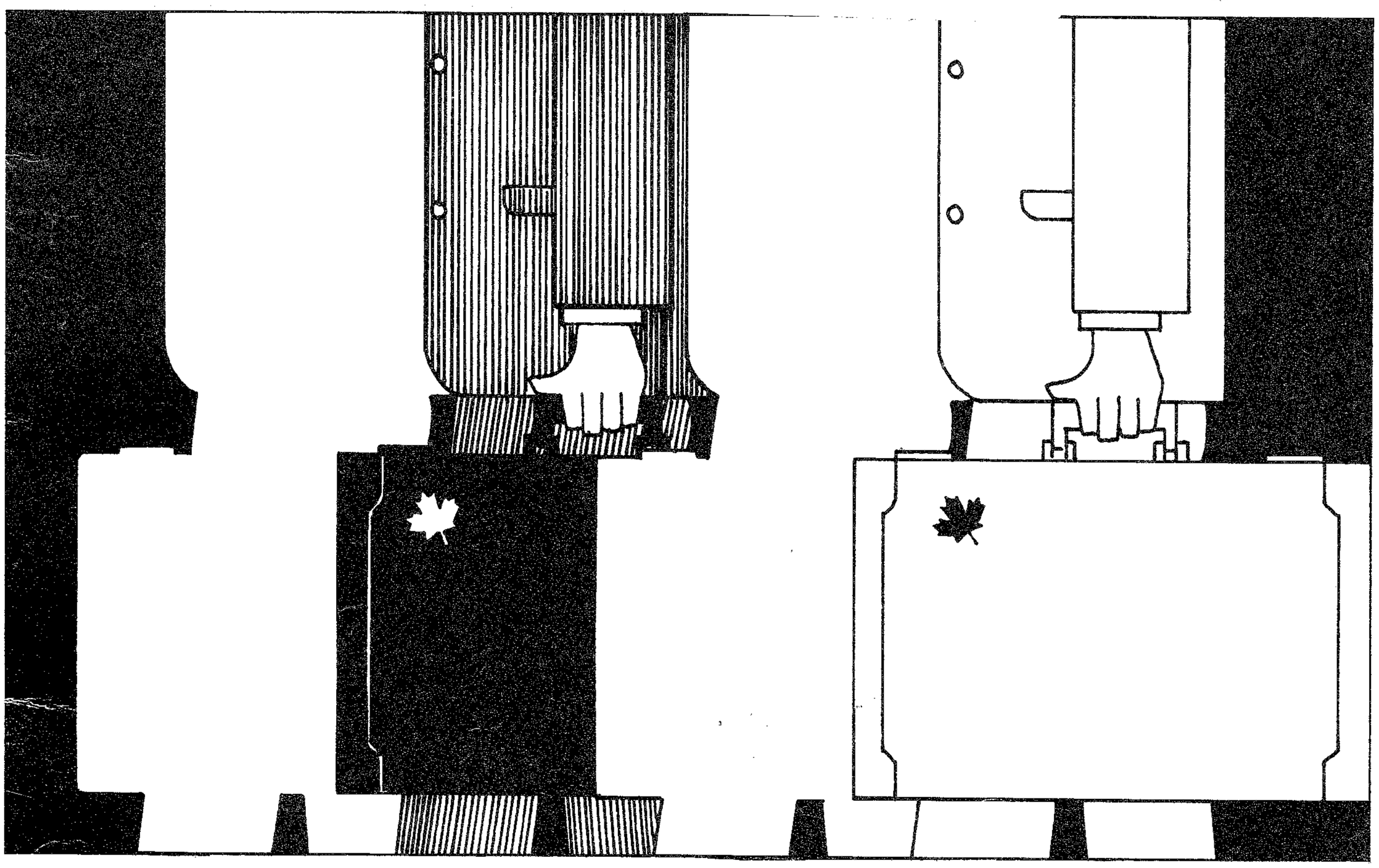
CURRENTS

Volume 5. No.1 | READINGS IN RACE RELATIONS | October 1988

Race Relations and Canadian Business



Price $6

Published by THE URBAN ALLIANCE ON RACE RELATIONS

Volume 5. No.1

October 1988

CONTENTS

CURRENTS: *Readings in Race Relations* is the quarterly magazine of the Urban Alliance on Race Relations.

The Urban Alliance on Race Relations formed in July 1975 "to promote a stable and healthy multiracial environment in the community," is a non-profit organization made up of volunteers from all sectors of the community.

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

The work of the organization is carried out through committees such as:

Educational Institutions; Legislation; Media; Law Enforcement.

All correspondence, including letters to the editor, subscription requests and change of address should be addressed to:

CURRENTS
229 College Street, Suite 310
Toronto, Ontario M5T 1R4
Telephone (416) 598-0111

The subscription rate is $20.00 per year, $30.00 for institutions.

Membership fees to join the Urban Alliance on Race Relations are:

Students & Senior Citizens	$ 5.00
General Membership	$20.00
Sustaining Membership	$75.00 & over

Articles offered for publication are welcome. They should be typewritten, double spaced, with adequate margins for notation.

All enquires about advertising should be directed to the Editor.

The Urban Alliance on Race Relations wishes to acknowledge the financial support of the Ontario Ministry of Citizenship and Culture.

International Standard Serial Number ISSN 0715-7045.

2nd Class Mail Registration Number 5972.

October 1988.

EDITORIAL

Good Policies and Poor Practices

An increasing number of institutions and agencies in all sectors of Canadian life are articulating finely worded commitments and policies with regard to equity issues. Unfortunately, these have seldom been translated into good practices. The pursuit of racial equality in Canada appears to be frequently hampered by an inability to translate policy into time efficient and cost efficient procedures that have a measurable impact on eradicating racial disadvantage and discrimination. There is a danger that the impetus and commitment to equity will unravel in a collection of uncertain, cumbersome, and misdirected activities that do not achieve any real results in removing racial inequalities. Such confused and superficial responses may indeed reinforce and even exacerbate the existing state of racial discrimination.

The activity that has taken place in Canada over the last while in pursuit of racial equality has largely been spent on determining whether racial discrimination is occurring, how it is occurring, to what extent, and on proposing ways of prevention. While data on these questions is still very far from being adequate, and considerable research is still required, it is suggested that more emphasis should be placed on analyzing the issues from the perspective of results, on outcomes.

The most important measure of any initiative is its results. Extensive efforts to implement training, and develop procedures, analyzes, data collection systems, report forms and finely written polity statements are worse than meaningless unless the end product will be measurable improvement. Just as the success of a private business activity to increase sales is evaluated in terms of actual increases in sales, the only realistic basis for evaluating a program to increase opportunity for racial minorities is its actual impact upon these persons. If private enterprise is investing resources on an activity that does not improve its bottom line they very quickly scrap it.

This perspective was emphasized in the previous issue of Currents (Vol. IV, No. 4) by the Toronto Board of Education's Director, Dr. E.M. McKeown who called on his senior staff to develop action plans that were. . . "SMART". That is, specific, measurable and manageable, appropriate, realistic, and timebound".

In accelerating the process of change, more careful consideration needs to be given to focussing on those particular issues within various sectors where there is a real prospect of affecting change quickly.

In addition to this strategic targeting, any improvements in policy and practices must incorporate the mechanisms for monitoring and measuring their impact. In other words, any initiative must show definable results that reduce in a measurable way racial injustices.

What are the techniques and mechanisms that are required to meaningfully assess whether policies and practices that have been established are in fact achieving racial equality? The lack of rigorous monitoring systems and evaluation criteria in the field of race relations in Canada is inexcusable. The consequence of this state of affairs is that limited public dollars and community energies will continue to be wasted on trivial and irrelevant exercises because they do nothing to effect the bottom line - the eradication of racial discrimination and the establishment of equality of opportunity.

There is a huge need in Canada to collect and disseminate the body of knowledge--the strategies, the technology, the technical skills--that is required to effectively achieve racial equality. Unfortunately, the degree of skill development and information sharing in Canada across institutional, racial or geographical boundaries is relatively insignificant. This isolation, in not drawing upon the experience of other initiatives, effective methods and tested programs and approaches, is also found between Canadians and the international community.

It is perhaps regrettable that Canadians appear unable to grasp the opportunity to learn from the significant body of knowledge and technical experience in implementing practical strategies in pursuit of racial equality that has been developed elsewhere, particularly in the United States and Great Britain. In looking at the comparative experience of contract compliance in these two countries, this issue of Currents in a small way hopes to remedy this.

Canada cannot afford to persist in pursing racial equality on an insecure foundation of inadequate knowledge. And Canada, through its public and private sectors and its various social agencies and institutions, cannot afford to continue to devote increasing resources in terms of personnel and other ways in supposedly improving opportunity for racial minorities if the actual impact upon these persons continues to be negligible.

Contract Compliance

With reference to equal employment opportunity for visible minorities, the existing evidence continues to indicate depressingly high levels of racial discrimination. The 1985 study Who Gets the Work? (Ginsberg & Henry) showed that one third of employers discriminate against job applicants. The Multiracial Labour Force Case Studies Project, reviewed in this issue of Currents, found that of the the twelve major employers in Toronto selected for their leadership in addressing race relations issues, not one was involved in Employment Equity as defined by the Federal Royal Commission on Equality in Employment. And not one of these companies was even meeting

the limited requirements of existing federal initiatives (legislated Employment Equity and the Federal Contractors' Program).

Notwithstanding human rights legislation and government rhetoric, a substantial proportion of employers continue to employ people on the basis of their skin colour.

The Federal Contractor Program affects only those organizations with 100 or more employees which bid on federal government contracts for goods and services worth $200,000 or more. It does not require an employment equity plan, only a commitment to have a plan. It does not require employers to collect data in a standard used form or to report data annually. The monitoring mechanism, through a signed agreement, permits a compliance review officer from Canada Employment Immigration (CEIC) to conduct an on-site review and to examine workforce data. Failure to comply with the requirements does not result in the loss of a contract but merely removes the firm from the bidding process in the future. Clearly, the Federal Contractors Program is not a model worthy of emulation.

And the City of Toronto's much heralded contract compliance program (see Currents, Vol. 2, No. 4, Winter 1984/85) has still not been implemented!

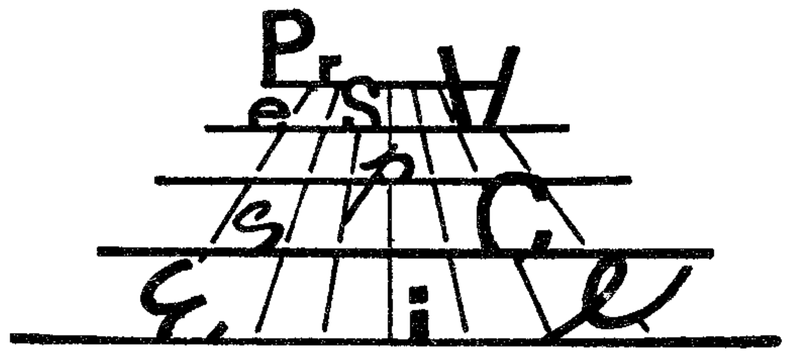
Given the fundamental flaws in current employment equity legislation, contract compliance can make a vital contribution to the eradication of discrimination from the employment market.

Contract compliance uses the economic power which public bodies enjoy, through their purchasing of good and services from the private sector, to promote equality of opportunity. Such an obvious and simple strategy should be in place for no other reason than that public money should not be used to subsidize discrimination or to provide profits to discriminators.

If government at whatever level is denying or delaying the power and authority that is conferred upon it by virtue of being elected, if it shuns the notion that it is there to undo injustices such as the discrimination racial minorities experience in the labour market, then it shuns the notion of government itself.

Tim Rees.

Affirmative Action/ Employment Equity Programs and Visible Minorities in Canada



Harish C. Jain

Visible Minorities are not well represented in public and private sector organizations in proportion to their representation in the population and the labour force. They are absent in key public positions and from the senior management of the public service and crown corporations. They are being denied full participation in almost all Canadian institutions (Daudlin 1984).

Affirmative action programs are explicitly designed to ameliorate the systemic discrimination and labour market disadvantages experienced by Visible Minorities.The term "affirmative action " is subject to widely varying interpretations, (Jain & Sloane, 1981, p. 101). Cohen (1983) suggests that affirmative action occupies a middle ground on a continuum with equal employment opportunity at one end and contract compliance at the other end. Affirmative action draws from equal opportunity its mandate to neutralize the environment so that all individuals have equal access to employment, training, and promotional opportunities. Affirmative action draws from the other end of the continuum, a proactive and structured approach to achieving this mandate in accordance with specified goals and timetables.

The most prevalent definition of affirmative action in the Canadian literature comes from the Affirmative Action Directorate of the Canadian Employment and Immigration Commission (CEIC, 1982). Here affirmative action is described as a comprehensive planning process adopted by an employer to: identify and remove discrimination in employment policies and practices; remedy effects of past discrimination through special measures; and ensure appropriate representation of target groups throughout the organization.

The term, affirmative action, often sparks a negative emotional reaction as it is equated with reverse discrimination, or hiring and promotion based on target group membership, rather than merit. Judge Abella (1984), has recommended that "measures to eliminate discriminatory employment barriers and practices should be referred to as employment equity, rather than as affirmative action" (p. 255). This new label, according to Judge Abella, should help defuse the emotional reaction to affirmative action, and will be used frequently throughout this article.

Employment Equity in Canada; An Overview

Canadian employers are largely protected from the charge of reverse discrimination (Tarnopolsky, 1980, p. 94). Legislation in most jurisdictions allows for the development of special programs to reduce the disadvantages experienced by women, native people, visible minorities and the handicapped. The Canadian Human Rights Act, Section 15(1), explicitly permits the implementation of special programs that will prevent or reduce disadvantages to designated minority groups or remedy the effects of past discrimination against those groups. Section 41(2) of the Act allows a Canadian human rights tribunal to order a special program where such an action is deemed necessary to prevent discriminatory practices from occurring in the future. This authority was underscored in a recent Supreme Court ruling (8-0) that the Canadian Human Rights tribunal did have the power to order the Canadian National Railway Company in 1984 to increase to 13 per cent the proportion of women working in non-traditional occupations in its St. Lawrence region (Rauhala, 1987); this case is detailed later in the paper. Canada further confirmed its commitment to the principle of employment equity in passing the Constitution Act of 1982. As of April, 1985, under Section 15(2) of the Canadian Charter of Rights and Freedoms, special programs or affirmative action programs are considered legal.

With such legal protection, coupled with the costs of discriminating against minorities (Agarwal, 1986; Dunnette & Motowidlo 1982; Milkovich & Glucek, 1985, p. 245), one might expect widespread adoption of employment equity programs. However, of 1400 employers offered assistance by the CEIC Directorate in 1984, only 71 agreed to develop an employment equity plan (Abella, 1984). Since 1984, recent legislative developments at the federal, provincial, and municipal levels have increasingly put pressure on both private and public sector organizations to adopt employment equity programs.

Employment Equity Act

At the federal level, the Employment Equity Act became law in August of 1986 and applies to Crown corporations and federally-regulated employers with 100 or more employees. The legislation requires these employers to file an annual report with the Canada Employment and Immigration Commission (CEIC) beginning June 1988. The report will provide information on industrial sector, geographic location and employment status, that is, on the representation of all employees and members of designated groups by occupational group and salary range and on those hired, promoted or terminated month by month for a full year. Failure to comply with this requirement can result in a fine of a maximum of fifty thousand dollars. All records used in the compilation of the report must be retained by the employer for three years following the submission of the report. The annual reports will be publicly available and will be provided to the Canadian Human Rights Commission which has the authority to initiate an

investigation if it has reasonable grounds to believe that systemic discrimination is indicated by the data in the reports. In addition to the annual report, the employers are also required to prepare an annual employment equity plan with goals and timetables, and to retain such a plan for a period of at least three years. Unlike the annual report, however, employers are not required to submit this equity plan to the government and no penalty is provided for failure to prepare and implement this plan.

Employers under the Act are legally obliged to consult with designated employee representatives, or, in unionized settings with bargaining agents. The purpose of such consultation, in implementing employment equity, is to identify and eliminate barriers against persons in the designated groups and to institute positive policies and practices, that is, to implement special measures and apply the concept of reasonable accommodation.

The Act provides for a comprehensive review of the provisions and operation of the legislation in five years and every three years thereafter.

Federal Contractors Program

Effective October 1, 1986, the Federal Contractors Program affects organizations with 100 or more employees which bid on federal government contracts for goods and services worth $200,000 or more. Contractors will be required to sign a certificate of commitment to design and carry out an employment equity program which will identify and remove artificial barriers to the selection, hiring, promotion and training of women, aboriginal peoples, persons with disabilities and visible minorities. The program should have eleven criteria. These include:

(a) Communication by the chief executive officer to employees and unions of the commitment to achieve equality in employment and assignment of responsibility for implementing employment equity to senior personnel.

(b) Collection and maintenance of information on the employment status of designated groups by occupation and salary levels and terms of hiring, promotion and termination in relation to all other employees.

(c) Analysis of designated group representation within the organization in relation to their representation in the qualified external work force.

(d) Elimination or modification of policies, practices and systems, whether formal or informal, which have or may have, an unfavorable effect on the employment status of designated groups.

(e) Establishment of goals for the hiring and promotion of designated group employees.

(f) Adoption of special measures where necessary to ensure that goals are achieved, including the provision of reasonable accommodation as required.

(g) Adoption of procedures to review the progress and results achieved in implementing employment equity.

(h) Authorization to allow representatives of the Canada Employment and Immigration Commission access to records in order to conduct on-site compliance reviews for the purpose of measuring the progress achieved in implementing employment equity.

The Contractors program is expected to apply to 900 major firms whose business with the government has a projected dollar value of some $6 billion; both the employment equity legislation and the contractors program will include in excess of 1 million Canadian workers (MacDonald, June 12, 1986). Failure to implement equity can result in the exclusion of the contractor(s) from future government business. Recently, two paper companies' bids worth more than $5 million were rejected by the government because neither company had complied with the requirements on employment equity. The bidding period was extended to give the companies a chance to resubmit their bids; one of the two companies has already complied. More than 520 companies have signed the certificate of commitment since the program became law in October 1986 (Globe and Mail, February 17, 1987, Al-)

It is important to note that under the Contractors program, the government's policy does not require a contractor to file an employment equity plan, only a commitment to have a plan.

Affirmative Action of the Federal Public Service

The Federal government, through the Treasury Board, has also undertaken employment equity measures for the target groups in the Public Service of Canada. Visible Minorities were added to the list of these target groups in July 1985. In June 1986, the Treasury Board announced several measures for Visible Minorities. These include a special employment program costing $10.5 million for 300 person years until March 1989,[2] a visible minority employment office at the Public Service Commission in Ottawa, regional visible minority co-ordinators, special training for public service managers, a monitoring program for the recruitment, referral and appointment process of visible minorities in the public service, and Canadian educational equivalences of certain foreign university degrees (News Release 86/22, Treasury Board of Canada, 1986).

In August 1987, The Treasury Board announced the establishment of numerical targets for Visible Minorities. These targets were established by departments for a 3-year period beginning April 1, 1988 and set by occupational category. In November 1987, the Treasury Board extended the period for an additional 3 years to 1993. In April of this year the Minister Pat Carney approved the employment equity targets for 1988-1991 with a commitment to add 2,115 person years from the four designated groups.

Affirmative Action Programs Across Canada

Voluntary affirmative action programs are legal in all jurisdictions in Canada.

In Alberta, the cabinet can approve such a program. Such programs are also legal under Section 15(2) of the Canadian Charter of Rights and Freedoms, as noted earlier. In Quebec, as of September 1986, the Quebec Human Rights Commission can recommend an affirmative action program, if an investigation by the Commission shows a group being discriminated against. If the Commission's recommendations are not followed, it can apply to a court of law and obtain an order to draw up and to enforce implementation of an affirmative action program. The Quebec regulations cover the same four target groups as in the federal legislation as well as other groups who may be victims of discrimination. In Saskatchewan and at the Federal level, boards of inquiry can order affirmative-action programs, if discrimination is found.

A tribunal under the federal human rights legislation ordered (1984) the Canadian National Railways Company (CN) to undertake a mandatory affirmative-action program. The tribunal, after three years of hearings and deliberations, found that the company had discriminated against women in its hiring practices in the St. Lawrence region. In a landmark decision, the tribunal ruled that the company was required to hire women for one in four non-traditional (blue collar) jobs in the region until they hold 13 percent of such jobs. The CN was also required to implement a series of other measures, ranging from abandoning certain mechanical aptitude tests to modifying the way it publicizes available jobs.

It was an important decision in several respects. It arose from a complaint laid against CN in 1979 by a Montreal women's lobby group, Action Travail des Femmes (ATF). It was the first time that goals were specified; the goal of 13 percent roughly corresponded to the proportion of women in blue-collar work in industry generally. The CN appealed the tribunal ruling to the federal Court of Appeal. The Court set aside the affirmative action part of the tribunal order but found that the CN had discriminated against women in its hiring practices and upheld the ban agianst tests, etc. The supreme court of Canada (Rauhala, June 26, 1987), as noted earlier unanimously endorsed the power of tribunals to impose affirmative action plans on employers to remedy systemic discrimination, thereby upholding the 1984 tribunal decision.

Affirmative-action programs have also been ordered by boards of inquiry in other jurisdictions in previous years. For instance, in 1980 in Betty Hendry vs. Liquor Control Board of Ontario (LCBO), a similar program was ordered by an Ontario board in a ruling against the LCBO. However, no goals were specified. The LCBO was required to collaborate with the provincial women's bureau to design a program which could reduce imbalance in employment opportunities for women. In Shirley Naugler v. The New Brunswick Liquor Corporation in 1976, the New Brunswick board's order on affirmative action was appealed to the New Brunswick Supreme Court where it was not upheld. The Hendry ruling was not appealed by the LCBO.

The Quebec and the Saskatchewan Human Rights Commission have a set of regulations in order to approve affirmative action plans. The Saskatchewan regulations entail: (1) a systematic analysis of an employer's current workforce, (2) a comparison of the make-up of that workforce with that of the larger surrounding community, (3) establishment of management policies which will move in the direction of overcoming those imbalances which have been identified, within a certain time frame, and (4) a monitoring system to ensure that goals and timetables are being adhered to.

Affirmative action as part of contract compliance has also taken place in a number of specific resource mega projects and through contract leverage of surface lease agreements to include Native hiring on major projects in Saskatchewan and Manitoba. In addition, as Tarnopolsky 1980 has pointed out, "...for at least the last decade we have witnessed in Canada the greatest affirmative action program of all, and that is the recruitment of francophone Canadians into the federal public service ..." (95). Bill 101 in Quebec, a language based mandatory affirmative action program, is another example of a massive program to improve the representation of francophones in the public and private sector organizations in Quebec. Similarly, the War Veterans have received preference in employment in the federal government over the years.

Affirmative action programs have been adopted by some public (such as Crown Corporations) and private sector employers in Nova Scotia, Saskatchewan and Ontario as well as in the Ontario and Manitoba public service, several municipal governments such as Toronto, Winnipeg, Saskatoon, Regina, Vancouver and at least one police agency, the Metropolitan Toronto police force and a number of large Canadian businesses. However, a majority of organizations in Canada do not have such programs.

Effectiveness of the Employment Equity Legislation

The employment equity legislation is likely to be beneficial to minorities in that it will require employers under federal jurisdiction to prepare an annual employment equity plan with goals and timetables and to retain it for three years. It may not be very effective, however, since employers are not required to submit this plan to the government. There is no mechanism to guard against plans which may be poorly devised with no meaningful goals and timetables; for instance, much of the wording in the employment equity law is ill defined and somewhat loose in that positive policies and practices and reasonable accommodation do not lend themselves to precise interpretation. There is only a vague process of consultation between employers and designated group employee representatives to formulate the plan; meaningful consultation between the union or employee representatives is not possible if the employee representatives do not have a right to see the plan. What is more, there is no penalty for non-compliance with the action plan to prepare goals

and timetables. The Act leaves it to employers to establish and pursue their own goals and targets. As Stasiulis has noted, "no matter how appalling the reports reveal a company's performance to be, nothing in the legislation obliges it to improve," (1987, page 10).

The position side of the Act is that the reporting requirements on the representation of Visible Minorites and other target groups will be standardized and that the annual reports will be made public so that comparisons with subsequent years from 1988 onwards, will become possible. In addition, as MacDonald suggested, comparisons between employers in the same industrial sector will be possible (MacDonald, June 12, 1986.). Thus, employers could possibly be ranked, for instance, by industrial sector, region and size, by a comparison of employment equity reports .

In this author's judgment, on balance, it is better to have the employment equity legislation - despite its crippling weaknesses - than not to have it at all.

The federal contractors program (FCD), unlike the employment equity act, does not require employers to collect data in a standardized form or to report data annually, although employers are required to collect data concerning the composition of their workforce, as noted earlier. The monitoring mechanism is the signed agreement by the employer to permit a compliance review officer from Canada Employment Immigration (CEIC) to conduct an on-site (company premises) review and to examine data on minorities by occupation and salary levels and concerning hiring, promotion and termination with a view to measure the progress achieved in implementing employment equity.

In our view, the program should be enforced vigorously by reviewing the goals and timetables for Visible Minorities and others. The CEIC compliance officers will have to guard against contractor plans which may be poorly devised and inadequate to meet the needs of the target groups. In addition, failure to comply with the requirements of the contractors program does not result in the loss of a contract but only means that such a firm will be removed from the bidding process in the future. This penalty is too weak and needs to be strengthened. Similarly, the program should have a wider coverage and not be restricted to contractors with 100 employees or more and a contract of $200,000 or more. In the United States, the federal contractors' program includes contractors with 50 employees or more and a contract of $50,000 or more. The executive orders also include sub-contractors, unlike the Canadian program. In our view, it will be easier to strengthen the federal contractors' program since it can be done by the Order-in-Council or some other "in-house" procedure rather than amend the employment equity legislation.

We agree with Stasiulis (1987) that the federal employment equity policy will remain de-facto voluntary-making modest demands on business to show good intentions, since it lacks (a) specific goals and timetables, (b) systematic monitoring mechanisms or (c) effective sanctions for non-compliance, unless the changes suggested above are implemented.

Conclusions

As noted earlier, the federal employment equity Act and the federal contractors programs have come into effect as of 1986. However, both of these measures need to be strengthened in order to be effective. For instance, the employment equity Act does not include an effective enforcement component. Research (Jain and Hackett, 1987) has demonstrated that few Canadian organizations are likely to initiate an employment equity program in the absence of government or public pressure and that the data reporting requirements of the Act are certainly needed since few organizations in the study were collecting these data.

It is essential that the Employment Equity Act be amended to require employers to:

(a) make public their employment equity plans along with numerical goals and timetables;

(b) keep and to make public both the stock and the flow data by minority and non-minority status. Flow data provides information on the movement of minorities into and through the organization, including numbers of applicants, hires, promotions, terminations and so forth. Stock data provides a "snap-shot" of the current workforce make-up by minority and non-minority status across all occupational levels within an organization. These data will help identify entry and post-entry job barriers.

The federal contractors program also needs to be strengthened and enforced vigorously. Unlike the employment equity Act, the federal government need only to pass new regulations -- without having to go through the Parliament and the Senate -- through Order-in-Council. These regulations can then be enforced by Canada Employment & Immigration Commission (CEIC) Officials.

Under the federal contractors Program (FCP), while the data concerning the composition of the workforce by minority and non-minority status must be collected by individual contractors, the form in which the data must be collected is not specified and there are no reporting requirements. Moreover, the only penalty is that employers in violation of employment equity may lose the right to do business with the federal government needs to strengthen the FCP regulations in order to make the program more effective. The program should:

(a) specify numerical goals and timetables to be achieved by the contractors;

(b) require public reporting of stock and flow data in a standardized form to be prescribed by the CEIC;

(c) Levy penalties on contractors for failure to comply with the requirements of the program.. There should be a range of penalties including cancellation or loss of contract, etcetra;

(d) include sub-contractors; and

(e) broaden coverage from 100 employees and $200,000 contract

at present to include contractors with 20 or more employees and a contract of $50,000 or more.

As noted earlier, the employment equity legislation applies to employers under federal jurisdiction while the federal government's affirmative action program applies to the federal public service. The Royal Canadian Mounted Police (RCMP) and the Armed Forces are not covered either by the federal affirmative action program or the employment equity legislation. In our survey (Jain 1986; 1987) of selected police forces in Canada, the RCMP reported that they do not collect data by visible minority status. Indirect evidence indicates that visible minorities are not well represented as police officers in the RCMP; for instance, data supplied by the RCMP indicates that very few RCMP officers are fluent in languages spoken in third world countries. It is ironical that government is requiring employers in the private sector to collect and to report data on the representation of designated groups in their workforce while an important government agency like the RCMP does not come under the federal government's affirmative action program and thereby has no requirement to collect and report data on Visible Minorities and other minorities and to undertake an affirmative action program. For this reason, the federal government needs to issue regulations to bring the RCMP and the Armed Forces under the federal affirmative action program.

At present, as noted earlier, all provincial jurisdictions allow voluntary affirmative action plans by employers. However, this has not resulted in very many employment equity programs. Similarly, there are very few contract compliance programs at the provincial level. Therefore, provincial and territorial governments should introduce mandatory employment equity and contract compliance programs forthwith.

Harish Jain is Professor, Personnel and Industrial Relations, Faculty of Business, McMaster University, Hamilton.

Footnotes

1. This is not as simple as it appears. The data contained in an employer's annual report on its workforce may not be truly comparable to the external labour force data or "availability data". The disparity may be attributable to legitimate, non-discriminatory factors such as existence of union seniority and hiring hall requirements, downsizing, competition for certain types of personnel and so forth (Bevan, 1987).

2. The 300 person-years are divided into 50 person-years for 1986-87; 150 for 1988-89 and 100 for 1988-89.

3. As Bevan (1987) points out, however, any company with a workforce profile significantly 'below the norm' may not be in deviance due to, for example, downsizing. Therefore, the Canadian Human Rights Commission may not be able to conclude that this company has practised systemic discrimination.

Urban Alliance Race Relations Award Medal

Designed by: Irene Chu

The ultimate goal in race relations – to achieve racial equality and harmony – is depicted in the medal by the symbols of 16 men and women encircling the Maple Leaf. The number represents the 16 points on the compass thus reflecting the cosmopolitan make-up of the people of Canada. The choice of 8 men and 8 women of equal status emphasizes our effort towards equality between men and women as well as equality among all races.

Race relations work has never been smooth, nor easy; it takes courage, patience and unwavering determination to overcome the many hurdles and obstacles that lie in the path towards racial harmony. The many difficulties and hardships are represented here by the angles and edges on the outerside of the medal.

At the centre is our National Emblem-the Maple Leaf -- around which all Canadians gather and rally expressing our aspirations that Canada be a leader in Race Relations.

Race Relations Award

The Race Relations Award, established by the Urban Alliance on Race Relations, honours people in the community who have contributed in a significant way to the betterment of human rights and race relations in Canada.

This years' recipients, honoured at the Award Dinner held on March 23 1988 were Dr. Lilian Ma and Ms. Bromely Armstrong.

Dr. Lilian Ma is a founding member of the Chinese Canadian National Council which was established in 1980 following a national protest on CTV's racist W5 program, "Campus Giveaway". She played a crucial role in organizing grassroots support during the anti-W5 movement leading to the national rally and a formal apology by CTV. The Chinese Canadian National Council was formed to maintain the new level of consciousness and organization which sprung out of the anti W5 movement.

Lilian has been active in advocating for a united front for immigrant and visible minority women and, in 1986, was one of the founders of the National Organization of Immigrant and Visible Minority Women of Canada.

Lilian has acted as a consultant to national ethnocultural organizations as well as government agencies on multiculturalism, human rights and women's issues. She has volunteered her expertise and insights to Multiculturalism Canada, the Ontario Human Rights Commission and the Ontario Advisory Council on the Status of Women among numerous other organizations.

Lilian obtained her Ph.D. in chemistry in 1971 from Simon Fraser University in British Columbia. She is currently a research scientist in the Department of Biochemistry of the University of Toronto and focuses on biomedical research. She has published extensively in various professional journals.

Lilian was appointed to the Ontario Human Rights Commission as a Commissioner for the term 1986 to 1989. She has been appointed by the Canadian Council on Social Development to the Equality Rights Panel of the Court Challenge Program for the federal Justice Department. She has received various other appointments to federal and provincial task forces focusing on race relations and the particular concerns of immigrant and visible minority women in Canada.

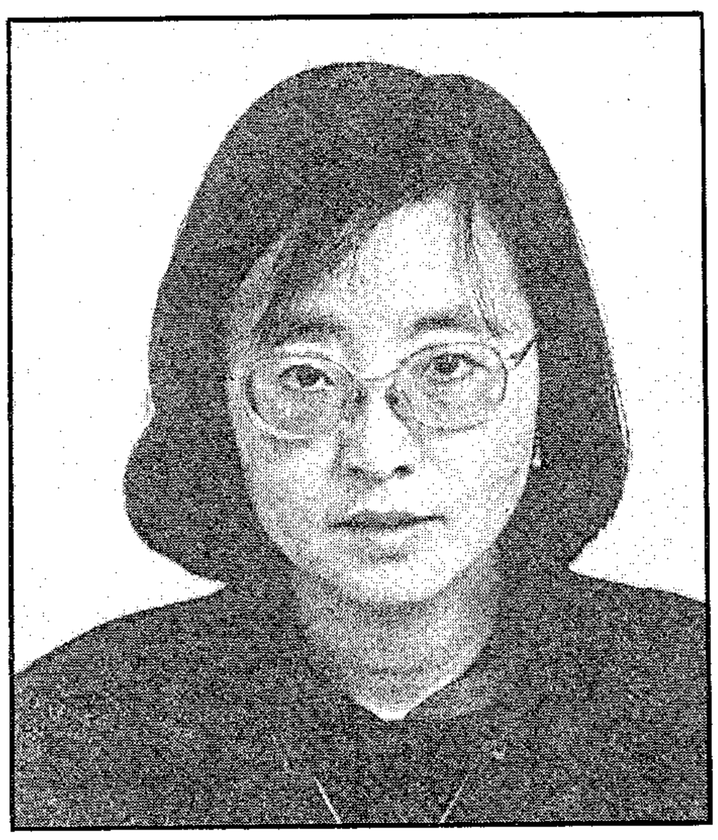
Lilian's leadership role in the organization of the anti-W5 movement in the Chinese community as well as in the organizational development of the Chinese Canadian National Council has contributed to the tremendous inroads which have been made into eradicating the stereotypes of both Chinese Canadians and women.

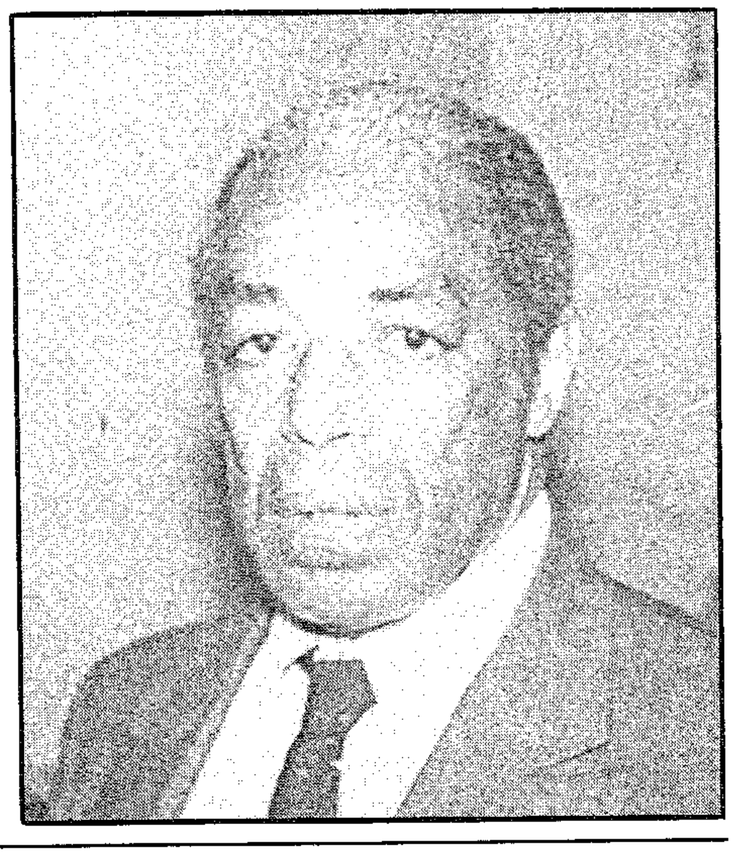
Bromley Armstrong is one of those who have fought for equality and justice in Canada. Born in 1926 in Kingston, Jamaica, he emigrated to Canada in 1947. At Massey Ferguson where he got his first job, he noticed that the few Blacks in the company were in the most menial jobs without any possibility of advancement. Mr. Armstrong joined the company union. Over the next ten years, he rose to the position of union secretary, becoming involved in the fight during the 1950's for better wages and working conditions for his colleagues.

Bromley represented his union in the Toronto and District Labour Council under whose auspices he fought to change laws that allowed blatant discrimination against Blacks and Jews. He would test employers, home and property owners, night club owners etc., by pretending to be a client or patron. When he found discrimination, the case would become part of the ammunition for pressuring the provincial and municipal governments into change. The result was the passage of legislation such as the Fair Employment Practices Act and the Fair Accommodation Practices Act, which were forerunners of the Ontario Human Rights Code.

Bromley was a member of the group in the 1954 "March on Ottawa," demanding changes in racist immigration laws(which were subsequently changed). In 1969, he began his own insurance agency and four years later, the Islander newspaper. He is a founding member and a past President of the Jamaican Canadian Association. Between 1975 and 1980, he was an Ontario Human Rights Commissioner. He was an executive Member of the Canadian Civil Liberties Association and a founding member of the Urban Alliance for Race Relation. He is presently a member of the Ontario Labour Relations Board. He is president of the newly formed National Council of Jamaicans and Supportive Organizations in Canada.

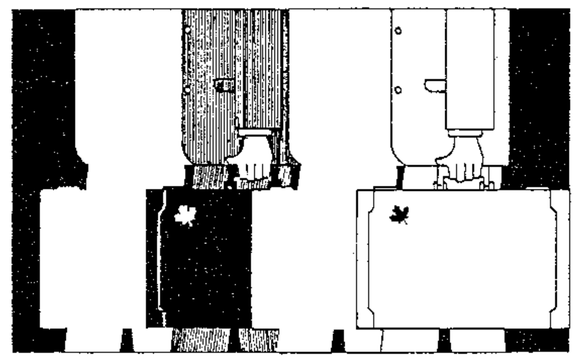
Bromley's determination and persistence in challenging racism in this country involved significant personal sacrifice and cost. It is an investment which he made from which all of us now benefit.





Contract Compliance in the UK

John Carr



There is more than ample evidence to show that progress towards eliminating discrimination from the employment markets in the United Kingdom has been unnecessarily and unconscionably slow. There is more than ample evidence to suggest what may be the several consequences of this tardiness.

Over 70% of people in employment are employed in the private sector. Thus, if we are looking for new strategies for dealing with inequalities in employment we must be looking first and foremost for new ways of influencing behaviour within the private sector. This is not by any means intended to let the public sector off the hook; quite the opposite. We cannot ask the private sector to steam ahead, leaving the public sector lagging behind. However, the two sectors require different approaches.

Contract compliance is a new strategy. It is tied into the massive sums of money that the public sector spends with the private sector in the acquisition of goods and services.

In 1984 the public corporations, local and central Government between them, spent about £74 billion on the acquisition of goods and services. That is approximately 27 per cent of our total gross domestic product. Allowing for a proportion of that sum representing movements between parts of the public sector, we are still looking at well over £50 billion being spent with the private sector, and that is nearly 20 per cent of our gross domestic product.

On another estimate, the acquisition of goods and services by the public sector in 1984 represented approximately 36 per cent of the total private sector value added. That is almost the same as saying that about 36 per cent of all sales by the private sector were to the public sector in one form or another.

I do not suppose that anyone will be surprised to learn of the scale of trading between the public and private sectors, but those figures remind us of the potentially enormous influence that the public sector has over business in the UK, and therefore of the enormous responsibility that the public sector has. Of course, that potential influence will not be evenly or universally spread across all sectors of the economy.

That brings me straight away to one of the first limits of contract compliance. If there is not a contractual relationship, there is not an entree and we need to tackle potential discrimination in the sectors of the economy with other laws or in other ways.

Let us remind ourselves also that the public sector is ultimately our sector. It is funded through our taxes and our rates. We have a right to demand that it does not subsidize, with our rates and our taxes, discrimination or law breaking. Black people, women and disabled people have a right to demand that their publicly elected representatives do not use their rates and taxes against them.

We are now aware of around 401 local Councils throughout the UK that have either expressed a real interest in contract compliance or are already some way down the road to adopting and implementing such a policy. The Greater London Council*, however, was the first, and is still substantially the only sizeable public body in the UK to have adopted a contract compliance policy in anything approaching the American sense and is a policy which seeks to link public sector purchasing power with the goal of advancing equal employment opportunity in the private sector.

Contract compliance was adopted as Council policy in March 1983. I have been responsible for the policy since its inception. It fitted neatly with my existing general responsibilities as Staff Committee Chair for the GLC's in-house equal employment opportunity policy for our 23,000 employees.

The Policy

I think it is important to grasp at the outset that whilst the policy ultimately rests on the sanction of debarring companies from receiving public sector contracts if they show no sign of being willing to promote equality of opportunity within their workforce, we emphatically do not see barring companies from doing business with us as being the objective of the policy. So far we have barred 25 firms, the best known case perhaps being that of Rowntree-Mackintosh, but we viewed each one of those debarments as a defeat.

As against the 25 debarments, there are about 400 companies with whom we are still involved, and of those 400 companies 134 have signed agreements with us about changing their domestic or internal employment practices to advance the cause of equal opportunity.

**With the abolition of the Greater London Council in March 1986, the GLC Supplies Department, and the Contract Compliance Equal Opportunity Unit was transferred to the Inner London Education Authority.*

Having selected a company for review the GLC requests, initially, information on the company's personnel practices. The actual questions we ask are a matter of public record. If the information thus obtained discloses a need for it, we then look for evidence of a good faith intention on the part of the company concerned to bring itself into line with our requirements. These requirements are identical to the modest recommendations of the Codes of Practice on race and sex discrimination issued by the two statutory Commissions. Six months or a year later, or after whatever time-scale is agreed, we then look for evidence that good faith efforts were made to give effect to that original good faith intent. We are prepared to offer a great deal of our time, energy and skill, free, to help the firm with any or all parts of these processes.

If we have to move against a firm which we do reluctantly and, so far, quite rarely, the rules of natural justice apply. We may not, as a public body, act capriciously or whimsically, even if we wanted to, and the rules of natural

justice and the whole body of administrative law governs the way in which we act. That would be the case with any public body that sought to administer a policy of contract compliance.

Current Practice

Seeking to make equal opportunity gains through the medium of commercial contracts may be new to the UK but the practice of public sector intervention based on a contract certainly is not. There are numerous areas of central Government purchasing, especially, but not exclusively, in the defence industry, where intervention is very much the norm. Extremely searching enquiries are often made into a company's most private business arrangements, as well as the personal affairs of many of the company's personnel. Even in local Government a similar degree of intimacy can arise as between a Council and a company.

When companies come to Councils or Government for grants or, for example, for planning permission or licences, a great deal of information passes over. It is all received, as it is with contract compliance, on strictly confidential terms.

It has long been the case that before firms could tender for any local authority business they had to show the Council concerned that they were technically capable of carrying out the work in question, and also show that they were of sufficient financial goodstanding.

There is nearly always an interventionist price of some sort to be paid for doing business with, or receiving financial support from, the public sector. Consequently, to bring us back to the GLC, it is our view that with contract compliance we are merely extending an established practice to say to firms that their standing in relation to equal opportunities in employment is of just as much interest or importance to us as the firm's technical competence, their financial 'sea-worthiness' or other questions.

Neither can it be said that contract compliance introduces a wholly new level of complexity to public sector contracting procedures. Anyone who doubts that should study, as I have, the syllabus for a short-course that is exclusively concerned with how one does business with the central Government, provided by a company called Eagle Communications Ltd, a subsidiary of the Longman's publishing empire. Alternatively you should read some of the very expensive books which have been published on that same subject.

There are several areas of central and local government purchasing activity and broader spheres of operations where it is not, and never has been, simply taken for granted that companies will do everything they promised they would do or are expected to do. The Factories Inspectorate is but one of the more obvious examples. Before a local authority will accept a completed housing estate from a private builder, or even from its own Direct Labour Organization, the Council's surveyors will carefully inspect the work done to ensure it is up to the agreed standard. In the nuclear industry the Government leaves little to chance. Consequently, again we see that contract compliance raises no new principle of public policy, but it might tell you something about different people's priorities.

Equal Opportunity or similar 'good employer' clauses have been in public sector contracts for many years, yet few would argue that they have had any significant practical effect. The most charitable explanation would be that such clauses were meant to be primarily exhortatory. Perhaps it was thought that only a few of the worst offenders would fall foul and this would encourage the others. In reality the scale of non-observance of officially approved practice confounds such charity. Nothing was ever really done to ensure that the clauses were anything other than cosmetic.

Such practices or approaches bring public administration, or politics, into disrepute. If public bodies truly have no intention of doing anything about their clauses they should remove them from their contracts. If we have done anything really new at the GLC with this policy it is to have grappled with the logistics of finding a coherent way to see if our contractual clauses mean anything at all.

People might say that the logic of the more recent Government policy of 'Lifting the Burdens' and all that entails points in a completely different direction from that suggested by contract compliance. It might do, but it is then necessary to explain why equal opportunity considerations can be overlooked in the interests of this latest fashion.

Historical Background

Just as contract compliance raises no new question of practice so it does not, in my view, raise any new principles of public policy for the United Kingdom. Conceptually-speaking we have not broken new ground. According to Colin Turpin of Cambridge University, Government Contracts have been used to support employment policies since the 19th century. The House of Commons passed its first fair wages resolution in 1891. Our own economic historian, Ellen Leopold, uncovered a fair wages resolution passed by the London School Board dated 1889. The London County Council's (LCC) first fair wages resolution, also from 1889, read as follows:

> 'that the Council shall require from any person or firm tendering for any contract with the Council a declaration that they pay such rates of wages and observe such hours of labour as are generally accepted as fair in their trade, and in the event of any charges to the contrary being established against them, their tender should not be accepted.'

I first came across the notion of contract compliance, although it was not called that, when I read the White Paper on Racial Discrimination (Cmnd. 6234, September 1975). It was fully discussed in all of two paragraphs: 19 and 20. In paragraph 19 it was noted that:

'Since 1969 all Government contracts have contained a standard clause requiring contractors in the UK to conform to the provisions of the Race Relations Act, 1968, relating to discrimination in employment and to take all reasonable steps to ensure that their employees and subcontractors do the same.'

In paragraph 20, after stating that it was the Government's intention to retain a similar clause following the new legislation, the White Paper went on to say:

'The Government has considered whether its duty to take an active role to eliminate discrimination requires something additional.'

The government then decided that nothing additional really was required as it concluded that:

'It would be an unacceptable burden to require all contractors to supply as a matter of form full particulars of their employment policies. . .'

The Government has missed the point. They clearly lacked a broader and more programmatic view of how they could use the clauses to further the cause of equality without giving rise to 'an unacceptable burden'. Nonetheless the White Paper went on:

'. . . but the Government cannot passively assume that a formal condition is all that is required. It is therefore intended that it should be a standard condition of Government contracts that the contractors will provide on request to the Department of Employment such information about its employment policies and practices as the Department may reasonable require.'

And there the matter passively rested.

During the passage of the Bill through Parliament efforts were made to insert a clause on contracts. These were thwarted but undertakings were given to look further at the matter. In May 1979, on a Government initiative, discussions were held with the Commission for Racial Equality with a view to deciding how the above policy statement from the White Paper might be developed from within Government. A month later we had a new Government. That changed everything.

In May 1981 a political majority was elected to the GLC with a manifesto promising to harness the huge spending power of the GLC to the implementation of a range of major policies. Equal opportunities was one of those major policies.

Developing the Policy

In the initial period of our Administration we concentrated on our in-house equal opportunity programme. This was a sizeable and essential task in itself but it was also a necessary precursor to contract compliance because, in my view, it is certainly morally, probably politically, and perhaps even legally impossible for local government, if not for the whole of the public sector, to seek to impose on the private sector terms which it is not itself at least trying to match. Any local authorities that might be considering moving down the road of contract compliance please take careful note!

Thus in the early part of 1982 the move towards contract compliance at the GLC began. It took about a year to get to Committee with all the necessary legal opinions and advice. The internal opposition and obstruction by the bureaucracy was phenomenal. It was very tiresome having to deal with it. But we did deal with it.

Before adopting the policy we consulted widely with business and trade union interest, as well as with the CRE, EOC and a large number of community-based organizations. This whole process was essential, if very time-consuming. Nonetheless at the end of what turned out to be a rather lengthy process, we were sufficiently encouraged by the response we had received to persuade us that the idea was worth pursuing.

The Law

Fundamentally the policy rests upon the ancient common law of contract. Thus, broadly-speaking, the GLC has the freedom to buy from whomsoever it wishes on whatever terms it chooses. Overlaid upon that are a number of statutory and other common law duties and responsibilities.

As a Council we have to draw up rules for tendering. We have to secure competition for our tenders. We have a fiduciary duty to the ratepayers not to be profligate. If we ever were to ignore the lowest tender submitted we would need to have good reasons. Neither may we act capriciously nor whimsically; we are governed by a whole body of administrative law.

One legal obligation that we have, which is of enormous importance in the context of contract compliance, arises from s.71, Race Relations Act, 1976. Under this section we have a duty to seek to eliminate racial discrimination and promote equality of opportunity in all of the actions we take.

Purchasing is one such important action. We spend around £700m. per year on buying goods and services.

There is no equivalent specific legal obligation in respect of sex discrimination or discrimination against disabled people but, on moral grounds and on public policy grounds, it must be the case that public bodies should be positively seeking ways to further adherence to these laws where they have a power or an ability so to do. In that sense s. 71, Race Relations Act, 1976, only underlines and strengthens what local authorities should be doing anyway.

From amongst all of these laws and principles there emerges a solid legal basis for a contract compliance policy. It would be open to any and every public body to adopt such a policy today. It requires no new legislation although until there is a statute, one is bound to be slightly nervous about what a Judge could do. This suggests that public bodies need to be cautious in these

early days of developing the practice of contract compliance.

Logistics

Following the adoption of our policy in March 1983 we took the best part of the next twelve months staffing the Contract Compliance Unit and then working-out operational procedures. A visit we were able to make to the USA in early 1984 was extremely helpful in this respect. We did not have to reinvent the whole of the wheel.

The idea of contract compliance is itself a very simple one. It seems obvious that taxpayers' money should not go to subsidize discrimination. Ethnic minorities, women and disabled people have a right to expect that their publicly elected representatives do not use their taxes against them.

However, if the concept is relatively straightforward, working through the logistics and finding a practical means of delivering the policy definitely are not.

Consider the GLC, whose practice is typical of local government, if not the whole of the public sector: in order to be eligible to tender for any GLC business a firm must first be on the Approved List. Many household names are to be found among them. Most are smaller and less well known. Some of the firms on the list might not have won a GLC contract in ten years or more. Others will be very regular suppliers. Either type could win a contract the very next day.

With some, we will be only a tiny part of their total business. With others we may be a very substantial part of their turnover. Some companies may have massive contracts in money terms, yet employ very few people. The opposite will also be true. Firms in declining industries are less likely to be amenable to, or able to cope with, change than firms in growing parts of the economy. Monopoly suppliers are less nervous than most about losing trade.

It is most unlikely that there would ever be sufficient financial resources or staff available to allow any public body to attempt to give a detailed review to every firm that wins a contract with it. Consequently, it is always going to be necessary to have some kind of rational criteria for selecting companies for review. These criteria must be demonstrably fair and even-handed but they can be highly strategic in order to maximize and spread the likely beneficial impact of the reviews undertaken.

Choices

In determining how to pursue the policy in practice, a number of critical choices need to be made. How will company reviews be triggered? What role should individual complaints play in the whole process? What monetary limits, or limits by size of firm are most relevant?

What type of questions should be asked of the contractors to elicit that first insight into the realities of the company's personnel practices? What type of review system? Do you want to try to go through the whole of your Approved List? Do you wish to do only pre-award reviews, i.e., wait until a lowest-bidder has been identified and then indicate that they have won the contract subject only to a satisfactory contract compliance review? Or would it be better to review firms mid-way through a contract when they might be hoping or anticipating to keep on doing business with you after the expiry of the current contract? Certain types of contract will be amenable to certain types of review, others may require a different approach.

There are a whole host of variables that need to be considered when selecting firms for review. A scatter-gun or random approach to selecting companies could be very wasteful of resources. Some kind of matrix is necessary.

You need to know who you are spending your money with and when. That is not as easy as it sounds in a large organization where very many purchasing decisions are decentralized. You need to know about the timing of future contract decisions. There may be little point seeking to discuss a contract if it is being dealt with by another part of the bureaucracy and has just received a contract to supply goods valued at £50m. over the following six years. Whereas if you had spoken to the same company only a month beforehand, their attitude might have been entirely different.

You need to decide whether there is much point in concentrating reviews on firms that are in dying sectors of the economy or whether instead to concentrate on firms in economic growth areas. Might there be a case for concentrating on firms located in or near the major conurbations or population centres? What significance do you attach to that growing number of firms which, claiming to have been liberated by the new technologies, are moving the operations away from the cities, or at least away from the inner cities, towards green-field sites? Can contract compliance do anything at all about this? In the early days of the policy how much effort should one put, say, into firms in fairly isolated parts of the country, or into areas with very high rates of unemployment; or into areas with small ethnic minority populations? The logistics of contract compliance are fascinating but not intractable. A high degree of computerization is essential.

Practical Policy

Contract compliance is a very practical policy. It works with real situations in actual companies. I believe that if contract compliance were being pursued as a national policy across the whole of the public sector, it could produce significant, measurable changes at a macro-level, in terms of the changed composition and internal distribution of the workforce, in the medium to longer term. At the micro-level it will produce certain beneficial changes more or less immediately.

Other, more general benefits might accrue fairly quickly. The different dis-

advantaged groups would soon realize that contract compliance was a serious policy. They might then finally start to believe that the authorities were genuine about routing out discrimination and providing real equality of opportunity.

Contract compliance has its limits. Not all barriers to employment are discriminatory. For instance, although it would have a contribution to make in terms of evening-out the unemployment rates, contract compliance will not in itself solve the problem of unemployment amongst ethnic minorities or women or disabled people. Probably only a period of sustained national economic growth will do that. This may be obvious, but it is necessary to set contract compliance within its limitations.

Contract compliance is primarily about breaking-down job segregation between different groups of similarly qualified people. Hence it may not, in itself, do very much for the unskilled and the underskilled.

It is my belief that contract compliance will only produce its optimum effects if it is a part of a comprehensive approach to eliminating employment discrimination. For example there might be a limit as to how far the policy can benefit women if nothing is done on a wider front about childcare provision within society.

Observations on the Policy

The climate within which our contract compliance policy has had to operate, virtually since its inception, has not been the most propitious. We would have preferred that the policy had had a slightly longer time in full operation before offering firm conclusions on the results of our work.

With those caveats, but based on our experience now with a considerable number of companies, we are able to make a number of observations.

1 We believe contract compliance can work to bring about equal opportunity gains. The law of contract is a very flexible instrument but, so far as public bodies are concerned, it is unclear how far they could use their contractual powers as a purchaser to require companies to go further than the minimum advised or required by the law or the recognized authorities. Hence the strength of the anti-discrimination laws becomes one of the key determinants of the pace at which contract compliance can bring about change. If you want better or quicker contract compliance you will need tougher and clearer laws. The threat of huge back-pay claims has been a major factor in encouraging US firms to get to grips with discrimination.

In the UK at the moment the Codes of Practice of the two Commissions are the bottom line to which contract compliance has to be linked. The Codes are often regarded as fairly minimalist documents. Although there is some value in seeking to win wider adherence to the two Codes of Practice, sooner or later we will have to go beyond their rather 'soft' approach.

A statistically-oriented approach to equal opportunity, in which monitoring and goals with timetables feature prominently, is essential in the longer-run to any much larger-scale nationally-based tougher contract compliance policy. This will require a greatly improved national database on the employment demographics of the UK. It will also require much more extensive self-monitoring by the various training, educational, craft and professional bodies.

2. In the longer run there will need to be very close connections established between the policies and practices of the various training, educational, craft and professional institutions and the contract compliance agencies. Discrimination in the past has kept women, ethnic minorities and disabled people out of training opportunities and therefore out of certain job areas. Thus, the question of positive action is going to be vital to the longer-term success of the policy. A major increase in positive action training is essential to change the employment profiles of each of the three target groups. As in the USA, it is not suggested that contract compliance in the UK should lead to companies being expected to recruit or promote unqualified people.

We have had some experience at the GLC of establishing networks and making connections between different advisory and training bodies and companies genuinely looking to recruit with equal opportunity. It is important for the contract compliance agency to be able to ensure that connections of this kind can be made, especially where a company offers an explanation of non-availability to account for why there are very few, or no members of a particular target group in the relevant workforce. There may be a need to consider stronger institutional arrangements to guarantee these connections.

3. Compared with a number of other areas of public sector work, contract compliance is perhaps relatively staff and resource intensive.

This may be principally a reflection of the current low-level of understanding of equal opportunity questions in industry and commerce. However, when related to the total volume and value of purchasing, the cost of the policy is extremely small. In the GLC's case, for example, excluding one-off costs in 1984-86, the cost of the policy was less that 0.05% of the total value of Council purchasing.

Although there is no hard data available from the UK the cost to private sector concerns of coping with a contract compliance policy is also likely to be extremely low. The US experience and our own experience as a large employer certainly support such a view. However, some sectors of industry and some types of firms will be sooner and better able to cope with contract compliance that others. This fact needs to be built into the approach towards the expectations of those firms.

4. Whilst some firms at the moment resent and reject contract compliance as an 'intrusion', most do not. Providing you can convince companies that your primary aim is to help to bring them into compliance, and that exclusion is

only the last thing that will be contemplated if they will not agree to make good faith efforts to comply, then you will frequently find them co-operative.

5. There are still huge areas of employment where most anti-discrimination laws seem hardly to have been heard of or acted upon. It is broadly, although by no means wholly true that bigger firms are better, but there does not appear to be very much understanding in the broader reaches of industry and commerce as to how, even when they do learn of their equal opportunity obligations, and understand them, they can implement them effectively.

6. If a larger number of concerned and responsible public bodies are to take up contract compliance there is a risk that a multiplicity of different practices might either create unnecessary conflicts, or place too great a burden on companies. This risk may already be real, although in London all of the Councils pursuing the policy are co-ordinating their efforts through the Association of London Authorities. Nonetheless we would all benefit if there were a lead given by a powerful or influential national institution.

7. Small scale attempts at contract compliance are unlikely to be productive. Locally-based initiatives employing one or two officers on their own in a Unit are not likely to be able to deal with some of the country's industrial giants, much less the multi-nationals. It is impossible to say where the critical cut-off point is but I suspect that even the hefty GLC might have been quite near to it. Larger-scale operations are essential.

8. Contract compliance requires a great deal of co-operation between the public sector purchasing Departments or Agencies and the contract compliance organization, particularly in respect of the provision of information. This points away from contract compliance being organized through Quangos or Qualgos. I do not see that this would necessarily create difficulties with the two existing statutory commissions. Institutional arrangements are an area for wider discussion, however.

9. Compared with the size and volume of national public expenditure on the acquisition of goods and services from the private sector, the level of spending at the GLC is small, but not so small as to render invalid any generalizations from our experience. Historically the GLC and its predecessor, the LCC, have frequently been used as testing-beds for new ideas in public policy which have later 'gone national'.

Conclusions

We believe that contract compliance could make a very significant contribution to the eradication of employment discrimination in the UK.

When we first launched our policy, sections of the business community suggested that this was the thin end of the wedge. I would not wish to disguise my belief that, once you accept that public sector spending can and should be harnessed to public policy, then there is always the possibility that other items can be added if they, too, conform to policy.

There is no doubt that contract compliance as a technique could be applied to other questions. There are other disadvantaged groups, for example gays and lesbians, and other forms of discrimination, for example based on age, that I would like to see included in a broader-based programme.

The initial outcry against the GLC's contract compliance policy convinced me that all the clauses we had in public sector contracts had really gone almost completely unnoticed. However there is something absurd or grossly hypocritical about a local authority or a Government that, on the one hand, spends large sums of money funding bodies concerned with equality questions, inner city initiatives or similar programmes, and on the other, spends even larger sums with those who cause the very problems those initiatives address.

Surely there can be no objection in principle to civic authorities doing their best to encourage conformity with the law? People may not like the law, but that is a separate question. If people want things to be left to the courts instead, are they at the same time arguing for laws with the same power and immediacy as contract compliance? Is anyone suggesting that the Government should cancel and withdraw the existing Clauses from public sector contracts? If not, why not?

I think there are two principal answers to those who are worried about the potential expansion of contract compliance into other areas:

1. If there were more satisfaction with the rate at which the private sector was routing out discrimination and staying within the anti-discrimination laws; there would probably not now be the need or the support for policies such as contract compliance.

2. There exist practical legal limits to the extent to which contract compliance can be used more widely. There needs to be a consensus about the desirability of extending it, before that can be done.

I believe that contract compliance has a future in this country not just because its impressive achievements in the USA make it ultimately an irresistible social policy option, but above all because I believe that the clear moral core to the policy will continue to generate for it a very great deal of public and political support, especially from the ethnic minority communities, women and people with disabilities.

John Carr is an elected Councillor and Chair of the Supplies and Contract Services Sub-Committee of the London Education Authority.

Contract Compliance in the U.S.A. - An Overview

Cynthia Marano

Affirmative action is central to ensuring economic independence and equal opportunities to those who have been victims of discrimination and who continue to face severe labour market under-utilization. While contract compliance polices alone cannot achieve an integrated workplace, they are a vital ingredient in the mix of required strategies. Moreover, it is our view that compliance has played a critical role in creating opportunities for women and minority males in the United States which otherwise would not have existed. Affirmative action is a stimulus, a prod, and when it's worked best, a creator and guarantor of opportunity.

The History of the Policy

The concepts of equal opportunity, contract compliance, and better utilization of minorities and women in the workplace are concepts in which administrative policy, regulation and legislation have played distinct but equally powerful roles in the past four decades of U.S. history. Contract compliance as a strategy was introduced first in 1941 when President Franklin Roosevelt barred discrimination against black workers in all federal government war contracts. In 1943 the policy was expanded to cover all federal contractors. The notion that the federal government should take the lead in combating discrimination has, therefore, been a matter of policy for more than forty years.

Like many policies early contract compliance in the U.S. was more a statement of national values than a pragmatic, action-oriented vehicle for change. It was not until 1961 that 'affirmative action' was developed as a tool, with a governmental body accountable for it's implementation. On March 6, 1961, President John Kennedy issued Executive Order 10925 which required the federal government to take 'affirmative action' to provide equal employment opportunity for minority workers. Kennedy then established the Presidential Committee on Equal Employment Opportunity to develop rules, regulations and orders to oversee the implementation of the policy.

In 1964, the Civil Rights Act was passed, with Title VII prohibiting employment discrimination and giving the courts authority to order such forms of 'affirmative action' as they judged appropriate in seeking remedies for victims of discrimination .

With passage of the Civil Rights Act, both types of affirmative action now in place in the U.S. became established government policy - the administrative strategy focussing on contract compliance and the role of the U.S. government in fostering equal employment opportunity and the government role of litigant on behalf of victims of discrimination. Affirmative action policy in the U.S. has achieved it's impact because of the interplay of these two strategies .

Between 1965 and the early 1980's affirmative action policy was clarified, strengthened and structured. In 1965, President Lyndon Johnson issued Executive Order 11246 which prohibited discrimination in federal contracts and made the Secretary of Labor responsible for administering enforcement. In 1967, Executive Order 11375 expanded coverage of 11246 to include women, and in 1972, Congress passed the Equal Employment Act, guaranteeing women freedom from employment discrimination. In 1971, President Nixon established the regulations which generally govern the contract compliance arena today and articulated the concepts of affirmative action plans, utilization analysis, the setting of goals and timetables, the ranking of job classifications, and the other major elements of current contract compliance enforcement.

In 1978, President Carter issued Executive Order 12067 restructuring the government entities responsible for oversight of equal employment opportunity and federal contract compliance. The centralizing of these functions in the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs was designed to streamline what had become a duplicative, overlapping set of federal responsibilities and to develop greater accountability.

Between 1978 and the present, affirmative action policy was first strengthened and then diminished. Since 1981, President Reagan's administration has supported a shift in the policy and philosophy of affirmative action. While some in the Administration work to sustain the historical initiatives I've described, others put forward the view that the affirmative action policies of the 60's and 70's are rigid and discriminate against white males. Draft regulations which would have limited the effect of Executive Order 11246 were published early in Mr. Reagan's first term. They were subsequently withdrawn. However debate within the Administration continues over the appropriate administrative and judicial role for the US government in seeking equal employment opportunity. Debate includes, of course, how many federal dollars should be spent for enforcement.

A review of the history of US affirmative action policy reveals that it has been a political process of shifting sands characterized by frequent changes in coverage, in regulations, in structure, in funding, and in authority and accountability. Until recently, however, the basic philosophy of the federal government role in achieving a more equitable workplace has been stable for more than 20 years, through both Republican and Democratic administrations.

The Achievement of Affirmative Action in the US

It is a difficult task to document the impact of policies which have undergone so much evolution. Yet, scholars, economists, the government itself, and advocates for affirmative action have recognized the importance of this documentation. And, while individual anecdotes reveal problems with implementation of affirmative action policies, all of the systematic studies done on the issue indicate that affirmative action has had a positive effect, and results in increased employment opportunities for women and minority males.

In 1978, a report by the US Commission on Civil Rights entitled 'Social Indicators of Equality for Minorities and Women' concluded, that for black men and women and for Hispanics between 1960 and 1976, there was a substantial increase in representation in 'occupations considered more important, more prestigious, and more desirable by the rest of society. Upward mobility reflected by higher earnings had increased steadily.'(1)

But, you might ask, what is the connection between these gains and affirmative action policy? Two studies conducted since 1980 have painstakingly drawn this connection. In 1981, the Office of Federal Contract Compliance undertook research conducted by V. Griffin Crump to assess the impact of affirmative action. This study entitled 'A Review of the Effect of Executive Order 11246 and the Office of Federal Contract Compliance on the Employment Opportunities of Minorities and Women', reviewed 77,000 companies employing 20 million employees. Finally published in 1984, the study found minority employment to have increased 20.1% and women's employment to have increased 15.2% between 1974 and 1980 in federal contractor workplaces. In non-contracting establishments, the gains were a 12.8% increase for minorities and a 2.2% increase for women.(2)

Jonathan Leonard also published an exhaustive and well-controlled study on the same topic in 1983,(3) which supported the findings of the OFCCP Study.

While Leonard found disparate impact for different so called 'protected groups' (namely women and minorities), he asserts that impact can be seen and documented even under strict statistical and control conditions.

But for those of us who work with women and minority males, such studies, while valuable, don't tell the full tale. They do not document the more indirect effects and climate-setting changes wrought by affirmation action.

Climate Setting Effects

In retrospect, there are many indirect gains and climate changes that appear to have been brought about by affirmative action policy. Some of these gains directly affect minorities and women; others have a more generally efficacious result. Some gains have been experienced, for example, in general business practice.

For women and minorities, one of the most important indirect results of affirmative action has been the stimulation of training programs in and out of the employer community, supported by both public and private dollars. From the mid-sixties on, such training programs grew up and began to make placements. Targeting of similar underrepresented groups in publicly-funded employment training, as in the Comprehensive Employment and Training Act of 1978, was an important complementary strategy.

Employers were then able to tap women and minorities trained in such programs to meet their affirmative action goals. Similarly, as of 1975, Title IX, attached to the Education Amendments of 1972, prohibited sex discrimination in federally funded education programs. This was another complementary policy strategy. Women and girls entered both job training programs and higher educational programs in greater numbers where they had previously been barred or present in negligible numbers. My own organization began a network of independent women's employment training organizations in the mid 70s. In 1979, there were close to 90 such programs. Today, less than ten years later, there are more than 200. These programs provide training and career counseling to 300,000 women each year. Non-traditional training for women in the trades, in technical, and other predominantly male fields was also stimulated - especially at the highest point of EEO enforcement.

A look at the construction trades creates a vivid picture of this situation. The construction trades in the US provide highly important occupational opportunities for several reasons. First, these jobs require less 'formal' education than other similarly paid occupations and generally provide decent wages. Secondly, career paths are possible in the trades because of promotion from within policies and union bargaining. Thirdly, training available for the trades is frequently done through apprenticeships, training registered and regulated by the federal government.

Lastly - and perhaps most important - construction trades jobs were jobs in which women and minorities were highly under-represented as affirmative action policy was being initiated. As late as 1971, for example, blacks accounted for less than 4% of the membership in 11 of the 16 construction-oriented unions. In the higher paying mechanical trades unions, the average black membership was less than 1.7%. In 1970, 6% of the total membership of construction unions was female, and women held less than 7% of all craft work jobs in the construction industry.(4)

Between 1970 and 1979, great strides were made in the training of women and minorities in the construction trades, even considering a period of recession in the trades during that period. Minority employment in the trades rose from 9.2% in 1970 to 14.2% in 1979. Women moved from 6% of union membership to 1.6% and from 6.5% of the construction craft labour force to 8.5%. But both minority and female participation in training and apprenticeship programs in the trades had increased more dramatically.(5)

But not only were training opportunities more available after affirmative action, women and minority males began to see themselves in broader occupational categories and to seek a greater range of jobs in greater numbers. A look at the coal mining industry is instructive in this regard. In 1953, there were no women employed in the coal mines throughout the US. No women applied for coal mining jobs in 1972. In 1973, 15 women applied. By 1978, 1,131 women applied for these jobs, and by 1980, there were 3,295

women coal miners in the US and 8.7% of all coal miners being hired were female. The Peabody Coal Company in Kentucky found, for example, that the number of women applying for coal mining jobs rose dramatically as it became known that the company was hiring women.(6)

Movement of women and minorities up the career ladder can also be connected with affirmative action policy. In 1978, for example, in Cleveland, Ohio, the OFCCP reviewed the employment practices of the five largest banks. Three years later, the percentage of women officials and managers had risen more than 20%.(7) Similarly, Jonathan Leonard's study of the occupational advance effects of affirmative action indicated that between 1970 and 1979 demand grew for blacks in higher skilled blue collar and professional jobs in contractor firms.(8)

Business Impacts

Affirmative action has done much to improve these kinds of opportunities for minorities and women. But it has also had a positive impact on the business climate and employment practices of many US corporations.

In November of 1983, the Citizens Commission on Civil Rights held an all-day dialogue with business leaders to explore their experience with contract compliance. Representatives of four major corporations drawn from diverse segments of American business attended. Three other corporations submitted written materials to contribute to the dialogue. In addition the Commission distributed questionnaires to 200 other corporations to determine whether affirmative action programming had resulted in improved personnel policies or practices, other than expanded opportunities for minorities and women.

The Commission's investigation found much that was revealing:

1. Of the business participants in the all day dialogue, each stated that his corporation has benefited as a whole from affirmative action planning. Each believed that successful affirmative action planning required support for the policy from top management. Each utilized training for mid-level managers and built accountability for affirmative action into manager performance, tying achievements in this area into more generalized objective-setting. All of the corporations represented use the goals and timetables approach and find it a satisfactory and important element in successful planning.

2. Also at this session, business representatives discussed their experiences with affirmative action enforcement and enforcement agencies. Complaints were raised about paperwork systems and about the quality of compliance reviews. Participants also commented upon the effects of Administration debate over affirmative action policy since 1980. They expressed concern over the effect such debate was having on resistance to equal employment opportunity in their own companies and other corporations.

3. Additional company benefits stimulated by affirmative action which emerged from the all day dialogue included:

* discovery of a pool of 'highly capable, experienced women with long service to the company' who had previously been barred from middle and upper management positions:
* the demystification and depersonalization of the promotion process throughout the company;
* the development of more job-related job descriptions with less extraneous and irrelevant requirements:
* expansion of their business customer pool into new minority and female markets.

Results of the questionnaires revealed similar corporate experience:

* 90% of the respondents said that affirmative action had resulted in the establishment or improvement of procedures and standards regarding *hiring*:
* 89.3% of the respondents reported establishment or improvement of employee *disciplinary action* policy as a result of affirmative action;
* 85.7% said their *promotion* policies had been established or improved as a result of affirmative action; and
* 82.1% said their *performance evaluation* process had been established or improved as a result of affirmative action.(10)

In 1974, the Conference Board, a professional business organization, contacted 1,015 companies to study their experiences of integrating women into their workplaces. Questionnaires, telephone and on-site interviews were used to gain information. A report - *Corporate Experiences in Improving Women's Job Opportunities* was published in 1978.

One important finding of the report states:

> 'Interrelated goals and timetables are being established for improving the representation of women in jobs where they are under-utilized at all higher organizational levels - taking realistic account of the expected staffing flows, of the genuine qualifications required to perform various availability of appropriately qualified women . . .'
>
> 'This is what is called for under the Executive Order, but the scope of the planning being done is much larger than the regulations require. That is, the planning is being done on an interrelated basis for the whole organization, not merely for each establishment. Thus, far from considering a 'goals and timetables' approach as a meaningless paper exercise needed to satisfy government reporting requirements, most of the companies now say goals and timetables are being used as corporate-wide planning and control tools with respect to the appropriate utilization of human resources, especially at the managerial and professional levels.'(11)

To be fair, all US employers do not embrace affirmative action or see its benefits. The US Chamber of Commerce and the Associated General Contractors, for example, support pullbacks from the Executive Order and regulations governing contract compliance. A review of their materials reveals concern primarily over enforcement issues and paperwork, however, and a lack of understanding of the distinctions between goals and quotas.

Others who support the elimination or diminution of affirmative action do so on more theoretical grounds. None of these critics can argue from evidence, however, that affirmative action stimulated by contract compliance policies has had no impact. Research, labour force statistics, and employers speaking 'on the record' about these results cannot rationally be denied.

An Assessment of Critiques of Affirmative Action

It is important for us to examine the concerns raised by critics of affirmative action.

In the US, arguments against affirmative action and contract compliance centre around four basic themes:

1 Opposition to race/sex conscious strategies to eliminate discrimination (the issue of reverse discrimination);
2 The view that goals and timetables are quotas;
3 Arguments that minorities and women are not available, interested, or trained for contractor jobs; and
4 The concern that women and minorities who are not qualified have been pushed along the job ladder and are merely tokens.

While other arguments exist, these criticisms are the most frequently posed in combating affirmative action policy in the United States. A final argument, which bears repeating, is the illusion that race, sex, and ethnic origin discrimination have already been conquered in US society and that affirmative action while once useful is simply no longer necessary. That fantasy is addressed in my conclusion.

Reverse Discrimination

Evidence such as that produced by Dr. Leonard's researches,(12) suggests that reverse discrimination is not an outcome of affirmative action.

But the broader issue behind the question of reverse discrimination is whether it is appropriate to use race/sex/national origin conscious remedies to address discrimination. Many conservative theoreticians challenge this thesis.

In the United States, the use of conscious strategies to address discrimination as a policy has four decades of history. It has been defended in the courts, upheld even in cases where a particular defendant was decided for in a claim of reverse discrimination. In a hearing on affirmative action held in 1982, Clay Smith of the Equal Employment Opportunities Commission said:

> 'It is fallacious to argue that the interpretation of our laws must remain colourblind when in fact they have never been applied in a neutral manner. The founders (of the United States) proclaimed that 'all men are created equal' but gave us a Constitution which designated blacks as 3/5 of a person. Until 1920, women citizens were denied the right to vote. It wasn't until 20 years ago that the law of the land forbade discrimination in employment. We cannot, therefore, suddenly make the Constitution colour and sex blind.'(13)

In testimony prepared for a consultation of the US Commission on Civil Rights on 2 March 1985, Judy Goldsmith, then president of the National Organization for Women, put it this way:

> 'Does affirmative action in the process of providing access to opportunities previously denied to minorities and women necessarily disadvantage some other group? The answer is no. An affirmative action program that is properly developed and carried out is neither reverse discrimination nor preferential treatment. Courts have made it very clear that affirmative action may, in fact, result in disappointing the EXPECTATIONS of white male workers, but it will not displace men to make room for minorities and women.'(14)

Suffice to say that the perspective of wider opportunities for women is that without policies which recognize the entrenched discrimination in our society and institutions, women and minorities will continue to be discriminated against, under-utilized, and economically unequal in the United States.

Goals vs Quotas

As has been pointed out previously in this paper, a great deal of confusion surrounds the issue of goals and timetables in the US. The debate centres around the distinction between goals as required in the Executive Order or quotas.

Some critics of affirmative action contend that goals *are* 'quotas' or are enforced as quotas. Some argue that any numerical affirmative action assessment is tantamount to quotas:

> 'A hiring goal is a numerically expressed estimate of the number or percentage of new employees who will belong to a certain class, for example, black or female. Typically, an employer undertaking affirmative action sets a hiring goal . . and a projected timetable for achieving that goal . . .As part of its plan to achieve the ultimate goal, an employer will establish annual hiring goals for the duration of its timetable.'(15)

This concept is quite distinct from quotas, which are an *exclusionary* as opposed to an *inclusionary* tool designed to limit the number of an excluded group from participation.

The regulations governing Executive Order 11246 themselves prohibit the use of goals in a rigid fashion. They require only the setting of goals and the performance of a good faith effort to achieve them.

Moreover, while it may be the case that individual, poorly trained OFCCP reviewers have applied undue rigidity in enforcing goals, little evidence can be found of widespread sanctions against such contractors. Debarment from government contracting has been ordered less than 30 times in the entire history of the contract compliance programs. Most compliance reviews are completed without financial or other excessive penalty to the employer.

Availability

Frequently opponents of affirmative action use the arguments that sufficient numbers of the protected groups are not trained or available for hiring. Yet, once again, the concept of good faith effort will not penalize the contractor who sincerely designs outreach, structures hiring criteria fairly, sets goals and cannot meet them because members of the protected group are not available. Such employers can engage in training or can seek referrals from relevant training programs. If, in the end, they are not able to find such employees, they are not financially penalized.

Tokenism

A common argument against affirmative action is that it undermines the principle of merit-hiring, and that protected class members who are unqualified are promoted and stigmatized because of affirmative action. Other than anecdotal stories from individuals, there is little evidence to support this notion.

The court cases dealing with affirmative action policy appear consistently to agree that affirmative action should be used to create an environment where merit can prevail. One court ruling read:

'If a party is not qualified for a position in the first instance, affirmative action consideration do not come into play.'(16)

Contract compliance policies which stimulate affirmative action by federal contractors are vitally needed. With contract compliance, however, as in any policy initiative, a number of other strategies must accompany it to provide a meaningful alternative to a discriminatory and inequitable society which wastes human potential. Statutes ensuring equal employment opportunity for all, judicial remedies for individual and class action's in the face of discrimination, affirmative action in federal contracting, adequately funded enforcement, minority and women's small business set asides, targeted recruitment, publicly funded and employer sponsored training programs, appropriately monitored and integrated apprenticeship programs, citizen action and monitoring must all go forward together to combat discrimination in the United States if we are to succeed in overcoming the kind of discrimination we see in our society.

A hopeful sign is, of course, that so many key players support contract compliance and recognize the compelling need for it to continue. Today, business leaders, civil right activists, and increasingly the American public support affirmative action. In a Harris poll last Fall 75% of respondents acknowledged support of federal affirmative action program for women and minorities' provided there are no rigid quotas.'(17)

We have seen expansion of opportunity during the two decades of structured affirmative action. While it has all too often been fragmented, under-funded, and bureaucratic, it has *worked.*

Cynthia Marano is Executive Director, Wider Opportunities for Women, Washington, D.C.

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Contract Compliance in the U.S.A. -An Evaluation of Impact and Cost

Jonathan Leonard

One of the things I have learnt in looking at the contract compliance programme is the vast disparity between the huge amounts of rhetoric that flow around the issue and the relatively meagre amount of evidence that is produced in public discussions. I tried to find out exactly what contract compliance is doing in the United States and how it is operating.

There have been two major lines of criticism of contract compliance recently in the US. The first is that the contract compliance programme just simply does not work' and since it does not work, we should get rid of it. The second is that the contract compliance programme *does* work and therefore we had better get rid of it. I want to examine the premises; whether the contract compliance programme in the US works, and what kind of impact it has had.

When contract compliance programmes were voluntary and there was no monitoring, the end result was that nothing happened. Contract compliance may have looked good on paper but in practice it did not really change things, except perhaps among a few companies with particularly good will. That situation changed in the early 1960's when contract compliance clauses had some teeth put into them, and the teeth involved a system of monitoring and a set of sanctions. Those two things made the programme effective for the first time. A programme that relies entirely on voluntary goodwill is almost guaranteed not to have any effect on those who are the worst discriminators to start with.

The contract compliance programme in the US applies to all federal contracting companies. So that suggested a relatively simple way of trying to decide whether the contract compliance programme has had any effect through a comparison of contractors with similar non-contractors. I did that using data for 70,000 companies with more than 16 million employees. I looked at changes in ratio and general composition of workforce during the late 1970's. What I found basically was that the contract compliance programme had been successful. It has a small, steady, but peculiarly large effect in promoting the employment of minorities, blacks, hispanics and females. The evidence of that is that the employment shares of all those groups increase faster among the contractor companies than among similar non-contractors. You should bear in mind that that means there is a change over and above that which is accomplished by anti-discrimination laws. The anti-discrimination law in the US applies to all companies. Contract compliance applies only to the federal contractors. So over and above the impact of the anti-discrimination law, we see an additional positive impact from the contract compliance programme.

That results in changed behaviour on the part of companies. The changes that we observe are not ephemeral. When the inspector walks away the black and female advances do not disappear. Companies by and large have learnt to see positive value in these programmes. There has been a revolution in the sense that there has been a complete rationalization of the personnel process which before these programmes used to be very informal and very slapdash. Now companies have been forced to look at their personnel programmes and employee selection procedures with the same kind of analysis that they apply to a lot of the other business problems they face, and that has led to better personnel practices all round.

Compliance Review

As part of the process of contract compliance, one of the major enforcement tools is a compliance review. That is the first, most common, and usually the last enforcement pressure that most contractors see. Comparing the companies that have undergone a compliance review with those who have never undergone one, compliance reviews prove quite effective. Companies that have come under review which have had their contract compliance plans (their affirmative action plans), ordered by government, and have received advice, suggestion and education, from the government compliance officers, have managed to show even better records for the employment of minorities.

It is important to understand that white males are not being tossed out in the street to make room for minority females. In a situation of growth, there is more employment for everybody and minorities and females are able to advance their share. It is certainly not the case that white males are being displaced by contract compliance policies.

The fact that compliance reviews have an additional positive effect shows, to my mind that direct pressure does make a difference; but you cannot simply put one of these programmes into place and expect it to run on its own. A notable factor is that one of the most effective policies for increasing minority and female employment in the US is simply added growth. Similarly, the contract compliance programme has the most effect on companies that are growing. Companies that are growing can accommodate pressures from contract compliance because they have the job opportunities and they are able to increase employment of minorities and females. So economic growth is crucial to this process. It prevents a purely redistributive gain which pits one party against another.

The larger corporations tend to have better records in contract compliance. Larger companies tend already to have a formal personnel department, and they are better able to deal with government and understand exactly what is required. Small companies on the other hand tend not to have come into any contact with the compliance group people and to be relatively ignorant about how the programme works.

In the US the AFLCIO, came out strongly during the 1960's as one of the major proponents of the anti-discrimination law. At the national level union support for these policies has been maintained. There is a popular impression that when you get down to the local level there is no strong support for them. What I have found is that you really cannot tell the difference between a unionised plant and a non-

unionised plant by looking at the demographics. There are plenty of minorities and females and it looks just about the same. That means that the unions at the local level are not against the policy, and unionised plants seem to show better employment rates of blacks. So it is quite inaccurate in the US context to point to unions as a major road black to contract compliance.

One of the more controversial issues in the US deals with occupational advance. In the early days, people would say that if an affirmative action or contract compliance programme is at all effective it is only helping blacks get menial clerical jobs; it is not really producing a different profile in the higher level jobs. It turned out that at least by the late 1970's that the story had changed. The contract compliance programme in the late 1970's was quite effective for blacks across the board in the higher skilled occupations as well as in the lower skilled occupations, and for lowly educated blacks as well as highly educated ones. Educational advances have contributed to that result. We have not only had a contract compliance programme and anti-discrimination law in employment, but we have had analogous programmes working in the educational field, opening up higher education to blacks, and opening up new fields of study to women. Those two programmes work hand in hand. It is very difficult to try and convince a young black or a young woman to go and study to be an engineer, or something, if their experience is that no black or no woman, even with advanced education, could get a job in that field. It is similarly a futile exercise to go in and pound on the employers' doors to hire black or female engineers if there are none. So in the US it has been those two elements working together which have contributed to the occupational advance we see.

The evidence is that contract compliance programmes work better in the US when they are rigorously enforced, when there is a monitoring system, when there is a substantial acceptance of them, and when they work together with other programmes, like those developing the skills of minorities and females.

That brings us to what seems to me one of the major red herrings in this area. Whenever the word 'goal' is used people tend to assume it is just a polite euphemism for 'quota', because 'quota' would be offensive to too many people. The system of goals and timetables has come under another criticism in the US, which is that it is a mere exercise in paper pushing.

I wanted to get to the bottom of the difference between a goal and a quota. I looked at the goals set by companies in negotiating with the US contract compliance agency. I then went back and looked at what they accomplished and the progress made towards those goals. My hypothesis was that if those goals were really quotas you would expect them to be filled. If a company had promised to hire 10 per cent more blacks, I would expect that if it was a quota they would hire 10 per cent more blacks. In fact what I found was that companies who had promised to hire 10 per cent more blacks or 10 per cent more females ended up hiring one per cent more. That is going a tenth of the way towards the goal. I cannot think of a better way of telling people that in fact those goals are not quotas than to point out that as it works in the US, companies fulfil a tenth of their goal on average. As this accumulates they may make a further promise of progress. Over time, the companies with a system of goals and timetables make greater progress in the employment of blacks and females, not, by using a rigid inflexible set of quotas, which is specifically outlawed.

Another aspect of the US programme I was interested in was how the bureaucracy, the Office of Federal Contract Compliance Programmes, actually decided to put more pressure on.

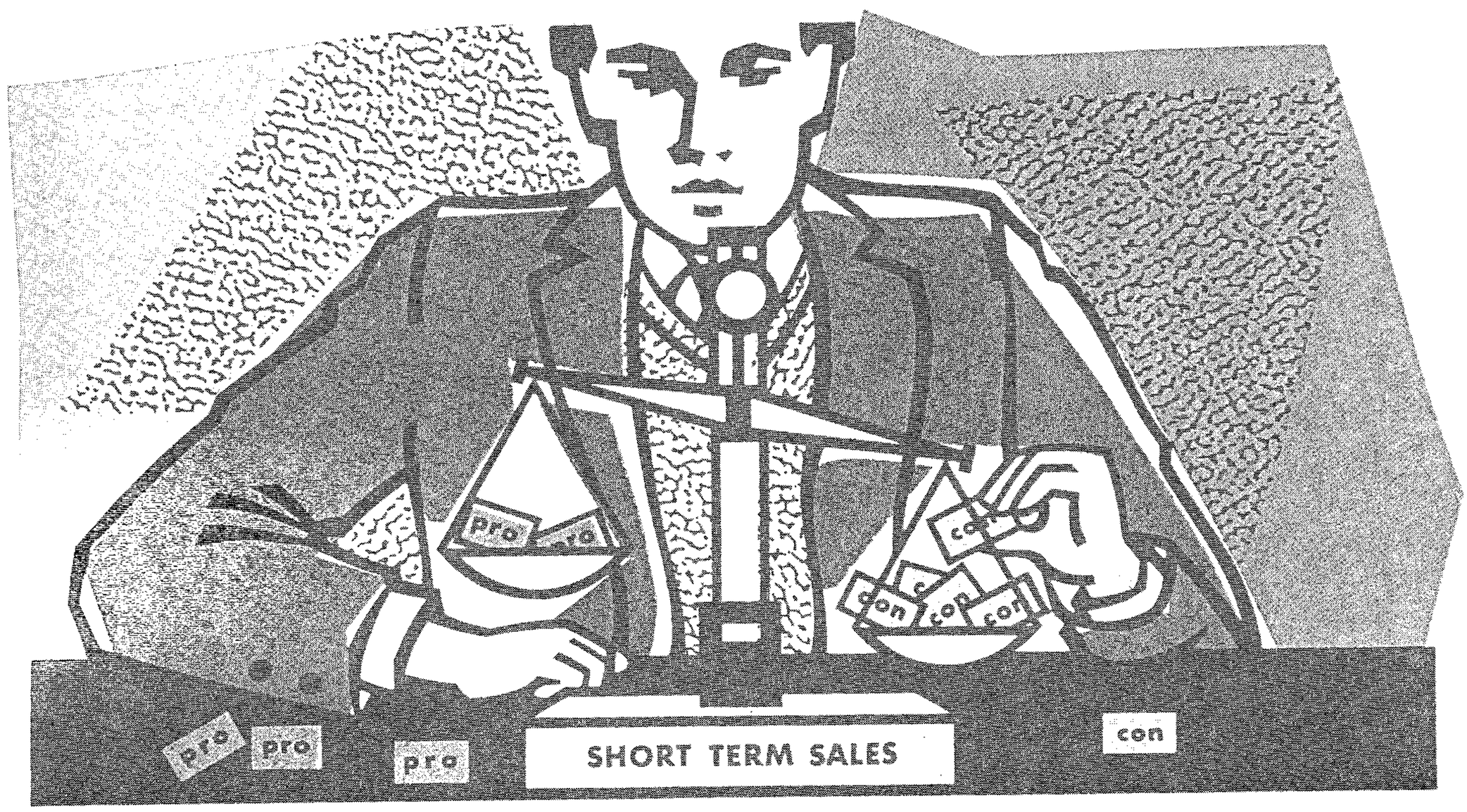
In fact, the contract compliance agencies tend to target large companies over and over again without much regard for their demographics or their past employment record. Compliance reviews have not been specifically targeted at those with the lowest proportions of minorities such as females. Their effectiveness in fact, could be quite easily improved simply by paying attention to the existing composition of the workforce.

Another question brought up time and again in the US is 'Is this anti-discrimination or is it reverse discrimination?' What, after all, is the goal of the contract compliance programme? Critics in the US contend over and over again, that the contract compliance programme has gone beyond the point of anti-discrimination. To my knowledge there is no substantial evidence in support of that thesis. The evidence with which I am familiar suggests just the opposite, that there is no substantial significant evidence of reverse discrimination under this programme. Rather, what seems to have occurred is that discrimination has been reduced under this programme. People have made the point that this can make good business sense, and there is obviously support for this view. Companies which have had the largest increases in minority and female employment actually show no negative impact on their profits and in some cases they show greater than average profits. What this suggests to me is that this is not a very costly programme for the companies involved. It has no substantial negative impact on growth nor on their profits. I think in the US, at least, companies have, without too much trouble, been able to find plenty of qualified blacks and minorities to employ without any noticeable reduction in productivity.

Another concern is with the direct costs of the programme. The direct costs are the administrative costs of actually enforcing contract compliance programmes. Those turn out to be something of the order of 40 or 50 dollars a year per employee, a relatively negligible amount, and the larger the company the smaller this cost may be. It is mostly a question of developing plans, putting a little bit more effort into employee selection and promotion, and filling out a little bit of paperwork for the government.

My conclusion is that too often the rhetoric has obscured the truth about contract compliance. The truth seems to be that the programme has been successful, has had a substantial impact on improving employment for minorities and females, and has helped them up the occupational ladder. It has done so where similar programmes that were truly voluntary, but lacked monitoring methods and had no sanctions, failed.

Jonathan Leonard is Professor of Industrial Relations, School of Business Administration, University of California, Berkeley, and a Consultant to EEOC and the US Department of Labor.



How Business See Contract Compliance

Three businessmen, two American and one British, reflect on their experience.

BILL McEWAN, Director of Equal Opportunity Affairs, Monsanto, Chairman of the Equal Employment Opportunities Committee, National Association of Manufacturers.

Basic truths about human nature have to be taken into account when we consider contract compliance. For instance, there are always 'haves' and 'have-nots'. 'Haves' work very hard to get what they have. 'Haves will not voluntarily give up what they have to 'have-nots'. 'Have-nots' once they become 'haves' are just as bad at holding on to what they have as the 'haves' were. That is human nature. If you keep that in mind and remember that the world's not fair, then you will be better able to deal with questions of equal opportunity.

In the US, there was a time when we knew that people needed to be treated fairly. But our institutions were not geared to doing so and we did make distinctions based on race, creed, colour and national origin to such an extent that they made a difference in the make-up of our workforce and the make-up of our society. Even though the injustice was recognized, we did not do anything about it. It was only when we came to a point in our history where this social preference became a social necessity that change occurred. How do you get from a social preference to a social necessity? Somewhere in that process the 'haves', whoever they are, whatever they are, have to be convinced that it is in their enlightened self-interest to include the 'have-nots'. That is human nature.

What has happened in the United States is that with the creation of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, companies were forced to understand that we needed to approach the management of our human resources in the same way that we approach our other business goals. However, do not believe that we went into it voluntarily. We went into it kicking and screaming, and we went into it mouthing such platitudes as 'we always look for the most qualified person, we don't have a problem. Give us a black or give us a woman or give us someone else and we will hire them. We always recruit and try to find blacks and women'.

We really believed it. In many cases we were really practicing that, at the universities at which we recruited, but we were not going to the establishments that educated women and blacks. The fact is that we have lived in a society that was permissive of our making distinctions based on race, sex, creed, colour and national origin. The thing that changed us was not a change in our moral values or anything like that. Events dictated a change. Our cities were burning, our people were rioting, our country was in disarray because people determined that either we share the American dream, or no-one would have the American dream. It is as simple as that.

When we went into the contract compliance and affirmative action area one of the reasons we were able to implement change, despite the fact that there were riots and so on, is that we had a bustling economy. Our plants were operating at 95 percent capacity and we were looking for bodies. The industrial output was such that the general world economy, and especially our economy, was growing. That is different from the situation now. I would venture to say that if we had no contract compliance or affirmative action programme and we had to start from scratch today we would have a different result.

A declining economy is the most difficult situation in which to try to implement contract compliance and affirmative action, not because they are not noble ideas, not because they are not needed, but because at this juncture in many countries' evolution they are social preferences as against social necessities. Only when you get to the point that they are perceived by 'haves', no matter who those 'haves' are as social or business necessities, will you get many of the answers that you know are needed if we are going to have an inclusive society.

In the US now the current debate is centred around two broad issues. The first concerns the role of the Government in the everyday life of business and people. We have an administration now, led by an Attorney General who feels that the Government is much too involved in the everyday lives of our people. We also have a declining economy and changing demographics in our industrial life. The old smokestack industries in the United States are giving way to high technology and electronics, which means that not only do we have people coming into the workforce where there are not a lot of jobs, but we have people being laid off who had jobs and skills that are no longer in demand. So we have high unemployment and we have social pressures to provide opportunities for everyone. This has led to conflicts.

The debate is about whether or not it is the Federal Government's role to continue to require goals and timetables in employment, especially in a declining economy, whether that is a role for the individual States and local organizations, and whether those goals have now been equated with quotas. I do not know the answer. I do know that in the absence of a unified, centralized policy in our country which protects the rights of all of our employees to be gainfully employed, and to progress as far in the career scheme as their individual skills will take them, we are going to be revisited by the problems of the early sixties and seventies. One reason is that minorities and women will not accept that we turn the clock back. Secondly, and perhaps more importantly, we in business have learned that we cannot afford to ignore the valuable resource that women and minorities constitute again.

JIM NIXON, Vice President, ITT, and Director of Equal Opportunity Operations (USA)

Since the early 1960's US corporations which hold government contracts have been required to establish and implement Affirmative Action Plans as part of the vast array of contractual requirements imposed when one accepts business with the US Government. Initially these plans were developed on a voluntary basis, under a format created by a group of manufacturers collectively organized as the National Alliance of Businessmen.

As the decade of the 60's went on, however, and racial unrest and the drive for civil rights reached the crisis level,President Lyndon Johnson issued an Executive Order forbidding discrimination (racial and otherwise) on the part of contractors and requiring 'affirmative action' to assure this. Under the Executive Order, regulations were implemented defining 'affirmative action' and requiring that contractors establish 'plans' - including setting goals and timetables for the hiring of minorities (and later women) - as a means of assuring that the promises of US civil rights laws were being lived up to at least on the part of those businesses

which reap the benefits of contracts with the government.

The Affirmative Action Plan is basically the contractor's self-developed 'road map', setting forth the intended programmes and procedures for assuring that its employment procedures are free of discrimination, and identifying steps to be taken to begin eradicating the effects of prior societal discriminatory practices.

Periodic review of these Affirmative Action Plans by the government (as the contracting entity) thus became the key element in US contract compliance procedures. Other elements of the contract compliance system include the requirements that contractors 'pass along' non-discrimination requirements to sub-contractors and that they should develop and implement plans to use minority-owned enterprises as sub-contractors and suppliers. However, the main focus of the enforcement agencies' attention has always been the compliance audit of the Affirmative Action Plan.

Over the years, the regulations and the Affirmative Action Plans which they spawned have become progressively more complex. The technical and analytical detail required for the rather elaborate statistical analyses necessary for an Affirmative Action Plan to be deemed to have met all requirements have been subject to criticism. On the other hand, most employers (i.e. most large government contractors) now seem to agree that though elaborate, Affirmative Action Plans serve a number of business purposes. For example, they provide a much needed planning vehicle for the overall development of employee skills. Further, they force the development of innovative recruitment strategies and outreach programmes designed to meet manpower needs by including previously overlooked elements of the population. They also foster the development of training programmes needed to help managers more effectively manage the diverse workforces which they now direct. The process of developing and implementing Affirmative Action Plans has also helped employers to create strategies which minimize their exposure to complaints of discrimination and, when those complaints do occur, they have the documentation necessary to refute the charges.

Let me give some illustrations of what I mean in practice.

As an example of affirmative action as a planning vehicle for the development of needed employee skills, let me pick one of our Sheraton Hotels, in Los Angeles. We had found from experience that a large percentage of the people coming in were ethnic minorities. The people who were setting up this new hotel, The Sheraton Grand in Los Angeles, decided to adopt a very novel employee training programme. In Los Angeles, which is the capital of American movie-making, the appropriate thing, it seemed obvious, was basically to tell everybody working at the hotel that they would be on stage, that they had a part to play, just as though they were in the theatre or on the movie screen and that the process of being trained was the process of learning your part well. To make that a reality, they called the hiring office, 'central casting'. They called the place where they keep the employee uniforms 'costumes', and employees were called directors, associate directors and stagehands and so on. So as you pull up to the hotel now, the show begins right there when the doorman or doorwoman greets you at your car to help you out. They are on stage, they know it and hopefully you will know it and like it, tell others about it so they will come, and come back yourself.

This was done because it was found that there was some difficulty in getting the kind of participation in the enterprise from black youth, hispanic youth and Asian youth that the hotels had traditionally just expected. However, once they got the programme developed, starting with that idea of affirmative action, what they found was that it made a fantastic difference for all employees regardless of whether they were minority or majority, black or white, male or female, old or young. It made a much more hospitable industry.

Another example, concerns the innovative recruitment strategies and outreach programmes to meet manpower needs in previously overlooked sources. If companies had traditionally only recruited at the top named schools, such as Harvard, Yale and Princeton, and if they continued that practice, no matter how much effort they put into seeking out minority and female applicants, they would not find many because these are predominantly schools which cater to white men. To enlarge the pool of qualified applicants they had to find those colleges and universities that had higher percentages of blacks or hispanics or women of all races. This meant going to places like Vassar and Smith and Wellesley, which were predominantly girls' schools, and to the black schools such as Howard and Tuskegee. Companies like General electric and ITT which had recruited at Yale and Princeton then began to expand their recruitment circles.

That strategy was easily understood by managers. Other problems required more innovative thinking. One of my favourites concerned a plant in Northern Mississippi, a very well run plant which had a shortage of technician trainees. It is in a rural area so there were not many people who had the basic background at high school to go through their technician training programme effectively. They had put advertisements in all of the places where minorities and women would see them, but still did not get many applicants, particularly not many women. Somebody then realized that women who sew using patterns have developed a skill comparable to blueprint reading. Once this was mentioned in the job specification they had fantastic success with their ability to attract women technician trainees, and therefore to fill their need for technician trainees.

An example of developing appropriate training programmes for managers managing the diverse workforce comes from a GE company shop in New York State, where early in the programme we were having some difficulty getting the managers, the shop foremen that is, to coach and train young black apprentice trainees so that they could move up through the ranks. When we discussed with them what the problem was, we found that the shop foremen were pre-

dominantly second and third generation German Americans, who had a very strong Protestant work ethic, so strong in fact that they bought work suits to come to work in, typically, dark blue or dark green. They felt that the young blacks who were brought in as apprentices were not 'serious' about working, and as we delved into what gave them that impression we found that the young blacks had a completely different view of how you dress to go to work. The last thing they would do was 'waste' money on buying work clothes, they would wear their fashion party clothes. That meant, however, that when the blacks showed up for work in the factory they did not look to the foreman as if they came to work. They looked as if they were on their way to a party. That problem, once we got to the root of it, was readily solvable by getting each side to see what the other side was thinking.

Finally the rioting and civil unrest which characterized the late 1960's and which was often directed toward employers (who were seen as not only supporters but often major perpetrators of discriminatory practices) have been significantly reduced partly as a result of Affirmative Action. To the extent that there are occasional flare-ups at this time, there appears to be considerably less likelihood that corporations will be the target.

The overall reaction of US employers is currently deemed to be positive and supportive of contract compliance procedures. This is demonstrated by the positions taken recently in support of affirmative action planning procedures by such organizations as the National Association of Manufacturers, the Equal Employment Advisory Council, and the Organization Resources Counsellors, all of which represent very significant corporate employer organizations.

DAVID DOLTON, the Assistant General Manager (Personnel), National Employers Mutual (UK)

For some people there is no economic justification in making vast changes. So we have to recognize that in business there is a natural hostility to filling in forms for other people. We all have that feeling when we are confronted with forms, but we still have to do it. There is a reluctance amongst some to disclose information which they may feel would be incriminating in some way, and there is of course the natural feeling that this is going to involve a lot of time-wasting and expensive work. Those are attitudes that we have to face; however, attitudes are changing. An outspoken former critic of contract compliance, had, after 18 months experience of it, expressed a more pragmatic view: 'Well, as a matter of fact, we can't afford *not* to go along with this; we are doing it, and actually it is working'.

A key dictum in boardrooms is 'Management must always in every decision and action put economic performance first. It can only justify its existence and authority by the economic results it produces'. This is a primary role of management, and this is a fact of life. If we want social changes, we must recognize that the individuals on board are not opposed to social change as individuals. Indeed, many of them in their spare time are involved in one way or another in social activities, but as members of the board they are there to ensure the successful running of the enterprise, to ensure that jobs are maintained, and so on. So in talking about desirable social change, it is important to explain it in terms of economic performance, debits and credits - it is speaking the right language - economic sanctions on the one side and economic benefits on the other.

In the reform of industrial relations, external pressures for change, namely legislation, were seized on by the company in which I was employed and turned to very good account. Penalties were avoided and very clear benefits accrued: to the employees, the companies, the trade unions and the shareholders.

The same principles, I believe, apply to contract compliance. Currently the two main pieces of legislation dealing with discrimination, despite the penalties for failing to observe the minimum requirements, do not clearly draw out the benefits. But contract compliance has injected the spur into the discrimination issue which was not previously there and which can produce action.

I had already in 1983/84 revised for the second time my own company's policies, procedures and practices covering the whole range particularly of selection, both for new recruits and for promotion, and it was in the summer of 1984 that the big questionnaire from the GLC's Contract Compliance popped through the letterbox. It asked the sorts of questions which any well run professional company should be asking itself, in any event, to ensure that its employment policies were meeting the requirements of the organization. The Contract Compliance Unit demonstrated that it was not a doctrinaire body but was fully a professional and ready to listen to problems that an individual company might have. There was a dialogue between professionals who were interested in making the company more effective in a way which was socially acceptable, something for which my staff and I are very grateful.

Now, what was the commercial outcome and how did that go with my fellow directors? The insurance industry, on the general insurance side, is going through a time of great competition and life is not easy. Resources are not readily available for training and other things. But in this case resources were readily made available for special training for all staff involved in recruitment interviewing. Resources were made available for extending the use of psychometric testing to make sure that candidates were treated in an objective and similar way as possible. It was possible to bring in quite wide-ranging reforms in the whole way we did our selection, right the way up through the organization to senior management positions as well. Why? Because it was possible to show that there were penalties as well as benefits, and it is this balancing of economic benefits and penalties which makes it possible for the personnel executive to talk to his board in terms that they understand and in terms which are socially acceptable.

Toronto Employers are Bad Examples

Multi-Racial Labour Force Case Studies Project
Nan Weiner and Gerald Swartz
Urban Alliance on Race Relations and the Social Planning Council of Metropolitan Toronto. 1987

The multiracial workplace is now a phenomena of the entire western industrialised world. This creates a new and, in many ways, more difficult human environment. Many believe that this is one of the most important challenges which faces western urbanised societies in the latter part of the twentieth century.

The findings of this study indicate that employers in Toronto are a very long way from acknowledging or addressing this challenge. They do not recognize the nature of the changes that a multiracial environment brings. Toronto employers are not attempting to develop strategies to cope with some of the common managerial needs that arise, and they are not even meeting the minimal requirements of existing federal employment equity legislation.

This project was the third component of a three-part study sponsored by the Urban Alliance on Race Relations and the Social Planning Council of Metropolitan Toronto. The first study Who Gets the Work? A Test of Racial Discrimination in Employment (Henry and Ginzberg 1985) found a considerable amount of racial discrimination in employment. Whites have three job prospects to every one for Blacks.

The second study, No Discrimination Here? Toronto Employers and the Multi-Racial Work Force Billingsley and Muszyuski (1985) in a survey of 199 major employers found the large majority have no policies to prevent discrimination or promote employment equity. They do not want such policies, and claim they are unneeded. In addition, 51% of management respondents expressed negative views of racial minorities, and only 9% stated a firm belief in racial equality.

This third study attempted to identify those activities undertaken by employers to address race relations issues. Drawing from the sample of 199 employers in the No Discrimination Here? study, twelve case studies were undertaken of those organizations who were involved in some equity efforts.

There is very little data in Canada that helps us to understand the way in which racism manifests itself at the firm level in personnel policy and in white-non-white and management-labour relations. There is no large body of theory or practice that permits an effective assessment of what works in the management of race relations in employment.

Discrimination and racial tension within the workplace is an organizational problem with organizational solutions. Therefore the case study approach is useful in identifying a range of different organizations with different problems with different approaches to solving these problems.

The data generated from this collection of case studies however is disappointing in not providing much direction in the development of productive approaches to race relations in employment apart from in the most general way.

Not withstanding that seven out of the twelve employers in this study are involved in 'equity activities', the actual content of these experiences appears to be very thin.

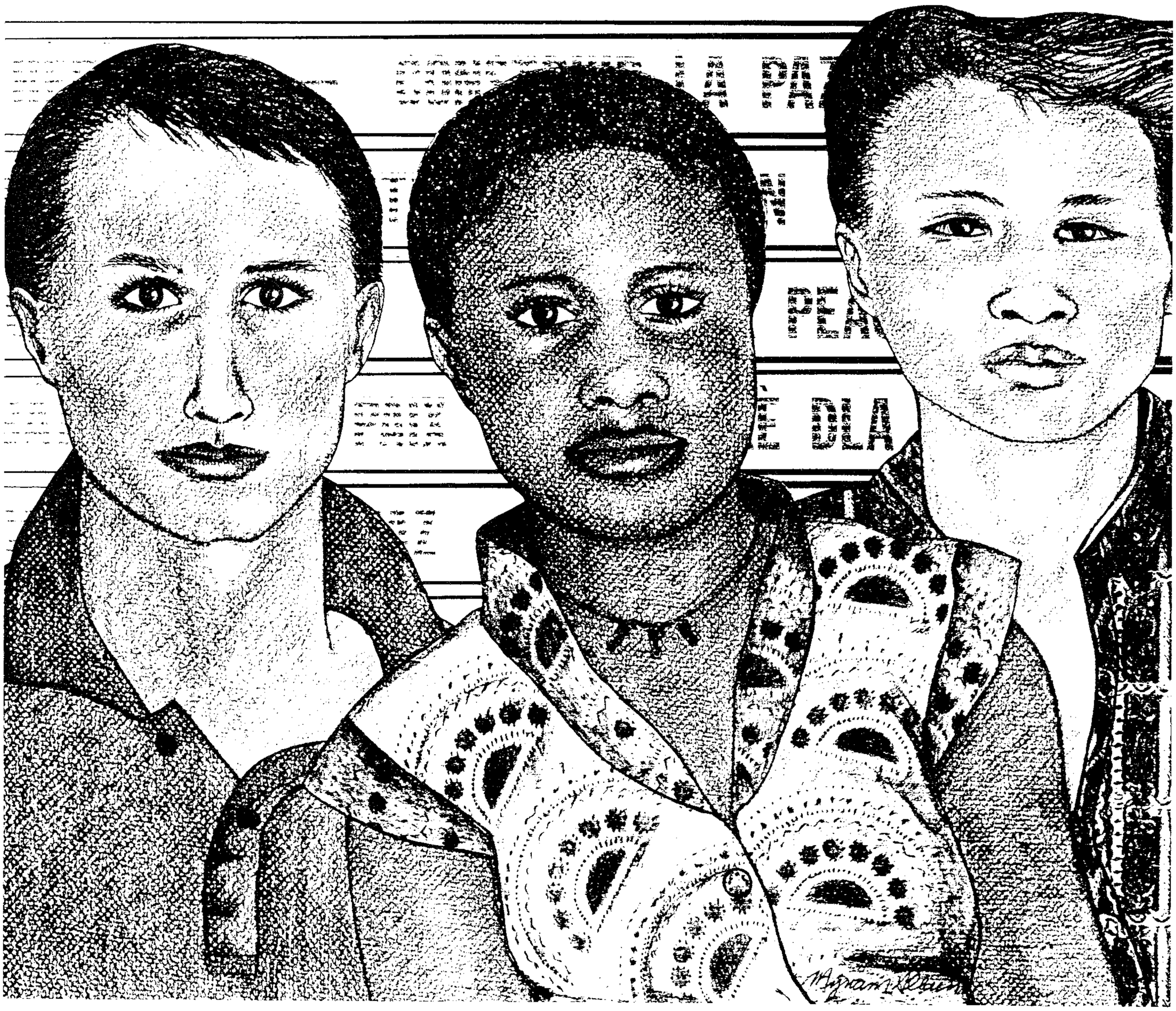
The findings show that respondents from all organizational levels still perceive of discrimination as intentional behaviour, interpersonal in nature and motivated by prejudicial attitudes. Further, few understand the differences between anti-discrimination, equal employment opportunity and employment equity. It is little surprise therefore that employers do not understand why current practices result, unintentionally, in inequality and therefore oblivious to what they need to do to correct the situation.

This study fails to identify many of the more subtle forms of discrimination in the workplace, nor does it help in identifying some innovative solutions to racial problems. In order to be able to contribute to a process by which employment equity can become an integral objective of everyday management practices, such a case study approach requires at minimum that the experience of those employers studied is worth something. When, as appear to be the situation in this set of case studies, the experience of the employers is so limited, the exercise is rather valueless.

Another element in the case study approach that appears to be missing from the findings of this research is the investigation and presentation of the issue from several points of view. It requires presenting the experience and perceptions of not only management involved in policy implementation but also those involved in policy formulation, of non-white employees as well as white employees; males as well as females; of those from several occupational levels i.e. labour, skilled, clerical, sales, professional, etc. While the researchers state that they interviewed between ten and thirty people within each organization, these differing insights are not presented.

Further analysis and interpretation of the raw data generated from this research project may be useful if presented in a format that is readable and has utility for professional educators, employers, human rights agencies, and community organizations. At the moment however the report does little more than reiterate and reinforce the results of the earlier study, No Discrimination Here?, which found that Toronto employers do not know or care too much about racial discrimination in employment. Despite all the talk about employment equity, it is a sad indictment of the Canadian state of affairs that we are still unable to build a body of knowledge - of theory and practice - simply because there is not enough concrete evidence of meaningful experience of implementing in a comprehensive fashion employment equity within any Canadian organization.

Tim Rees



The Urban Alliance
on Race Relations

229 College Street, Suite 310
Toronto, Ontario
Canada M5T 1R4

2nd Class Mail
Registration Number 5972

MR. CHARLES NOVOGRODSKY
COMM. REL. OFFICER
CHIEF ADMINISTRATOR'S OFFICE
5TH FLOOR, WEST TOWER

In the next issue:

Race and Care