



## MATERNITY AND PARENTAL BENEFITS

## RECOMMENDATIONS

1. We recommend that Parliament amend the Unemployment Insurance Act to recognize a two-tier system of benefits relating to childbirth:

the first tier (maternity benefits), to be available to women only, during late pregnancy and the period following birth, and

the second tier (parental benefits), to be available to either or both parents, during the period following maternity leave.

2. We recommend that parental benefits (for both natural and adoptive parents) under the Unemployment Insurance Act be available to either or both parents, the total amount of benefits provided not to exceed the maximum available to one parent.
3. We recommend that no distinction be made between the qualifying periods for regular benefits and for special benefits under the Unemployment Insurance Act and that the Act be amended so that the current eligibility requirement for regular benefits applies in respect of all benefits.
4. We recommend that section 22(3) of the Unemployment Insurance Act be amended to remove the present 15-week aggregate benefit limit so that the availability of sickness benefits is separate and distinct from any maternity, adoptive or parental benefits to which a person may be entitled.

## RESPONSE

- Maternity and adoptive or parental benefits are only one element of a far-ranging scheme. As a consequence, rather than consider changes to these benefits in isolation, the Government believes that its response should await consideration of the recommendations of the Commission of Inquiry appointed on July 4, 1985, to study the entire Unemployment Insurance program. A report is due in the first half of 1986. Meantime, the Subcommittee's recommendations will be considered by the Commission of Inquiry.

## RECOMMENDATION

5. We recommend that maternity leave provisions for employees under federal jurisdiction, including the Armed Forces and public service employees not covered by collective agreements, be brought into line with the provisions of the Canada Labour Code.

## RESPONSE

The Government agrees that maternity leave provisions for employees under federal jurisdiction should be as uniform as possible, subject to special employment needs. At the present time, there is one set of maternity leave provisions for all public service employees for whom the Treasury Board is the employer, whether or not they are represented in the collective bargaining process. These provisions, together with provisions

for leave without pay for the care and nurturing of pre-school-aged children, are more generous than comparable provisions of the Canada Labour Code.

The Canadian Armed Forces have been examining possible changes to their maternity leave provisions, but are awaiting the reports of the Commission of Inquiry on Unemployment Insurance and the National Task Force on Child Care before making final decisions. Both reports are expected to make recommendations which could affect the design of these provisions.

The Royal Canadian Mounted Police are now in the process of amending their maternity leave provisions to more closely reflect those of the Public Service.

## MANDATORY RETIREMENT

## RECOMMENDATION

6. We recommend that mandatory retirement be abolished by
- a) amending the Canadian Human Rights Act so that it is no longer a defence to a complaint of age discrimination that an employee who is forced to retire has reached the "normal age of retirement"; and
  - b) amending the Canadian Human Rights Act so that it is no longer a defence to a complaint of age discrimination that an individual whose membership in an employee organization is terminated has reached the "normal age of retirement."

## RESPONSE

The Government agrees in principle with this recommendation.

However, since abolishing mandatory retirement will have an impact on labour relations in the private sector, the Government will consult with private sector employers and employee organizations before taking any action, in order to determine the most effective way to implement the Subcommittee's proposal.

Many collective agreements either refer directly to a retirement age or, more commonly, refer to stipulations of a company pension plan which specify an age of retirement. Most of these plans are set up under legislation that will also have to be revised to bring about maximum individual choice in retirement decisions. Consequently, to prevent any undue hardship, the Government would accompany implementation of the proposal with transitional rules that would ensure the orderly abolition of mandatory retirement in the private sector.

## RECOMMENDATION

7. We recommend that those provisions of the Public Service Superannuation Regulations providing for mandatory retirement at age 65, as well as comparable regulations affecting public servants who do not contribute to the Superannuation Account, be revoked.

## RESPONSE

The President of the Treasury Board will immediately ask the Treasury Board to revoke both:

- a) the provisions of the Public Service Superannuation Regulations which provide for mandatory retirement at age 65 for contributors under the Public Service Superannuation Act; and
- b) corresponding provisions in the Non-Contributor Retirement Regulations.

Treasury Board hopes to establish a system to monitor the impact of the removal of mandatory retirement in a number of areas of personnel management and human resources and to provide data for use in any studies that are needed in future on this issue.

## RECOMMENDATION

8. We recommend that the Canadian Human Rights Act be amended so that it applies to all mandatory retirement policies embodied in legislation, regulations or orders.

## RESPONSE

The Government agrees in principle. This will be carried out as part of the general review of the Act which will include a re-examination of the defences available under the Canadian Human Rights Act.

The only defence now available is the one concerning bona fide occupational requirement (BFOR). The concept of BFOR may be applied where it can be established that the age limitation is reasonably necessary to assure efficient and economical performance of the job without endangering the employee, fellow employees or the general public.

But the concept of BFOR does not necessarily include all the kind of justifications that may nonetheless provide a basis for a valid defence under section 1 of the Charter.

The Government agrees with the Parliamentary Subcommittee when it notes that some exceptions, in addition to BFORs, might be necessary to prevent undue hardship as a result of a general prohibition of mandatory retirement.

Therefore, in conducting its review, the Government will identify any possible case such as the Canadian Forces where mandatory retirement could be justified under the Charter and decide how these exceptions will be dealt with in the Canadian Human Rights Act.

Note: It is the view of the Department of National Defence that there should be no agreement with the recommendation to repeal the defences for mandatory retirement ages because of the effect this would have on the retirement policies of the Canadian Forces. In their view, the enactment of a legislative provision to exempt the Canadian Forces from the abolition of mandatory retirement could itself be subject to a challenge under the Charter which might result in the Canadian Forces having to abolish mandatory retirement without ever having the opportunity to defend their retirement policies in a court under the Charter. The Department of Justice however, believes there is little risk that such a challenge would be successful.

## RECOMMENDATION

9. We recommend that Parliament and the Government of Canada adopt measures to facilitate flexible retirement, so that individuals will have a greater degree of choice in the timing of their retirement, to complement the abolition of mandatory retirement.

## RESPONSE

The Government is committed to policies facilitating flexible retirement. A number are already in place, and the Government will continue to seek ways to provide for flexible retirement for all employees.

Federal and provincial ministers have agreed on a number of proposed amendments to the Canada Pension Plan (CPP), including proposals to provide for actuarially-reduced retirement benefits as early as age 60 and actuarially-increased benefits for those choosing to start receiving them as late as age 70. While a consensus on this amendment has been reached in principle, it should be noted that a change of this nature to the CPP requires the approval of two-thirds of the provinces having two-thirds of the population of Canada in addition to the approval of Parliament. It is hoped that there will be amending legislation before the House in 1986 with an implementation date of January 1, 1987.

Federal public service pension plans already contain certain of the measures suggested. For example, the statute covering the largest groups, the Public Service Superannuation Act, provides for unreduced pensions at age 55 for those with 30 years of service or at age 60 for those with 5 years of service, as well as reduced pensions as early as age 50. There is also a feature which allows for continued accrual of pension benefits as long as the contributor remains in the workforce.

Within the overall context of public service pension reform, further consideration will be given to other measures which might be introduced to facilitate flexible retirement. This will require consultation with employees and various decision-making authorities.

## SEXUAL ORIENTATION

## RECOMMENDATION

10. We recommend that the Canadian Human Rights Act be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds, which are race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, and conviction for an offence for which a pardon has been granted.

## RESPONSE

The Government is committed to the principle that all Canadians have an equal opportunity to participate as fully as they can in our society; no one should be denied opportunities for reasons that are arbitrary or irrelevant. In particular, persons should not be excluded from employment opportunities for reasons that are irrelevant to their capacity and ability to do the job.

The Government believes that one's sexual orientation is generally irrelevant to whether one can perform a job or use a service or facility. On this basis, the Government will ask Parliament to amend the Canadian Human Rights Act, making sexual orientation a prohibited ground of discrimination. As with all prohibited grounds of discrimination in this Act, legitimate distinctions are permissible if they are based on a bona fide occupational requirement or have a bona fide justification.

After careful consideration, the Government of Canada has decided that the Canadian Armed Forces and the Royal Canadian Mounted Police will be exempted from this amendment, as discussed in the response to recommendation 11.

## RECOMMENDATION

11. We recommend that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the Canadian Human Rights Act as amended to prohibit discrimination on the basis of sexual orientation.

## RESPONSE

Canadian Armed Forces

The Canadian Armed Forces fully support the principles underlying the equality rights set out in section 15 of the Canadian Charter of Rights and Freedoms. Indeed a fundamental precept of effective military leadership has always been respect for the individual, concern for the welfare of members, and fairness and impartiality in dealing with people. The Canadian Forces have an enviable record in ensuring that differentiation involving people is restricted solely to those limitations that are necessary in the interests of the security of Canada.

The Canadian Forces policy concerning sexual orientation has been carefully and thoroughly examined in terms of section 15 of the Charter. The experience and policies of other democratic societies were sought and carefully considered. This examination showed that these nations also have been unable to find a means of maintaining the effectiveness of their armed forces without limitations concerning sexual orientation.

Because the review was conducted in terms of the Canadian Charter of Rights and Freedoms, the Canadian Forces also had to consider the effects of any change in policy on the rights of current members. The examination raised serious concerns as to the infringement of the right to privacy of other members, due to the particular conditions inherent in military service, and which could not be accommodated without impairing the capability of the Canadian Forces.

The considerations that gave rise to this issue must be balanced against the potential effects on the rights of other members, and on the ability of the Canadian Forces to contribute to the vital national objective of ensuring the security of Canada.

It is therefore the conclusion of this Government that at the present time it is reasonable to continue the current policy of imposing limitations concerning the sexual orientation of a member.

#### RCMP

It is also the conclusion of this Government that at the present time it is reasonable to continue the current policy of imposing limitations concerning the sexual orientation of a regular member of the RCMP.

Note: The RCMP and DND have serious concerns about their ability to integrate homosexuals and lesbians. They believe that discipline and morale problems, with a resulting decrease in the efficiency of the Canadian Forces and the Police, will occur if this recommendation is accepted. The Solicitor General is of the opinion that any decision on this issue with respect to the RCMP should be made by Cabinet. The Department of National Defence is opposed to adding sexual orientation as a prohibited ground of discrimination and is concerned that the exemption will be the focus of political controversy and legal challenges under the Charter.

#### RECOMMENDATION

12. We recommend that the federal government security clearance guidelines covering employees and contractors not discriminate on the basis of sexual orientation.

#### RESPONSE

Sexual orientation is not a ground for denial of a security clearance, rather, the criteria applied are loyalty to Canada and reliability.

#### RECOMMENDATION

13. We recommend that the Criminal Code be amended to ensure that the minimum age or ages at which private consensual activity is lawful be made uniform without distinction based on sexual orientation.

#### RESPONSE

The Minister of Justice will give careful consideration to the possibility of amending the Criminal Code to ensure that the minimum age or ages at which private consensual activity is lawful be made uniform without distinction based on sexual orientation.

Both the Report of the Committee on Sexual Offences Against Children and Youths (Badgley Committee) and the Report of the Special Committee on Pornography and Prostitution (Fraser Committee) suggested that since the age of majority in most provinces is 18, this would be an appropriate uniform age of consent. Department of Justice officials are studying these recommendations and, following consultation with provincial governments and private sector groups, the Minister will announce the Government's response to them.

## RECOMMENDATION

14. We recommend support in principle for Bill C-225 and urge the Government to enact legislation reflecting the principle of the Bill as outlined in this Committee's recommendations.

## RESPONSE

As outlined in the response to recommendation 10, the Government supports the addition of sexual orientation to the list of prohibited grounds of discrimination in the Canadian Human Rights Act, as proposed in Bill C-225. The Government will bring forward legislation to provide for this, among other amendments to this Act.

## MARITAL OR FAMILY STATUS

## RECOMMENDATION

15. We recommend that the Income Tax Act be amended to extend the meaning of the words "spouse" and "married person" and similar expressions to include a common law spouse, and the word "marriage" to include a common law relationship, so that the same tax treatment is afforded taxpayers in established common law relationships as now applies to taxpayers who are legally married.

## RESPONSE

The Government does not feel that it is possible to amend the Income Tax Act at this time.

At present, the Income Tax Act makes many distinctions based on marital status. There are benefits conferred upon legally married spouses, such as the spousal deduction, inter-spousal transfers of interest, dividends, pension and disability deductions, capital gains roll-overs and a deduction for a spousal registered retirement savings plan.

The Act also includes provisions that place married persons at a disadvantage vis-à-vis single persons, such as the non-arm's length status of spouses and the income attribution rules that prevent the splitting of income. Also, there are certain benefits under the Act that are normally available to all individuals but may be denied an individual who is legally married because the benefit is available only to one spouse (e.g. one principal residence).

The impediment to extending equal treatment to common law spouses is that Revenue Canada would be unable to administer a definition of common law spouse with a high degree of accuracy. If a provision of the Income Tax Act is not subject to proper verification, it will be impossible to apply it fairly and it will be open to abuse. This in itself will create unfairness.

The problem with a definition of common law spouse from the viewpoint of the Income Tax Act is that such a relationship must be identifiable as a common law relationship as soon as it begins -- not just after it has stood the test of time.

Characterization of a relationship as a common law relationship could not depend on a voluntary statement of the parties but must be based on a definition capable of precise application. To leave such a characterization to the parties concerned could create an unfairness to legally married spouses.

Therefore, unless a definition of a common law relationship can be developed that can be administered with a high degree of efficacy and fairness, the present distinctions in the Income Tax Act based on marital status appear to be justifiable.

## RECOMMENDATION

16. We recommend that when benefits are conferred or obligations imposed upon partners in a legal marriage by federal law or policies, such benefits and obligations apply in a similar manner to common law spouses.

## RESPONSE

Common law relationships already carry the same benefits and obligations as legal marriages in a number of federal statutes, regulations and policy guidelines. The major public service pension plans, public service group insurance plans and some employment-related assistance programs recognize common law spouses. In addition, benefits are payable to common law spouses under the Canada Pension Plan and the Old Age Security Act. These provisions provide protection for those in common law relationships.

The Government is committed to the preservation of marriage and the family unit. In recognition of the differences between legal marriages and common law relationships, and in recognition of the wishes of those who have chosen not to have a legal marriage, the Government does not agree that wherever benefits and obligations are provided for legally married people, those in common law relationships should be included.

## RECOMMENDATION

17. We recommend that a consistent definition of common law relationships be incorporated in all federal laws and policies that recognize such relationships, and for this purpose, we recommend that the definition require that the parties be of the opposite sex, reside continuously with each other for at least one year, and represent themselves publicly as husband and wife.

## RESPONSE

Where federal laws and policies recognize common law relationships, a consistent definition would be desirable. However, there may be problems in finding a definition that is appropriate in all cases. In pension law, it is necessary to ascertain the relationship of the parties for a fixed period of time in the past, but that would not be suitable for determining who should be entitled to ongoing benefits -- under the Foreign Service Directives, for example. Some federal laws such as the Income Tax Act and the Government Employees Compensation Act must use provincial definitions of common law spouse in order to be consistent with other, similar benefits provided and obligations imposed in particular provinces.

It may be necessary to vary the definition for different classes of benefits and obligations - i.e., pension and insurance, taxation and ongoing benefits such as moving expenses and health benefits. This is an area that requires further consideration. Where additional requirements are added to the definition there should be valid reasons for it.

Before adopting new definitions of common law relationships, the Government will consult with provincial authorities about the inter-relation between federal and provincial laws and programs.

Where changes are made to federal laws and policies to recognize common law relationships, care will be taken to protect the rights of legal spouses.