



**LEAF**  
**FAEJ**

WOMEN'S LEGAL  
EDUCATION & ACTION FUND  
FONDS D'ACTION ET D'ÉDUCATION  
JURIDIQUE POUR LES FEMMES

***Review of the *Employment Equity Act* Framework***  
**Submission to the Employment Equity Act Review Task Force**  
**June 20, 2022**

Employment Equity Act Review Task Force  
C/O Employment Equity Act Review Secretariat  
[EDSC.LEE-EEA.ESDC@labour-travail.gc.ca](mailto:EDSC.LEE-EEA.ESDC@labour-travail.gc.ca)

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## Introduction

The Women's Legal Education and Action Fund (LEAF) is pleased to make this submission to the Employment Equity Act Review Task Force, to support its review of the *Employment Equity Act* ("EEA") Framework.<sup>1</sup>

LEAF supports improvements to pay equity legislation, regulations, programming, and research. These tools play a key role in identifying and combatting systemic discrimination in the labour market.

LEAF's submission will focus on the following consultation questions circulated by the Task Force:

1. How does the changing nature of work affect the ability to achieve equality in the workplace?
2. How can the Government of Canada generally, and the Ministry of Labour specifically, improve its support to achieving equality in Canadian workplaces?
3. Should the EEA's designated groups include additional populations, such as the 2SLGBTQI communities?
4. What changes to employment equity legislation, regulations, programming, and research could better support equity groups?
5. What roles can other organizations play in promoting employment equity, for example, unions, employer associations, and non-governmental organizations (NGOs)?
6. What changes to the EEA are necessary to better support the public conversation on equity, diversity, and inclusion?

LEAF understands that a considerable body of literature focuses specifically on the strengths and weaknesses of the *Employment Equity Act* framework, and that the Task Force has engaged with this literature. This submission does not seek to duplicate this work, but rather draws on LEAF's intersectional feminist approach, and recent relevant publications.

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<sup>1</sup> LEAF acknowledges with gratitude the following contributors to this submission (in alphabetical order): Pam Hrick, LEAF Executive Director & General Counsel; Rosel Kim, LEAF Staff Lawyer; Yasaman Mohaddes Khorassani, LEAF Summer Legal Intern; and Kat Owens, LEAF Project Director.

## About LEAF and its expertise

LEAF is a national, charitable organization that works towards ensuring the law guarantees substantive equality for all women, girls, trans, and non-binary people. Pay equity is a critical component of substantive equality, and an important part of LEAF's advocacy.

Since 1985, LEAF has intervened in over 100 cases – many of them before the Supreme Court of Canada – that have advanced equality in Canada. Together with the Equal Pay Coalition and the New Brunswick Coalition for Pay Equity, LEAF intervened before the Supreme Court of Canada in two 2018 pay equity cases.<sup>2</sup> These decisions represented an important step forward in achieving economic justice for women.

LEAF has been involved in law reform advocacy linked to pay equity and economic justice. In 2021, LEAF released two reports on the potential for basic income to promote substantive equality for women and gender-diverse people.<sup>3</sup> LEAF has also made previous submissions on pay equity and employment legislation at both the federal and provincial levels.<sup>4</sup>

## LEAF's submissions

### 1. How does the changing nature of work affect the ability to achieve equality in the workplace?

The gendered division of labour and the undervaluation of unpaid care work is not new. The changing nature of work – including changes that occurred because of the COVID-19 pandemic – combined with a lack of adequate social supports, however, present significant challenges to achieving equality in the workplace.

Increases in women's labour market participation rates, demands by employers for an "unencumbered worker", and a lack of access to childcare influence the nature and type of employment undertaken by women, often to their detriment. Women are more likely to: work part-time, work in temporary employment, and accept precarious employment featuring lower wages, minimal or no pensions, and fewer benefits and promotional opportunities.<sup>5</sup>

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<sup>2</sup> Quebec (Attorney General) v. Alliance du personnel professionnel et technique de la santé et des services sociaux, [2018 SCC 17](#); and Centrale des syndicats du Québec v. Quebec (Attorney General), [2018 SCC 18](#).

<sup>3</sup> Cee Strauss, [Basic Income & The Care Economy](#) (Toronto: LEAF, 2021); and Sally Kimpson, [Basic Income, Gender, & Disability](#) (Toronto: LEAF, 2021).

<sup>4</sup> See e.g., "[Submission to the 2017 Workplace Legislation Review](#)" (April 2017); "[Submission to the Changing Workplaces Review](#)" (September 2015); and "[Submission on Pay Equity](#)" (June 2009).

<sup>5</sup> See Cee Strauss, [Basic Income & The Care Economy](#) (Toronto: LEAF, 2021) at 23-24.

In addition, women are overrepresented in the “5 C occupations”: caring, clerical, catering, cashiering, and cleaning. The 5 C occupations, and those involving care more broadly, feature lower wages than male-dominated jobs, including those at the same skill level.<sup>6</sup>

Racialized, migrant, and/or undocumented women occupy the lowest paid and most precarious caring jobs due to systemic barriers such as racism and immigration status-related work restrictions.<sup>7</sup> This is especially true in “investment friendly” areas of the care sector, such as long-term care, childcare, and home care.<sup>8</sup>

The ongoing COVID-19 pandemic has exacerbated and brought to the surface many workplace inequalities faced by women and gender-diverse people.

With the onset of the pandemic, many women were forced to reduce their hours or leave their jobs altogether given the loss of daycare and other caretaking services. Fathers who lost working hours recovered their losses by August 2020; however, working mothers with children still had not done so by the end of December 2020.<sup>9</sup> Lone mothers, mothers with disabilities, mothers of children with disabilities, immigrant mothers, and low-income women faced greater challenges,<sup>10</sup> as did Indigenous and Black caregivers when compared to white caregivers.<sup>11</sup>

The pandemic has led to an increase in the number of jobs carried out completely remotely, or through a “hybrid” model. Workers in the 5 C occupations, however, are likely to fall within the 60 per cent of workers in Canada required to work “in person”, and therefore unable to access the benefits of working remotely.<sup>12</sup> For example, while 85 per cent of finance and insurance or professional, scientific, and technical services employees could work from home, only 6% of accommodation and food services workers could do so.<sup>13</sup>

We note that remote work also has negative implications for equality in the workplace. Technology-facilitated gender-based violence disproportionately impacts women and girls.<sup>14</sup>

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<sup>6</sup> Melissa Moyser, “[Women and Paid Work](#)” in Statistics Canada, *Women in Canada: A Gender-based Statistical Report*, 7th ed (Ottawa: Statistics Canada, 2017) at 28.

<sup>7</sup> The Canadian Women’s Foundation et al, “[Resetting Normal: Women, Decent Work and Canada’s Fractured Care Economy](#)” (July 2020) at 4.

<sup>8</sup> Cee Strauss, [Basic Income & The Care Economy](#) (Toronto: LEAF, 2021) at 22-23.

<sup>9</sup> Katherine Scott, “[Women, work and COVID-19: Priorities for supporting women and the economy](#)” (March 2021) at 17-18.

<sup>10</sup> *Ibid* at 17.

<sup>11</sup> “[71 per cent of Canadian women feeling more anxious, depressed, isolated, overworked or ill because of increased unpaid care work caused by COVID-19: Oxfam survey](#)” (18 June 2020).

<sup>12</sup> Ross Marowitz, “[Remote, hybrid work dividing Canadian employees as many required on-site](#)” (5 June 2022), Global News.

<sup>13</sup> Tahsin Mehdi and René Morissette, [Working from home in Canada: What have we learned so far?](#) (Ottawa: Statistics Canada, 2021) at 1.

<sup>14</sup> See the discussion in Cynthia Khoo, [Deplatforming Misogyny](#) (Toronto: LEAF, 2021) at 21-22.

For example, according to a 2018 Canadian survey on gender-based violence and unwanted sexual behaviour, women were more likely than men to have “experienced an unwanted behaviour that made them feel unsafe or uncomfortable in a virtual space in the past 12 months”, and to have been “pressured to send, share, or post sexually suggestive or explicit images or messages”.<sup>15</sup>

## **2. How can the Government of Canada generally, and the Ministry of Labour specifically, improve its support to achieving equality in Canadian workplaces?**

LEAF calls on the Government of Canada to support and enable the creation of quality, affordable, and accessible public services, including childcare, to allow women and gender-diverse people to participate in the wage economy while recognizing caretaking as work. The federal government’s 2021 \$30 billion investment in a national early learning and childcare system, including Indigenous early learning and childcare, provides an example of what such action could look like.<sup>16</sup>

LEAF recommends the adoption of a basic income, provided that specific attention is given to the roll out of these benefits to ensure basic income legislation does not create the same challenges that the current system of social assistance has created. Any basic income must be accompanied by three other components of care economy infrastructure: (1) high-quality, affordable, accessible public care services; (2) valuing paid caregiving work and other gendered occupations; and (3) a shift in workplace norms to allow for flexibility and part-time work arrangements. Without these elements in place, LEAF does not support implementation of a basic income, as it would risk entrenching gendered economic and social inequality.<sup>17</sup>

Additionally, LEAF recommends making changes to the eligibility criteria for current employment insurance as well as social assistance legislation to ensure they provide adequate support to the people that rely on these services.

The Employment Insurance (EI) system needs to be changed. Current eligibility requirements exclude many low-wage and precariously-employed workers, more than half of whom are women. EI also does not adequately support part-time workers more generally, who are

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<sup>15</sup> Statistics Canada, “Gender-based violence and unwanted sexual behaviour in Canada, 2018: Initial findings from the Survey of Safety in Public and Private Spaces”, by Adam Cotter & Laura Savage, in Juristat Catalogue No 85-002-X.

<sup>16</sup> See Department of Finance Canada, “[A Recovery Plan for Jobs, Growth, and Resilience: Budget 2021](#)” (19 April 2021) at 101-105.

<sup>17</sup> For a thorough discussion of basic income and the necessary supporting infrastructure, see Cee Strauss, [Basic Income & The Care Economy](#) (Toronto: LEAF, 2021).

disproportionately women and are often working part-time due to caregiving responsibilities.<sup>18</sup>

Social assistance and disability benefits must also be reformed. As they exist now, they create benefit traps, or ‘welfare walls’ – meaning welfare and disability recipients would often be worse off financially if they attempted to enter the paid workforce. This is because their social assistance/disability benefits and related support decrease sharply at the same time that their work-related expenses and tax burdens rise. To address this, allowable earnings exemptions should be set at a generous level, with a gradual phase out of benefits.

Both the Government of Canada generally, and the Ministry of Labour specifically, should take steps to acknowledge intersectionality when creating and amending legislation. Legislation focusing on “single axis discrimination” (such as being a woman or being Black) erases other identities a person may have and the oppressive forces that person may face as a result.<sup>19</sup>

### **3. Should the EEA’s designated groups include additional populations, such as the 2SLGBTQI communities?**

LEAF supports additions and changes to the designated group names and definitions to reflect current understandings of substantive equality and intersectionality. This includes expanding the number of designated groups to include additional populations, while keeping in mind the need for an approach grounded in intersectionality. The Task Force should consult with representative groups, and ground changes to group names and definitions in preferred forms of self-identification. LEAF recommends removing the term “visible minorities” and considering incorporating “BIPOC (Black, Indigenous, and People of Colour)” as a step towards recognizing the specificity of racialization in Canada.

It is important that the EEA continue to include “women” as a designated group, given the ongoing wage gap and undervaluation of “women’s work”. It is also important to take steps to correct the knowledge gap that currently exists regarding the experiences of trans and non-binary people in Canada as they relate to pay equity. This gap is reflected in studies looking at “women”, which tend to focus on the experiences of cis women, erasing the experiences of trans women and gender-diverse people.<sup>20</sup>

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<sup>18</sup> See Cee Strauss, *Basic Income & The Care Economy* (Toronto: LEAF, 2021) at 27.

<sup>19</sup> See the discussion in Grace Ajele and Jena McGill, *Intersectionality in Law and Legal Contexts* (Toronto: LEAF, 2020) at 41-58.

<sup>20</sup> For a discussion of this point, see Cee Strauss, *Basic Income & The Care Economy* (Toronto: LEAF, 2021) at 6, footnote 1.

At the same time, the EEA needs to recognize the different and intersecting systems of oppression faced by equity-seeking groups in order to better capture the lived experiences of these groups and the diversity of experiences within them. For example, 53.2% of working-age disabled Canadians (ages 18-64) are women, who are significantly poorer than disabled men, and twice as likely to be living alone than non-disabled women.<sup>21</sup> Single, single-parenting, Indigenous, working class, racialized visible minority, and/or newcomer disabled women experience the highest levels of poverty.<sup>10</sup> Legislation that simply accounts for “persons with disabilities” or “disabled people” fails to identify and assist individuals who face multiple forms of intersecting oppression.

#### **4. What changes to employment equity legislation, regulations, programming, and research could better support equity groups?**

LEAF supports the use of research methodologies that seek to promote and maintain equity and push back against oppressive systems. One key component is collecting and disseminating disaggregated data within a purposeful framework and in relationship with community.<sup>22</sup> This is critical to understand and respond to the experiences of individuals facing multiple intersecting forms of oppression, including those (such as Black, trans, and/or gender-diverse people) whose experiences have often been left out of existing research.

#### **5. What roles can other organizations play in promoting employment equity, for example, unions, employer associations, and non-governmental organizations (NGOs)?**

As noted above, women and gender-diverse people are overrepresented in the care economy and in part-time work. Increasing unionization in these sectors would help signal that women’s work in the care economy is valued and provide increased protections for workers.

#### **6. What changes to the EEA are necessary to better support the public conversation on equity, diversity, and inclusion?**

To better support the public conversation on equity, diversity, and inclusion, the EEA should reflect an understanding of intersectionality and its importance to equity-promoting

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<sup>21</sup> Sally Kimpson, [Basic Income, Gender, & Disability](#) (Toronto: LEAF, 2021) at 24. Please note Kimpson’s explanation at 11-12 as to the different uses of “disabled people” and “people with disabilities”.

<sup>22</sup> For a more thorough discussion of this approach, see [Disaggregated demographic data collection in British Columbia: The grandmother perspective](#) (Vancouver: British Columbia’s Office of the Human Rights Commissioner).

legislation. This includes, as noted above, updating and expanding designated group names and definitions to reflect current understandings of substantive equality and intersectionality.

Amendments, however, should not simply add different identity categories so they can be used “as a box to be ticked at the outset of an antidiscrimination case, with a focus on individual membership in an identity group”.<sup>23</sup> The key is to examine how identities intersect with existing power structures. It is also critical to understand discrimination based on “race” in light of the social construction of race in Canadian society, how racialization serves to facilitate oppression, and how people living with multiple intersecting identities face oppression that is unique to them.<sup>24</sup>

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<sup>23</sup> Grace Ajele and Jena McGill, [Intersectionality in Law and Legal Contexts](#) (Toronto: LEAF, 2020) at 51.

<sup>24</sup> See *ibid* at 51-54.