AFFIRMATIVE ACTION AND EMPLOYMENT EQUITY: POLICY, IDEOLOGY, AND BACKLASH IN CANADIAN CONTEXT

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Equality is thus a process — a process of constant and flexible examination, of vigilant introspection, and of aggressive open-mindedness.¹

Employment equity became a significant public policy issue in Canada following the 1984 publication of *Equality in Employment: A Royal Commission Report* under the direction of Commissioner Rosalie Abella. Abella consulted widely with individual advocates and representatives of social movements to capture the growing concern for equality and equity issues that had crystallized with the adoption of the *Charter of Rights and Freedoms*. The result was a unique, Canadian approach to equity and it guided the development of a public policy agenda in very significant ways. However, the significance was not only in the establishment of a political culture friendly to an ideology of inclusiveness in the country’s workplaces; it also laid the ground for an acceptance of, and concessions to, certain aspects of political backlash.

The ideological foundations of policymaking or policy avoidance are difficult to trace, particularly in the Canadian context where there is little direct linkage between policy formulation and “think tanks.”³ We contend, however, that a discernable pattern can be identified in the debates surrounding employment equity policy in Canada. While there is direct backlash against any form of employment equity policy on the part of those ideologically opposed to the principle, there are also significant concessions,
or accommodation, to such backlash from policymakers who nonetheless advocate for employment equity. Such concessions are often just as significant as direct backlash in weakening the policy, making it less effective and more subject to criticism. This article elaborates on this argument, suggesting a general analytical framework based on two case studies: the normative effects of the Abella Report’s abandonment of the concept of “affirmative action” in favour of “employment equity”; and the gradualism and timidity with which the Ontario NDP government implemented employment equity legislation in the 1990s.

From as early as the 1980s, Canadian discourse in defense of employment equity has been influenced by a strategy of yielding ground to the backlash. Initially reacting to the debate as it unfolded in the US context, the Abella report took an apparently contradictory and progressive approach, adopting fresh language to deflect adversaries while at the same time moving towards dramatic compromise. Abella argued that by avoiding the term “affirmative action,” Canada would also avoid the ideological baggage that came with the term in the United States, and thus encounter less opposition. She made it clear that equity and quotas are not the same thing. Replacing the term “affirmative action” with “employment equity” may have deflected criticism, but it also failed to enshrine a proactive approach, seriously limiting the efficacy of the program. By avoiding the obligation to establish firm commitments to increasing numerical diversity in representation, the considerable effort and expense invested in employment equity during the 1980s failed to produce significant results by the end of the 1990s.4

A decade after the publication of the Abella Report, the province of Ontario’s experience displays a similar pattern. At that time, the NDP government under Premier Bob Rae passed the Employment Equity Act and, although it was repealed less than a year later by the new Conservative government led by Mike Harris, it was the most comprehensive to date in any Canadian jurisdiction.5 The retrospective story of the demise of employment equity legislation in Ontario, however, requires more than a simple narrative where the NDP introduced progressive legislation and the Conservatives reversed it.6 A more in-depth analysis reveals a complex process in which the politics of frontal backlash and the politics of concession resulting from anti-
ipated backlash coalesced. The result was a downward spiral of retreat on the part of employment equity advocates in the face of overt, and increasingly confident, ideological and political backlash.7

The fear of a US-style backlash against affirmative action and the experience of the rise and fall of employment equity legislation in Ontario continue to affect policy discourse among civil society stakeholders — both advocates and opponents and at both the provincial and federal levels — in Canada today. Understanding the politics of backlash has implications not only for interpreting historical events, but also for navigating policy debates in the present and future. Some of these implications are suggested in our conclusion.

**Considering “Backlash”**

“Backlash” is a phenomenon widely recognized to be significant in public policy development, but rarely defined or explained. Understood in the context of contemporary political debates, backlash is an ideological current or policy platform that is based on conservative premises, but is distinct from conservatism generally because of its specifically reactive character. Unlike ideological positions considered to be on the Right or far Right wing of the political spectrum — such as sexism, racism, or homophobia — backlash is a negative response to a progressive policy, campaign, or event. Backlash is therefore distinguishable from mere political opposition. Typically, it can be traced to a “trigger” or a “spark” that provokes a response considered otherwise to be nonexistent, or existent but dormant and lacking substantial influence.8

There is, then, an especially dynamic quality to backlash. It emerges as the second of two distinct but related phases of contested policy development. The first phase is the advance of a progressive ideological position or policy platform; this is understood to be a provocative element in shaping the second phase, backlash, where a reactionary and conservative force gains ascendance. Backlash arises as the result of a “boomerang” effect, where the desire to provoke progressive change unleashes a greater and more powerful regressive force.

Backlash develops, therefore, in specific contexts where there is sharply contested ground, and where traditional lines of ideological and partisan
identity may be transgressed. Despite this polarization, however, those who adopt positions associated with backlash usually lay claim to political neutrality. Backlash defenders commonly insist that they are in a defensive posture, merely holding the terrain of the democratic centre. The politics of backlash have coincided comfortably with the rise of neoliberalism, and the links have been amply identified.\textsuperscript{9} The general retreat of state support for social services, and the ideological insistence on the individual rather than the group as the basic unit of democracy, provides fertile ground for views that oppose any form of social intervention that might offset market forces or unhindered competition among individuals.\textsuperscript{10} Backlash cannot be abstractly reduced to or equated with neoliberalism, however, as it can often challenge traditional ideological and partisan lines of adherence.

To this essentially “common sense” understanding of backlash, a new dimension needs to be added. The claim to represent a defense of the political centre, or neutrality, while at the same time unleashing extreme reactionary forces that challenge progressive measures, renders the politics of backlash variable and complex. On the part of those involved in developing progressive social policy, there may be, we maintain, a discursive and anticipated fear of backlash that can be instrumental in shaping the nature of any particular policy change or outcome. The fear of backlash has been central in shaping employment equity policy in Canada, and is the focus of the argument developed here.

Fear of backlash, particularly on the part of those who are at the leading edge of advancing progressive social policy, can be one of the most powerful and corrosive effects of the backlash agenda. Whether there is a direct frontal assault, or a refusal to advance social policy for fear of such an assault, the outcome is the same. Both result either in limiting debate or in silencing challenges to status quo conditions that may be discriminatory or biased. Both stifle proactive measures for redress.

Backlash can take a variety of forms, and needs to be considered within specific contexts and political cultures.\textsuperscript{11} Recent debates in a number of Canadian jurisdictions show that, while the outcome of diminishing or eliminating employment equity policies and practices may be the same, the most effective patterns of backlash follow the contours of specific political
circumstances. The Ontario case study that follows, therefore, depends upon an understanding of the specific ways in which political and ideological strategies played out in that province. Those events have reverberated through other jurisdictions however; the Ontario case has been held up as an argument against using similar approaches in other places. As a result, employment equity policy throughout Canada has been shaped by anticipated or suspected backlash since the policy’s inception because those who proclaim to support equity hesitate when it comes to actual implementation, citing the fear of “provoking a backlash.” Fear of backlash as a form of backlash in itself has thus produced a self-limiting quality to employment equity advocacy throughout Canada.

The effectiveness of frontal backlash strategies therefore results in part in creating confusion and disorganization among the supporters of equity policies, leading them to offer ideological concessions to backlash in an effort to gain legitimacy. As a pragmatic and strategic move, ideological ground is given up, ostensibly as a way to avoid conflict and in the hope of gaining or maintaining a policy foothold that will allow for greater advances in the future. But evidence drawn from employment equity outcomes suggests that such an incremental strategy does not lead to greater representation or more effective policy. This brings us to the development of employment equity policy outlined in the Abella Report.

From Bakke to Abella: The Impact of Backlash in the Making of Federal Employment Equity Policy The term “employment equity” is commonly understood today according to concepts established in the Abella Report. This is a two-pronged approach that addresses the societal conditions that affect access to employment, as well as the policies and practices that create or remove barriers to full and equal participation in the workforce for the four designated groups recognized in the Abella Report to suffer from measurable systemic discrimination in employment in the public service: women, Aboriginal peoples, members of visible minorities, and persons with disabilities.

The Abella Report deliberately distanced the concept of employment equity from that of affirmative action, which was seen as an American
solution associated with quotas and government interference, creating a “protective wall through which reason cannot easily penetrate.”\(^{15}\) By employing the new language of “employment equity,” Abella focused attention on the Canadian context, encouraging the kind of “aggressive open-mindedness” referred to above. In response, the federal government moved to establish an extensive policy and legislative framework based on the concept of employment equity that was soon viewed internationally as innovative and path-breaking.\(^{16}\) It was subsequently adopted by most of the provinces, although unevenly and with considerably less enthusiasm.

Judge Rosalie Abella undertook extensive consultation and research in preparing the commission report. She sent letters to nearly 3,000 individuals and held 137 meetings attended by more than 1,000 people across Canada; she also commissioned 39 substantial research reports on topics including education, child care, racism, and pay equity.\(^{17}\) The Abella Report maintained, in bold and unambiguous terms, that four identifiable groups were not being fairly represented in the Canadian public sector work force, despite demonstrated educational and skill capacity. Drawing on the recently enacted *Charter of Rights and Freedoms*, the Report established the constitutional legitimacy for a proactive approach to altering the historic bias in employment against women, visible minorities, Aboriginal peoples, and persons with a disability. On a normative level, the Report insisted that equality did not require equal treatment; on the contrary, differential treatment resulting from systemic discrimination requires the elimination of specific barriers:

Equality under the Charter, then, is a right to integrate into the mainstream of Canadian society based on, and notwithstanding, differences. It is acknowledging and accommodating differences rather than ignoring or denying them. This is the paradox at the core of any quest for employment equity: because differences exist and must be respected, equality in the workplace does not, and cannot be allowed to, mean the same treatment for all. In recognition of the journey many have yet to complete before they achieve equality, and in recognition of how the duration of the journey has been and is being unfairly protracted by arbitrary barriers, section 15(2) permits laws, programs, or activities designed to eliminate these restraints.\(^{18}\)
Notwithstanding this proactive statement, one of Abella’s major findings based on the public presentations to the commission was that use of the term “affirmative action” creates an unnecessary association with the American concept and provokes confusing, emotional, and futile debates. Recognizing that the backlash against affirmative action in the United States had received considerable international support, she sought to clear a route for Canadian policy that would make a clean break with American discourses:

The Commission was told again and again that the phrase ‘affirmative action’ was ambiguous and confusing. … The Commission notes this in order to propose that a new term, ‘employment equity,’ be adopted to describe programs of positive remedy for discrimination in the Canadian workplace. No great principle is sacrificed in exchanging phrases of disputed definition for new ones that may be more accurate and less destructive to reasonable debate. … Ultimately, it matters little whether in Canada we call this process employment equity or affirmative action, so long as we understand that what we mean by both terms are employment practices designed to eliminate discriminatory barriers to provide in a meaningful way equitable opportunities for employment.¹⁹

At the core of the “disputed definition” of the term “affirmative action” in this period was the backlash argument developed in the US debate, where it was maintained that it constituted reverse discrimination and imposed quotas designed to ignore merit. In shifting the discursive ground to the removal of barriers, Abella caught the imagination of policymakers in Ottawa, who subsequently focused significant energy on creating a made-in-Canada approach. Proponents of the Canadian policy could claim that their approach was better because it did not use quotas (which, it was accepted, might compromise merit) and relied instead on changing the values of the workplace.

A lengthy analysis of trends in the United States related to the highly contested practice of affirmative action goes beyond the scope of this discussion. However, Susan Faludi’s investigation of backlash in the United States, and the specific example of the Bakke case that advanced the notion of “reverse discrimination,” are relevant to consideration of the debates surrounding employment equity in Canada.²⁰ Faludi has demonstrated that
if the spectrum of opposition — whether passive or active — is wide enough, then even the strongest proponents of progressive measures may undermine their own efforts by giving ground in order to secure political gains.

Backlash against affirmative action in the United States consisted mainly of charges that it represented “reverse discrimination” against white, able-bodied men. Asserting a defense of the democratic centre, this claim challenged both the normative premise and the constitutionality of affirmative action, and marked the rise of a serious backlash against affirmative action that moved into the centre stage of US national politics, and gained extensive international attention when the case of Allan Bakke came before the US Supreme Court. Bakke, a young white male and Vietnam war veteran, was declined admission to the University of California (UC), Davis campus, Medical School in 1973, while minority students with weaker academic records were accepted under the university’s affirmative action program. The Medical School at UC Davis accepted 100 students per year, of whom a relatively small number, 16 placements per year, were set aside for African Americans, Chicanos and Chicanas, Asian Americans, and Native Americans. When Bakke’s application was declined a second time in 1974, he filed a lawsuit against the university, arguing that he had been rejected solely on the basis of his race. Bakke sued for admission on the grounds that his rights under Title VI of the Civil Rights Act of 1964 had been violated. In 1978, the US Supreme Court ruled that Bakke should be admitted and he proceeded to complete his MD and pursue a medical career. The Supreme Court also found, however, that affirmative action policies undertaken by universities and, by inference, employers, may consider race and ethnicity as one of a number of factors when offering admission or hiring — although students or employees could not be denied entrance or employment if race was the only factor considered. This ruling allowed both sides of the debate to claim victory.

Returning to the Canadian case, the Abella Report considered the phrase “affirmative action” to be “ambiguous and confusing,” but was “employment equity” less so? Abella’s discursive strategy was effective in mobilizing an initial effort on the part of policymakers that won support more because of its disassociation from American-style affirmative action than because of
provided a clear and effective way forward. Indeed, the scope of the policy actually shifted, and narrowed, considerably with the change in terminology. For example, whereas educational affirmative action had been one of the major areas of institutional policy in the United States, in Canada the federal government limited the concept to its application in the workplace. Further, only a limited number of workplaces were covered in the mandate: the federal public service (not initially covered under the Employment Equity Act, but under separate legislation), crown corporations, and federally regulated employers. While education, as well as childcare policies and practices, were addressed in the Abella Report as enabling factors that prepare individuals for the workplace, they are not addressed in subsequent policy or legislation. The narrowing of focus occurred partly because federal policy did not extend to those areas that were under provincial jurisdiction, but it was also a response to backlash against affirmative action. The notion of “equity” rather than “action” suggests a narrower lens, and thus a more palatable but less effective solution, for achieving equality.

The 1986 Employment Equity Act stood clear of numeric targets or “quotas,” the issues at the centre of the Bakke dispute. Instead, those employers affected by the legislation were asked to file annual reports and plans, with virtually no obligation to follow up on those plans. In this way, despite the rhetoric of proactivity, ideological and practical concessions to the backlash were embedded in the Canadian policies from the outset. Tania Das Gupta states, referring to the federal Employment Equity Act:

In effect, it is a voluntary program. … Some equity advocates have argued that the federal employment equity program has not been successful because it has been ‘top down’ and not geared to ‘statistical improvement.’ It seems that most of the federally-regulated employers are concentrating on removing biases from the outreach, screening and interview processes and concentrating less on actually increasing representation from target groups.²⁴

The relevance of US debates was not lost on backlash ideologues in Canada. Author and conservative researcher William Gairdner, for example, in *The War Against the Family*, argued against what he called “The Feminist Mistake” that refused to recognize the inherent biological role of women
as homemaker and mother. He praised Germaine Greer’s *Sex and Destiny*, which celebrates women’s role as child bearer and mother. This was an author, Gairdner maintained, who “had the courage to turn her back on her earlier inflammatory work, *The Female Eunuch.*” Gairdner similarly praised Betty Friedan’s “recanting book,” *The Second Stage,* for its rejection of her earlier feminist perspectives.25

While a move towards overt “feminist revisionism,” identified by Faludi as significant in the success of backlash in the United States, has certainly not been the standard in Canada, pragmatism and gradualism have claimed much of the same ground in the policy debates.26 Timidity on the part of employment equity advocates has been based on a fear of provoking reactionary opponents, who have secured a number of concessions by remaining ready at the wait. Flora MacDonald, Minister of Employment and Immigration in 1984, reflected on the experience:

My predecessor had appointed a one-person Royal Commission to look into limited aspects of equity in the public service. The commissioner, Rosalie Abella, came to me shortly after I was made minister and said, ‘I would like to have my mandate enlarged.’ I said, ‘Rosie, take the whole thing, whatever you want.’ It was on this basis that she wrote her report, using the term ‘employment equity.’ She did not want to follow what the Americans had done in affirmative action, which had greatly congested the courts. … Generally, there wasn’t a great deal of support. The opposition came both from those who felt there should be nothing and those who felt there should be much more. I had a lot of difficulty with women’s groups, who were saying, ‘Why haven’t you done this, this, this and this?’ To me, they didn’t understand the reality of the House. … That has always been my way: If you can’t get everything you want at the outset, get at least the basis that will allow you to build. … The greatest opposition came from those who were disabled. They didn’t think the legislation went far enough.27

Although backlash in Canada has over the years found organized expression in various provincial contexts and in the political platform of the federal Reform/Alliance/Conservative party, employment equity policies enacted at the federal level have not explicitly generated the furor witnessed in the United States. Indeed, after making a quiet campaign promise to do so in 1993, the Liberal government under Jean Chrétien undertook a review of
the legislation and introduced a revamped bill a few years later. For the most part, the legislation was “housekeeping,” consolidating existing federal law.\textsuperscript{28} A comprehensive audit system was also introduced, however, obliging employers to identify and eliminate barriers to employment for members of the designated groups, develop positive measures, and prepare employment equity plans, including both qualitative and numerical goals. Reports were to be filed annually with Human Resources Development Canada for federally regulated employers and with the Treasury Board for the Public Service.\textsuperscript{29}

At the provincial level, backlash against employment equity has proceeded apace with significantly more vigour. While opponents of employment equity at the provincial level have been quick to take the ground of controversy, employment equity advocates have often hesitated to defend the policy when under direct challenge.\textsuperscript{30} Some advocates maintain that even suggesting the need for legislation, rather than simply general policy, was detrimental to its effectiveness. The argument was that legislative debates would draw attention — and therefore resistance — on the part of both policymakers and a general public for whom equity remained a sensitive issue. The perception of backlash among advocates often appeared, however, to be greater than the actual strength or influence of antiemployment equity opinion.\textsuperscript{31}

The Ontario context served as an important laboratory for backlash debates, not only in the explicit attacks by opponents of employment equity in policy and legislation, but also in the response of employment equity advocates. There are grounds to suggest that Canada’s social democratic tradition has moderated the type of polarization that occurred in the United States by dulling the leading edge of the movement and accommodating the backlash even before the overt challenges had come fully into play. Nowhere have such politics of concession been more evident than in Ontario.

**Ontario: NDP Hesitancy and the Backlash** The rise and fall of employment equity legislation in Ontario closely followed the rise and fall of the Ontario New Democratic Party (NDP) government in the 1990s and the subsequent election of the Ontario Progressive Conservatives. The Ontario NDP historically held a strong commitment to employment equity policy. During its single term in office (1990-95) under the premiership of Bob
Rae, the NDP implemented the *Act to Provide for Employment Equity for Aboriginal People, People with Disabilities, Members of Racial Minorities and Women*.\(^\text{32}\) Proclaimed in 1994, the legislation was repealed one year later in an atmosphere of extreme backlash, upon the election of Mike Harris and the Ontario Progressive Conservatives in 1995.

Elsewhere, we have pointed to the aggressive political and ideological assault carried on by the newly elected Harris Tory government against the Employment Equity Act in Ontario.\(^\text{33}\) Here, we consider the factors in the NDP government’s strategy that rendered the Act exceptionally vulnerable to challenge and ultimate repeal.\(^\text{34}\)

In the early years of the Rae government, there was a broad base of public support for the employment equity initiative. Before the law was enacted, it was preceded by extensive public consultation. Although many employment equity advocates believed the legislation to be far too weak, the concern to maintain a united base of support across a spectrum of views was the stated goal of the NDP government’s extensive consultation process.\(^\text{35}\) The slow pace of development is now seen, however, to have cost the NDP dearly. The formal process began in November 1990 when, in the first Speech from the Throne, the newly elected NDP government identified employment equity as a provincial priority.\(^\text{36}\) By March 1991, Juanita Westmoreland-Traoré was appointed as Ontario Employment Equity Commissioner. In the summer of the same year, the Commissioner established a Consultation Advisory Committee comprised of representatives of the four designated groups that would ultimately be identified in the title of the legislation, as well as business and labour representatives, and employment equity practitioners already active in the province. Between 25 June 1992 and 7 September 1993, more than 100 presentations and 184 written submissions were received. A clause-by-clause review by a designated standing committee concluded on 6 December 1993. The Office of the Employment Equity Commissioner established a Public Education Advisory Committee before Third Reading in December and passage in January 1994.

Winnie Ng was the Executive Assistant and Senior Policy Advisor to the Minister of Citizenship during the period of the Rae government. From
her perspective, the long consultation process weakened the capacity of the legislation to withstand the later repeal under Harris:

We went through a whole consultation process. ... There may have been goodwill in trying to do the consultation. Trying to do it right was then being seen as part of an educational process. But one can also read it as a delaying tactic. There was hesitancy. And we ended up paying a major political price for it. ... We never had full control within the Ministry, within the Minister's office, to push it. And there was great reluctance from the Premier's office. In retrospect, I think it took too long. ... So by the time the Bill finally was proclaimed in 1994, there was really not much time to have the whole thing entrenched. That is why it was so easy for the Harris government, the Tories, to repeal the whole thing.37

Elaine Ziemba, former NDP government Minister of Citizenship with responsibilities for Human Rights, Seniors and Persons with Disabilities, identified an ambiguity in the process, as well as a delay that threatened its survival at the hands of the next government:

I looked at what the federal government did and I saw that there was very little dialogue, or educational seminars. They kind of just did it. Our government was about being open, about dialogue. We were about making sure that people were in the picture and were being updated. I would like to have kept some of that openness. But I also think I would have liked to have just done it. I think we waited too long trying to get everybody on board. ... I think on reflection, it's about timing. You know always in politics, it's timing.38

Rosario Marchese, former Ontario NDP Chair of the Standing Committee on the Administration of Justice, maintained that there should have been more emphasis on mass, general education and less on consultation with various stakeholders. In fact, his view was that the “consultation” process may have actually created more of a sense of fear and alarm, overexplaining rather than governing as if employment equity was a “business as usual” policy:

Where we failed, in my view, is that unless you do the political preparation work to explain to people what you're doing, you're in trouble. ... So while
we dragged this issue through for a couple of years, we weren’t really
communicating to the public in a way that would explain what this bill is
doing. Rather we were alarming the public.\textsuperscript{39}

Marilyn Churley, former NDP Minister of Consumer and Commercial
Relations and a strong advocate for employment equity legislation with the
Cabinet, was even more definitive:

I think a lesson learned is that you have to do these things more quickly. There
is a happy medium — the Tories don’t consult at all, or very selectively when
they do. But I think that we overconsulted. I would propose that on some of
these things that we believe in, we needed to get it done fast. At the end of
the day, not everybody is going to be happy anyway. So we do the best we can
and get the legislation passed in time, so that should there be another
government, it is more entrenched. I think that is really important.\textsuperscript{40}

Bob Rae, former Premier and ultimately responsible for the legislation
and the process of enactment, however, defended the pace of development
of the legislation:

basically, we started to proceed fairly early on in the government, recognizing
that it was going to be politically difficult. We were determined to go ahead
and get it done. We ran into all kinds of flak on our labour legislation, with
major political opposition. There were huge billboards and we were accused
of never consulting. … We decided that we really did have to try to generate
as many incentives as we could. We had the parliamentary committee people
who went out and listened. And Members throughout the committee came
back and said ‘This is very tough and we are getting a lot of problems.’ There
were negative reactions. So we had to listen and listen carefully. We went
and did a lot of consultation and discussion and tried as much as possible to
produce something like a consensus.\textsuperscript{41}

When asked specifically about the argument that the consultation process
was too lengthy and that earlier enactment of the employment equity legis-
lation would have strengthened public support, Bob Rae responded:

no. I don’t think I agree with that. My own view is that if we hadn’t had the
consultation process, we wouldn’t have had the benefit of what I felt was
needed. I am speaking here as the Premier. I felt I constantly had to go back to the Ministry and say ‘I know you want to go with this.’ I mean people would want to go further. But people were also saying the legislation went too far. In fact, the legislation itself was a compromise. Some people were saying that it was better than nothing, but it didn’t have this or it didn’t have that. It didn’t have all the bells and whistles that the advocacy groups had developed, sort of their model legislation. Frankly, I needed the consultation period to get the Legislature closer into line to what I thought was going to be politically manageable. I think if, in fact, had we passed it more quickly, the legislation would have been harder to administer.\(^\text{42}\)

Notably, Bob Rae was unique among the respondents interviewed in suggesting that perhaps the lessons of history should be taken into account regarding the substantive content of the legislation. His commitment to legislating employment equity, in hindsight, had changed. He now identified the suggestions of Canadian Civil Liberties Association representative and human rights lawyer, Allan Borovoy,\(^\text{43}\) as significant, emphasizing that if there was past discrimination reflected in workplace imbalances, current policies should not be called in to enact redress. According to Rae:

Allan Borovoy made some tough presentations to the Standing Committee. His main arguments were from the perspective that you can’t hold this generation responsible for what past generations have done. So his argument was that you had to construct the legislation in such a way that it would be anticipatory about going forward. But you can’t sort of blame the past. In terms of targets and objectives which were said to be made, he said those targets and objectives would be too aggressive and would fail to take into account the fact that you’re looking at making up for past wrongs. You can’t make up for past wrongs — all you can do is basically move forward and make sure that the hiring is done from now on in such a way that you meet certain objectives.\(^\text{44}\)

In effect, Borovoy was challenging the fundamental premise of employment equity policy, that patterns of workplace discrimination are systemic and not accidental. The aim of achieving numerical representation according to the availability of each designated group in the larger workforce population is central to this premise. Rae noted that, at the time, such an amendment would have been seen within the NDP government leadership
as “watering it down too far.”\textsuperscript{45} He reflected, however, that when the final legislation was enacted, it still may have been too aggressive: “I think we probably built the bridge a little bit too far.”\textsuperscript{46}

In fact, the Ontario Employment Equity Act steered far away from even the initial expectations of NDP MPPs. It did not include quotas or statistical standards, instead calling upon employers to develop appropriate goals and flexible plans, with recognition of “different kinds of workplaces and workforces.” It also allowed small businesses to be exempt. The legislation was enacted in part on the grounds that employment equity already existed in many sectors, and was defended as a means to consolidate existing policy. The Act therefore subsumed many other pieces of previously existing provincial legislation that brought equity policies in certain sectors under a single umbrella. When it was repealed, however, virtually all of the legislative infrastructure for equity issues that had been in place prior to the law was eliminated.

After the repeal, activists for employment equity attempted to reverse the backlash of the Harris Tories through a legal Charter challenge. Though it proved unsuccessful, the challenge did bring together a coalition of organizations that supported the continuation of a grassroots network of employment equity advocates: the Alliance for Employment Equity.\textsuperscript{47} Winnie Ng’s later reflections on her experience in this coalition contrast sharply with the sense of frustration expressed in the Ontario Parliament:

\begin{quote}
The Coalition of Visible Minority Women got involved early on in the Alliance for Employment Equity. Sexism and racism are wings of the same bird of oppression. That was our key point to put on the Alliance agenda. It was a good process. There weren’t tensions on race grounds in the Alliance. We were all in the same boat, and it was clear that we were after legislation and government response to address systemic barriers.\textsuperscript{48}
\end{quote}

In opposition after the 1995 election, the Ontario NDP no longer placed the same emphasis on employment equity policy that it had during the 1990s. NDP policy documents had included advocacy for employment equity as a general principle of workplace practices, but advocacy for employment equity law in Ontario was no longer pursued. By the late 1990s, the
earlier commitment to legislative change and implementation “with teeth” had been replaced by a more moderate commitment.\textsuperscript{49}

There is little to be gained, of course, in speculating about the fate of the employment equity legislation had political events in Ontario not taken the turn that they did. In retrospect, however, we can note that the story is much more complex than a simple policy about-face; the politics of concession to backlash are apparent in Ontario throughout the five-year period during which the NDP implemented the policy. The NDP in government developed a \textit{modus operandi} of giving ground that, in the end, left no ground at all. Paradoxically, the “consultative process” itself left so much room for retreat that by the time the NDP mandate ended — having had no time in which to implement the controversial policy — it had achieved very little except to exacerbate hostility on a number of fronts, thus fuelling the subsequent backlash. Notably, federal employment equity legislation was not and has not been subject to a similar assault, from within Ontario or any other province.

\textbf{Conclusion: The Price of Accommodation to Backlash} Democratic theorists such as Iris Marion Young and Chantal Mouffe have argued that the paradox of democracy is that to achieve normative change that will enhance the common good requires that there is in fact a great deal in common.\textsuperscript{50} If commonality is not to be based on exclusion of those not represented by the majority, whether defined by numbers or by access to power, then the liberal notion of human rights as purely individual rights becomes less and less feasible. In a plural society, there is a conflict between the democratic expression of normative values of the included majority and the achievement of rights for the excluded. Both Young and Mouffe have advocated more inclusive forms of democracy that depend upon broader consultation, participation, and representation. Debates regarding employment equity policy and legislation demonstrate that serious attempts to shift dominant values in a direction that is more inclusive encounter resistance from those who defend these values as entrenched norms. These debates suggest that encountering controversy over the meaning of democratic values is an inevitable feature of a shift from exclusion to inclusion. Such contro-
versy, then, needs to be approached as an inevitable and necessary step towards increasing greater equity for those who have been systemically excluded or marginalized.

Steering advocates away from “controversy” was a key element in both the Abella Report’s recommendation to avoid using the term “affirmative action,” and in the hesitancy of Bob Rae’s Ontario NDP majority government regarding employment equity legislation. In both examples, pragmatism was the overt motivating factor. We suggest, however, that the politics of concession to backlash were elemental and, despite the advocates’ intentions, fed rather than forestalled backlash arguments.

The Abella Report and the Rae government’s legislation are arguably the best case examples of political advocacy for employment equity in Canada, yet both have wielded a blunt sword in challenging systemic discrimination. Strategic accommodation has failed to advocate forcefully for accountable practices, or to achieve specific numeric targets. Members of the designated groups who are the victims of systemic discrimination have suffered the most from strategic accommodations. For them, it matters little whether that discrimination results from strategic accommodation or direct opposition.

There is a need to analyze employment equity’s relative lack of advancement, therefore, in light of the effects of new forms of racism and sexism that wield tremendous discursive power. This may not entail explicit racist and sexist ideas or actions but, alternatively, the claim that racism and sexism no longer exist. In British Columbia, for example, the Liberal government has maintained that the provincial government no longer needs measures to advance employment equity because previous measures were so successful. In fact, previous employment equity practices were uneven and were applied more effectively for women and persons with a disability than for visible minorities and Aboriginal peoples. The discursive ideology, however, has hidden a profound attack on employment equity and other equity practices in British Columbia, in what we have termed a pattern of corrosive backlash.51

In the twenty-first century, such claims are much more persuasive than the previous arguments that members of designated groups are unqualified
or essentially unsuited for equality. In future, therefore, strategies to resist and redress the effects of systemic discrimination need to consider the lessons of backlash, not only as they relate to employment equity but in the wider context challenging racism, sexism, and all forms of bigotry. In formulating such strategies, the risks of accommodation and concessions to backlash need to be considered with as much attentive care as is commonly applied to considerations of the consequences of failing to make such concessions.

Notes
2. This paper is part of a wider study on employment equity and the politics of backlash directed by the authors and funded by the Social Sciences and Humanities Research Council of Canada. We are very grateful to the expert research assistance of Hilary Janzen, Julie Devaney, Clara Ho, and Alberta Danso in the preparation of this paper, and to Judy Fudge, Donald Swartz, and the editorial collective of *Studies in Political Economy* for constructive comments on an earlier draft. This paper is equally and jointly written by the authors.
6. Ironically, though the Ontario Employment Equity Act did not actually require quotas, opponents insisted on pinning this label on the legislation, a clear allusion to the US affirmative action program, despite the attempts of Abella and others to deflect such assumptions. In 2006, Right-wing critics of Bob Rae’s campaign for leadership of the federal Liberal Party continue to emphasize the former premier’s ostensibly poor record of governmental administration by highlighting “a workplace hiring law with the Orwellian moniker ‘employment equity.'” Guy Giorno, “Don’t Fall into a Rae Daze Looking for a Liberal Leader,” *The Globe and Mail* (16 March 2006). Guy Giorno was Chief of Staff to Ontario Progressive Conservative Premier Mike Harris.
8. For example, it has been argued that the relative success of the post-apartheid regime in South Africa has triggered a backlash from the extreme Right. See Fred Khumalo, “White Backlash: The Fear that Mandela and de Klerk Will Eventually Reach Some Accommodation has


12. This argument and the research upon which it is based can be found in Bakan and Kobayashi, *Employment Equity Policy in Canada*.


14. See for example, Lynne Pearson, Frederick Cuddington, and Deb Thorn, Commissioners, “Final Report and Recommendations of the Commission on Improving Work Opportunities for Saskatchewan Residents,” Government of Saskatchewan (February 2006), <www.labour.gov.sk.ca>. This report identifies patterns maintained by “structural barriers that prevent Aboriginal peoples from entering the workplace,” and recommends numeric targets for recruitment, hiring and training of Aboriginal employees to ensure appropriate redress (p. 39, ff.).


16. However, in Quebec, New Brunswick, and Nova Scotia, the term “affirmative action” continues to be in use in public policy circles. Elsewhere, we have written about each of these provincial case studies in backlash against employment equity in detail. Ontario and BC have been the sites of particular and considerable backlash, the former in an overt manner, the latter more through gradual corrosive measures. The federal policy context, particularly at the level of legislation, continues to be more consistently favourable to employment equity than the provincial contexts. We have demonstrated that despite the now extensive list of policies that support employment equity, opposition remains strong and consists of new protective walls of discursive resistance. In a comparative study of employment equity in Canada’s ten provinces, we found a recurrent pattern, where those responsible for implementing the policies drew back from taking a proactive position for fear of backlash. Regarding Ontario, see Bakan and Kobayashi, “Employment Equity Legislation in Ontario: pp. 91–107; and “Ontario: Lessons of the Rise and Fall of Employment Equity Legislation from the Perspective of Rights Advocacy,” *Canadian Race Relations Foundation Reports* (March 2003), pp. 35–77. Regarding BC, see “Backlash Against Employment Equity: The British Columbia Experience,” *Atlantis* volume 29.1 (Fall, 2004), pp. 61–70. Also see Bakan and Kobayashi, *Employment Equity Policy in Canada*.


18. Ibid.


26. See, for example, Bakan and Kobayashi, “Backlash Against Employment Equity: The British Columbia Experience”; and “Ontario: Lessons of the Rise and Fall of Employment Equity Legislation from the Perspective of Rights Advocacy.”


28. Critics had long maintained that because the federal public service was not covered under the original Employment Equity Act, the government was unwilling to abide by the standards it set for crown corporations and federally regulated employers. In fact, the parallel legislation was broadly similar, but by bringing the parties under one umbrella the federal government achieved a political advantage by quelling such criticism.


31. *Ibid*.

32. Hereafter referred to as the *Employment Equity Act*.

33. See Abigail B. Bakan and Audrey Kobayashi, “Employment Equity Legislation in Ontario.”

34. This examination of the Ontario NDP’s enactment of employment equity legislation, described below, is based largely on face-to-face interviews conducted in Toronto in 2001 with NDP legislators responsible for the Act. Those interviewed were selected on the basis of their involvement with the legislation as participants in the NDP government. The interviews were one to two hours long and loosely followed a schedule of questions focusing on the experience of the NDP government and the subsequent events surrounding the rise and fall of employment equity legislation. Based on a small sample, these findings are not presented as representative numerically, but rather as the qualitative interpretations and lessons gleaned from senior-ranking former members of the NDP government. A strategy of yielding concessions, principally advocated and directed by then Premier Bob Rae, and contested even among Rae’s advisors in the government, is indicated. All of the interviews were taped and transcribed, and all of the interviewees provided written permission to be quoted in reference to this research project. No portion of the quotations presented here may be quoted except as part of this study and with prior permission from the authors. Some of the findings from these interviews were presented in an earlier draft in Abigail Bakan and Audrey Kobayashi, “Employment Equity and the Ontario NDP: The Legacy of Defeat,” *Canadian Political Science Association* (Quebec City: May 2001).

35. This was the view, for example, of the National Action Committee on the Status of Women at the time. See transcripts of the Legislative Assembly of Ontario, Standing Committee on Administration of Justice (30 August 1993), pp. J-508–12.


37. Winnie Ng, interview (Toronto: 5 April 2001).

38. Elaine Ziemba, interview (Toronto: 16 April 2001). This is a reference to the federal government’s development of employment equity legislation.
42. Ibid.
44. Bob Rae, interview (Toronto: 24 April 2001).
45. Ibid.
46. Ibid.