



Submission to the Employment Equity Act Review Task Force: The Importance of Clearly Defining Women Within the Employment Equity Act

Employment Equity Act Review Task Force
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RE: Employment Equity Act Review - Feedback Submission

Please find attached a joint submission to the Employment Equity Act review consultation from two of Canada's national grassroots women's organizations. We share concerns regarding the deterioration of the sex-based rights of women and girls.

Women's Declaration International – Canada (WDI Canada) is the Canadian component of the international organization dedicated to protecting women's sex-based rights. WDI'S [*Declaration on Women's Sex-Based Rights*](#) urges all nations to maintain language protecting women and girls on the basis of sex rather than "gender" or "gender identity."

[Canadian Women's Sex-Based Rights](#) (caWsbar) is a cross-Canada, non-partisan coalition of women and male allies working together to preserve the rights and protections of women and girls, as enshrined in section 15 the *Canadian Charter of Rights and Freedoms*.

Our response is included on pages 7 through 13 of the consultation booklet. Separate privacy statements for WDI Canada and for caWsbar are signed and included on pages 30 and 31 respectively of the consultation booklet.



In response to the Employment Equity Act Consultation review question regarding whether we have concerns with women being maintained as a designated group, WDI Canada and caWsbar provide this joint response:

In the current political climate, there is a growing number of people espousing the view that women who are not transgender-identified, homosexual, or racialized are an oppressor class. We have concerns with eliminating women as a designated group based on this controversial view.

We strongly urge the task force to ensure the continued protection of all members of the female sex class by preserving “women” as a designated group, as the Act purports to be “a proactive approach to achieving and sustaining substantive equality in the workplace.” In order to achieve this goal, the disparity between male and female employees must be addressed.

Women must be defined as “adult female human beings,” as described by Liberal MP Lisa Hepfner in her response to question number 2473 in the House of Commons on May 6, 2024. This definition was so widely accepted at the time the Act was written that legislators left the word undefined. They could not have anticipated a time when men would claim to be members of, and take opportunities and protections from, the historically oppressed female sex class.

Article 1 of the United Nations’ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) defines discrimination against women to mean, “any distinction, exclusion or restriction made **on the basis of sex** which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

Sex is defined by the United Nations as “the physical and biological characteristics that distinguish males and females.” (Gender Equality Glossary, UN Women).

The United Nations’ Special Rapporteur on Violence Against Women and Girls, Reem Alsalem, recently wrote a [position paper](#) on the definition of “woman” in international human rights treaties, specifically the CEDAW, which Canada signed on July 17, 1980. Alsalem makes it crystal clear that women should be defined as biological females and that any signatory of CEDAW would be in contravention of international law by adopting any other definition.

The Canadian Charter of Rights and Freedoms Section 15 1) states, “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.”



The Charter predates the Employment Equity Act, and it specifically included “sex” in [Provision 15 2\) Section \(1\)](#) because the female sex is unquestionably the disadvantaged sex class. Further, Section (2) Subsection (1) provides for programming to ameliorate conditions of disadvantage that women experience by virtue of their sex class.

Section 28 of the Charter states “Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons”. The language used in the Charter makes it plainly obvious that the Charter was concerned about equality of the two **biological sexes**.

The Canadian Human Rights Act clearly defines the [prohibited grounds of discrimination](#) to include **sex** and clarifies that “(2) Where the ground of discrimination is pregnancy or child-birth, the discrimination shall be deemed to be on the ground of **sex**.” Modernizing the Employment Equity Act should include clarification that “woman” is a **sex category** and not a gender category because gender and sex are no longer synonymous. The word gender has evolved to have many other connotations. Women’s rights in Canada were established **on the basis of sex**. This is noted by [Professor Debra Haak](#) of Queens University Faculty of Law.

Further, as stated above, in the House of Commons on May 6, 2024, in response to question number 2473 from Conservative MP Kerri Lynn D Findlay, Liberal MP Lisa Hepfner, parliamentary secretary to WAGE replied, “[a woman is an adult female human being](#).” The Oxford dictionary also aligns with this description, defining woman as “[an adult female human being](#).”

Whatever definition the task force uses must include all females, regardless of sexual orientation, ‘gender identity,’ or gender expression. Women are not defined anywhere else in Canadian legislation. For this reason, it is of the utmost importance to ensure that the definition reflects the spirit of the law. We submit that the most inclusive definition of woman would be adult human female. No woman should have to identify into their own sex class. The Act should not require, for example, a female who identifies as a transgender person to ‘identify as’ female. It should be made clear on self-identification forms that it is a biological sex category.

No biological female’s protections should be lost in the modernization of the Employment Equity Act. By defining women as biologically female, the rights of all women, regardless of gender expression or ‘gender identity,’ would be preserved.

Using the definition of “adult female human being” would enable the intersectional lens to be used more effectively. For example, a transgender-identifying female could face employment barriers based on being a member of two designated groups.

There is no risk to adopting “adult female human being” as a definition of women since the Employment Equity Act is adopting 2SLGBTQIA+ as its own designated group.



Transgender-identifying males, who are members of the male sex class, would still be protected under the Act from unfair employment practices.

Using the definition of “adult female human being” for women would include intersex individuals. Intersex is an umbrella term for people who can nevertheless be categorized into [either male or female](#) - perhaps not in conventional ways, or at conventional times. That is why it is important not to ask one’s sex “at birth” or “sex assigned at birth” on self-identification forms. For an intersex person, they may have been assigned the wrong sex category at birth that did not match their genetic biological sex, or they might have discovered their biological sex at a later time in their life. Therefore, when asking workers to self-identify their sex, the question should clearly ask their biological sex.

According to Intersex Human Rights of Australia (IHRA), “Intersex people have innate sex characteristics that don’t fit medical and social norms for female or male bodies, and that create risks or experiences of stigma, discrimination and harm.” No intersex person should be excluded from the female category for having a body that varies from the norm. Scientifically, intersex people are people living with disorders of sexual differentiation. All female intersex individuals would be included in the category of female, such as intersex workers with Trisomy X, SRY negative, Tetrasomy X, or Congenital Adrenal Hyperplasia. IHRA also [advises against](#) offering a sex category “other” to select on forms.

The [Public Sector Equitable Compensation Act](#) defines “female predominant” in relation to a job group or job class, as “a job group or job class, as the case may be, composed of at least 70% **female** employees.” It is made clear here that the societal problem of inequality in the workplace relates to the **biological sex** of employees. The main intent of including women as a designated group of the Employment Equity Act should be to reach parity between male and female workers.

The [report to the Clerk of the Privy Council](#) by the Treasury Board and the Department of Justice published in September 2018 states that, “Sex refers to biological characteristics, whereas gender refers to a social and personal identity. Departments and agencies should collect or display gender information by default, **unless sex information is specifically needed.**” We argue that when it comes to employment equity between the two sexes of male and female, sex information is specifically needed. Since the self-identification forms are confidential, and there is an option to opt out, there is no need or requirement to make any exceptions for the collection of sex-specific information.

The report also states that Departments and agencies should collect sex information when biological information is necessary to fulfill the specific needs of programs or services such as when demographic statistics are required. We would argue that biological information is necessary to fulfill the purpose of the Employment Equity Act, and that the Act requires demographic statistics to measure outcomes of employment equity between male and female workers. The conditions of exception outlined by the report are clearly met by the Employment Equity Act.



Gender as we know it today is a social construct, based on sex stereotypes which continue to be used to subjugate women. Biological sex, on the other hand, is an immutable characteristic found in the genetic coding of every cell of the human body and is established at the moment of conception. It is on the basis of our female biology that these sex stereotypes have persisted.

Signed,

A handwritten signature in black ink that reads 'Samantha Brown'.

Samantha Brown – Coordinator, WDI Canada

A handwritten signature in blue ink that reads 'Heather Mason'.

Heather Mason – Founding member, Canadian Women's Sex-Based Rights

Women's Declaration International (WDI) – Canada coordinators:

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CC:

The Honourable Marci Ien – Minister for Women and Gender Equality and Youth
The Honourable Dominic LeBlanc – Minister of Public Safety
The Honourable Mark Holland – Minister of Health
The Honourable Arif Virani – Minister of Justice and Attorney General of Canada
The Honourable Patty Hajdu – Minister of Indigenous Services
The Honourable Marc Miller – Minister of Immigration, Refugees and Citizenship
The Honourable Seamus O'Regan Jr. – Minister of Labour and Seniors
The Honourable Carla Qualtrough – Minister of Sport and Physical Activity
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The Honourable Kamal Khera – Minister of Diversity, Inclusion and Persons with Disabilities
The Honourable Ya'ara Saks – Minister of Mental Health and Addictions and Associate Minister of Health

Enclosure: Completed feedback submission document for the Employment Equity Act Review – see pgs. 7 - 13