



Government of Canada  
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MEMORANDUM NOTE DE SERVICE

TO → Lise Théroux  
À Personnel Policy Branch

FROM DE L.M. Tenace  
Deputy Secretary  
Staff Relations Branch

ORIGINAL SIGNED  
L. M. Tenace  
A SIGNÉ L'ORIGINAL

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<b>SECRET</b>	
Our file	Notre Référence
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Your file	Votre référence
Date	
January 9, 1990	

SUBJECT Draft Justice Memorandum to Cabinet on Amendments to the CHRA  
OBJET

As requested by memorandum from A.K. Liljefors dated January 2, 1990, the following are SRB's comments on the above-noted document:

Detailed Recommendations

# 2.: SRB supports the concept of a permanent tribunal functioning independently of the Commission.

# 3.(g): Governor in Council appointment of an acting Chairperson is a needlessly unwieldy procedure, particularly when the Chairperson is unable to act for a short period of time. The appointment of a Vice-Chairperson and a provision similar to that contained in section 31(2) of the present CHRA would be much more workable.

# 11.: Presumably, what is being proposed here is a change to non-binding rather than binding guidelines. If this is so, we support this recommendation.

# 14: The concern with undue delay, discussed in paragraph 34 of the main paper might be better addressed by appointing more individual investigators. Investigation by a "group" could create a dissension which might adversely affect constructive resolution of the complaint.

# 26: Both section 3 of the CHRA and section 15 of the Canadian Charter of Rights and Freedoms refer to "sex" as a prohibited ground of discrimination. In the view of the Staff Relations Branch, the existing language of these pieces of legislation is proper and we are opposed to adding sexual orientation as a prohibited ground of discrimination. We have commented before that it is a short step from such amendment of the CHRA to an altered definition of 'family', the basic social structure, with all the implications that such an altered definition would entail.

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It should be remembered that the particular concern expressed in Toward Equality was with the possible exclusion of individuals "from employment opportunities for reasons that are irrelevant to their capacity and ability to do the job". This specific concern is valid and might be more properly addressed in the federal public service sphere by amendment to subsection 12(3) of the PSEA.

# 31: We support the inclusion of "operational inconvenience" as a factor to be considered in determining whether reasonable accommodation can be made without undue hardship.

# 32: We have no difficulty with the concept presented here; however, we would like to see the proposed amended wording of this section.

# 39: The Canadian Human Rights Commission, under section 27, is assigned responsibility for the administration of the CHRA. This includes responsibility for the administration of section 11. In our view, it is not appropriate to have the Governor in Council regulating the application of section 11. This responsibility should remain with the Commission.

This proposal, however, falls far short of addressing the essential problem with section 11; i.e., its failure to describe parameters to an employer's liability in rectifying pay anomalies between male and female employees. Paragraph 109 of the main paper suggests deferring amendment to the CHRA in this respect. It seems, however, unrealistic to expect any government to keep re-opening the legislation to correct difficulties on an 'ad hoc' basis. Difficulties with equal pay complaints are of primary importance to this Branch and it should be noted that the question of equal pay was one of the key factors in the recent strike by the Hospital Services group which resulted in the need for Parliament to enact back-to-work legislation. Section 11 requires amendment as soon as possible to define when pay equity has been achieved.

# 40.: This proposed amendment does not adequately address the concerns raised in paragraph 111 of the main paper, under the heading Affirmative Action. We have commented before,

"It is important to recognize that among the various types of discrimination, the ordering of special programs to rectify some kinds of past discriminatory practices can be carried out with minimal cost and little adverse effect on the general public; e.g. those which involve staffing

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and employment opportunities. With respect to other sorts of discrimination, however; e.g. equal pay, the ordering of a special plan to correct past practice can only be implemented at monumental cost to the Canadian public. ... If such an amendment is considered, it must as a minimum include a statutory limit on retroactivity; e.g. adjustment retroactive to the date of the complaint."

# 45.: We are opposed to empowering the Tribunal to make orders such as injunctions. This type of order should be left to the courts. We note the generally-held view which Justice Canada and the Courts have expressed with respect to injunction orders sought in the area of strike activity - to the effect that an injunction order is an extreme remedy issued on the basis of very stringent and exacting requirements. Such a power, if improperly handled, could produce chaotic and very damaging results (e.g. in the equal pay area).

# 49.: We are opposed to this proposed amendment (ref. comments on D.R. # 26).

# 54.(30): We assume that this recommendation should refer to paragraph 13(1)(b) of the PSSRA (which places an upper age limit on eligibility for membership on the PSSRB), not 13(1)(d). If so, we have no problem with this recommendation; if not, we are opposed to any proposed amendment to PSSRA 13(1)(d) as this would raise a conflict of interest that could seriously damage the impartiality of the Public Service Staff Relations Board.

The discussion on publicizing complaints and settlements which appears in paragraphs 38 and 39 has not been reflected in the detailed recommendations. The Staff Relations Branch supports the view put forward in the first part of paragraph 39; i.e., that the concern in this issue is with protecting the rights of the respondent. The CHRA should be amended to preclude the Commission from disclosing or confirming information concerning complaints or investigations until a decision has been rendered.

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