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Minister of Justice and
Attorney General of Canada

Ministre de la Justice et
Procureur général du Canada

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October 28, 1986

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CONFIDENTIAL

The Right Honourable
Brian Mulroney, P.C., M.P.
Prime Minister of Canada
Ottawa, K1A 0A2

My dear Prime Minister:

Re: Canadian Human Rights Act

As you know, work has been underway for a number of months on possible revisions to the Canadian Human Rights Act, and I expect to be in a position to present my proposals to Cabinet within the next few weeks.

There are two issues that I wish to bring to your attention at this time, the first because it is likely to be contentious, and the second because it relates to matters within your prerogative as Prime Minister.

The first relates to the prohibited grounds of discrimination under the Act. As you recall, "Toward Equality", our government's response to the report of the Parliamentary Subcommittee on Equality, was tabled in Parliament on March 4, 1986. At that time, largely as a result of your positive intervention, the government made a commitment to take whatever measures were necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction. In the discussions following the tabling of "Toward Equality", the government indicated that it would examine the means to fulfill this commitment, including the necessity of an amendment to the Canadian Human Rights Act.

I have examined the alternatives and believe the most meaningful way to meet this commitment is an amendment to the Canadian Human Rights Act even though this may cause some controversy in caucus and Cabinet.

The second matter has to do with government organization, and specifically my view that it would be desirable to replace the present Canadian Human Rights Tribunal Panel with a permanent Human Rights Tribunal. The Panel currently consists of about 100 persons appointed by the Governor in Council from which ad hoc Human Rights Tribunals and Review Tribunals are drawn.

As the Act is now structured, complaints are referred by the Commission to the President of the Human Rights Tribunal Panel, who then appoints, from among the members of the Panel, a Tribunal of up to three persons to enquire into it. A decision of a Tribunal can then in most cases be appealed to a three-member Review Tribunal. However, a number of criticisms of the present Panel approach have been voiced by both outside groups and government departments. First, the fact that Tribunal members are otherwise employed and have other pressures on their time means that it is frequently difficult to arrange Tribunal hearings, with the result that the adjudication process is often unnecessarily prolonged. Second, it is more difficult to develop a coherent body of jurisprudence in a rapidly-evolving area of the law when complaints are dealt with by ad hoc Tribunals. Third, in view of the wide variety of individuals who are appointed to the Tribunal, it is difficult to ensure a consistently high level of expertise, a matter of some concern in view of the significance and complexity of the issues Tribunals are required to face.

It is my view that a permanent Human Rights Tribunal, with a full-time President and Vice-President, and a smaller number of other members who might be appointed by the Governor in Council on a full or part-time basis depending on the growth of the Tribunal's workload, would be an appropriate response. Moreover, while some groups have advocated that complaints be dealt with by the courts rather than by a quasi-judicial body, I think the establishment of a permanent Tribunal would be well received by most individuals and groups with an interest in this area.

In light of the above considerations, I propose to include, in my proposed recommendations to Cabinet for amendments to the Act, a recommendation that sexual orientation be added to the Act as a prohibited ground and a recommendation that a permanent Human Rights Tribunal be established. The detailed provisions will be set out in the Cabinet Memorandum, drafts of which have been provided to your officials in the Privy Council Office. However, if you

foresee major difficulties with these proposals at this stage, I would appreciate an early indication so that the necessary changes could be made.

With kindest regards, I remain,

Yours sincerely,

Ray Hnatyshyn