

Response to
The Canadian Human Rights Commission's
Legislative Review of
the *Employment Equity Act*:
A Discussion Paper

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THE CANADIAN HEARING SOCIETY
LA SOCIÉTÉ CANADIENNE DE L'OUÏE



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Introduction

The Canadian Hearing Society (CHS) is pleased to have an opportunity to consult on behalf of our deaf and hard of hearing consumers and is encouraged that the Canadian Human Rights Commission is committed to clarifying important standards and improving the administration of the Commission's mandate to enforce the *Employment Equity Act*. The recommendations we put forth in this paper support those contained in a position paper being submitted by the Toronto Employment Equity Practitioners Association. Our recommendations, however, will focus specifically on the needs of persons who are deaf and hard of hearing.

In 1997, the Supreme Court of Canada granted intervenor status to CHS and a number of other groups in *Eldridge v. British Columbia*. In this case, the Court ruled that the failure to provide sign language interpretation where it is needed for effective communication in the delivery of health care services, social services, education and training and employment, violates the rights of deaf consumers. The Court stated that governments cannot escape their constitutional obligations by passing on the responsibility of policy implementation to private entities not directly under the jurisdiction of the *Canadian Charter of Rights and Freedoms*.

In 2000, CHS was one of a number of intervenors in a case that involved deaf lawyer Scott Simser. Simser planned to take his case against the Tax Court of Canada before a tribunal of the Canadian Human Rights Commission. Negotiations prior to the hearing date resulted in a mutually satisfactory out-of-court agreement, and in September 2000, the Tax Court announced a landmark policy that acknowledges and accepts responsibility for arranging and paying for accommodation for deaf and hard of hearing lawyers, articling students and any parties they represent. This accommodation not only includes sign language interpretation and real-time captioning, but also embraces any other widely recognized method of meeting the translation needs of deaf or hard of hearing persons. The Canadian Human Rights Commission is urged to encourage other court systems to adopt similar policies.

In 2001, CHS was part of a negotiating team that reached several mutually satisfactory out-of-court agreements with employers in the banking and transportation sectors. Negotiations with other large employers continue and hopefully these, too, will result in out-of-court agreements.

Even with landmark Supreme Court of Canada decisions such as *Eldridge*, *Meiorin*, and *Grismer* and recent amendments to the *Canadian Human Rights Act*, the *Canada Transportation Act* and the *Employment Equity Act*, individual citizens still bear sole responsibility to fight for their right to access, if service providers and employers fail to comply. This is costly in terms of time, money and dignity. CHS strongly supports amending the *Employment Equity Act* to include clearer standards and stronger enforcement mechanisms. The Commission must establish higher standards for the federal government, the broader public sector and the private sector, so that intentional or unintentional discriminatory practices of employers covered by the *Employment Equity Act* are eradicated.

Systemic Discrimination

Deafness is not a disease, disorder or health impairment, nor is it a threat to the health and safety of others. Research studies have shown that deaf and hard of hearing drivers have better safe-driving records than their hearing counterparts. Regrettably, the Canadian Medical Association has taken the position that hearing loss poses a threat to safe driving.

The record shows that if a few simple precautions are followed, deaf, deafened and hard of hearing employees pose no greater safety risk on the job than employees with normal hearing. Serious attitudinal barriers may be evident in the expectations, perceptions, beliefs and behaviours of employers regarding the employability and capabilities of deaf, deafened and hard of hearing persons. An example is an employer's concern that training will take longer and be more difficult. The continued underemployment of deaf individuals is a result of deep-rooted discrimination that progressive organizations are striving to overcome.

Historically, federal safety and hiring policies and regulations have served to exclude deaf and hard of hearing job seekers from unskilled positions in janitorial, food service and clerical work – this, even though a number of deaf and hard of hearing individuals have proven themselves by gaining employment in skilled occupations, such as carpentry, or in professions, such as medicine, law and education.

The continued under-representation of these deaf and hard of hearing workers in the banking, communications, transportation and other industries, as well as in federal departments and agencies, is well documented. The Commission's employment equity and annual reports provide clear evidence of deep-rooted systemic discrimination. Only strong regulations to the *Employment Equity Act* will remove the persistent barriers that prevent deaf and hard of hearing workers from becoming gainfully employed by departments of the federal government and the crown corporations and agencies they regulate.

Barriers to Employment

Unemployment/underemployment rates among the deaf and hard of hearing are unacceptably high. For example:

- 20% of deaf Canadians are employed; 42% are underemployed and 38% are unemployed (Canadian Association of the Deaf, 1998).
- 85% of deaf Ontarians are underemployed or unemployed (CAD, 1998).
- 48% of deaf Canadians are unemployed (Statistics Canada, 1992).

Employers typically look to the public sector to set the standards of practice in the workplace. However, most providers of public services are in violation of the Eldridge decision. They fail to provide sign language interpreters and TTYs (telephone devices for deaf people) to make their offices accessible or they have TTYs, but their employees are not trained to use them. As a result, deaf and hard of hearing Canadians are being denied access to necessary employment supports to maximize their career potential.

The federal government has ignored the need for a comprehensive legislative initiative for barrier removal and barrier prevention. Without a Canadians with Disabilities Act, deaf and hard of hearing persons will continue to form a marginalized and severely disadvantaged minority in Canadian society.

Human resources managers in the public and private sectors need to develop more sensitive psychological and vocational aptitude testing procedures for deaf, deafened and hard of hearing job applicants and employees. They also need to be made aware of their legal responsibilities under the Canadian and provincial human rights codes and the Eldridge decision.

Barriers to Education, Training and Development

A 1992 Statistics Canada report cites the following:

- 2% of deaf Canadians have university degrees compared to 14% of the general population.
- 13% of deaf Canadians have college certificates/diplomas.
- 8% of deaf Canadians have obtained post secondary education.
- 25% of deaf Canadians have obtained high school education.
- 52% of deaf Canadians have obtained elementary education.

In its 1998 *Literacy Survey of Ontario's Deaf and Hard of Hearing Adults*, the Ontario Ministry of Education and Training reported that deaf and hard of hearing individuals are less likely to be employed and earn less on average than other Ontarians. This finding reflects their older age profile, their relatively low level of education and their low literacy levels.

Recent changes in the education system will only make the employment situation worse for our consumers. CHS is concerned by a marked decline in the enrollment of deaf and hard of hearing Canadians at local and foreign universities and colleges. We are also alarmed that educational institutions serving deaf and hard of hearing students are experiencing extreme difficulty in recruiting qualified deaf and hard of hearing graduates to fill staff teaching positions.

Deaf and hard of hearing consumers are unable to commence or continue their post-secondary studies in Canada or the United States for the following reasons:

1. Rising tuition costs.
2. Dramatic reductions in government funding.
 - Financial support changed from grants to loans.
 - New taxes imposed on disability-related supports and out-of-country bursaries for students with disabilities. Students attending foreign post-secondary institutions now receive Revenue Canada tax bills ranging from \$5,000 to \$10,000 each year.
3. No government funding for deaf and hard of hearing students attending private vocational schools to purchase sign language interpreting and captioning assistance.

4. No accommodation funding for deaf and hard of hearing students seeking summer or part-time jobs, unless these students are also clients of HRDC programs or provincial programs, such as the Ontario Disability Support Program and Ontario Works.
5. Changing admission requirements prevent deaf and hard of hearing students from entering teacher training programs in the education of the deaf and hard of hearing. For example, in Ontario deaf and hard of hearing candidates with degrees from out-of-province schools must first obtain a Bachelor of Education degree from a university in their own province, even though these local institutions are not accessible to them.
6. New barriers created by the Employability Assistance for Persons with Disabilities agreement (EAPD) adversely affect deaf and hard of hearing post-secondary students in Canada, as well as those attending Gallaudet University and the National Technical Institute for the Deaf in the United States. The EAPD appears to violate the Supreme Court of Canada's *Eldridge, Eaton, Mercier, Granovsky* and *Grismer* decisions. Unlike its predecessor, the Vocational Rehabilitation for Disabled Persons agreement, the EAPD does not:
 - provide grants to disabled students attending foreign institutions of higher learning.
 - subsidize tuition fees or other supports (e.g., tutors) for students attending universities and colleges.
 - subsidize accommodation supports (e.g., sign language interpreters and captioners) for students attending private vocational schools.
7. A recently introduced policy by Public Works Canada will not provide hearing employees of the federal government with sign language interpretation for meetings with deaf non-employees.

Specific Recommendations

CHS strongly recommends that the Canadian Human Rights Commission amend the regulations to include the following:

1. Require employers to establish their own disability advisory committees consisting of employees and community members with disabilities.
2. Require employers to conduct employment systems reviews to monitor both employees hired when disabled and employees who become disabled after hire.
3. Enforce employment equity legislation to comply with the equality decisions of the Supreme Court of Canada (*Eldridge, Meiorin* and *Grismer*).
4. Enforce accessibility standards in public and private workplaces.
5. Implement a more efficient and expeditious enforcement process, so that the burden of enforcement is not solely the consumer's responsibility.

Furthermore, CHS recommends that regulations from the *Employment Equity Act* be amended to include the following practical suggestions:

1. Establish an action plan to remove existing barriers and prevent the creation of new barriers for deaf and hard of hearing employees and consumers.
2. Implement sensitivity training that informs service providers and employers of the legal rights of deaf and hard of hearing employees and consumers.
3. Hire accommodation coordinators where a need to serve deaf and hard of hearing people is identified.
4. Have employers implement policies and procedures to accommodate all employees and job seekers who are deaf and hard of hearing.
5. Ensure prompt availability of qualified sign language interpreters and captioners for deaf and hard of hearing persons.
6. Become familiar with and use appropriate terminology to describe disabilities, including hearing loss and deafness.
7. Utilize consumer organizations, such as the Ontario Association of the Deaf, the Canadian Association of the Deaf, and the Canadian Hard of Hearing Association, and service agencies such as The Canadian Hearing Society, to provide cultural sensitivity training, sign language interpreter services and related communication supports and devices, as well as consultation on policy developments.

General Recommendations

To prevent an increase in the number of deaf and hard of hearing individuals forced onto welfare rolls and to counter the critical shortage of deaf and hard of hearing professionals across Canada, we strongly urge the Canadian Human Rights Commission to pressure the Minister of Human Resources Development Canada to send a directive to all provincial and territorial ministers responsible for post-secondary education and skills training to ensure that they are in compliance with the Supreme Court of Canada's decisions in *Eldridge*, *Eaton*, *Mercier*, *Granovsky* and *Grimser*. Provincial and territorial governments should be required to remove barriers facing deaf and hard of hearing post-secondary students, trainees and employees.

Furthermore, CHS strongly recommends that the federal government introduce and pass into law a strong, effective and enforceable Canadians with Disabilities Act that will:

1. Strengthen the Employability Assistance for Persons with Disabilities Program.
2. Enforce accessibility standards in federal offices and all places of work.

3. Adopt the proposed World Health Organization definition of disability which recognizes that people with certified or perceived impairments are disabled by society's failure to accommodate their needs.
4. Require all employers with a minimum of 50 employees to establish a disability advisory committee consisting of employees with disabilities and representatives of disability organizations and agencies serving deaf and hard of hearing persons. These committees would advise employers on:
 - recruitment and selection
 - accommodation
 - training and development
 - promotion
 - retention
 - termination

Appendix: The Canadian Hearing Society's Accessibility Policy

The Canadian Hearing Society has disseminated to all employees in its 28 offices a series of communication strategies and directives on meeting accessibility and accommodation. These are available via our internal website and are part of the orientation program for all new employees. A sample of these documents is appended here to illustrate the kind of written information on accommodation supports that all employers covered by the *Employment Equity Act* should make available to their employees.