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Cabinet Minutes

Procès-verbal du Cabinet

(Revised Pages)

(Pages révisé)

A meeting of the  
Cabinet was held in Room  
323-S, House of Commons,  
on Thursday, February 27,  
1986 at 9:30 a.m.

Une réunion du Cabinet a eu  
lieu dans la pièce 323-S,  
Chambre des communes, le  
jeudi 27 février 1986 à  
9h30.



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156

Serial #  
N° de série 5-86CBM

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Cabinet Minutes

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Procès-verbal du Cabinet

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jeudi 27 février 1986 à  
9h30.

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Present

The Prime Minister  
(Mr. Mulroney)  
in the Chair,  
The Minister of Veterans  
Affairs  
(Mr. Hees),  
The Secretary of State  
for External Affairs  
(Mr. Clark),  
The Minister of  
Employment and  
Immigration  
(Miss MacDonald),  
The Deputy Prime Minister  
and Minister of National  
Defence  
(Mr. Nielsen),  
The Minister of Justice  
and Attorney General of  
Canada  
(Mr. Crosbie),  
The Minister of National  
Revenue  
(Mr. MacKay),  
The Minister of  
National Health and  
Welfare  
(Mr. Epp),  
The President of the  
Queen's Privy Council  
for Canada  
(Mr. Hnatyshyn),  
The Minister of Indian  
Affairs and Northern  
Development  
(Mr. Crombie),  
The President of the  
Treasury Board  
(Mr. de Cotret),  
The Solicitor General  
of Canada  
(Mr. Beatty),  
The Minister of Finance  
(Mr. Wilson),  
The Associate Minister of  
National Defence  
(Mr. Andre),  
The Minister of State  
for Science and  
Technology  
(Mr. Siddon),  
The Minister of State  
(Canadian Wheat  
Board)  
(Mr. Mayer),  
The Minister of Labour  
(Mr. McKnight),  
The Minister of State  
(Immigration)  
(Mr. McLean),  
The Minister of the  
Environment  
(Mr. McMillan),

Etaient présents

Le Premier ministre  
(M. Mulroney)  
Président,  
Le ministre des Affaires  
des anciens combattants  
(M. Hees),  
Le Secrétaire d'État aux  
Affaires extérieures  
(M. Clark),  
Le ministre de  
l'Emploi et de  
l'Immigration  
(Mlle MacDonald),  
Le Vice-premier ministre  
et ministre de la Défense  
nationale  
(M. Nielsen),  
Le ministre de la Justice  
et procureur général du  
Canada  
(M. Crosbie),  
Le ministre du Revenu  
national  
(M. MacKay),  
Le ministre de la Santé  
nationale et du Bien-être  
social  
(M. Epp),  
Le président du Conseil  
privé de la Reine pour le  
Canada  
(M. Hnatyshyn),  
Le ministre des Affaires  
indiennes et du Nord  
canadien  
(M. Crombie),  
Le Président du conseil  
du Trésor  
(M. de Cotret),  
Le solliciteur général  
du Canada  
(M. Beatty),  
Le ministre des Finances  
(M. Wilson),  
Le ministre associé de la  
Défense nationale  
(M. Andre),  
Le ministre d'Etat chargé  
des Sciences et de la  
Technologie  
(M. Siddon),  
Le ministre d'État  
(Commission canadienne du  
blé)  
(M. Mayer),  
Le ministre du Travail  
(M. McKnight),  
Le ministre d'État  
(Immigration)  
(M. McLean),  
Le ministre de  
l'Environnement  
(M. McMillan),

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The Minister of Energy, Mines and Resources  
(Miss Carney),  
The Minister of State (Small Businesses)  
(Mr. Bissonnette),  
The Secretary of State of Canada  
(Mr. Bouchard),  
The Minister of State (Youth)  
(Mrs. Champagne),  
The Minister of Consumer and Corporate Affairs  
(Mr. Côté),  
The Minister of State (Mines)  
(Mr. Layton),  
The Minister of State (Finance)  
(Mrs. McDougall),  
The Minister for External Relations  
(Mrs. Vézina),  
The Minister of Supply and Services  
(Mr. McInnes),  
  
The Minister of State for Science and Technology  
(Mr. Oberle).

Also Present

(Prime Minister's Office)

The Secretary to the Cabinet  
(Mr. P. Tellier)

The Deputy Secretary to the Cabinet (Operations)  
(Mr. G. Shortliffe)

Secretary

Mr. D. Broadbent  
(Privy Council Office)

Le ministre de l'Énergie, des Mines et des Ressources  
(Mlle Carney),  
Le ministre d'État (Petites entreprises)  
(M. Bissonnette),  
Le secrétaire d'État du Canada  
(M. Bouchard),  
Le ministre d'État (Jeunesse)  
(Mme Champagne),  
Le ministre de la Consommation et des Corporations  
(M. Côté),  
Le ministre d'État (Mines)  
(M. Layton),  
Le ministre d'État (Finances)  
(Mme McDougall),  
Le ministre des Relations extérieures  
(Mme Vézina),  
Le ministre des Approvisionnement et Services  
(M. McInnes),  
Le ministre d'Etat chargé des Sciences et de la Technologie  
(M. Oberle).

étaient aussi présents

(Cabinet du premier ministre)

Le secrétaire du Cabinet  
(M. P. Tellier)

Le sous-secrétaire du Cabinet (Opérations)  
(M. G. Shortliffe)

Secrétaire

M. D. Broadbent  
(Bureau du Conseil privé)

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Report on Supplementary Estimates  
(C) 1985-86  
(including reference to public service  
labour relations)  
(4-0079-86RD(02)(R))

Rapport sur le Budget des dépenses  
supplémentaire (C) de 1985-1986  
(et allusion aux relations de travail  
dans la Fonction publique)  
(4-0079-86RD(02)(R))

Prior to tabling Supplementary Estimates in the House of Commons, the President of the Treasury Board reported on their highlights and on related matters.

Mr. de Cotret began by announcing that a tentative wage settlement had been reached with the Public Service Alliance. Its terms - a three year agreement with wage increases averaging 3.5% p.a. - were favourable to the point that the union might have some difficulty securing ratification by its members. It was, then, important for the government to adopt a modest and statesmanlike position without any innuendo of having secured a victory over the union.

With respect to the Supplementary Estimates, Mr. de Cotret noted that they totalled \$1.6 billion and involved an additional 352 person years. Estimates for 1985/86 would total \$106.8 billion net of repayments and, with the lapses that had been directed, expenditures would be held to less than \$104 billion.

The Cabinet authorized the tabling of 1985-86 Supplementary Estimates (C) on March 4, 1986.

Le Cabinet autorise le dépôt du Budget des dépenses supplémentaire (C) de 1985-1986 le 4 mars 1986.

The 1986 Budget  
(6-0064-86CR(01)(NSD))

Le Budget 1986  
(6-0064-86CR(01)(NSD))

The Minister of Finance was invited to present a report on the reaction to his Budget.

Mr. Wilson circulated a paper (attached to this minute) for review at the meeting. It highlighted the key strengths and perceived weaknesses in the Budget. Picking up the points in this document and relating them to post-Budget consultations he had held with major interest groups, Mr. Wilson summarized the principal concerns as:

- There was disbelief on some of the main numerical assumptions in the Budget - 9½% interest rates and US\$22.50 for oil in particular.

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- There was uncertainty about the Program Review study team reports; did these herald more cuts?
- The assertion that the attack on the deficit was based on 70% expenditure cuts and 30% tax increases was being questioned. The position was that this ratio applied to a period of five years and included measures taken last November. The credibility of this position was being questioned because tax increases were indeed greater than expenditure cuts in the February Budget.
- Preliminary reactions suggested that the Business Transfer Tax had been better received than a Value Added Tax would have been but that the full significance of the budgetary corset applied to Canada Post had not yet been realized.
- The biggest worry was the pressure on the dollar, which was trading at 71.12¢US, and that interest rates had increased slightly.

In inviting general discussion of the Budget, the Prime Minister remarked that its approach was somewhat equivalent to the Gramm-Rudman Bill seeking to reduce the US deficit. He expressed some concern about oil price assumptions, noting that President Mitterand had told him that France, which imports all its oil, was budgetting on an assumed US\$20 per barrel.

The following were the major points made in subsequent discussion:

1. A Minister said that the Minister of Finance's concern about confusion over the 70/30 'expenditure cut/tax increase' ratio was justified. The Budget increased taxes by \$1.5 billion but cut expenditures by only \$600 million. There was a need for an explanation that all could use to square these figures with the cited 70/30 ratio. It was agreed that the Department of Finance prepare a statement on this issue.
2. Another Minister suggested that while the reaction to the Budget had been quite good, caucus members needed a short, clear statement of why the deficit needed to be reduced and of how this would benefit the average Canadian.
3. Taking up this point, a Minister said that the effect of lowered interest rates on home mortgages had a real impact: a 1% decrease in mortgage rates was worth \$75 per month in the pocket of the average voter. Another Minister observed that a 50¢ a day increase in taxes could be justified in the eyes of the average family if the result was a reduction in mortgage payments of several times that amount.
4. Discussion centred on a major dilemma for the government. Attacks would be made on the Budget from those who believed it was not tough enough and from those who argued it hurt the "little guy". The latter arguments would come from the

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opposition. But the government should recognize that the real danger came from the reaction of the markets and business to the Budget. There should, therefore, be no downplaying of the fact that the Budget contained "tough medicine" because, if the markets did not see the Budget as being as tough as was realistically possible, the economic situation would worsen with higher interest rates following a falling dollar.

- 5. On the other hand, it was observed that the government should be careful not to claim that its approach was more vigorous than that of Gramm-Rudman in the USA. The public had begun to accept that the road to more jobs was through a lowering of the deficit. And, indeed, the government's record in permanent job creation was its major weapon in combatting the Liberals who had forecast massive loss of jobs from the strategy enunciated by the government last year. Nevertheless, it was important to maintain a sense of balance to avoid accusations of taking tougher measures than those being put in place in the USA.
- 6. The sense of the meeting was that the judged success of the Budget would hinge in large part on the reactions of the money markets. The trend of the Canadian dollar would bear careful monitoring and would to a considerable extent determine the emphasis the government should place on the toughness of the medicine, with its longer term benefit for all, versus demonstrated concern for the immediate effects on the lot of the average Canadian.

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TSTRENGTHS AND WEAKNESSES OF BUDGET

The strengths outweigh the weaknesses. But, we must maintain a united, aggressive front, particularly on future social reform.

Real Strengths: The Record, The Achievements

1. An impressive combination of social initiatives in November, May and now - credibility.
2. A substantial package of deficit reduction measures in November, May and now. We hit out \$33.8 billion target and will be below \$30 billion next year. We have a strong 5-year plan to control the growth of the debt- more credibility.
3. Seventy % of deficit reduction through spending reductions.
4. We have a plan - first set out in November 1984. We have followed that plan with determination and consistency. We have performed as we said we would.
5. We are reinforcing government priorities through a selective approach to spending cuts and in our new initiatives.
6. We have an extremely strong record of tax reform through eliminating many unnecessary tax expenditures. We have a game plan for future reform of sales and corporate tax.
7. We are continuing our initiatives on privatization and deregulation.

Perceived Weaknesses

1. Some may perceive the Budget as having too much tax increase.
2. Spending cuts and deficit reduction not enough for business.
3. The proposal on business transfer tax (VAT) will be controversial with some parts of the business community (small business).
4. The dividend tax credit measures will be controversial with investors.
5. The Post Office measures will be controversial with public sector unions and the union movement at large.
6. The measure relating to Defence and ODA will be portrayed as a reversal of our previous positions.
7. The spending reduction plan could be described as "smoke and mirrors" - de Côtret will not have a precise plan on the across the board cuts until mid-March.

Apart from the parliamentary opposition, the real threat comes from business (taxes, not doing enough) and media (probing for weakest points). Over time, there is the threat of growing disillusionment over personal income tax load.

Canadian Sweetener Policy 1986-1990Politique canadienne des édulcorants 1986 à 1990

The Cabinet had for consideration a report (3-0051-86CR(01))(E), February 27, 1986) from the Committee on Economic and Regional Development on a memorandum (3-0051-86MC(01), 4 February 1986) from the Minister of State (Canadian Wheat Board) on a policy affecting domestic sugar beet interests.

The following were the major points made in discussion:

1. Concerns were expressed about the timing of subsidy payments for sugar beet growers so soon after a Budget with tough measures to deal with a difficult economic situation.
2. It was pointed out that the sweetener policy had been in development for over a year in response to long-standing difficulties of the sugar beet industry. There was the strong possibility of an imminent demonstration on Parliament Hill.
3. The sense of the meeting was that the money markets would focus on this subsidy measure as a sign of weakness contradicting the Budget's strong message. Therefore, the policy proposal would be re-tabled in a week's time. In the interim, the Minister of State (Canadian Wheat Board) and the Deputy Prime Minister should seek to resolve their differences on paragraph 3 of the Committee Report that called for limiting the initial announcement to the payment for the 1984 crop year.

Response to the Recommendations in the  
Equality for All Report

Réponse aux recommandations du rapport  
Égalité pour tous

The Cabinet had for consideration reports (3-0008-86CR(03) and CR(05), February 26, 1986) from the Committee on Social Development concerning the government's response, due to be tabled in the House of Commons on March 4, on the Parliamentary Committee recommendations on 'Equality for All'.

The Prime Minister made a major intervention on the proposed response. His main points were:

1. The government had been handed a thorny problem by the Parliamentary committee. With a response due the following week there was little time left to focus on the range of sensitive issues covered by the report.

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- 2. The most difficult problem to deal with was that of sexual orientation.

[REDACTED]

Quebec has had such provisions in legislation for nine years. Nevertheless there was strong disagreement with such a move in caucus, on moral grounds. On such matters of conscience, the Prime Minister said he did not feel it right to ask backbench members of caucus to take a stance they might find morally repugnant. But the facts were simple: about 15% of the population was reportedly of homosexual inclination and it was unthinkable to bring in legislation that would tolerate discrimination against a group of "God's children".

- 3. It was important to take the high road on this issue: to look at the long sweep of history and at the changes in what had become socially acceptable. Leadership brought with it constraints and responsibilities; tolerance within a pluralistic society was not only desirable but essential. The Prime Minister did not wish to open a full debate on this matter (or on the question of women in combat roles in the armed forces). He did not know when legislation would have to be brought forward, but, if it were required, he would allow a free vote as envisaged in the McGrath reforms. He understood and had sympathy for those who opposed non-discriminatory acceptance of homosexuality but felt it important that the government's response be shifted

[REDACTED]

The following were the major points in subsequent discussion:

- 1. It was pointed out that the McGrath reforms sought to reduce the number of matters on which votes were construed to be votes of confidence. This was vastly different from calling a free vote on an issue. It would be prudent to go softly in sending any signal to caucus about a free vote. A better course would be to settle the issue quietly inside caucus and refrain from commentary outside.
- 2. A Minister foresaw some forty caucus members voting against any non-discriminatory provision. The grass roots of the Conservative party would feel that the government had deserted their views. It would be important to ensure that the language of the response did not give an impression that the government's position on the issue was cut and dried in favour of gay rights.
- 3. A Minister acknowledged that it made sense legally to proceed with a non-discriminatory position regarding homosexuals; morally and politically the question was much tougher. While there was clearly no right to discriminate against any of "God's children", gay activities were judged by law and by codes of morality. Just as there was

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no moral justification for withholding compassion in such cases, so there was no right to discriminate. But, in reality, discrimination takes place every day where behaviour is judged morally repugnant. On the political side the problem was that those with fundamentalist views are numerous and conservative by definition. It was too easy to brand their views old fashioned and out of tune with modern society. Such people were chafing under media criticism that they were remnants of a Neanderthal past. The government's response needed to be as sensitive as possible to this situation. Such people must not be made to feel that their views have no worth and are not respected.

In summing up the discussion, the Prime Minister said that he had deliberately not tabled revised wording for this section of the government's response. Rather he asked that the Minister of Justice and the Deputy Prime Minister sort this matter out with the help of PCO and PMO officials so that the government's response could be tabled the following week.

The Cabinet agreed that:

1. a comprehensive response to the recommendations of the Parliamentary Committee be tabled in the House of Commons on March 4, 1986;
2. a statement addressing the Canadian Human Rights Act aspects of the Government's response be approved for incorporation in the introductory preamble to the Government's response; and
3. the Minister of Justice be authorized to make amendments to the text of the response in consultation with concerned Ministers.

Secretary's Note: The introductory preamble, as outlined in Annex 1, and the proposed response, as outlined in Annex 2, contain the amendments noted above.

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ANNEX 1

## THE CANADIAN HUMAN RIGHTS ACT

Many of the recommendations of Equality For All relate to proposed changes to the Canadian Human Rights Act. That is not surprising, since this Act is the main instrument created by the Parliament of Canada to combat discrimination in the federal Government and the federally-regulated private sector. Because the Subcommittee's recommendations regarding the Act appear throughout the report, it is important to describe the framework within which they must be considered.

An overall review of the Canadian Human Rights Act was announced by the Minister of Justice before the Subcommittee tabled its report. This review involves the examination of proposals or ideas for amendments arising not only out of the Subcommittee's report but out of Equality Now! (the Report of the Special Parliamentary Committee on the Participation of Visible Minorities in Canadian Society) and annual reports of the Canadian Human Rights Commission as well as other sources.

**Relationships**

With the coming into force of the equality rights guarantees of the Charter on April 17, 1985, fundamental questions were raised about the interrelationship between the Charter and the Canadian Human Rights Act. The Charter and the Act overlap in part, particularly in relation to Government activities. However, the Act applies to the private sector while the Charter does not. As the Subcommittee suggested, the Act provides the central protection against discrimination by private persons at the federal level. In addition, the Act provides a special mechanism for the investigation and adjudication of complaints. Complaints are investigated by the Canadian Human Rights Commission, an independent agency, and, if they are not settled, can be adjudicated by independent human rights tribunals. The procedures under the Act are readily accessible to Canadians and broadly remedial, encouraging the conciliation and settlement of complaints. The Charter, however, is designed to provide legal redress through the courts to those whose rights have been infringed. One purpose of the review is to ensure that the Act and the Charter are complementary in function and purpose.

The Canadian Human Rights Act and section 15 of the Charter are also different in other respects. Unlike the Charter, the Act applies only to a number of specific areas -- that is, employment; the provision of goods, services, facilities and accommodations customarily available to the general public; and the provision of residential accommodations and commercial premises. The Charter, on the other hand, applies to all laws and all areas of Government activity. In

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addition, the Act contains a closed list of prohibited grounds of discrimination which Parliament has singled out for special attention while the Charter contains an open-ended list. The list of prohibited grounds of discrimination in the Act may be expanded by Parliament, but the courts will decide which unenumerated grounds of discrimination will be recognized under the Charter.

#### All Grounds

A fundamental question is raised as to whether the Canadian Human Rights Act must contain all grounds of discrimination prohibited by the Charter. This question will be given careful consideration as part of the review.

The Government believes that there are situations where it is important to take into consideration important public and social interests which may not always be recognized under the Canadian Human Rights Act. The Charter does this by acknowledging in section 1 that reasonable limits may be established on Charter rights, including the equality guarantees. The Act contains no general provision like this, which means there may be legitimate policies or programs that might be upheld under the Charter equality guarantees, but not under the Act. As a consequence, careful consideration must be given to ensuring that any changes to the Act recognize these interests.

As part of this review, careful consideration is being given to issues relating to mandatory retirement, sexual orientation, primacy of the Canadian Human Rights Act over other laws, systemic discrimination, reasonable accommodation, political belief and criminal charge or conviction. Consideration is also being given to a variety of other substantive reforms, to functional reforms affecting such matters as the remedial powers of human rights tribunals, and to reforms designed to ensure fairness for all parties. It is expected that this review will be completed in 1986.

#### Independent Commission

Some of the Subcommittee's recommendations were directed to the Canadian Human Rights Commission, which is responsible for the administration and enforcement of the Canadian Human Rights Act. The Commission functions independently of the Government, so the responses to these recommendations reflect the views of the Commission.

The Government will approach the Canadian Human Rights Act on the same broad basis as the Subcommittee did, guided by the letter and spirit of the equality guarantees of the Charter. While not all of the changes suggested by the Subcommittee might be required by section 15, the Government will give careful consideration to the recommendations, keeping in mind the principle -- as expressed in section 2 of the Canadian Human Rights Act -- that "every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have".

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ANNEX 2

## 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 part 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. In the 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.

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## 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 that could affect the design of these provisions.

The RCMP is now in the process of amending its 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, subject to the comments made in the response to recommendation 8.

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.

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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.

The Government will also work to ensure that the abolition of mandatory retirement will not have an adverse impact upon women, youth and visible minorities who are struggling to gain equal opportunity in the workplace.

## 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 it makes available.

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

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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 justifications that may provide a basis for a valid defence under section 1 of the Charter.

The Government agrees with the 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 its review, the Government will identify any possible cases 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.

## 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 Parliament 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 pensions as early as age 55 for those with 30 years of service or more and as early as age 60 for those with at least five years of service, which are not actuarially-reduced, as well as reduced pensions as early as age 50. It also allows continued accrual of pension benefits as long as the contributor remains in the workforce, subject to maximum accrual of 35 years of pensionable service.

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

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## 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.
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

The Government recognizes that the issue of sexual orientation addresses some of the most difficult moral and religious concerns of Canadians. There is no simple manner of reconciling deeply felt views.

Though fully cognizant of the social dilemmas that the issue raises, 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 irrelevant to whether one can perform a job or use a service or facility. The Department of Justice is on the view that the courts will find that sexual orientation is encompassed by the guarantees in section 15 of the Charter. The Government will take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction.

## 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.

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## RECOMMENDATION

13. We recommend that the Criminal Code be amended to ensure that the minimum age or ages at which private consensual sexual activity is lawful be made uniform without distinction based on sexual orientation. (This recommendation does not pertain to existing sexual assault offences in the Criminal Code.)

## 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 sexual 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

See the response to recommendations 10 and 11.

## 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 as recommended by the Subcommittee.

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.

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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 to only 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 a common law relationship would have to be identifiable 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 would have to 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 if the voluntary statement were untrue.

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

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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.

While the report did not make a formal recommendation addressing the issue of distinctions in federal laws between those in a marriage or a common law arrangement and other individuals, it did suggest that such legislation be reviewed. For instance, it has been argued that it may no longer be appropriate in all situations to assume that a family of two or more wage-earners represents a single economic unit. The Government is aware of these issues and will take them into account in any policy review.

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 - that is, 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.

Before adopting new definitions of common law relationships, the Government will consult with provincial authorities about the interrelationship of 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.

## EQUALITY ISSUES IN PENSIONS

## RECOMMENDATION

18. We recommend that section 56 of the Canada Pension Plan be amended so that surviving spouse's benefits are awarded without reference to disability, age or family status.

## RESPONSE

The original rationale behind the eligibility criteria governing the payment of Canada Pension Plan (CPP) survivor benefits reflected the assumption that the older the widow was at the time of the contributor's death, the less would be her chances of finding a paying job and supporting herself or of remarrying. Consequently, older women would require financial assistance when their husbands died, and benefits were discontinued on remarriage. Similarly, the presence of dependent children or ill health would make it difficult for a widow to provide for herself. At the time, legislators felt that these provisions would ensure larger benefits to those surviving spouses generally regarded as being in greater financial need.

This rationale reflects the social norms of the early 1960s when the growth in the labour force participation rate of women had barely begun to make itself felt and when the traditional family with only one wage-earner was prevalent. (Note: Until 1975, survivor benefits were payable to widows only.)

The Government recognizes, however, that social programs must evolve to reflect changing social conditions. A number of proposals to amend the current survivor benefit provisions under the CPP have been put forward. Consensus has been reached on continuation of benefits on remarriage, but there is no widespread agreement on the best way to deal with the present age-based structure of pre-retirement survivor benefits. As a result, in 1983, the Parliamentary Task Force on Pension Reform recommended further study. More recently, the federal Government has been discussing with the provinces a number of improvements to CPP benefits, including provisions to continue survivor benefits on remarriage and to provide pre-retirement survivor benefits that would not be affected by the age of the survivor. It is the intention of the Government to work with the provinces to find an acceptable consensus on this issue.

It should be noted that the proposed changes may require, in accordance with the CPP legislation, that a three-year notice of intention be tabled in Parliament. Amendments to the CPP require the consent of two-thirds of the provinces having two-thirds of the Canadian population as well as of Parliament.

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## RECOMMENDATION

19. We recommend that federal superannuation plans and other employer pension plans under federal jurisdiction be required to provide benefits for surviving spouses of deceased contributors without distinctions that would offend section 15 of the Charter, whether the contributing spouse dies before or after retirement.

## RESPONSE

Except as dealt with under recommendations 20, 21 and 22, the provisions of federal superannuation statutes at present do not:

- a) base eligibility for a surviving spouse's pension on any of the listed grounds in section 15, directly or indirectly; or
- b) make a distinction in eligibility for an amount of such a pension on the basis of whether the contributing spouse dies before or after retirement.

## RECOMMENDATION

20. We recommend the repeal of provisions of the Canada Pension Plan and federal superannuation plans requiring that the benefits to which a surviving spouse is entitled terminate when he or she remarries.

The federal and provincial governments have reached a consensus in favour of repealing the provision of the Canada Pension Plan (CPP) that terminates survivor benefits upon remarriage. The Government plans to introduce the necessary legislation in 1986 for implementation effective January, 1987.

Any major changes to the CPP, however, require not only the approval of Parliament but also the consent of two-thirds of the provinces having two-thirds of the Canadian population.

This issue is also being studied as part of the public service pension reform process now taking place. Decisions on specific recommendations can only be made in the context of the entire review.

Recently-tabled amendments to the Pension Benefits Standards Act include a provision prohibiting the termination of a surviving spouse's pension by reason only of the remarriage of that spouse.

## RECOMMENDATION

21. We recommend the repeal of provisions in federal superannuation plans that require that the amount of a benefit to a surviving spouse be reduced where the surviving spouse is 20 or more years younger than the deceased contributor.

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## RESPONSE

This recommendation is being studied as part of the overall review of public service pensions. A decision cannot be made at this time since the design to be chosen for survivor benefits is still under consideration.

## RECOMMENDATION

22. We recommend the repeal of provisions in federal superannuation plans that disentitle a surviving spouse to benefits where the marriage took place after the contributing spouse retired or reached age 60.

## RESPONSE

The Government would not want to commit itself to such a change as it would involve a significant increase in employee and employer costs. Providing benefits as recommended is virtually unknown under private pension plans. However, the public service pension reform study will address the possibility of changes to accommodate spouses who married contributors aged 60 or more or who were already retired.

## RECOMMENDATION

23. We recommend that federal superannuation plans extend surviving spouses' benefits to common law spouses who fall within the definition of a common law spouse (see recommendation 17), in the same manner as benefits are granted to surviving spouses who were legally married to a contributor.

## RESPONSE

The Government will consider, as part of the public service pension reform process, having the criteria for common law spouses spelled out in the statutes, without any added discretionary features about such status. The Government will also consider including such recognition in those federal public service pension statutes where it is not now present.

## RECOMMENDATION

24. We recommend that the value of Canada Pension Plan credits earned during the marriage be split equally between the spouses automatically upon marriage breakdown -- which would include divorce, separation or the termination of a common law relationship -- except when the parties agree otherwise after having received independent legal advice.

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## RESPONSE

In the course of federal-provincial discussions on amendments to the Canada Pension Plan, consensus has been reached to provide for automatic credit-splitting upon divorce and for credit-splitting on application in the event of marriage breakdown and the breakdown of common law relationships and for the sharing of pensions on retirement. As indicated in the response to recommendation 20, the Government will introduce legislation in 1986 to bring this about, subject to approval by two-thirds of the provinces having two-thirds of the Canadian population.

## RECOMMENDATION

25. We recommend that the Spouses Allowance under the Old Age Security Act be replaced with an equivalent benefit that is available without reference to marital status.

## RESPONSE

In 1985, the Government extended the Spouses Allowance Program to encompass all needy widows and widowers aged 60 to 65. This was done in recognition of the needs of this segment of Canadian society. The Government acknowledges that there are other near-elderly persons in need who still do not have the financial protection offered by the Spouses Allowance. However, as was recognized by the all-party Task Force on Pension Reform in 1983, restraint prevents the Government from going further at this time.

## RECOMMENDATION

26. We recommend that provisions in the Canada Pension Plan and federal superannuation plans that allow unmarried surviving children under 25 and in full-time attendance at an educational institution to claim benefits, be amended to permit eligibility regardless of the marital status of the surviving child.

## RESPONSE

The Government intends to amend the Canada Pension Plan to eliminate the criterion of marital status in the consideration of eligibility for childrens' benefits.

In addition, the Government is considering making this change in the eligibility requirements for a child's benefit as part of the public service pension reform review.

## RECOMMENDATION

27. We recommend that Parliament amend the Pension Benefits Standards Act to require that sex-based mortality tables be replaced by unisex mortality tables.

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In addition to the general requirements, there are specific regulatory provisions which address recognized hazards. Recent changes in the information to the women using oral contraceptives is a case in point.

Post-marketing evaluations of drugs take place mostly through the Drug Manufacturers Inspection Program. In addition, various categories of products are reviewed under a number of circumstances such as the reporting of a previously unsuspected health hazard or of evidence of widespread misuse of products.

#### Medical Devices

Health care or hygiene products that fall in the category of medical devices are subject to the Medical Devices Regulations under the Food and Drugs Act. These regulations provide for pre-market evaluation of several categories of devices. For example, when certain tampons were found responsible for causing Toxic Shock Syndrome (TSS) a few years ago, the Health Protection Branch instituted pre-market review for all new products of this kind.

#### Promotion

Radio and television advertisements of drugs must be cleared by the Department of National Health and Welfare before broadcast. Although print advertisements do not require clearance before publication, they are screened through monitoring of newspapers and magazines.

There are aspects of promotion which do not come under the purview of the legislation, such as tactfulness and good taste. Such issues are usually self-controlled; as social values change, it becomes self-defeating to depict attitudes which are contrary to the views of the general public.

It is the view of the Department of National Health and Welfare that monitoring activities of women's health care and hygiene products is adequate to respond to existing concerns.

#### Research

The Department of National Health and Welfare does provide support in several areas related to women's health, through the National Health Research and Development Program (NHRDP) and other programs.

Under the NHRDP, the Department supports a wide range of applied health activities including specific research projects, for example, in areas related to adolescent pregnancies, breast-feeding, anorexia nervosa and cancer. Forty-nine projects related to women's health were funded in 1983-84 and the same number in 1984-85.

It is, therefore, the view of the Department of National Health and Welfare that research into women's health needs is adequately supported.

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## RECOMMENDATION

77. We recommend that the Canada Elections Act be amended so that spouses and dependent children accompanying Canadian Armed Forces personnel and public servants posted outside Canada are entitled to vote, in general elections, in the electoral district where they declare themselves to be ordinarily resident in Canada. For this purpose, spouses and dependent children should be required to complete a declaration of residence comparable to that currently required of the members of the Forces and public servants whom they accompany outside Canada.

## RESPONSE

The Government agrees with this recommendation, but further consideration must be given to the administrative mechanisms necessary for implementation.

## RECOMMENDATION

78. We recommend that section 32 of the Public Service Employment Act be amended to ensure that no greater limitations are imposed on the political rights of public servants than are necessary to maintain a politically neutral Public Service.

## RESPONSE

The Government agrees with the principle that limitations on the political rights of public servants should be no greater than are necessary to maintain a politically neutral public service. This matter is now the subject of active review and study with the Public Service Commission and the Treasury Board to determine what those limitations should be.

## THE PROCESS OF SECURING EQUALITY

## RECOMMENDATION

79. We recommend that the Canadian Human Rights Act be amended by the addition of a primacy or override clause that will confirm its priority over conflicting federal laws unless they purport specifically to apply notwithstanding the Canadian Human Rights Act.

## RESPONSE

The Government agrees that human rights legislation should in general have primary over other laws. The Supreme Court of Canada stated recently in Winnipeg School Division No. 1 v. Craton that human rights legislation will have primacy over other laws except where there is a "clear legislative pronouncement" to the contrary. The case did not involve the Canadian Human Rights Act. The Department of Justice is conducting a review of the Canadian Human Rights Act, and it is considering whether in light of the Craton

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case, to whether it is necessary to amend the Act. Another factor that will be taken into account is that federal laws are already subject to the equality guarantees of the Charter, which overlaps the protections of the Canadian Human Rights Act. Federal laws that are inconsistent with the Charter are of no force or effect.

## RECOMMENDATION

80. We recommend that the Canadian Human Rights Act be amended so that employers are obliged to make "reasonable accommodation," that is, such special provisions as would not cause undue hardship to the employer, in response to the needs peculiar to those classes of employees that are protected from discrimination by the terms of the Act.

## RESPONSE

The Government agrees in principle that the Canadian Human Rights Act should be amended to incorporate the concept of reasonable accommodation. In light of the recent Supreme Court of Canada decisions in Bhinder and Canadian Human Rights Commission v. Canadian National Railway Company and O'Malley and Ontario Human Rights Commission v. Simpsons-Sears Limited, further consideration will be given to the best way of amending the Canadian Human Rights Act to include the concept of reasonable accommodation.

81. We recommend that the Canadian Human Rights Act be amended to ensure that it covers systemic discrimination, that is, practices that may not be obviously discriminatory in their formulation or nature but that, in their result, have an adverse impact on those who are protected from discrimination by the Act.

## RESPONSE

In its decision on December 17, 1985, in Bhinder and Canadian Human Rights Commission v. Canadian National Railway Company, the Supreme Court of Canada held that adverse effect (or systemic) discrimination is prohibited by the Canadian Human Rights Act. Thus, there is no need for the amendment proposed by the Subcommittee. But, as suggested by the Subcommittee, the Government will, as part of the review of the Canadian Human Rights Act being conducted by the Department of Justice, consider amending the Act so that it states expressly that systemic discrimination is prohibited.

## RECOMMENDATION

82. We recommend that the Canadian Human Rights Act be amended to include political belief and criminal conviction or criminal charges as prohibited grounds of discrimination, subject to the usual defences of bona fide occupational requirement and bona fide justification, as applicable.

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RESPONSE

The Government believes there is a need for closer examination of the potential impact of such a change on the private sector as well as on the public sector.

RECOMMENDATION

- 83. We recommend that the Standing Orders of the House of Commons be amended to provide for a Standing Committee on Human Rights with responsibility for overseeing the protection of human rights, including equality rights.

RESPONSE

The Government's recommendations on reform of the House of Commons, announced in October 1985, included a recommendation that the House of Commons establish a Standing Committee on Human Rights. The House of Commons adopted this proposal on February 13, 1986, for a 10-month experimental period.

RECOMMENDATION

- 84. We recommend that the annual report and estimates of the Canadian Human Rights Commission and those portions of the annual reports of any government departments, including the Departments of Justice, Secretary of State, and Employment and Immigration, dealing with human rights and equality rights, including employment equity, be referred to the Standing Committee on Human Rights.

RESPONSE

The Government agrees in principle with the recommendation and will study whether it is feasible to refer detailed portions of estimates and annual reports to different standing committees.

RECOMMENDATION

- 85. We recommend that the Canadian Human Rights Act be amended to provide that the Canadian Human Rights Commission report direct to Parliament.

RESPONSE

It is the practice in Canada for human rights commissions to report to legislative bodies through ministers of the Crown, usually the Minister of Justice or the Minister of Labour. This enables a minister to defend the commission's estimates in Cabinet and before Parliament. It also allows the minister to table the commission's reports and prepare amendments to the human rights legislation.

The absence of conflict and the strict regard for the independence of the Canadian Human Rights Commission indicate that the present system, under which the Commission reports through the Minister of Justice, is satisfactory. The Commission indicated in its 1983 Annual Report that the current system is acceptable.

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TLe Cabinet convient:

1. que soit déposé à la Chambre des communes, d'ici le 4 mars 1986, un document établissant la position à adopter face aux recommandations du Comité parlementaire;
2. qu'une déclaration sur les aspects de la réponse du gouvernement qui touchent la Loi sur les droits de la personne soit approuvée, puis incorporée au texte que servira de préambule à la réponse du gouvernement; et
3. que le Ministre de la Justice soit autorisé à apporter des modifications au texte des réponses après avoir consulté les ministres intéressés.

Note du secrétaire: Le préambule à la réponse et les réponses proposées incorporent des modifications telles qu'indiquée, ci-dessus.

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ANNEXE 1

## LA LOI CANADIENNE SUR LES DROITS DE LA PERSONNE

Dans bon nombre des recommandations qu'il a formulées dans son rapport Égalité pour tous, le Sous-comité propose des modifications à la Loi canadienne sur les droits de la personne. Il n'y a là rien d'étonnant, puisque cette loi est le principal instrument qu'a mis en place le Parlement canadien pour lutter contre la discrimination au sein de l'administration fédérale et dans les domaines du secteur privé qui sont réglementés par le fédéral. Du fait que les recommandations qui concernent cette loi se retrouvent un peu partout dans le rapport, il importe de décrire le cadre à l'intérieur duquel elles doivent être étudiées.

Le ministre de la Justice avait annoncé avant le dépôt du rapport du Sous-comité qu'il serait procédé à un examen d'ensemble de la Loi canadienne sur les droits de la personne. Cet examen permettra au gouvernement d'étudier non seulement les propositions de modification à la Loi canadienne sur les droits de la personne qui ont été formulées dans le rapport du Sous-comité, mais également celles émanant d'autres sources, dont le rapport du Comité spécial parlementaire sur la participation des minorités visibles à la société canadienne, intitulé L'égalité ça presse!, et les rapports annuels de la Commission canadienne des droits de la personne.

**Rapports**

L'entrée en vigueur, le 17 avril 1985, des dispositions de la Charte garantissant les droits à l'égalité a soulevé certains problèmes fondamentaux concernant les rapports entre la Charte et la Loi canadienne sur les droits de la personne. En effet, ces deux textes se recoupent en partie, notamment en ce qui concerne les activités du gouvernement. Toutefois, à la différence de la Charte, la Loi canadienne sur les droits de la personne s'applique au secteur privé. Comme le soulignait le Sous-comité, la Loi canadienne sur les droits de la personne offre la principale protection contre la discrimination pratiquée par des individus dans les domaines de compétence fédérale. Cette loi prévoit en outre des mécanismes permettant de faire enquête sur les plaintes et de les régler. Ainsi, lorsqu'une plainte est déposée, la Commission canadienne des droits de la personne, qui est un organisme indépendant, se charge de faire enquête. À défaut d'un règlement à l'amiable, l'affaire peut alors être soumise à la décision d'un tribunal des droits de la personne, lui aussi indépendant. Il est facile pour les citoyens de recourir à la procédure prévue par cette loi; cette procédure se veut foncièrement réparatrice et favorise le règlement des plaintes par voie d'entente entre les parties. Pour sa part, la Charte vise à permettre aux personnes dont les droits ont été violés d'obtenir réparation devant les tribunaux. L'examen auquel il sera procédé a entre

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autres buts de veiller à ce que la Loi canadienne sur les droits de la personne et la Charte se complètent l'une l'autre, tant du point de vue de leur rôle que de leurs objectifs.

La Loi canadienne sur les droits de la personne et l'article 15 de la Charte diffèrent également à d'autres égards. Ainsi, contrairement à la Charte, la Loi canadienne sur les droits de la personne ne s'applique qu'à un certain nombre de domaines bien précis: par exemple en matière d'emploi, de fourniture de biens, de services, d'installations et de moyens d'hébergement destinés au public, et de fourniture de locaux commerciaux ou de logements. La Charte s'applique quant à elle à toutes les lois de même qu'à tous les domaines d'activité du gouvernement. Par ailleurs, la Loi canadienne sur les droits de la personne énonce de façon précise les motifs de distinction que le législateur a voulu interdire, alors que la Charte prévoit à cet égard une liste non limitative. Le Parlement peut ainsi ajouter des motifs de distinction illicite à la liste établie dans la Loi canadienne sur les droits de la personne. Ce sont toutefois les tribunaux qui décideront lesquels des motifs non prévus par la Charte entreront dans le champ de la prohibition édictée par ce texte.

#### Tous les motifs

Il est essentiel de déterminer si la Loi canadienne sur les droits de la personne doit viser tous les motifs de discrimination qu'interdit la Charte. C'est pourquoi cette question sera étudiée soigneusement dans le cadre de son examen.

Le gouvernement estime qu'il est des situations où il importe de tenir compte des intérêts supérieurs de la société, ce que la Loi canadienne sur les droits de la personne ne fait pas toujours. Or justement, par son article 1, la Charte reconnaît que les droits qu'elle prévoit, dont les droits à l'égalité, peuvent être restreints dans des limites raisonnables. Pour sa part, la Loi canadienne sur les droits de la personne ne contient aucune disposition générale semblable à l'article 1 de la Charte. Dès lors, certains programmes ou certaines politiques risquent d'être jugés valides au regard des dispositions de la Charte relatives aux droits à l'égalité, mais contraires aux dispositions de la Loi canadienne sur les droits de la personne. Il faudra donc veiller à ce que toute modification à la Loi canadienne sur les droits de la personne reconnaisse ces intérêts.

Dans le cadre de la révision en cours, on attache beaucoup d'importance aux questions concernant la retraite obligatoire, l'orientation sexuelle, la protection de la vie privée, la discrimination systémique, l'adaptation raisonnable, les opinions politiques, et les accusations ou condamnations criminelles. On étudie également toute une gamme d'autres réformes de fond, des réformes fonctionnelles portant sur des sujets tels que les pouvoirs des tribunaux des droits de la personne d'ordonner des mesures correctrices, et des réformes de procédure

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destinées à assurer aux parties l'équité et à améliorer le traitement des plaintes. Cet examen devrait prendre fin en 1986.

#### Indépendance de la Commission

Certaines des recommandations du Sous-comité s'adressaient à la Commission canadienne des droits de la personne, qui est chargée de l'application de la Loi canadienne sur les droits de la personne. Cette Commission étant indépendante du gouvernement, les réponses aux recommandations la concernant reflètent ses vues propres.

#### Une large perspective

Le gouvernement abordera l'étude de la Loi canadienne sur les droits de la personne dans une perspective aussi large que celle du Sous-comité, en tenant compte de la lettre et de l'esprit des garanties prévues par la Charte en matière d'égalité. Bien que tous les changements proposés par le Sous-comité ne soient pas forcément tous indispensables pour se conformer à l'article 15, le gouvernement étudiera soigneusement les recommandations formulées, compte tenu du principe - énoncé à l'article 2 de la Loi canadienne sur les droits de la personne - selon lequel tous ont droit à l'égalité des chances d'épanouissement.

#### ANNEXE 2

### LES PRESTATIONS DE MATERNITÉ ET LES PRESTATIONS POUR LE SOIN DES ENFANTS

#### RECOMMANDATIONS

1. Nous recommandons que le Parlement modifie la Loi sur l'assurance-chômage, afin de prévoir à l'égard de la naissance un régime à deux paliers:

Un premier palier qui comporterait des prestations de maternité auxquelles auraient droit les femmes seulement, vers la fin de leur grossesse et pendant la période des couches; et

Un deuxième palier qui comporterait des prestations aux parents et auxquelles auraient droit l'un ou l'autre des parents ou les deux, au cours de la période suivant immédiatement le congé de maternité.

2. Nous recommandons que l'un ou l'autre des parents (tant naturels qu'adoptifs), ou les deux, soient admissibles, en vertu de la Loi sur l'assurance-chômage, à des prestations pour le soin des enfants, dont le total n'excède pas le maximum dont peut bénéficier un parent.

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3. Nous recommandons de ne faire aucune distinction au titre de la période de référence entre prestations ordinaires et prestations spéciales en vertu de la Loi sur l'assurance-chômage et de modifier la Loi de façon à ce que la norme actuelle d'admissibilité applicable aux prestations ordinaires s'applique à toutes les prestations.
4. Nous recommandons de modifier le paragraphe 22(3) de la Loi sur l'assurance-chômage de façon à supprimer la limite totale de quinze semaines, afin que le versement des prestations de maternité, d'adoption ou de soins des enfants, auxquelles toute personne peut avoir droit, intervienne indépendamment du versement des prestations de maladie.

## RÉPONSE

Les prestations de maternité, d'adoption ou de soin des enfants ne sont que l'un des éléments d'un plan de plus grande portée. Ainsi donc, le gouvernement estime qu'il devrait attendre pour donner sa réponse d'avoir pris connaissance des recommandations de la Commission d'enquête nommée le 4 juillet 1985 et chargée d'étudier l'ensemble du programme d'assurance-chômage. Cette commission doit présenter son rapport avant la mi-1986. D'ici là, les recommandations du Sous-comité seront prises en considération par la Commission d'enquête.

## RECOMMANDATION

5. Nous recommandons que les dispositions sur les congés de maternité pour les employées dépendant de la juridiction fédérale, y compris celles des Forces armées et de la Fonction publique non couvertes par les conventions collectives, soient conformes aux dispositions du Code canadien du travail.

## RÉPONSE

Le gouvernement convient que les dispositions sur les congés de maternité pour les employées relevant de la compétence fédérale devraient être aussi uniformes que possible, selon toutefois les besoins particuliers de l'emploi. À l'heure actuelle, il n'existe qu'une seule série de dispositions sur les congés de maternité pour toutes les employées de la Fonction publique dont le Conseil du Trésor est l'employeur, que ces employées soient intégrées ou non dans le processus de négociation collective. Ces dispositions, ainsi que les dispositions sur le congé sans solde pour le soin des enfants d'âge préscolaire, sont plus généreuses que les dispositions comparables prévues dans le Code canadien du travail.

Les Forces armées canadiennes étudient la possibilité de modifier leurs dispositions sur les congés de maternité; toutefois, elles attendent les rapports de la Commission d'enquête sur l'assurance-chômage et du

Groupe de travail national sur le soin des enfants avant de prendre une décision définitive. Ces deux rapports devraient proposer des recommandations qui modifieraient la conception de ces dispositions.

La Gendarmerie royale du Canada modifie, à l'heure actuelle, ses dispositions sur les congés de maternité pour les rendre plus conformes à celles de la Fonction publique.

ANNEXE 2

LA RETRAITE OBLIGATOIRE

RECOMMANDATION

6. Nous recommandons que la retraite obligatoire soit supprimée:
- a) en modifiant la Loi canadienne sur les droits de la personne, afin qu'un employeur ne puisse désormais plus donner comme excuse à un employé, qui se plaint de discrimination fondée sur l'âge, qu'il est obligé de prendre sa retraite parce qu'il a atteint "l'âge normal de la retraite";
  - b) en modifiant la Loi canadienne sur les droits de la personne, afin qu'il ne puisse désormais plus être donné comme excuse à un particulier qui se plaint de discrimination fondée sur l'âge, qu'il a été suspendu d'une association d'employés parce qu'il a atteint "l'âge normal de la retraite".

RÉPONSE

Le gouvernement donne son accord de principe à cette recommandation, sous réserve des remarques formulées dans sa réponse à la recommandation 8.

Toutefois, étant donné que l'abolition de la retraite obligatoire aura une incidence sur les relations du travail dans le secteur privé, le gouvernement consultera les employeurs de ce secteur et les organisations de travailleurs avant d'adopter quelque mesure, afin de déterminer le moyen le plus efficace de mettre en oeuvre la proposition du Sous-comité.

De nombreuses conventions collectives ou indiquent un âge de la retraite ou, plus couramment, font référence aux stipulations d'un régime de pension de l'entreprise, qui précisent un âge de retraite. La plupart de ces régimes sont établis en vertu d'une législation qu'il faudra également modifier afin d'accorder à une personne une latitude maximale en ce qui a trait à sa décision de prendre ou non sa retraite. Par conséquent, afin d'éviter toute contrainte excessive, le gouvernement conjuguera la

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mise en oeuvre de la proposition avec des règles de transition qui assureront la suppression cohérente de la retraite obligatoire dans le secteur privé.

Le gouvernement s'efforcera d'éviter que l'abolition de la retraite obligatoire n'ait un effet négatif sur les femmes, les jeunes et les minorités visibles, qui luttent pour obtenir l'égalité en milieu de travail.

## RECOMMANDATION

7. Nous recommandons que les dispositions du Règlement sur la pension dans la Fonction publique et des règlements analogues affectant les fonctionnaires "non cotisants", qui prévoient la retraite obligatoire à l'âge de 65 ans, soient révoquées.

## RÉPONSE

Le président du Conseil du Trésor demandera immédiatement au Conseil du Trésor de révoquer:

- a) les dispositions du Règlement sur la pension dans la Fonction publique qui prévoient la retraite obligatoire à l'âge de 65 ans pour les "cotisants" aux termes de la Loi sur la pension de la Fonction publique; et
- b) les dispositions correspondantes du Règlement sur la retraite des "non-cotisants".

Le Conseil du Trésor espère établir un mode de surveillance des répercussions de l'abolition de l'âge obligatoire de la retraite dans certains secteurs de la gestion du personnel et des ressources humaines, et fournir les données qui serviront à toute autre étude nécessaire à l'avenir.

## RECOMMANDATION

8. Nous recommandons que la Loi canadienne sur les droits de la personne soit modifiée de façon à s'appliquer à toutes les politiques de retraite obligatoire formulées dans des lois, règlements ou décrets.

## RÉPONSE

Le gouvernement donne son accord de principe à cette recommandation. Elle sera mise en oeuvre dans le cadre de la révision générale de la Loi canadienne sur les droits de la personne, à l'occasion de laquelle seront notamment révisés les moyens de défense que prévoit la Loi.

Le seul argument de défense possible à l'heure actuelle s'articule autour des exigences professionnelles normales. Celles-ci peuvent être invoquées lorsqu'il peut être établi qu'un âge limite est effectivement nécessaire pour assurer l'exécution efficace et économique du travail sans mettre en danger l'employé, ses collègues et le public.

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Cependant, la notion d'exigences professionnelles normales n'inclut pas forcément toutes les justifications qui pourraient être invoquées aux termes de l'article 1 de la Charte.

Le gouvernement est d'accord avec le Sous-comité parlementaire lorsque celui-ci précise que certaines exceptions, en plus des exigences professionnelles normales, pourraient être nécessaires pour éviter toute contrainte excessive par suite de l'interdiction générale de la retraite obligatoire.

Par conséquent, au cours de la révision en cause, le gouvernement déterminera tous les cas, tels que celui des Forces armées, dans lesquels la retraite obligatoire pourrait être justifiée aux termes de la Charte et décidera comment ces exceptions seront traitées dans la Loi canadienne sur les droits de la personne.

## RECOMMANDATION

9. Nous recommandons que le Parlement et le gouvernement du Canada envisagent l'adoption de mesures destinées à diversifier les choix offerts en matière de retraite, parallèlement à la suppression de la retraite obligatoire.

## RÉPONSE

Le gouvernement appuie des politiques destinées à diversifier les choix offerts en matière de retraite. Un certain nombre de ces politiques sont déjà en vigueur et le gouvernement continuera d'envisager des moyens d'accorder à tous les employés le choix du moment de leur retraite.

Les ministres fédéraux et provinciaux se sont entendus sur un certain nombre de modifications qu'il est proposé d'apporter au Régime de pensions du Canada, y compris sur celles prévoyant des rajustements actuariels de ces prestations de retraite, à la baisse à partir de 60 ans et à la hausse pour ceux qui choisissent de commencer à recevoir ces prestations aussi tard qu'à 70 ans. Bien qu'une entente de principe ait été atteinte sur cette modification, soulignons qu'un tel changement exige l'approbation des deux tiers des provinces regroupant les deux tiers de la population du Canada, en plus de l'approbation du Parlement. Nous espérons que la législation modifiée sera déposée en Chambre en 1986 en vue de sa promulgation le 1<sup>er</sup> janvier 1987.

Les régimes de pension de la Fonction publique fédérale comprennent déjà certaines des mesures proposées. Par exemple, la loi qui s'applique au plus grand nombre de fonctionnaires, soit la Loi sur la pension de la Fonction publique, rend admissible à une pension non réduite en fonction des tables actuarielles dès l'âge de 55 ans les personnes comptant au moins 30 ans de service ou dès l'âge de 60 ans celles qui ont au moins cinq ans de service. Une pension réduite peut être versée à partir de 50 ans. Elle autorise également les cotisants à laisser s'accumuler leurs crédits de retraite aussi longtemps qu'ils travaillent, sous réserve de l'accumulation maximale de 35 ans de service ouvrant droit à pension.

Dans le contexte général de la réforme du régime de pension de la Fonction publique, d'autres mesures seront également envisagées en vue de diversifier les choix offerts en matière de retraite. À cet effet, il devra y avoir consultation entre les employés et les autorités compétentes.

## L'ORIENTATION SEXUELLE

## RECOMMANDATION

10. Nous recommandons que la Loi canadienne sur les droits de la personne soit modifiée de façon à ajouter l'orientation sexuelle aux autres motifs de discrimination illicite tels que la race, l'origine nationale ou ethnique, la couleur, la religion, l'âge, le sexe, l'état matrimonial, la situation familiale, la déficience et l'état de personne graciée.
11. Nous recommandons que les Forces armées canadiennes et la Gendarmerie royale du Canada rendent leur politique d'embauche conforme à la Loi canadienne sur les droits de la personne telle que modifiée de manière à faire de l'orientation sexuelle un motif de discrimination illicite.

## RÉPONSE

Le gouvernement reconnaît que la question de l'orientation sexuelle fait appel aux plus grandes préoccupations morales et religieuses de la population canadienne. Il n'y a aucune solution facile qui nous permette de réconcilier des points de vue aussi profondément ressentis.

Bien qu'il se rende parfaitement compte qu'il s'agit là d'une question sociale particulièrement délicate, le gouvernement souscrit au principe que tous les Canadiens et toutes les Canadiennes puissent avoir, en toute égalité, l'opportunité de participer pleinement à la société; nul ne devrait se voir refuser une occasion d'emploi pour des raisons arbitraires ou inopportunes. Plus particulièrement, personne ne devrait se voir refuser une occasion d'emploi pour des raisons autres que la capacité d'accomplir le travail.

Le gouvernement croit que l'orientation sexuelle n'a aucune incidence sur la capacité d'une personne de s'acquitter d'un travail ou d'utiliser un service ou une installation. Le ministère de la Justice estime d'ailleurs que les tribunaux décideront que les dispositions de l'article 15 de la Charte s'appliquent également à l'orientation sexuelle. Le gouvernement prendra donc toutes les mesures nécessaires pour que, dans tous les domaines relevant du fédéral, l'orientation sexuelle soit un motif de distinction illicite.

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## RECOMMANDATION

12. Nous recommandons que les lignes directrices du gouvernement fédéral qui concernent les cotes de sécurité s'appliquant aux employés et entrepreneurs n'établissent pas de distinction fondée sur l'orientation sexuelle.

## RÉPONSE

L'orientation sexuelle ne constitue pas une raison de refus d'une cote de sécurité; les critères adoptés sont plutôt la loyauté envers le Canada et la fiabilité.

## RECOMMANDATION

13. Nous recommandons que le Code criminel soit modifié afin d'assurer que les âges ou âge minimums pour toutes les formes d'actes sexuels consensuels faits en privé soient uniformisés sans distinction fondée sur l'orientation sexuelle. (Cette recommandation ne s'applique pas aux infractions actuelles d'agression sexuelle visées par le Code criminel.)

## RÉPONSE

Le ministre de la Justice étudiera soigneusement la possibilité de modifier le Code criminel afin d'assurer que l'âge ou les âges minimums pour toutes les formes licites d'actes sexuels consensuels faits en privé soient uniformisés sans distinction fondée sur l'orientation sexuelle. Tant le rapport du Comité sur les infractions sexuelles à l'égard des enfants et des jeunes (le Comité Badgley) que le rapport du Comité spécial sur la pornographie et la prostitution (le Comité Fraser) estiment que 18 ans pourrait être, uniformément, l'âge de consentement puisqu'il constitue l'âge de la majorité dans la plupart des provinces. Les fonctionnaires du ministère de la Justice étudient ces recommandations et, après consultation des gouvernements provinciaux et de groupes du secteur privé, le Ministre annoncera la réponse que le gouvernement entend y donner.

## RECOMMANDATION

14. Nous recommandons d'appuyer en son principe le projet de loi C-225 et insistons vivement auprès du gouvernement pour qu'il promulgue une législation reflétant le principe du projet de loi tel qu'exposé dans les recommandations de ce Comité.

## RÉPONSE

Voir la réponse aux recommandations 10 et 11.

## L'ÉTAT MATRIMONIAL OU LA SITUATION DE FAMILLE

## RECOMMANDATION

15. Nous recommandons que la Loi de l'impôt sur le revenu soit modifiée afin d'élargir le sens des mots "conjoint" et "personne mariée" et expressions similaires pour que ceux-ci comprennent les conjoints de fait, et également d'élargir la définition du mot "mariage" afin d'y inclure les unions de fait, de façon que les conjoints de fait soient fiscalisés de la même façon que les personnes mariées.

## RÉPONSE

Le gouvernement n'estime pas qu'il soit possible, à l'heure actuelle, de modifier la Loi de l'impôt sur le revenu, tel que le recommande le Sous-comité.

La Loi de l'impôt sur le revenu contient plusieurs distinctions fondées sur l'état matrimonial. Certains avantages sont accordés aux conjoints légalement mariés, tels que l'exemption de personne mariée, les transferts entre conjoints de déductions d'intérêt, de dividendes et de prestations de retraite et d'invalidité, les transferts au conjoint de biens en capital et la déduction d'un régime enregistré d'épargne retraite pour un conjoint.

La Loi contient également des dispositions aux termes desquelles les personnes mariées sont en position de désavantage par rapport aux célibataires, comme celles sur le statut avec lien de dépendance des conjoints et les règles d'attribution du revenu qui en interdisent le partage. Cette loi prévoit également certains avantages normalement destinés à tous, mais qui peuvent être refusés à une personne légalement mariée car un seul des conjoints peut s'en prévaloir (par exemple, un lieu de résidence principale).

Un obstacle s'oppose au traitement égal des conjoints de fait: Revenu Canada ne pourrait pas vérifier avec certitude l'état de "conjoint de fait". Si une disposition de la Loi de l'impôt sur le revenu ne peut faire l'objet d'une vérification adéquate, il sera impossible de la mettre en application avec équité et elle pourra entraîner des abus. Ceci, en soit, créerait une injustice.

Le problème d'une définition de "conjoint de fait" du point de vue de la Loi de l'impôt sur le revenu est que la relation doit pouvoir être établie comme étant une union de fait dès ses débuts et non pas une fois qu'elle a résisté à l'épreuve du temps.

La caractérisation d'une relation en tant qu'union de fait ne peut pas dépendre d'une déclaration volontaire des parties; il faudrait qu'elle soit fondée sur une

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définition pouvant donner lieu à une application précise. Permettre que cet état soit établi par les parties concernées entraînerait une situation injuste pour les personnes légalement mariées dans les cas où la déclaration volontaire serait fausse.

Ainsi, à moins que ne soit élaborée une définition de l'union de fait qui puisse être appliquée avec précision et équité, il semblerait que les distinctions actuelles de la Loi de l'impôt sur le revenu en fonction de l'état matrimonial soient justifiées.

## RECOMMANDATION

16. Nous recommandons que lorsque des lois et politiques fédérales confèrent des avantages ou imposent des obligations aux personnes légalement mariées, les mêmes avantages et obligations soient étendus de la même façon aux conjoints de fait.

## RÉPONSE

Plusieurs lois, règlements et lignes directrices fédéraux attribuent déjà aux conjoints de fait les mêmes avantages et obligations qu'aux personnes légalement mariées. Les principaux régimes de pension de la Fonction publique, régimes d'assurance collective de la Fonction publique et certains programmes d'aide reliés à l'emploi reconnaissent l'union de fait. De plus, les conjoints de fait perçoivent des prestations dans le cadre du Régime de pensions du Canada et aux termes de la Loi sur la sécurité de la vieillesse. Ces dispositions offrent une protection aux conjoints de fait.

Le gouvernement est en faveur de la préservation du mariage et de la famille. Tout en reconnaissant les différences entre le mariage et l'union de fait, et en respectant le désir des personnes qui ont choisi de ne pas se marier, le gouvernement n'estime pas pour autant que les avantages conférés aux personnes légalement mariées et les obligations qui leur sont imposées doivent être étendus aux conjoints de fait.

Bien que le rapport n'ait pas formulé de recommandation précise concernant les distinctions qu'établissent les lois fédérales entre, d'une part, les personnes mariées ou les conjoints de fait et, d'autre part, les autres personnes, on y a toutefois suggéré d'examiner les dispositions législatives en cause. On a, par exemple, fait observer qu'il n'y avait peut-être plus lieu de considérer qu'une famille dont le soutien est assuré par deux personnes ou plus constitue dans tous les cas une seule unité économique. Le gouvernement est conscient de ces questions et en tiendra compte à l'avenir dans l'examen de ses politiques.

## RECOMMANDATION

17. Nous recommandons qu'une définition uniforme de l'union de fait figure dans toutes les lois et politiques fédérales qui reconnaissent ce genre d'union et que celle-ci exige que les parties soient de sexe opposé, résident ensemble de façon ininterrompue au moins pendant un an et se présentent publiquement comme mari et femme.

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## RÉPONSE

Lorsque les lois et politiques fédérales reconnaissent l'union de fait, une définition cohérente serait souhaitable. Cependant, il pourrait être difficile de trouver une définition qui soit appropriée dans tous les cas. Pour la législation sur les pensions, il est indispensable de s'assurer de l'existence de la relation pendant une période fixe, écoulée. Cependant, une telle définition ne conviendrait pas pour déterminer qui est admissible à des avantages continus comme, par exemple, dans le cadre des Directives du Service extérieur. Certaines lois fédérales comme la Loi de l'impôt sur le revenu et la Loi sur l'indemnisation des employés de l'État doivent utiliser les définitions provinciales de conjoint de fait afin d'assurer la cohérence avec des avantages et des obligations semblables en vigueur dans une province donnée.

Il faudra peut-être varier la définition selon différents genres d'avantages et d'obligations comme, par exemple, les avantages sur le plan des pensions et de l'assurance et les avantages fiscaux et continus tels les dépenses de déplacement et les prestations d'assurance-santé. Ce domaine devra faire l'objet d'une étude plus approfondie. Toute exigence ajoutée à la définition devra être justifiée par des motifs valables.

Avant d'adopter de nouvelles définitions de l'union de fait, le gouvernement consultera les autorités provinciales en ce qui a trait à l'interrelation des lois et programmes fédéraux et provinciaux.

Lorsque des changements seront apportés aux lois et politiques fédérales en vue de la reconnaissance des unions de fait, on prendra soin de protéger les droits des conjoints légaux.

## LES PENSIONS ET L'ÉGALITÉ

## RECOMMANDATION

18. Nous recommandons que l'article 56 du Régime de pensions du Canada soit modifié afin que les prestations de survivant soient accordées sans égard au handicap, le cas échéant, à l'âge ou à la situation de famille.

## RÉPONSE

Les règles d'admissibilité régissant le versement des prestations de survivant accordées en vertu du Régime de pensions du Canada (RPC) semblent avoir été initialement fondées sur l'hypothèse que plus l'épouse était âgée au moment du décès du cotisant, moins elle avait de chance de trouver du travail ou de se remarier. Par conséquent, les femmes âgées avaient besoin d'une aide financière lors du décès de leur époux, prestations qui étaient interrompues lors de leur remariage. De même, une veuve handicapée ou qui a des enfants à charge avait de la difficulté à subvenir

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à ses besoins. À l'époque, on avait estimé que ces dispositions assureraient que les prestations les plus importantes seraient versées aux conjoints survivants que l'on estimait être, en général, dans le plus grand besoin financier.

Cette justification reflète les normes sociales du début des années 1960 lorsque la croissance du taux de participation des femmes à la main-d'oeuvre avait à peine commencé à se faire sentir et lorsque le modèle traditionnel de la famille soutenue par un seul gagne-pain prévalait. (Soulignons que, jusqu'en 1975, les prestations de survivant n'étaient accordées qu'aux veuves.)

Le gouvernement reconnaît cependant que les programmes sociaux doivent évoluer dans le même sens que les conditions sociales. Un certain nombre de propositions de modification des dispositions actuelles du RPC relatives aux prestations de survivant ont été présentées. On s'est entendu pour continuer de verser des prestations après le remariage. Par contre, on n'est pas arrivé à un accord général quant au meilleur moyen de modifier la structure des prestations de survivant avant la retraite, qui est actuellement fondée sur l'âge. C'est pourquoi, en 1983, le Groupe de travail sur la réforme des pensions recommandait une étude plus approfondie de la question. Depuis, le gouvernement a entrepris des discussions avec les provinces au sujet d'un certain nombre d'améliorations aux avantages du RPC, y compris des dispositions selon lesquelles les prestations de survivant se poursuivraient après le remariage et les prestations de survivant avant la retraite ne seraient pas fonction de l'âge du survivant. Le gouvernement a l'intention de collaborer avec les provinces afin d'en arriver à un accord acceptable sur cette question.

Soulignons que les changements proposés pourraient exiger, conformément à la loi concernant le RPC, qu'un avis d'intention de trois ans soit déposé devant le Parlement. Toute modification au RPC doit être approuvée par les deux tiers des provinces regroupant les deux tiers de la population canadienne, ainsi que par le Parlement.

#### RECOMMANDATION

19. Nous recommandons que les régimes de retraite fédéraux et les régimes de retraite professionnels de compétence fédérale offrent obligatoirement des prestations de survivant aux conjoints des cotisants sans distinction contraire à l'article 15 de la Charte, que le cotisant décède avant ou après la retraite.

#### RÉPONSE

À l'exception de ce qui est abordé dans les réponses aux recommandations 20, 21 et 22, les dispositions des lois fédérales concernant la retraite:

- a) ne fondent pas, directement ou indirectement, l'admissibilité aux prestations de survivant sur l'un des motifs énumérés à l'article 15; ou

- b) ne prévoient aucune différence dans le montant de la pension accordée selon que le conjoint cotisant est décédé avant ou après la retraite.

## RECOMMANDATION

20. Nous recommandons que le Régime de pensions du Canada et les régimes de retraite fédéraux soient modifiés de façon que les prestations auxquelles ont droit les conjoints survivants ne soient pas supprimées lorsque ceux-ci se remarient.

## RÉPONSE

Les gouvernements fédéral et provinciaux se sont mis d'accord pour abroger les dispositions du Régime de pensions du Canada prévoyant que les prestations accordées au conjoint survivant cessent d'être versées lorsque celui-ci se remarie. Le gouvernement a l'intention de déposer en 1986 un projet de loi à cet effet en vue de sa promulgation en janvier 1987.

Tout changement important au RPC requiert, toutefois, non seulement l'approbation du Parlement, mais le consentement des deux tiers des provinces regroupant les deux tiers de la population canadienne.

La question est également étudiée dans le cadre de la réforme des pensions dans la Fonction publique qui est actuellement en cours. Les décisions portant sur les recommandations particulières ne peuvent être prises que dans le contexte de l'étude dans son ensemble.

Les modifications à la Loi sur les normes des prestations de pension qui ont été déposées récemment interdisent entre autres de cesser de verser des prestations à un conjoint survivant pour le seul motif qu'il s'est remarié.

## RECOMMANDATION

21. Nous recommandons l'abrogation des dispositions des régimes de retraite fédéraux prévoyant une réduction du montant de la prestation de survivant lorsque le conjoint survivant a au moins vingt ans de moins que le cotisant décédé.

## RÉPONSE

Cette recommandation est étudiée dans le cadre général de la révision des pensions de la Fonction publique. Aucune décision ne peut être prise à l'heure actuelle puisque la structure des prestations de survivant qui sera choisie est encore à l'étude.

## RECOMMANDATION

22. Nous recommandons l'abrogation des dispositions des régimes de retraite fédéraux en vertu desquelles un conjoint n'a pas droit à la prestation de survivant s'il a épousé le cotisant après que celui-ci ait pris sa retraite ou ait atteint l'âge de 60 ans.

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20. Temporary Member of the National Parole Board  
- Mr. Bernard Dufour  
  
(Order in Council P.C. 1986-1787, dated July 28, 1986)

Re-appointments:

1. Ad Hoc Member of the Pension Review Board  
- Miss Twila M. Whalen  
  
(Order in Council P.C. 1986-714, dated March 24, 1986)
2. Citizenship judge  
- Mr. John A. Nolan  
  
(Order in Council P.C. 1986-795, dated April 1, 1986)
3. Temporary Member of the National Parole Board  
- Mrs. Margaret (Peggy) Johnson  
  
(Order in Council P.C. 1986-804, dated April 2, 1986)
4. Temporary Member of the National Parole Board  
- Mr. Douglas Crosbie  
  
(Order in Council P.C. 1986-805, dated April 2, 1986)
5. Temporary Member of the National Parole Board  
- Mr. William Hackett  
  
(Order in Council P.C. 1986-806, dated April 2, 1986)
6. Temporary Member of the National Parole Board  
- Mr. William Douglas Whitley  
  
(Order in Council P.C. 1986-887, dated April 11, 1986)

Designation:

1. The Chief Commissioner of Canadian Grain Commission  
- Mr. George G. Leith  
  
(Order in Council P.C. 1986-713, dated March 24, 1986)

To exercise all the powers and functions of the chief commissioner in the event of the absence or incapacity of the chief commissioner or if the office of chief commissioner is vacant  
- Mr. Richard H. Klassen

(Order in Council P.C. 1986-713, dated March 24, 1986)

Le sous-secrétaire du Cabinet  
(Opérations)  
Glen Shortliffe  
Deputy Secretary to the Cabinet  
(Operations)