

**EMPLOYMENT EQUITY AND VISIBLE MINORITIES:
IS THE FEDERAL GOVERNMENT IN COMPLIANCE?**

AN ADDRESS DELIVERED

BY

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AT THE

7TH ANNUAL GENERAL MEETING OF THE

VISIBLE MINORITIES ADVISORY COMMITTEE
NATURAL RESOURCES CANADA

HELD AT

SALA SAN MARCO
215 PRESTON STREET, OTTAWA, ONTARIO

DECEMBER 05, 2007

Introduction

I thank Mr. Harvey Brown, the Chair of the Visible Minority Advisory Committee (VMAC) NRCan, and his colleagues on the executive, for inviting me to deliver an address at this august occasion. I recognize in the audience colleagues with whom I had shared the vision of a representative workforce at NRCan. I also recognize some founding members of the National Council of Visible Minorities in the Federal Public Service (NCVM) in the audience. The confluence of these two particulars indicates a symbiotic relationship between the NCVM and VMAC NRCan. As President of the NCVM, I am committed to this relationship, a relationship which the NCVM will maintain and enhance with visible minority networks and committees in other government departments and agencies.

In accepting the invitation to speak at this forum, I had to grapple with some personal feelings associated with the nostalgia of home-coming, for it was here at NRCan that my journey into the world of visible minorities' struggle for equity, fairness, openness and transparency in the Federal Public Service started. In his letter of invitation, Harvey asked me to "touch on how the NCVM sees its role in moving the visible minority employees' agenda forward in the period of renewal and what NRCan can do to assist" the NCVM "in meeting" its objectives. I will endeavour to do justice to this task within the context of the topic of my address. Let me quickly state that, with the agreement of VMAC NRCan, I slightly revised the topic of my address but retained the question in the sub-title: Is the Federal Government in Compliance?

The Issue

Before providing an opinion on the question it is essential that we understand the core issue at stake. The *Employment Equity Act*, (EEA) (Asserted to 15th December, 1995), which provides the legislative framework for our involvement with employment equity issues in the federal public service, calls upon federal departments and agencies "to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfillment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences."

Two imperatives emerge from the above stipulation. First, "that no person shall be denied employment opportunities or benefits for reasons unrelated to ability." Second, that "in the fulfillment of that goal," departments and agencies are "to correct the conditions of disadvantage in employment experienced by women, aboriginal peoples, persons with disabilities and members of visible minorities." The EEA further calls on departments and agencies to implement "special measures and the accommodation of differences" as a tool "to correct the conditions of disadvantage in employment" experienced by visible minorities and the other three employment equity designated groups. These "conditions of disadvantage in employment" are rooted in the systemic barriers facing visible minorities in the federal public service. Thus, the *Act* recognizes the presence of discriminatory employment practices based on race, gender, and physical disabilities. It was on the basis of this recognition that the Lewis Perinbam committee was established to provide solutions to this problem. In its 2000 Embracing Change, the

Perinbam report recommended, *inter alia*, a benchmark of 1 visible minority in 5 hirings, acting appointments, and Executive level appointments in federal departments and agencies by the year 2005. This has not been achieved. Instead of 1 in 5 we received 1 in 10. The under-representation of visible minorities in the federal public service remains a constant phenomenon of federal departments and agencies, while we continue to witness an increased representation of women, Aboriginal peoples, and persons with disabilities. By definition, visible minority women are excluded from the gains attained by women. Not to be out performed by other departments and agencies in the under-representation of visible minorities, I understand that NRCan has drastically dropped the recruitment of visible minorities from 13.2% in 2004-2005 to 4.8% in 2007. This drastic drop at NRCan seems to reflect a disturbing phenomenon as underlined in the Public Service 2006-2007 Annual Report of the Public Service Commission (PSC) as follows:

“The decline for visible minorities from 9.8% in 2005-2006 to 8.7% in 2006-2007 is of great concern, since they remain the only under-represented designated group in the public service and their proportion of recruitment remains below their workforce availability.”¹

Discussing the Issue

The issue of fair representation of Canadians in the Federal Public Service is about human rights in a democratic system. It is about fairness, equity, openness and transparency in a merit based system. Visible minorities welcome the merit principle, but demand that the hiring and promotion processes be fair, equitable and transparent. NCVM embraces the Clerk’s Renewal policy that calls for the hiring of the best and most talented Canadians in the public service. While the PSC declares visible minorities “the most educated” in the public service,² it is a bafflement that members of the most educated segment of the Canadian population face systemic barriers in the hiring and promotion processes in a system that aspires to hire the best and most talented Canadians. Who is responsible for ensuring fairness and transparency in the Federal Public Service? Who is accountable?

The answer to both questions is the Public Service Commission. Under the *Public Service Employment Act* (PSEA), which came into force on December 31, 2005, the PSC delegated “staffing authorities to deputy heads” of departments and agencies. The deputy heads, in turn, “sub-delegate in writing to hiring managers within their organizations,” while they (deputy heads) “remain accountable to the PSC for the exercise of delegated authorities in their organizations,....”³

Since the late 1990’s, deputy heads of departments and agencies have released a series of employment equity action plans designed to addressing the under-representation of visible minorities (and the other EE designated groups) in their respective organizations. The Canadian Human Rights Commission (CHRC) “is responsible for the enforcement of employers’ obligation under the Employment Equity Act.”⁴

¹ Public Service 2006-2007 Annual Report, Public Service Commission of Canada, Ottawa, Ontario, 2007, p.59

² Ibid., p.61

³ Ibid., p.32

⁴ Annual Report 2006, Canadian Human Rights Commission, Ottawa, Ontario, 2007.

Based on the review undertaken by the CHRC to ascertain the compliance of departments and agencies with the EEA, can we conclude that the Federal Government is in compliance? The answer is Yes and No. Yes, if we restrict ourselves to a mere review of processes identified by deputy heads in their EE action plans. Because of these processes that are based on the 9 requirements for compliance, CHRC issues certificates of compliance to the respective departments and agencies. Despite these certificates of compliance, the CHRC acknowledges that visible minorities “still remain under-represented” in the respective departments and agencies.⁵ How were these deputy heads issued CHRC’s certificates of compliance when, according to the CHRC, visible minorities “still remain under-represented” in their respective departments and agencies? These certificates were issued on the basis of departments’ and agencies’ promissory notes to effect positive changes vis-à-vis visible minorities. We question the value of those promissory notes. In our dialogue with CHRC, we understand that they are taking steps to ensure that their review is result oriented.

Both the PSC and the CHRC play crucial roles in managing the employment equity file. While the CHRC is the compliance officer for the EEA, the PSC remains accountable to Canadians and to Parliament for the staffing processes in the federal public service. Thus, the failure and/or unwillingness of deputy heads and/or their hiring managers to increase the representation of visible minorities in their respective organizations, especially at the Executive levels, must be seen as a failure of the PSC to meet its accountability. While the CHRC lacks the power to punish deputy heads for non compliance under the EEA, the PSC is invested with the power and authority, in its Appointment Delegation and Accountability Instrument and the Staffing Management Accountability Framework, to sanction defaulting deputy heads.⁶

In a series of annual reports, the PSC has “raised concerns” and “expressed concern about the persistent under-representation of visible minorities in the public service,”⁷ without demonstrating proactive leadership anchored on corrective measures to address the problem. Instead we are informed that:

“The PSC review of departmental and agency HR planning documents found that many organizations do not have staffing strategies to address employment equity gaps, but this work is under way.”⁸

Resolving the Issue

How do we resolve the issue? In our presentation to the Standing Senate Committee on Human Rights, on December 03, 2007, we recommended five measures for the consideration of Parliament. Three of the recommendations are

- the appointment of a Commissioner of Employment Equity with full legislative power and authority to enforce compliance of the EEA;
- the establishment of Special Measures similar to Embracing Change but with stronger accountability and enforcement, and
- the review of the EEA with strict compliance regulations that are result oriented.

⁵ Ibid., pp.10-11

⁶ Public Service 2006-2007 Annual Report, p.32 and pp.90-91

⁷ Ibid., p.43; p.57.

⁸ Ibid., p.59

But while we wait for Parliament to deliberate on our recommendations, we can also bring pressure to bear on deputy heads to undertake special measures that are clearly within their respective jurisdictions. Schedule B of the *Constitution Act, 1982* provides the legal basis for deputy heads to employ special measures to appoint visible minorities to fill positions at levels where gaps exist, including the Executive Group. Schedule B is the *Canadian Charter of Rights and Freedoms* as outlined in section 15 entitled Equality Rights.

Section 15 (1)

- “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Section 15 (2)

- “Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Another provision that we need to bring to the attention of deputy heads and hiring managers is the *Exclusionary Order* of the Federal Public Service. This is used to fill a variety of positions, including bilingual positions where the candidates do not meet the language requirements. According to Dr. Maria Barrados, the President of the PSC, “the Public Service Official Languages Exclusion Approval Order can be invoked to allow for a unilingual person to be appointed to the position subject to certain conditions.”⁹ Barrados further explained:

“The Public Service Commission approves the exclusions for positions at the executive level and has delegated the authority to deputy heads to approve exclusions for non-executive positions.”¹⁰

It is within the jurisdiction of deputy heads to invoke any of the above measures in addressing the under-representation of any of the EE designated groups, especially the under-representation of visible minorities. I therefore invite all chairs of departmental/agency networks and committees to engage their deputy heads on this question. Based on consultations with network chairs, I will be pleased to engage their deputy heads on this crucial matter. I will also draw the attention of the Central Agencies to these measures during my meetings with them.

Concluding Remarks

Arising from the identified priorities at the 6th National General Meeting of the NCVM on September 12 – 13, 2007, the key priorities that will engage the NCVM during the 2007-2009 period are

- career development for visible minorities;
- awareness building and engagement of partners and stakeholders; and

⁹ Maria Barrados, “Opening Statement Before the Standing Committee on Official Languages,” House of Commons, November 30, 2004, <http://www.psc-cfp.gc.ca/speech/2004/2004-11-30-eng.htm> p.3.

¹⁰ Ibid.

- the building of organizational excellence.

The Business Plan of the NCVM will be constructed around those three themes. It is anticipated that visible minority employees' agenda will be advanced by a judicious execution of the Business Plan. We will be coming to NRCAN, as well as to the other departments and agencies, to seek their collaboration in the execution of these three priorities. The successful execution of these priorities will depend on the demonstrated commitment of visible minorities, individually and collectively, across federal departments and agencies. Each visible minority in the federal public service is an integral component of the NCVM. Thus, you are NCVM and the success of the organization depends on you, and on how much you are prepared to serve selflessly for the good of all.

In closing, I wish VMAAC NRCAN a successful AGM.