The Honourable Sean Fraser
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By email: mcu@justice.gc.ca

November 2, 2026

cc: The Right Honourable Mark Carney, Prime Minister of Canada
The Honourable Marc Miller, Minister of Canadian Identity and Culture
The Honourable Rechie Valdez, Minister of Women and Gender Equality

Re: Definition of Equality in the Guide on Equity, Diversity and Inclusion Terminology

Dear Minister Fraser,

We write today as individuals and organizations who have long advocated for the effective realization of the right to equality guaranteed under international human rights law, section 15 of the *Canadian Charter of Rights and Freedoms*, and human rights legislation across Canada.

We are deeply concerned by the definition of equality in the Government of Canada's *Guide on Equity, Diversity and Inclusion Terminology*, which was adopted to provide a unified frame of reference across federal departments and agencies and has subsequently been incorporated into federal policy, program design, reporting and funding contexts. The Guide misstates the content of the right to equality as guaranteed under Canadian and international law and risks undoing an understanding of substantive equality established by decades of advocacy and jurisprudence both in Canada and internationally. We wholeheartedly support policies and strategies designed to support and enhance what we believe is intended by “equity, diversity and inclusion”. However, the Guide’s definitions of “equality” and “equity” undermine the meaning of the right to equality that has been established in Canadian law.

The Guide defines equality as "[t]he principle of treating everyone in the same manner by ensuring they have access to the same resources and opportunities." It states that "Equality does not necessarily lead to fair outcomes since it does not consider people's unique experiences and differing situations." The Guide contrasts equality with 'equity' - which "aims to eliminate disparities and disproportions that are rooted in historical and contemporary injustices and oppression" - defined as "the principle of considering people's unique experiences and differing situations, and ensuring they have access to the resources and opportunities that are necessary for them to attain just outcomes."

For those of us whose advocacy and rights rely on an accurate understanding of the right to equality, it is difficult to overstate how troubling this is. The Guide assigns to *equality* almost

precisely the formal conception that the Supreme Court of Canada has rejected since its first decision under s.15 in *Andrews v. Law Society of British Columbia*, 1 S.C.R. 143 at p. 164, where the Court emphasized that "identical treatment may frequently produce serious inequality." Since *Andrews*, substantive rather than formal equality has become the governing principle of Canadian equality law. Most recently, in *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7 at para. 36, the Supreme Court reaffirmed that substantive equality is the "animating norm" of s. 15 and explained that it "looks beyond the apparent neutrality of a law to consider a law's actual effects on disadvantaged groups."

The same principle applies to statutory human rights protections against discrimination: the Supreme Court has held that "[i]nterpreting human rights legislation primarily in terms of formal equality undermines its promise of substantive equality," emphasizing that human rights legislation must address the effects of systemic discrimination rather than merely provide formally identical treatment. (*British Columbia (Public Service Employee Relations Commission) v. BCGSEU (Meiorin)*, [1999] 3 S.C.R. 3 at para. 41.

The UN Human Rights Committee has similarly recognized that the principle of substantive equality applies to Canada's obligations under international law, emphasizing that "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant." (*Human Rights Committee, General Comment No. 18: Non-discrimination*, para. 10.)

The problem is therefore not simply one of terminology. There is no constitutional or international human right to "equity" on which rights-holders may rely to hold governments accountable. The Charter guarantees *equality* before and under the law and equal protection and benefit of the law without discrimination. International human rights treaties similarly guarantee *equality and non-discrimination*. Those guarantees encompass substantive equality: consideration of disadvantage, adverse effects and systemic discrimination and recognition that accommodation of difference and ameliorative measures are part of what equality requires. Redefining the right to equality as imposing no obligations to ensure substantive equality and reassigning those legal obligations to a general principle of "equity" that has no legal protection in human rights legislation, the Charter or international law risks transforming legally binding equality obligations into discretionary policy commitments.

The substitution of the term equity for equality has been largely imported from the U.S., but in the Canadian context it may also reflect some confusion between the statutory right to employment equity and the human right to equality. As explained in the 2023 Employment Equity Act Review Task Force chaired by Professor Adelle Blackett, however, employment equity should never be substituted for the right to substantive equality. As clarified in the report, "[e]mployment equity is a proactive approach to achieving and sustaining substantive equality in the workplace." There are limited contexts in which the term equity may be usefully employed, particularly in the context of employment or health, but it should never be substituted for equality rights on the grounds that equality is more limiting. In the U.K. EDI is used as an acronym for Equality, Diversity and Inclusion and applied across the civil service.

(See Cabinet Office and Government People Group, *Civil Service Equality, Diversity and Inclusion Expenditure Guidance* (14 May 2024)). Elsewhere across Europe, public sector obligations are similarly referenced to equality and not equity.

We are also concerned that the Guide moves away from the term "equality-seeking groups" that was adopted in the late 1980s by the federal Court Challenges Program and adopts alternatives of "equity-seeking", "equity-denied" and "equity-deserving" groups. *Equality-seeking groups* identifies people as rights-holders engaged in an ongoing struggle to secure the equal enjoyment of rights guaranteed to everyone; it reflects both their agency and the legal obligation of governments and institutions to remedy systemic discrimination. By contrast, *equity-deserving* imports a concept of deserving v. undeserving rights claimants that has long been used to deny rights to certain categories of claimants such as those living in poverty or with precarious immigration status. We recommend that the federal government return to the long-established language of *equality-seeking groups*, which better captures both the universality of the right to equality and the continuing collective struggle to realize substantive equality.

We therefore ask you, as Minister of Justice and Attorney General of Canada, to remove the incorrect definition of equality in the Guide and with the assistance of experts in *Charter*, human rights and international human rights law, as well as representatives of equality-seeking groups, revise the Guide to make it clear that equality should never be described as being in opposition to the goals of equity, diversity and inclusion initiatives, clarifying that these should be understood as means to achieve substantive equality as guaranteed in Canadian law.

Sincerely,

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