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CABINET COMMITTEE BRIEFING NOTE
EXPOSÉ INFORMATIF D'UNE RÉUNION D'UN COMITÉ DU CABINET

Committee: Comité: Human Resources, Social and Legal Affairs

Date & time of meeting: Date et heure de la réunion: 26 March 1992 at 9:30 a.m.

Date: 25 March 1992

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MEMORANDUM TO THE PRESIDENT NOTE À L'INTENTION DU PRÉSIDENT

SUBJECT: OBJET: Canadian Human Rights Act Amendment (Draft MC only available)

SPONSOR: PARRAIN: Minister of Justice

This Memorandum to Cabinet is scheduled for Cabinet consideration over two consecutive weeks. The meeting of March 26, 1992, will consider the question whether amendment of the Canadian Human Rights Act (the Act) should proceed at this time. The more substantive issues would be considered at the second meeting.

MINISTER'S PROPOSALS

The Minister is recommending a number of amendments to the the Act of which are:

- The addition of **sexual orientation** as a prohibited ground of discrimination under the Act. Marital and family status etc would be defined to exclude homosexual relationships so as to preclude complaints of discrimination where social, employment etc benefits are restricted to heterosexual couples.

- Incorporating the concept of **reasonable accommodation**. This would require employers or service providers to take reasonable measures in employment conditions, building design and facilities etc to meet the needs of the disabled or other (eg religious) minorities.

Other proposed amendments include:

- Removal of the power of the Canadian Human Rights Commission (CHRC) to issue **guidelines** on the application of the Act which are **binding** on the Human Rights Tribunals. The CHRC would be empowered to issue non-binding guidelines.

- Replace the current system of **ad hoc Tribunals** with a permanent Tribunal.

- Provide that the Act has **primacy** over other federal laws except the Official Languages Act and the Charter.

- Eliminate the provisions of the Act which permit **mandatory retirement** on a blanket basis.

- Provide for the CHRC to **report** directly to Parliament rather than via the Minister of Justice.

- Double the possible **awards for compensation** under the Act to $10,000 and make uniform the maximum **fine** (eg for obstruction of a Tribunal or intimidation of a witness) - currently $50,000 for employers and unions and $5,000 for all others, at the $50,000 level.

TBS ADVICE

A decision on whether to proceed now to amend the Act turns on a number of what are essentially political judgements. The relevant issues are listed under Pro and Con headings below.

We understand that PCO is recommending that Ministers consider not proceeding with the package of amendments at this time but take up only the reasonable accommodation proposal, with this to be included in a Disabilities Omnibus Bill. The latter is also listed for consideration tomorrow. For this reason this brief contains comment on the reasonable accommodation issue. We believe that amendment should reflect the Supreme Court's most recent interpretation of this area of the law.

Comment on other substantive issues in the Minister's proposals will be provided for next week's cabinet meeting.

ISSUES

The major advantages and disadvantages of proceeding now with amendment of the Act are outlined below.

Pros

- The government has been contemplating amendment of the Act for 5-6 years. There is some pressure for amendment eg from disabled groups. If it is to do so at this stage in its current term, it must proceed now, reasonably quickly.

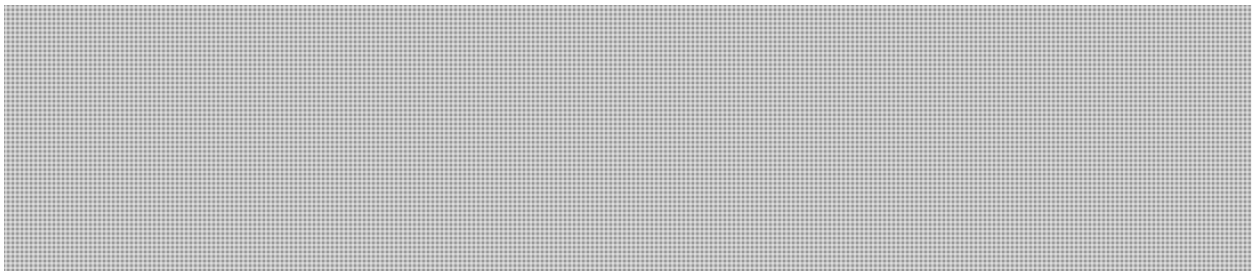
- In the absence of changes to the Act, development in the law in this area has been left to the courts. While the Minister's proposals are not radical in relation to the current state of the law, they do entail significant change. The proposals therefore represent a reassertion on the part of government and the legislature of their role in formulating the law, a development which most would see as a good thing.

Cons

- The package is not necessarily good news for the government. One view is that the sexual orientation proposal will please very few - some will see it as very much a minimum and belated while others will find offence in the same proposal. The reasonable accommodation proposal could well be interpreted as not much change from the status quo.

- There are cost implications for government in the reasonable accommodation proposal, under some scenarios potentially very large costs. At a minimum, it is possible that the costs of the government's accessibility policy (future costs estimated at around $300M for which there is little cover in reference levels) will be brought forward. It is also possible that additional costs may emerge in respect of a wider range of buildings than hitherto considered and in respect of groups other than the disabled. It must be emphasised that the cost implications of the Minister's proposals here are very uncertain. However they could well be large and in the current fiscal climate this is reason for caution.

- While there are some aspects of the package which will appeal to business (eg the removal of CHRC's powers to issue binding guidelines) the reasonable accommodation proposal are also likely to involve additional costs to business. This may argue for delay in implementation, given the current state of the economy and the desirability of not imposing additional burdens on employers at this time.



[redacted]

BACKGROUND

Proposals for amendment of the Act have been under consideration since a review of the Act was announced in May 1986. The lack of progress to date reflects the complexity of the issues involved. It also reflects the difficulty of finding agreement in caucus on sexual orientation and the Minister of Justice's view that the issue was of such importance that an amendment package could not be brought forward without it. Amongst departments, the most contentious issue remains reasonable accommodation, with TBS, DND and PWC in particular, being concerned with the potential cost implications.

Outside of government, women's, disability and minority groups have pushed for amendment of the Act along the lines of Ontario and Manitoba which have comprehensively reformed their legislation over the past decade. Employers on the other hand have been wary of expansion in the scope of the Act especially since many consider the CHRC already exercises too much power.

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