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SECRET

April 9, 1987

MEMORANDUM FOR MR. TELLIER

From: Ray Protti, Assistant Secretary to the Cabinet (Social Development)

Amendments to the Canadian Human Rights Act (CHRA)

You indicated during Monday's planning meeting that you would speak to the Prime Minister about the management of the CHRA amendments. This note reviews the implications of not proceeding with the amendments from a legal and practical point of view and from the point of view of the expectations which have already been raised.

Legal and Practical Implications

- There is no legal requirement to amend the CHRA.
- However, the Human Rights system has been criticized as unfair because of the conflicting roles of the Commission, the structure of the Tribunal Panel and the appointments to the Panel. Many of Mr. Hnatyshyn's proposed amendments would improve the perceived fairness of the system. (Annex A summarizes the proposed amendments).
- Under the Charter, individuals are protected from discrimination by the federal and provincial governments, [redacted] Protection against discrimination originating in the private sector under federal jurisdiction (e.g. banking, interprovincial transportation, communication), depends on the CHRA, but it currently does not provide protection from discrimination based on sexual orientation. Protection against discrimination originating in the private sector

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under provincial jurisdiction (e.g. housing) depends on provincial human rights legislation and only the legislation of Quebec and Ontario protects against discrimination based on sexual orientation.

- The commitment made in Toward Equality, which was the government's response to the Report of the Parliamentary Committee on Human Rights, was to take "whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction". If sexual orientation is not added to the grounds of discrimination in the CHRA, the rights of homosexuals in the private sector under federal jurisdiction (e.g. bank employees, Bell Canada employees) would not be protected and thus, the federal commitment would not be met.

Implications re: Expectations

- An overall review of the CHRA was announced formally in Toward Equality which was released in March, 1986.

- Over the Summer '86, the Department of Justice conducted an extensive consultation process both inside and outside government. Pressure groups are aware that technical work is completed and that proposals are ready for ministerial consideration.

- The Speech from the Throne indicated that the House would be asked to "consider amendments to the CHRA" but did not specify any timing.

- On February 4, 1987, Mr. Hnatyshyn indicated to the Standing Committee on Human Rights that he was "hopeful" that he could bring forward amendments to the CHRA "before the summer break".

Conclusion

A decision not to proceed with amendments to the CHRA would have to be explained in light of the public expectations raised by the consultative process. Such an explanation could be made in terms of other legislative priorities of the government. Not proceeding would mean that needed improvements to the human rights system would not be made, employees of the private sector under federal jurisdiction would not be protected from discrimination based on sexual

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orientation, and it would be perceived that the government had not met its commitment on sexual orientation. In our briefing note to the Prime Minister for this meeting with Ministers Epp, Wilson and Mazankowski on April 14 to discuss Social Policy, we have suggested that Ministers discuss whether amendments to the CHRA should be put on the back burner.

L. Lafontaine/mj

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