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MEMORANDUM/NOTE DE SERVICE

TO/À: MINISTER

FROM/DE: DEPUTY MINISTER

SUBJECT/OBJET: **Amendment to the Canadian Human Rights Act**

Comments/Remarques

On April 23, 1987 I sent you a memorandum discussing possible options and strategies to deal with the concerns expressed by certain Ministers and members of caucus about the proposal to add sexual orientation as a prohibited ground of discrimination to the Canadian Human Rights Act. As you are aware these concerns have prevented the proposals from receiving Cabinet consideration. Since the government is now giving consideration to its legislative agenda and concerns have been raised by the Canadian Human Rights Commission respecting equal pay, it seems an appropriate time for reconsideration of options and strategies to move these proposals through Cabinet.

Options and Strategies

We have re-examined the entire package of proposals for amendment and also examined them in view of Mr. Fairweather's proposals with respect to equal pay. As I indicate in a separate note concerning equal pay we believe it would be premature at this time to proceed in the direction of the kind of pro-active approach suggested by the Commission. In addition if equal pay proposals were added to the proposals to amend the Canadian Human Rights Act this would make it even less likely that the package would proceed through Cabinet since it is likely to be very controversial. It may be possible to use equal pay, however, as a bargaining tool for seeking to obtain support for the rest of the package. You may wish to offer not to proceed with a pro-active approach which would have financial and political implications in return for support on the sexual orientation issue.

Substantive Options

Option 2: The option remains to drop the proposal to add sexual orientation as a prohibited ground. This would not substantively affect the remainder of the package of

proposals since the addition of sexual orientation is not interrelated with the remainder of the proposals. There does not appear to be any advantage to severing any other parts of the proposal since they are interrelated and basically non-controversial. The advantage of this option is that the remainder of the package of amendments could then go forward and the current inadequacies in the investigation and adjudication of complaints could be dealt with. The major problem is that if sexual orientation is not included in the list of prohibited grounds the government can and will be criticized for failing to meet the commitments made in Toward Equality. Even if sexual orientation was withdrawn from the proposals in order to obtain cabinet consideration the question of meeting the government commitment to end discrimination on the basis of sexual orientation in all areas of federal jurisdiction would need to be raised with your Cabinet colleagues.

Strategic Options

There may be several other options which do not require severing the package.

Option 3: At the present time the Memorandum to Cabinet contains primarily proposals to amend the CHRA. It may be possible to invite other departments such as Employment and Immigration which is contemplating some equality based amendments to the Unemployment Insurance Act, to include their proposed amendments with the proposals to amend the CHRA and expand it to an omnibus bill on equality related issues. This would have several advantages. The first is that it would obtain the support of other Ministers to push the package forward. Secondly it would add other initiatives which would make the package more attractive by demonstrating further progress by the government toward the achievement of equality.

Option 4: Another possibility may be to enlist the aid of Mr. Perrin Beatty, and to then jointly seek support from the Prime Minister to bring the package forward for resolution. As you recall Mr. Beatty sought your support for enacting a Canadian Forces Order which would permit the Forces to release or refuse entry to sexually active homosexuals. In response to Mr. Beatty you indicated that you could not support the proposal in its present form. Mr. Beatty clearly has an interest in having a Cabinet resolution of this issue even though his interest may not be identical to yours. It may be that Mr. Beatty would even be prepared to support or a least not oppose an

amendment to the CHRA to add sexual orientation if his department was left free to defend their policy. In other words you might propose that the government not force the Department of National Defence to hire or retain homosexuals but rather leave them to defend their policies before the courts. This may have the advantage of gaining Mr. Beatty's support. While it would be criticized by the interest groups there is jurisprudence from other countries supporting the position that DND advocates. This approach would not give them special status but merely place them on the same footing as any other employer who must justify any of their policies which are prima facie in conflict with the Canadian Human Rights Act.

I would be pleased to discuss this matter further with you at your convenience.

Frank Iacobucci