

1/6 Sec. 151
discuss this with the
10/17. He will discuss this with
PFF tomorrow.
LS
14/5/92
LS

Cathy
for your file

SECRET

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MEMORANDUM FOR GLEN SHORTLIFFE

Proposals to Amend the Canadian Human Rights Act

The Minister of Justice has brought proposals forward to the Human Resources, Social and Legal Affairs Committee of Cabinet on March 26, and April 2, to amend the Canadian Human Rights Act. The proposals are intended to meet the Government's 1986 commitments in Toward Equality and to ensure that the Human Rights Commission and Tribunals will operate in a fair manner by recognizing the needs of both complainants and respondents. While there was general support for the proposals, two key and contentious issues included in the reform package relating to sexual orientation and reasonable accommodation required further work. Ms. Campbell is now anxious to receive approval to begin drafting so that the amendments can be tabled by June.

Sexual Orientation

Minister Campbell is proposing to include "sexual orientation" as a prohibited grounds of discrimination in the Canadian Human Rights Act. Given the expected concerns from Caucus about this proposal, the Minister has discussed it with members of Caucus. She believes that the concerns of some Caucus members related more to the possible distortion of traditional definitions of the family and the extension of benefits to homosexual lifestyles than to the protection of homosexuals from discrimination. Accordingly, she is proposing that the general prohibition against discrimination on the basis of sexual orientation be accompanied by statutory definitions of marital status, family status and spouse which exclude same-sex couples.

We are advised that Ms. Campbell's proposals have been well-received by Caucus. They will nevertheless be controversial. Given their express exclusion from family status, the proposals will not likely be fully supported by the homosexual community.

Some Ministers will still be concerned about ensuring policy coherence among this initiative, DND's proposed policy on sexual orientation, and defending challenges to DND's old policies in court.

Reasonable Accommodation

Although Ministers discussed the issue at the April 2, 1992 meeting of the Human Resources, Social and Legal Affairs Committee, they were unable to agree on a standard of reasonable accommodation. The Minister of Justice proposed that employers or providers of services would be required to provide reasonable accommodation to make buildings, services and jobs more accessible except where this would cause "undue hardship". Ministers had different views on what factors should define "undue hardship". Those Ministers who want to respect commitments made regarding persons with disabilities prefer a standard that will be perceived as an advance over the current judicially-imposed standard and no less than the standards adopted in some provincial human rights legislation. Other Ministers felt it was important to have a standard of reasonable accommodation which protected the government from potential costs and safeguarded operational effectiveness.

Officials and Ministers have been meeting in an effort to agree on a definition of reasonable accommodation, and a solution may be close at hand.

Other Elements

The package includes a number of Machinery of Government proposals which need the approval of the Prime Minister.

Other elements of the package supported by Ministers at the April 2, 1992 Human Resources, Social and Legal Affairs Committee meeting include: making the Commissioner's guidelines advisory rather than binding but grandfathering the current guidelines on pay equity; acknowledging the primacy of the legislation over other federal legislation but providing a defence if the discrimination is reasonably justifiable in a free and democratic society; abolishing the blanket defence of mandatory retirement and providing transitional rules; removing the entitlement of sponsors under the Immigration Act to protections under the Act; and, ending the exemption for the Indian Act. While the Minister of Indian and Northern Affairs

supported removing the exemption, he did caution that Mr. Joe Clark should be consulted before proceeding to ensure that it would not adversely affect discussions with the Chiefs relating to Unity issues.

PCO Comment

Any amendments in the area of human rights are likely to be controversial. The two key elements of the package relating to sexual orientation and reasonable accommodation may be lauded as advances generally but may be criticized as not going far enough by the homosexual and disabled communities respectively. Human rights advocates may argue that certain elements such as the weakening of the effect of Commissioners' guidelines, the additional defence for government to defend discriminatory provisions on the basis that they are reasonably justifiable, the specific exclusion of same-sex couples from definitions of "family status", and the removal of the entitlement for sponsors under the Immigration Act to have recourse to human rights protections are regressive.

In deciding whether to proceed with this package at this time, Ministers may want to consider whether the "good news" elements of the proposals are likely to outweigh the criticism of the package itself and of further delays.

Yours sincerely,


Shirley Serafini 

Latimer/mm