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CABINET COMMITTEE BRIEFING NOTE
EXPOSÉ INFORMATIF D'UNE RÉUNION D'UN COMITÉ DU CABINET

Committee: Social Development
Comité:

Date & time of meeting: February 11, 1987, 3:15 p.m.
Date et heure de la réunion:

Date: February 9, 1987

MEMORANDUM TO THE PRESIDENT NOTE À L'INTENTION DU PRÉSIDENT

SUBJECT: Amendments to the Canadian Human Rights Act
OBJET: (CHRA) 7-0043-87MC(01)

SPONSOR: Department of Justice
PARRAIN:

Proposal

The essence of the changes under development are to make the process for handling discrimination complaints fairer (especially in appearance) by steps such as establishing a Human Rights Tribunal with members from the Federal Court, Trial Division and other part-time lay members appointed by GIC (replacing those now appointed from the Human Rights Panel System). This change appears only cosmetic. Other revisions include a) adding sexual orientation as a grounds for discrimination, b) abolishing mandatory retirement, and c) clarifying Section 11 of the CHRA respecting equal pay for work of equal value.

TBS Comment or Recommendations

The proposal is intended to address commitments made by the government in Toward Equality to ensure that the process of complaint investigation, conciliation, settlement and adjudication is as fair as possible.

TBS generally supports the various proposed amendments. The Department of Justice feels that sexual orientation is a prohibited ground of discrimination under Section 15 of the Charter of Rights and Freedoms. Removal of the mandatory retirement age has already been done in the federal public service and would seem warranted in the federally-regulated private sector. However, transitional periods should be established to allow adjustment for the impact on such benefits as life and disability insurance and to deal with any difficulties in objective performance assessment. TBS has recommended, and Justice agreed that there should be a detailed study of the equal pay provisions of the Act (Section 11) with

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consultation between the Minister of Justice, the private sector and other Ministers to recommend whether a change to the existing Act or introduction of new legislation should be initiated. The Secretariat is concerned that Section 11 be reworded to expressly state that its purpose is to redress the historical undervaluation of traditional female occupations and to define when its provisions will be deemed to be met. The amendment to Section 11 would prevent the possibility of any related regulations re equal pay being considered ultra vires.

TBS Comment on Resource Implications

Justice wants \$201K and 4 PYs in each of 88-89 and 89-90 to carry on its work related to a review of the CHR Act and the response to Toward Equality. These resources are mainly for consultations with the public and private sectors in the areas of equal pay and the abolition of mandatory retirement. PCO's reaction will be to not recommend additional resources. The TBS view is the same. Person-years should come from the Justice A-Base.

TBS concurs that the Minister of Labour prepare proposals for a comprehensive study of the impact of the abolition of mandatory retirement on the private sector by 1989.

Primacy over the Indian Act

Section 63(2) of the current CHRA exempts the Indian Act and provisions made pursuant to it from the CHRA. This apparently was done for two reasons: one, a section of the Indian Act (now repealed) discriminated against Indian women in that they lost their status on marrying non-Indians whereas Indian men did not; two, there was a general concern that the CHRA would infringe on Indian culture and heritage. The CHRA amendments proposed in this MC would eliminate this exemption. In addition, the MC proposes that the CHRA be given primacy over other legislation (viz. the Indian Act) according to one or other of several technical options: one option would leave the final resolution of a conflict between the CHRA and another statute to judicial resolution under the Charter.

The position of Indian bands in constitutional and self-government negotiations has been that the Charter of Rights and Freedoms should not apply to them and they have consistently resisted application of the CHRA to Indians. Furthermore, Indian bands have been assured that they would be fully consulted on all matters affecting their rights.

Whatever its intrinsic merits, the proposed CHRA amendments could be strongly criticized as prejudging constitutional negotiations with aboriginal peoples and thereby demonstrating bad faith on the part of the federal government.

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Justice claims that these concerns are overstated because the CHRA amendments will be publicized only after the upcoming FMC. They also claim that DIAND officials will brief their Minister not to oppose the amendment. OACA officials have expressed the concern that this issue has not been properly examined by Justice officials.

Other Issues

Because of the enormous costs associated with unlimited retroactive settlements in the equal pay area, we would prefer to see a statutory provision that retroactive adjustments be made to the date of the complaint.

Gérard Veilleux

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