equity Act, also known as the Legislated EE Programme (LEEP), and the Federal Contractors Programme (FCP). Both measures were initiated in 1986. The Employment Equity (EE) Act was recently revised by the Parliament with the revisions that came into force on October 24th, 1996. This act replaces the EE Act of 1986. The act expands coverage to the federal public service for the first time. The act’s coverage of federally regulated employers in banking, communications, and transportation and federal crown corporations will continue as before. (Jain, 1997)

Employment Equity Legislation

As before (in 1986), the EE Act applies to federal crown corporations and federally regulated private sector employers with 100 or more employees. The legislation requires these employers to file an annual report with Human Resources Development Canada (HRDC). Under the previous act (1986) employers were required to provide annual information on the representation of the four designated groups by twelve occupational groups and salary ranges, as well as hires, promotions, and terminations. Under the new act (1995), in addition to this statistical information, employers for the first time will also be required to include in their annual reports (1) a description of the measures taken to implement EE and the results achieved, and (2) the consultations between the employer and its employee representatives concerning EE implementation, (Taggar et al., 1997).

Federal Contractors Programme (FCP)

FCP was established through a directive of the federal Treasury Board at the same time as the act was enacted in 1986. It applies to all Canadian firms (mostly provincially regulated) with 100 or more employees who bid on federal contracts worth \$200,000 or more. Under this programme, contractors are required to sign a certificate of commitment to design and carry out an EE plan. Contractors that do not meet their commitments may ultimately face exclusion from future government contracts. The contractors are not required to file an EE plan with the government, only a commitment to develop and implement such a plan subject to on-site compliance reviews by EE officers from Human Resources Development Canada.

Approximately 1,295 contractors with a workforce of more than a million (1,118,155) workers were certified under the FCP. A majority of contractors (689) are from Ontario, followed by Quebec (301).

8.2 “Best Practices”

A study conducted by Jain (Jain and Hackett, 1989) developed an Employment Equity Index based on a review of research in the United States and Canada. Its purpose is to allow employers to develop best practices to implement and evaluate the effectiveness of EE programmes. It consists of the following factors:

1. *Accountability*
2. *Numerical Goals and Timetables*
3. *Monitoring and Control Mechanisms*
4. *On-Going Publicity*
5. *Employment Practice Review*
6. *Special Target or Designated Group Recruitment and Training Efforts*
7. *Employment Equity Committee or Co-Ordinator*
8. *Resources or Budget*

Accountability:

Research indicates that employment equity programmes are more likely to succeed when line managers are incorporated into the planning and implementation of the programme and held responsible. Thus, line managers' performance assessment and subsequent linkage of success to bonuses, salary increase or promotion facilitate acceptance and adoption of employment equity throughout the organization.

Numerical Goals and Timetables:

Numerical goals and timetables are instrumental in facilitating the effectiveness of employment equity programmes. Employment equity programmes should specify all the designated groups (not just one) and specific goals and timetables ranging from 1 to 5 years.

Monitoring and Control Mechanisms:

Effective monitoring is necessary to the implementation of an employment equity programme. Regular evaluations can indicate progress being made toward set objectives and the need for suitable corrective action or adjustment. This should include: periodical reports of progress toward meeting goals, flow information on staffing; and adequate systems for human resource information management.

On-Going Publicity:

A major step in the development and implementation of an effective employment equity programme is to clearly communicate company policy to employees. These include

video and/or memorandum sent by senior management; annual reports; workplace posters; communication in several languages in company newsletters and other in-house organs.

Employment Practice Review:

One of the critical requisites to an effective employment equity programme is the identification and elimination of unfair discriminatory barriers to employment opportunities. These can include: reviewing and updating job description/specifications; monitoring staffing practices; ensuring job requirements are job related; interviewer training; validating tests and other staffing procedures.

Special Designated Group Recruitment and Training Efforts:

These include proactive efforts to recruit and train designated group members; ensuring that recruiting teams are represented by members of designated groups; making recruiting material available in several languages; mentoring programmes; as well as special measures in the form of flextime, internal and external communications, work sharing, child-care and educational assistance such as bursaries.

Employment Equity Committee or Co-Ordinator:

Co-ordinators and committees are helpful in developing, implementing and monitoring employment equity programmes. Workplace forums with equal numbers of employee and management representatives and trade unions participation where workplaces are unionised can be very helpful in this respect. However, it is important to have a full-time co-ordinator from senior management responsible for co-ordinating the work of the committee.

Resources or Budget:

In their study of employment equity programmes in nine large companies in several industries in the US, Vernon-Gerstenfeld and Burke (1985) found that most effective employment equity programmes are funded from separate budgets designated solely for this purpose. Hence, in order for an employment equity programme to go beyond tokenism, adequate resources must be allocated.

8.3 Best Practices of Selected Canadian Organizations

Based on some of the large Canadian Chartered Banks, here are some of the best practices they are following in order to enhance and implement effective EE programmes:

- 1) Requiring diversity competence of managers;
- 2) Mentoring programmes for racial minorities, women, and aboriginal persons;
- 3) Identification and development of potential leaders i.e. managers;
- 4) Alternate work arrangements;
- 5) Flexible work week (e.g. one hour a day more in the first week, Monday to Friday and one more hour from Monday to Thursday the following week, and Friday off);
- 6) Flextime;
- 7) Telecommuting;
- 8) Job sharing;
- 9) Each of the six chartered banks in Canada have an ombudsperson;
- 10) Awareness training;
- 11) Videos on the theme of valuing people and diversity;
- 12) Employee surveys;
- 13) In-house publications;
- 14) Outreach activities and sponsorships to recruit racial minorities, aboriginals, and persons with disability;
- 15) Inclusive approach;
- 16) Employment systems review to remove job barriers;
- 17) Goals and timetables to achieve a more diverse workforce;
- 18) Diversity working groups to capitalize on diverse employees, that is, racial minorities, women, and others; to serve customers of diverse backgrounds and markets and to improve business performance;
- 19) Establishing task forces consisting of senior management, women, and other minority groups to assess the status of EE;
- 20) Having an outside consulting firm do an attitude survey and make recommendations on the status of EE within the organization, on aspects such as maternity leave policies, and career advancement;
- 21) Holding career fairs to advertise job vacancies; and
- 22) Options for working from home for both women and men.

8.4 Best Practices by Individual Canadian Organizations

Recruitment and Selection Initiatives

- 1) An employer has initiated a pilot project to integrate persons with developmental disabilities into the workforce in partnership with the Downs Syndrome Association in the National Capital Region.
- 2) One employer in the transportation industry reported that a specialized industry-related campaign resulted in the hiring of women bus operators.
- 3) A small number of employers reported that before employment opportunities became available, they conducted orientation programmes for potential designated

group employees by providing tours of the facilities, information on entry-level skill requirements, employee benefits, and health and safety issues.

- 4) One employer conducted trial interviews with potential applicants in co-operation with an employment agency's job finding club for disabled persons.
- 5) A few employers also held recruitment activities at the actual locations where job openings were to be filled. For instance, in order to recruit aboriginal candidates, two employers went to reserves to publicize job openings and explain the requirements.

Seniority and Promotion Initiatives

- 6) The Saskatchewan Wheat Pool (SWP) had a unique and innovative programme for designated group members from January, 1993 to January, 1995. The designated group members received 6.2 years credited seniority. It assisted designated group members in acquiring promotional opportunities during layoff and recall in various unionized positions within SWP.

Training and Development Initiatives

- 7) A small number of employers implemented specialized industry training and internship programmes to provide designated group members with the basic skills to qualify for entry into the industry. For example, a) an employer in the water transport industry trained aboriginal women for work in marine and shipyard offices; b) an employer in the trucking industry participated in a six week training work placement programme for aboriginal candidates so that they could gain the basic skills needed to qualify for licenses and entry into the industry; c) employers in several federally regulated industries provided training in computer skills and work placement opportunities to enable persons with disabilities to qualify for employment.
- 8) An employer created a bridging programme to help women in traditional positions enter non-traditional fields of employment.
- 9) A summer camp designed to introduce students to all aspects of radio, attracted senior high school students from the designated groups. A broadcaster carried out a variety of measures to strengthen the technical and journalistic skills of aboriginal persons.
- 10) The Canadian Broadcasting Corporation (CBC) in co-operation with regional plant managers, developed a training and development programme for prospective female plant managers. For instance, a training programme was developed in Montreal to train women in the technical aspects of production. The CBC also

worked with Toronto Women in Film and Television (TWIFT) on a training programme for women.

Creating the Environment

- 11) An employer, through a leadership skills course, is focusing on equipping managers with the skills they need to manage a diverse workforce.
- 12) Some employers have instituted exit interviews to help identify any negative experiences any employee might have had with the organization.
- 13) An employer has introduced a "floater" holiday, available to all employees for their own purposes. Floater holidays would be especially welcomed by aboriginal and visible minority employees who want to take part in ethno-cultural or religious events other than the traditional Judeo-Christian ones included among statutory holidays.
- 14) Inter-provincial Pipe Line Incorporated has demonstrated the importance of communication and accountability among senior managers. "The President and CEO carefully reviews our employment equity statistics and he meets with the Vice-Presidents to discuss and approve any employment equity initiatives."
- 15) The Bank of Montreal noted that: 1995 is the third year in which, as part of the business planning and performance review processes, every manager is accountable for their contribution to the creation of a fair and equitable workplace and a workforce that reflects the diversity of the communities we serve. Performance goals include setting and meeting equitable hiring rates, and retention and advancement targets for Women, Aboriginal Peoples, Persons with Disabilities and Visible Minorities. In addition, 1995 is the second year in which branch managers integrated their workforce planning process with their business planning and marketing processes, thus further strengthening the natural business link between community composition, customer needs and workforce planning."

These practices, 1 to 15 above, are adapted from a presentation by Mr. Syed Naseem, Senior Data Analyst, Labour Standards and Workplace Equity Division of the HRDC on October 20, 1997.

8.5 Canadian Human Rights Commission

The CHRC has 425 employers under its jurisdiction for EE auditing and monitoring purposes. It has 12 compliance officers, including 3 supervisors. It expects to do 82 compliance audits a year. The CHRC conducted 14 trial audits in 1996 to get ready for mandated audits of employers under the EE Act, starting October 1997.

The total budget of the EE Branch is \$1.3 million with an authorization for 21 full time equivalent employees, or 21 person-years (PY's).

8.6 The Framework for Compliance Audits under the EEA: Audit Process and Assessment Factors, CHRC EE Branch October 1997

The CHRC is mandated to audit employers under the legislation. "These factors reflect the essentials of good employment equity planning." Each factor is described below, first by a statutory requirement, and next by an interpretation by the CHRC.

1. Workforce Survey and Data System

Statutory Requirements	Assessment Factors
<ol style="list-style-type: none"> 1. Employer must collect workforce data (s.9(1)(a)). 2. Self-identification for people with disabilities, aboriginal peoples, and members of visible minorities must be voluntary (s.9(2)). 3. Then information collected must be kept confidential and used only for the implementation of the requirements of the Act (s.9(3)). 	<ol style="list-style-type: none"> 1. All employees should be distributed the EE questionnaire with adequate lead up strategy to ensure a reasonable rate of return. The questionnaire should request voluntary self identification for people with disabilities, aboriginal peoples, and members of visible minorities (VM's). Employers are already required to have data on women. 2. Information collected for the purpose of a workforce analysis is to be reported to HRDC by private sector employers, and to the treasury board by government departments and agencies. Employees should be informed that a person may be a member of more than one designated group. 3. Workforce data must be kept up-to-date by providing questionnaire to employees who request it; who wish to change information previously submitted; and to new employees. 4. Terminations of designated group members should also be reported as they occur. 5. Data should include: information on recruitment, applications, screening, selection, training and development. 6. A system should be in place capable of providing up-to-date information on, at minimum, internal representation, hiring, promotion, termination, and salary by designated group and occupational group.

2. Workforce Analysis

Statutory Requirements	Assessment Factors
<p>1. The employer must analyse the degree of under representation of members of designated group in each occupational group (s.9 (1)(a); s.5).</p>	<p>The employer must calculate the external representation of designated group members by occupational group by taking into account the most appropriate labour pool for the occupational group, that is, the entire Canadian workforce or segments of the workforce.</p> <ol style="list-style-type: none"> 1. The relevant labour pool should take into account qualifications, eligibility, and geographic area. 2. The employer compares external representation with workforce data to determine the degree of under representation, if any, of each designated group in each occupational group. 3. For each designated group that has been found to be under represented, the employer compares the shares of hiring, with external representation (share means the % of hiring or promotions received by members of a particular designated group); compares the shares of promotions its members received with internal representation; and compares the termination rates of its members with the termination rates for non designated group members. 4. While the shares and comparisons are important: analysis of all occupational groups is done to determine whether or not designated group members are clustered in the lower levels of any of the occupation groups.

3. Systems Review

Statutory Requirements	Assessment Factors
<p>1. The employer must review its employment systems, policies and practices to identify barriers to members of designated groups for occupational groups for which under-representation has been found (s. 9(1)(b)).</p>	<p>(i) Employment policies and practices refer to recruitment, selection, hiring, development, training, promotion, retention, termination, and accommodation.</p> <p>(ii) The employer is required to review its employment systems, policies and practices, to identify barriers to members of designate groups for occupational groups in which under representation has been found.</p> <p>(iii) Where under represented, an employer must determine: (a) whether they are receiving shares of hiring that fall below external representation; (b) shares of promotion that fall below internal representation.</p> <p>(iv) If shares of hiring fall below external representation, reviews should focus on recruitment, selection and hiring policies and practices and to accommodation.</p> <p>(v) If shares of hiring fall below internal representation, employer reviews should focus on development, training and promotion policies and practices and to accommodation.</p> <p>(vi) If termination rates for designated groups exceeds those of non designated groups reviews should focus on retention, termination and accommodation policies and practices.</p>

4. Elimination of Barriers

Statutory Requirements	Assessment Factors
<p>1. The EE plan must specify the short term measures the employer will implement to eliminate barriers identified through its systems review (s.10(1)(b) and (c)).</p>	<p>The plan must include a timetable for the implementation for each of these measures within a reasonable period of time, and taking into account: (a) significance of the measure; (b) internal and external resources and constraints; (c) alternatives available; and (4) the complexity and costs of implementation.</p>

5. Accommodation

Statutory Requirements	Assessment Factors
<p>1. The EE plan must include provisions for the reasonable accommodation of employees' needs (s. 10(1)(a)).</p>	<p>Accommodation provisions are designed to ensure that:</p> <ul style="list-style-type: none"> A. The needs of applicants and employees from designated groups are accommodated without undue hardship B. Accommodation can address both physical accessibility issues and adjustments to policies and procedures. C. Accommodation is achieved through individual assessments. D. Accommodation respects individual dignity, minimises the individuals discomfort, and maximises their autonomy. E. The effective implementation mechanisms such as a written policy, availability of adequate funding for accommodations and a strategy for communicating information on accommodation to managers and staff to ensure that accommodation will be provided. F. Where accommodation policies do not already exist, the employer should adopt alternative procedures to ensure that accommodation takes place, or include measures in the plan for the implementation of procedures or a policy on accommodation. G. Where the employer has an accommodation plan with measures, such measures should be accompanied by an implementation timetable, taking into account internal and external resources and constraints and complexity and costs of implementation.

6. Positive Policies and Practices

Statutory Requirements	Assessment Factors
<p>1. The employer must prepare an employment equity plan which specifies short term positive policies and practices aimed at providing opportunities to members of under represented designated groups with respect to hiring, training, promotion and retention (s.10(1)(a)).</p>	<p>1. Positive policies should cover matters such as accessibility, harassment, support for designated group employees integration into the workplace and proactive outreach and mentoring programmes.</p> <p>2. These special measures for creating a 'critical mass' of under represented designated group employees in order to make change more self sustaining. These special measures may relate to hiring, training, promotion and retention and should:</p> <ul style="list-style-type: none"> A. Be carefully tailored to a situation of demonstrable and significant disadvantage. B. Explicitly temporary in nature. C. Designed in a manner that prevents undue exclusionary effects on non designated groups. <p>The plan should include a timetable for the adoption and implementation of each policy and practice within a reasonable period of time; taking into account the significance of the policy or practice internal and external resources and constraints and complexity and costs of implementation.</p>

7. Hiring and Promotion Goals

Statutory Requirements	Assessment Factors
<p>1. The EE plan must contain short term goals for the hiring and promotion of people from designated groups in each occupational group in which under representation has been found, along with measures to be taken each year to achieve these goals (s.10(1)(d) and (10)(2)).</p>	<p>1. The plan should include one to three year numerical goals for the hiring and promotion of designated group members in each occupational group in which under representation was found.</p> <p>2. If the employers goals are expressed as percentages, they should be based on the following considerations:</p> <ul style="list-style-type: none"> A. External representation. B. Degree of under representation. C. The requirement that the plan be sufficient to achieve 'reasonable progress'. D. The impact of goals on non designated group members. E. The expected effects of measures in the EE plan. F. Current hiring and promotion shares and termination rates for designated group members.

8. Representation Goals

Statutory Requirements	Assessment Factors
<p>1. The EE Plan must include longer term goals for increasing designated group representation in the employer's overall workforce, along with a strategy for achieving these goals (s.10 (1)(e)).</p>	<p>2. The plan should include over a period of more than 3 years the representation of each designated group in the employer's workforce found to be under represented.</p> <p>3. These goals may be either numerical or non numerical in nature.</p> <p>4. Where at least some of the representation goals are numerical, their establishment should be based upon the same sorts of considerations as those listed for short term hiring and promotion goals, along with the anticipated impact of those short term goals themselves.</p>

9. Monitoring and Revision of Plans

Statutory Requirements	Assessment Factors
<p>1. The employer must make reasonable progress (s.11) and must monitor implementation of its EE plan on a regular basis to assess whether in fact reasonable progress is being made (s.12).</p> <p>2. At least once during the period covered by the short term goals, the employer must review and revise its EE plan. Revision must include the updating of goals and any other changes that monitoring suggests are required, or that are necessitated by changing circumstances (s.13).</p>	<p>Managers should be clearly accountable and committed to the organisation's EE plan.</p> <p>The employer has a system in place for regularly assessing the effectiveness of its EE plan.</p> <p>1. Such an assessment should include an analysis of progress made since implementation of the plan began. This should consist of :</p> <p>2. A. Evaluation of attainment of short and long term goals. B. Implementation of initiatives to ensure accommodation. C. Removal of employment barriers. D. Establishment of positive and special measures. E. Communication, consultation/collaboration and record keeping.</p> <p>(i) At least once every 3 years the employer should carry out a review of the plan's effectiveness and make any necessary revisions to the goals etc. of its plan to reflect changes and circumstances.</p>

10. Provision of Information

Statutory Requirements	Assessment Factors
<p>1. The employer must provide information to its employees on the purposes of EE and steps taken to implement EE (s.14).</p>	<p>The material or presentations in this regard should be kept up-to-date and provided to all employees, managers and staff involved in activities undertaken to comply with the Act. The material should be brought to the attention of all other employees at reasonable intervals.</p> <p>(ii) Both materials and presentations should provide a reasonable amount of information in a clear, comprehensible manner and be made available in alternate formats upon request by employees.</p>

11. Consultation

Statutory Requirements	Assessment Factors
<p>(i) The employer must consult with employee representatives, including bargaining agents where they exist, on the assistance that representatives could provide with respect to communication with employees, and the implementation of EE (s.15).</p>	<ol style="list-style-type: none"> 1. Where bargaining agents exist, the employer should invite them to provide their views on the development, implementation and revision of the employer's EE plan, and on the assistance they could give regarding communication and implementation of EE. 2. Where bargaining agents do not exist, or do not represent the entire workforce, the employer should invite people designated by the employees to act as their representatives to provide their views on the same matters. 3. The employer should make all reasonable efforts to ensure that consultation is meaningful and appropriate in terms of EE.

12. Maintaining Records

Statutory Requirements	Assessment Factors
<ol style="list-style-type: none"> 1. The employer must maintain EE records regarding its workforce, its EE plan and the implementation of the plan (s.17). 	<ol style="list-style-type: none"> 4. The employer should establish a system or procedures for the maintenance of orderly EE records. 5. These records should contain accurate information on all matters specified in the regulations.

8.7 CHARACTERISTICS OF EQUAL OPPORTUNITY/EMPLOYMENT EQUITY (EO/EE) AND AFFIRMATIVE ACTION (AA) PROGRAMMES IN US, CANADA AND BRITAIN.

	US	CANADA	BRITAIN
Legislation	Civil Rights Act (CRA), (1871), (1964) and (1991) Presidential Executive Order #11246 (PEO) Age Discrimination in Employment Act (ADEA), (1973) Rehabilitation Act (RA), (1973) Americans With Disability Act (ADA), (1990) Vietnam Era Veterans Readjustment Act (VVRA), (1974) Immigration Reform and Control Act (IRCA), (1986)	Human Rights (HR) Legislations in 13 jurisdictions. Employment Equity Act (EEA), (1986 & 1995) Canadian Charter of Rights and Freedoms (1985)	Race Relations Act (RRA), (1976) Sex Discrimination Act (SDA), (1975) Disability Discrimination Act (DDA), (1995)
Target Groups	Race, colour, religion, sex or national origin (CRAs, 1964 & 1991), age (over 40 years) (ADEA), physical and mental disability (ADA and RA), Vietnam era veterans and disabled veterans (VVRA), citizenship and national origin (IRCA).	<ul style="list-style-type: none"> • Race or colour, religion or creed, age, sex, marital status, physical and mental disability (common to all 13 jurisdictions). National or ethnic origin (almost all jurisdictions). Sexual orientation, family status, ancestry or place of origin, and others (in selected jurisdictions), (HR Legislations). • Women, persons with disabilities, aboriginal persons, and visible minorities (EEA). • The Canadian Charter (1985) allows EE in government agencies across Canada. 	<p>Race, colour, nationality including citizenship, ethnic or national origins (RRA).</p> <p>Sex and marital status (SDA).</p> <p>Physical and mental disability (DDA).</p>
Scope	Public and private sector. PEOs cover federal contractors and sub-contractors.	Public and private sector.	Public and private sector.

Goals and Timetables	PEOs mandate programmes with goals and timetables of federal contractors and sub-contractors.	EEA mandates goals and timetables of employers in federal jurisdiction and federal government departments and agencies. The Federal Contractors Programme does the same.	Positive action for outreach recruitment, promotion and training for underrepresented groups is encouraged but no provision for goals and timetables.
	US	CANADA	BRITAIN
Codes of Practice	Detailed uniform employee selection guidelines adhered to by federal government agencies. Sex discrimination guidelines issues by the OFCCP.	Framework for compliance audits (under EEA) details employers' obligations relating to elimination of job barriers, reasonable accommodation, positive measures, short-term and long-term goals and timetables, and employee/trade union representatives consultations. Human rights commissions have issued short recruitment and selection "do's and don'ts" for employers.	Detailed codes of practice covering all aspects of staffing regarding race, sex and marital status, and positive action have been issued by the CRE and the EOC. The codes cover not only recruitment and selection, but also transfers and training, dismissal, performance appraisals, terms of employment and benefits, grievance disputes and disciplinary procedures, cultural and religious needs, communication and language training, victimisation, and monitoring EO, among other matters. A detailed code of practice for elimination of discrimination for physical and mental disability has also been issued. The codes spell out obligations of employers, individual employees, trade unions and employment agencies.

<p>Best Practices</p>	<p>EEOC has conducted a best practices survey of private sector employers who volunteered to provide this information. OFCCP has instituted a number of awards to recognize best AA practices among federal contractors and sub-contractors.</p>	<ul style="list-style-type: none">• EEA requires employers to submit qualitative information on best EE practices.• HRDC has instituted merit awards to recognize best EE practices among employers in both private and public sectors.	<p>CRE has initiated a number of innovative programmes to encourage positive action and has instituted awards to local authorities, media, as well as to individuals, groups or organisations for promoting harmony and good race relations.</p>
-----------------------	--	--	--

8.8 HRDC EE Awards Committee Meeting, June 22, 1998, Ottawa/Hull

The senior author was invited by the HRDC (Mr. Neil Gavigan, Director, Labour Standards & Workplace Equity) to attend as an Observer. This a very brief summary of his observations, following some background information.

Background

There are two levels of EE awards: the EE Vision awards and Certificates of Merit; the former one is much more prestigious. The awards and certificates are given in recognition of special achievements made by organizations in implementing an EE workplan and maintaining a representative workforce in Canada. The federal government introduced the EE awards program in 1990. To-date (1990 -1997) 21 companies have been given Vision awards and 66 have won Certificates of Merit

The 1998 Merit Awards Application form

This form has two parts. Part I consists of 11 questions dealing with: 1) period covered by the applicant's EE plan; the frequency of monitoring the plan: quarterly, semi-annually, annually and other; whether or not the applicant has a communication strategy; whether or not the EE plan or a summary is made available to employees; whether or not employee representatives (unionized or non-unionized) participate in the development of the EE plan; whether or not employee representatives are involved in monitoring and updating the applicant's EE plan; whether or not line managers are accountable for achieving the goals in the plan; whether or not the applicant has these four policies in place: EE, anti-harassment, work-and-family, and reasonable accommodation (e.g. disability, child or elder care); whether or not the applicant has a mechanism in place to regularly solicit input from employees on issues related to EE; whether or not the applicant regularly monitors data on the five employment systems, to identify the impact on members of the designated groups: new hires, promotions, lay-off and recalls, terminations, training and development, and pay and benefits; and whether or not the applicant's EE plan contain any qualitative measures to establish a climate favourable to the successful integration of designated group members within the organization. If so, the applicant is asked to list a maximum of five such measures.

Part II of the application asks the applicant to provide information (maximum two type-written pages) in either a narrative or bullet point format of those key elements of the applicant's EE plan that in his/her opinion demonstrates excellence which are over-and-above the minimum criteria for the Federal Contractors Program or the basis of requirements of the EE Act and requests the applicant to provide corroborating information on the impact (results) to date of the elements described.

The Process of Choosing Award Winners

In all there were 19 applications received for the awards this year (1998). Three organizations were selected for receiving the Vision Awards and another 4 for receiving a Certificate of Merit in a ceremony was presided over by the Minister in October 1998 in Toronto. The ceremony was held in conjunction with the Conference Board of Canada's annual human resource conference in Toronto.

The previous years winners (1990 -1997) were judges for 1998 award applicants, as was one representative from Workplace Equity office of the HRDC.

They were: 1. Barbara E.P. Balaban, Director, Human Resources, Carrier Canada Ltd. 1515 Drew Rd. Mississauga, Ontario, L5S 1Y8, Tel. (905) 405-3263 Fax (905) 405-4003. e-mail:

barbara.balaban@carrier.utc.com; 2. Byron B. Blundell, Manager, Human Resource Planning, Divisional Personnel (030-001), General Motors of Canada Ltd., 1908 Colonel Sam Drive, Oshawa, ON. L1H 8P7, Tel. (905) 644-1779, Fax (905) 644-7872; 3. Margaret Sarkissian, Equity Advisor, UBC, Equity Office, Room 306, Brock Hall, 1874 East Mall, Vancouver, BC V6T 1Z1, Tel. (604) 822-0560, Fax (604) 822-3260. E-mail: msark@equity.ubc.ca.

In addition, the 4th judge was an HRDC employee Ms. Joanne M. Ursino, Workplace Equity Officer, HRDC, Labour Program, 10th Floor, 300 West Georgia Street, Vancouver, B.C. V6B 6G3, Tel. (604) 666-6569, Fax: 666-6206. E-mail: joanne.ursino@hrdc-drhc.gc.ca

A fifth judge was unable to attend and sent in her recommendations.

The judges had done their home work before coming to the meeting and had read all the completed applications sent to them by the HRDC officials.

Vision Awards

The judges, in a preliminary discussion, felt that union-management co-operation in developing an EE plan was important and that these awards be given to those organizations that have integrated their EE plans with their business strategy-not necessarily for bottom line or profits only but that it was the right thing to do. Other considerations for Vision Awards based on the information provided by the applicants were: having an EE Co-ordinator; in one applicant's case having bi-weekly meetings to review EE plan - it was felt that regular meetings were essential; creating opportunities for a diverse workforce; full tuition fee reimbursement with no conditions attached; in one case having a week devoted specifically to EE; quarterly meetings; co-operation with the union/s and arriving at an excellent seniority accommodation clause for designated group members; an EE co-ordinator; mentoring programs; feedback to employees; having a representative workforce; development of EE plan with extensive

participation from designated group members; EE being fully integrated with the organization's communication strategy; an excellent campaign through T-shirts made available to employees; high success rates of return to work (97%); management accepting accountability; development of trust among employees to be able to bring issues of concern to management; participation in EE Conferences via presentations jointly with unions; the trade unions's general secretary and CEO of the company co-operating in the EE plan; business relations with tribal councils; increase in representation of designated group members; special arrangements for visually impaired; going beyond worksite to assist the community.

Certificates of Merit

Some of the considerations in awarding the Certificates discussed during the meeting, based on the applicants completed applications were: a Consultant taking responsibility for EE within the organization; provision of day care and home care; in one company 66% of the employees utilizing some form of flexibility; produced an excellent diversity brochure and videos; Canada- wide initiative to recruit instead of limiting the recruitment effort to the university campus; preparing a recruiting guide; building EE in collective agreement; having an Aboriginal Centre; appointing an aboriginal representative to serve on the University Senate; providing day care; addition of diversity aspect in many courses offered at the university; barrier free environment for women by campus safety initiatives.

9. NAMIBIA

9.1 Introduction

The Constitution of Namibia (Article 10) prohibits discrimination on the grounds of sex, race, colour, ethnic origin, religion, creed, or social or economic status. Article 23(2) states: "Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices..." The Labour Act (1992) indirectly allows for implementation of affirmative action programmes and equal pay for equal work, while the Tender Board of Namibia Act (1996) provides for price preference policy of the government to redress social, economic and educational imbalances. The Married Persons Equality Act (1996) ensures equality between men and women before the law and allows women the right to own property, sign contracts, open bank accounts, be a director of a company, and conduct business affairs. In addition, affirmative action legislation is pending.

9.2 Suggested Best Practices

According to the Namibian National Chamber of Commerce and Industry's "Employer's Guide to Affirmative Action," employers are encouraged to develop a number of strategy areas in recruitment, training and development, reduction of staff turn-over, promotion, and sub-contracting. The guide goes on to suggest that the responsibility for effective implementation should rest with the Chief Executive Officer, and an employer needs to develop a communication strategy to implement affirmative action.

In Chapter 5 of the guide, the employers are warned to look out for several problems in implementing a successful affirmative action programme such as:

- lack of commitment by senior management;
- insufficient resources provided to line management;
- resistance to change, misunderstanding and fear;
- failure to create supportive work environment.

10. OTHER SELECTED COUNTRIES

Several other countries including international organizations have also issued Codes of Practice, Guidelines, etc.

For instance, Australia has issued guidance in the area of disability discrimination, under: 1) Racial Discrimination Act (1975), as amended by the Racial Hatred Act (1995), entitled "Employment Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment - Working Draft, 1996; the Disability Discrimination Act (1992) entitled a) "Good Business Practice, the DDA - A Guide to assist employers," b) DDA Action Plans - A Guide for Business," c) Employment Manual - Developing Best Practice; 2) Sex Discrimination Act (1984), and "Sexual Harassment: A Code of Practice." The Australian Human Rights and Equal Opportunity Commission administers all these legislations. As of the date of writing this report, none of the Codes were accessible to the authors.

The International Labour Organization (ILO) in Geneva, Switzerland has issued Guidelines and Recommendations promoting the employment of Ethnic Minorities in Central and Eastern Europe (March, 1997). The countries included are: Bulgaria, Czech Republic, Hungary, Poland, Romania, Russian Federation, Slovakia and Ukraine. The report analyses, among other areas, a) access to employment in recruitment and selection, b) terms and conditions of employment, c) access to vocational training and guidance, d) the role of national authorities, and e) the role of social partners (that is, employers and trade unions).

The ILO Guidelines and Recommendations above are not in the form of Codes of Practice as in the case of US, Britain and Canada. The report and recommendations deal with discriminatory practices and make recommendations.

Malaysia and India have provided Constitutional protections for disadvantaged groups.⁷

In Malaysia, the 1957 Constitution (article 153) recognizes the Malays and the indigenous people of Sarawak and Sabah as "Bumiputras" (sons of the soil) with protected rights and privileges. Article 8(5) states that the general principle of equality does not prohibit any provision for the protection or advancement of the Malays. (Hodges-Aeberhard and Raskin, 1997) Thus, the majority population, rather than an ethnic minority, is singled out for special measures. Quotas were prescribed and have been used extensively to increase the employment and earnings of Bumiputras in the public sector. Appointments in the Civil Service were made at a ratio of four Malays to one non-Malay. (Jain & Verma, 1997)

When India became independent in 1947, the national leadership was committed to removing job and other barriers faced by severely disadvantaged persons. One group of disadvantaged persons are the so-called untouchables. They are generally known as the Scheduled Castes (SCs). The second group are the tribes. They are disadvantaged because they are isolated in remote places. They are known as the Scheduled Tribes (STs).

The government wrote in the Constitution provisions prohibiting discrimination on grounds of religion, race, caste, sex, descent, place of birth or residence. The purpose was to eliminate discrimination against the untouchables (SCs) and to facilitate spatial and social mobility for tribal peoples (STs). A reservation or a quota policy, as a direct result of the Constitutional provisions, came into effect. Both groups were given seats in the Parliament and the state legislative assemblies in proportion to their population. Reservations provisions were also made for employment in government and public sector jobs (that is, public enterprises), as well as for admission into schools, colleges, medical and engineering schools. (Jain & Ratnam, 1994)

⁷ In the case of both Malaysia and India, no Codes of Practice and Best Practices were available.

11. CONCLUSIONS

As the discussion in this report and the table on characteristics of EO/EE/AA programmes in the three countries indicate, the enforcement agencies in each country have issued guides and codes of practice which cover all aspects of staffing; in Canada, Human Rights Commissions in various jurisdictions have issued somewhat limited guides on recruitment and selection. However, the Canadian Federal Employment Equity Act and the Federal Contractors Program are covered by the requirements outlined in the EEA and the regulations issued by the CHRC, known as a framework of compliance audits. These are the latest guidelines in the EE area and perhaps reflect the state of the art based on what has been learned in legal cases, practice and research both in the United States and Canada.

The disability employment code in Britain is the latest of such codes in this area and is full of practical examples in an area which is generally not well understood by employers and the general public. The language of the Code is in lay terms and fairly comprehensible.

The "Best Practices" are discussed in terms of the EE Index developed by Jain based on research in the United States and Canada, as well as employers in the private sector and several government agencies. These practices should go a long way in assisting employers in South Africa in adapting and developing their own "Best Practices" suited to their own unique circumstances.

12. REFERENCES

Annual Report, Equal Opportunities Commission. London: HMSO, 1996.

Code of Practice for the elimination of discrimination in the field of employment against disabled persons or persons who have had a disability. London: HMSO, 1996.

Wayne F. Cascio, Managing Human Resources: Productivity, Quality of Work Life, Profits. New York: McGraw-Hill, 1992.

Employers' Forum briefing paper. London: Employers' Forum on Disability in association with the Prince of Wales' Advisory Group on Disability, undated.

Employers' Guide to Affirmative Action. Namibian National Chamber of Commerce, undated.

Ethnic Minorities in Central and Eastern Europe: Guidelines and Recommendations Promoting their Employment. Geneva: International Labour Office, Equality and Human Rights Coordination Branch, Report No. 19, March 1997.

Robert D. Gatewood and Hubert S. Feild, Human Resource Selection. Fort Worth: The Dryden Press, 1994.

Jane Hodges-Aeberhard and Carl Raskin, (Editors), Affirmative Action in the employment of ethnic minorities and persons with disabilities. Geneva: ILO, 1997.

Harish C. Jain, "Employment Equity in Canada," Human Resources Management in Canada, November 1997.

Harish C. Jain and Rick Hackett, "Measuring Effectiveness of Employment Equity Programs in Canada: Public Policy and a Survey," Canadian Public Policy, Vol. 15, June 1989.

Harish C. Jain and C. S. Venkata Ratnam, "Affirmative action in employment for the Scheduled Castes and the Scheduled Tribes in India," International Journal of Manpower, Vol. 15, 1994.

Harish C. Jain and Anil Verma, "Workforce Diversity, Employment Equity/Affirmative Action Programmes and Public Policy in Selected Countries," in Bargaining in Diversity: Colour, Gender and Ethnicity, edited by Barry Fitzpatrick. Dublin: Oak Tree Press, 1997. Vol 6 of the Official Proceedings of the Fifth IRA European Regional Industrial Relations Congress, Dublin, Ireland, August 26-29, 1997.

James Ledvinka and Vida G. Scarpello, Federal Regulation of Personnel and Human Resource Management. Boston: PWS-Kent Publishing Company, 1991.

Race Relations Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment. London: HMSO, April 1, 1984.

Racial Discrimination, Employment Code of Practice for the elimination of racial discrimination and the promotion of equality of opportunity in employment. Sydney: Human Rights and Equal Opportunity Commission, 1996.

Simon Taggar, Harish C. Jain and Morley Gunderson, "The Status of Employment Equity Programs in Canada: An Assessment," Proceedings of the Forty-Ninth Annual Meetings of the Industrial Relations Research Association (IRRA), New Orleans, January 4-6, 1997.

S. Vernon-Gerstenfeld and E. Burke, "Affirmative Action in Nine Large Companies: A Field Study," Personnel, April 1985.

Peter Wright, Stephen P. Ferris, Janine S. Hiller and Mark Kroll, "Competitiveness through management of diversity: Effects on stock price valuation," Academy of Management Journal, Vol. 38, 1995, pages

Appendix

INTERVIEWS WITH GOVERNMENT AGENCY OFFICIALS IN THE UNITED STATES, CANADA, BRITAIN AND NORTHERN IRELAND

U.S.A.

(vi) Interviews with OFCCP Officials November 4, 1997

1. Mr. Joe Kennedy, Deputy Director, OFCCP
2. Dr. Bernard Anderson, Assistant Secretary, Employment Standards Administration, US Department of Labor
3. Mr. Randy Lowe, Director of Management and Budget, OFCCP
4. Mr. James Melvin, Director, Division of Policy, Planning and Program Development, OFCCP and Ms. Karin Pedrick, Branch of Policy
5. Mr. Fred Azua, Deputy Director Operations, OFCCP and Bert Dominguez, Branch Chief
6. Ms. Rhonda Willingham, Special Assistant to the Director OFCCP and Mr. Da Chavez, Special Assistant

5.2 Interviews

Interviews with EEOC Officials on November 5, 1997:

- 1) Ms. Dianna Johnston, Associate Legal Counsel/Title VII, ADEA, and EPA
- 2) Ms. Jocelyn Samuels, Senior Attorney Fax: (202)663-4639, Tel: (202) 663-4679, address: 1801 L St. N.W., Washington, D.C. 20507

Psychologists:

- 1) Dr. Hilary Weiner (Industrial Psychologist)
- 2) Dr. Joseph Donovan, Director of Research and Analytic Services Division, Office of General Counsel.
- 3) Dr. Jack Kearn (Industrial Psychologist)

EEOC Commissioners Office:

- 1) Mr. Wallace Lew, Special Assistant to the EEOC Commissioner Mr. Reginald Jones

Notes on Interviews with EEOC Officials:

- 1) Employers must keep records.
- 2) Alternative selection procedures should be developed by employers in case adverse impact is found in the present selection procedures.
- 3) EEO-1 form for 100 or more employees by occupational category (9 occupations) does not include wage/salary data. In the case of South African employers, employee records can be used to compile these databases.
- 4) Even if reliable external labour force data is unavailable in the case of South Africa, collecting data by industrial sector and geographic region (community, region where the employer is located) can still be of assistance and can provide meaningful comparisons. Employer records can be used to compile this database.
- 5) In addition collection of data for jobs that are common across industrial sectors such as machinists can greatly assist in external comparisons.
- 6) It's important to build in ADR in the legislation, that is, conciliation and other procedures to persuade employers to co-operate.
- 7) It is important to have a tiered system of investigation instead of a full review or audit of employers EEO practices. This will include short reviews etc...
- 8) It is helpful to provide technical assistance to small employers such as do's and do not's in jobs interviews etc. as EEOC has done.
- 9) The EEOC has Attorney of the Day telephone line for assisting employers with any inquiries on the EEO legislation.
- 10) Congress has authorized the EEOC to set up a technical assistance fund to help train employers regarding EEO policies and practices; EEOC charges a small fee for seminars and materials provided to employers at these sessions, and then uses these fees to provide and prepare additional training.
- 11a) Contingency fee or damages to complainants/plaintiff has helped them launch suits (normally private lawyers/legal firms charge a fee of 30% of damages awarded in the same).
- 11b) However, EEOC can take the case of a complainant without the complainant hiring a lawyer.

- 11c) EEOC has sole jurisdiction of a complaint for six months; after six months a complainant can take the case to court on his own volition.
- 11d) Authorized damages are \$50,000 to \$300,000 dollars in discrimination cases, depending on the size of the employer.

Source: All the above points were made by Ms. Johnston and Ms. Samuels

Britain

7.2 *The Commission for Racial Equality (CRE): Interviews and Notes on the CRE*

The enforcement body for the Race Relations Act is the Commission for Racial Equality (CRE) which came into effect in 1976.

CRE budget was £14.6 million in 1996. It had two hundred and ten employees (full time equivalent). The population of the UK is 56 million. There are 6% ethnic minorities in the labour force.

Interviews with the CRE officials on November 21, 1997. I met with Mr. Makbool Javaid, Head Litigation; Mr. Sukhdev Sharma, Executive Director, Ms. Sue Ollerearnshaw, Head of Equality Performance Consultancy; Sir Herman Ouseley, Chair; Mr. G. Perceival, Senior Executive Officer, Research.

Met Baroness Valerie Amos, March 2-3, 1998 in the House of Lords (HL). HL Tel. No. (0171) 219-5353. Her secretary Veronica's tel. no. (0181) 830-4379.

The CRE has the mandate to provide financial assistance to Racial Equality Councils (REC) around the country. In the fiscal year 1996 (April 1996 – 31 March 1996) the CRE provided £3,995,032 to 88 REC's for salaries and pensions only. In addition, REC's receive funding from local authorities covering project aid and administrative costs. The total local authority funding to REC's was £4,925,228. Taken as a whole every £ of funding from the CRE mobilized more than equal support from local authorities.

Northern Ireland

Background Information on the Fair Employment Commission

As of January 1, 1997 FEC has a staff of approximately 86 employees and a budget of £2.5 million to £3 million. (Cooper in MacEWEN, 1997); the Commission received a

grant of £2,957,000 in both 1996 and 1997 from the Department of Economic Development (FEC Annual Report, 1996/97).

The FEC is entirely financed by the Department of Economic Development. Income thus received is used for the purpose of enforcing statutory requirements, providing advice and information on legislation, investigating patterns and trends in employment, providing training, holding conferences, undertaking research and disseminating information about the Commission's activities (FEC Annual Report, 1996/97).

Interviews in Belfast

March 4, 1998

1. Ms. Lyn Mackender, Information Officer, EOC Northern Ireland
e-mail address: Info@eeoni.org.ni
Website: <http://www.eoni.org.u.k>

Tel. (0123) 242-752

Fax (0123) 331-047

2. Ms. Denise Magill, Research Officer (Lawyer)
Standing Advisory Committee on Human Rights, Northern Ireland (SACHR)
e-mail: sachr@nics.gov.uk

3. Bob Cooper, FEC Chairman (Fair Employment Commission)
Andras House, 60 Great Victoria Street, Belfast BT2 7BB
e-mail: Robert.Cooper.fec@nics.gov.uk

Tel. (0232) 240020

Fax 331-544

Sources: Bob Cooper " , The Fair Employment Commission in Northern Ireland," in Martin MacEWEN, (editor), Anti-Discrimination Law Enforcement: A Comparative Perspective. Aldershot: England, Avebury, 1997.

Peter J. Sloane and Daniel Mackay, "Employment equity and minority legislation in the UK after two decades: a review," International Journal of Manpower, Vol. 18, No. 7/8, 1997.

Employment Equality: Building for the Future. A Comprehensive Review of employment equality after five years experience of the operation of the Fair Employment (NI) Act of 1989 and of the Fair Employment (NI) Act 1976 as amended. Presented to Parliament by the Secretary of State for Northern Ireland by Command of Her Majesty. Belfast:

Standing Advisory Commission on Human Rights, June 1997.

Equality and inequality in Northern Ireland, The Workplace. Policy Studies Institute, 1987.

The extent to which employers are adopting good employment practices. FEC, 1995.

8.5 Interviews with Government Officials in Canada: November 13 – 14, 1997

Persons interviewed at Human Resource Development Canada (HRDC): Messers G. Blanchard, DG Operations; Neil Gavigan, Director Labour Standards and Workplace Equity; Syed Naseem, Senior Data Analyst.

Canadian Human Rights Commission (CHRC): Mr. John Hucker, Secretary General; Ms. Nicole Chenier-Cullen, Director EE Branch; Mr. John Dwyer, Director Policy and Liaison; and Mr. Rhys Phillips, Chief, Policy and Legislation, Employment Equity Branch.

Faculty of Business
McMaster University

WORKING PAPERS - RECENT RELEASES

408. Ali R. Montazemi and Kalyan Moy Gupta, "An Adaptive Agent for Case Description in Diagnostic CBR Systems", June, 1995.
409. Roy J. Adams, Noel Cowell and Gangaram Singh, "The Making of Industrial Relations in the Commonwealth Caribbean", June, 1995.
410. Jiang Chen and George Steiner, "Approximation Methods for Discrete Lot Streaming in Flow Shops", June, 1995.
411. Harish C. Jain and S. Muthuchidambaram, "Bill 40 Amendments to Ontario Labour Relations Act: An Overview and Evaluation", June, 1995.
412. Jiang Chan and George Steiner, "Discrete Lot Streaming in Three-Machine Flow Shops", July, 1995.
413. J. Brimberg, A. Mehrez and G.O. Wesolowsky, "Allocation of Queuing Facilities Using a Minimax Criterion", January, 1996.
414. Isik Zeytinoglu and Jeanne Norris, "Global Diversity in Employment Relationships: A Typology of Flexible Employment", March, 1996.
415. N. Archer, "Characterizing World Wide Web Search Strategies", April, 1996.
416. J. Rose, "Immediacy and Saliency in Remediating Employer Opposition to Union Organizing Campaigns", July, 1996.
417. Roy J. Adams and Parbudyal Singh, "Worker Rights Under NAFTA: Experience With the North American Agreement on Labor Cooperation", September, 1996.
418. George Steiner and Paul Stephenson, "Subset-Restricted Interchange for Dynamic Min-Max Scheduling Problems", September, 1996.
419. Robert F. Love and Halit Uster, "Comparison of the Properties and the Performance of the Criteria Used to Evaluate the Accuracy of Distance Predicting Functions", November, 1996.
420. Harish C. Jain and Simon Taggar, "The Status of Employment Equity in Canada", December, 1996.

421. Harish C. Jain and Parbudyal Singh, "Beyond The Rhetoric: An Assessment of the Political Arguments and Legal Principles on Strike Replacement Laws in North America", January, 1997.
422. Jason Schwandt, "Electronic Data Interchange: An Overview of Its Origins, Status, and Future", March, 1997.
423. Christopher K. Bart with John C. Tabone, "Mission Statement Rationales and Organizational Alignment in the Not-for-profit Healthcare Sector", November, 1997.
424. Harish C. Jain, Michael Piczak, Işık Urla Zeytinoğlu, "Workplace Substance Testing - An Exploratory Study", November, 1997.
425. S. Suarga, Yufei Yuan, Joseph B. Rose, and Norman Archer, "Web-based Collective Bargaining Support System: A Valid Process Support Tool for Remote Negotiation", January, 1998.
426. Pawan S. Budhwar and Harish C. Jain, "Evaluating Levels of Strategic Integration and Development of Human Resource Management in Britain", March, 1998.
427. Halit Üster and Robert F. Love, "Application of Weighted Sums of Order p to Distance Estimation", April, 1998.
428. Halit Üster and Robert F. Love, "On the Directional Bias of the ℓ_p -norm", April, 1998.
429. Milena Head, Norm Archer, and Yufei Yuan, "MEMOS: A World Wide Web Navigation Aid", October, 1998.
430. Harish C. Jain and Parbudyal Singh, "The Effects of the Use of Strike Replacement Workers on Strike Duration in Canada", February, 1999.
431. Parbudyal Singh and Harish C. Jain, "Strike Replacements in the United States, Canada and Mexico: A Review of the Law and Empirical Research", February, 1999.
432. John W. Medcof and Jeremy Boyko, "Reinforcing, Revising and Reconciling Attributions in the Employment Interview", March, 1999.
433. Norm Archer, "World Wide Web Business Catalogs in Business-to-Business Procurement", March, 1999.
434. Diwakar Gupta and Saifallah Benjaafar, "Make-to-order, Make-to-stock, or Delay Product Differentiation? - A Common Framework for Modeling and Analysis", April, 1999.
435. Harish C. Jain, Parbudyal Singh and Carol Agocs, "Recruitment, Selection and Promotion of Visible Minorities and Aboriginals in Selected Canadian Police Services", April, 1999.

Innis Ref.

HB

74.5

.R47

no. 436