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1980-09-02

Mr. A. Bissonnette, O.C.,  
Deputy Solicitor General,  
Rm. 323-A,  
Sir Wilfrid Laurier Bldg.,  
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Our File:

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Dear Mr. Bissonnette:

Thank you for your letter of August 14, 1980 providing me with the opportunity to comment on a discussion paper concerning expansion of prohibited grounds of discrimination under the Canadian Human Rights Act. Though there appear to be no drastic new departures included in this discussion paper, it is to be regretted, because of the tone and extent of the paper, that more time was not afforded for direct exchange concerning its content. You will recall that we have addressed some of the topics in previous submissions and you dealt with several areas of concern in your letter to Mr. Strayer of August 29, 1979.

Several of the grounds suggested for inclusion in prohibitory sections of the Canadian Human Rights Act could cause most serious ramifications to the Royal Canadian Mounted Police and to the entire government service. For instance, if "opinion, belief or creed" becomes a prohibited ground of discrimination, is it logical or even sensible to suggest that a person who believes in the overthrow of democratic government by force should have the right to be employed in the service of that government? The term "opinion, belief or creed" is ill defined, leaving room for almost any interpretation by those charged with the enforcement of the statute.

Another ground suggested for prohibition is that of sexual orientation. In July 1979 I provided the Solicitor General's Office with a number of reasons why this ground should not

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be included in the Act, both from internal management and security points of view. These reasons are equally valid today and I will only emphasize two facts: Ample evidence exists that homosexuality is a type of aberrant behaviour carefully targeted for exploitation by foreign intelligence services. Should the Force hire known homosexuals, the effect on morale and discipline would be serious and debilitating.

Removing our right to prohibit employment with the police service on grounds of criminal or penal conviction would, of course, be completely unthinkable. Some might be surprised to know that police generally are anxious for and supportive of rehabilitation of criminals, but common sense dictates that criminals cannot work within the police service.

Should the government wish to expand prohibitive grounds in the area of mental incapacity, I believe the discussion paper very appropriately suggests great care in defining only certain limited forms of mental retardation. To include alcohol or drug addiction as prohibited grounds is, of course, an absurdity.

Some other points deserve comment at this time. A suggestion is put forward that some of the grounds presently prohibited or suggested for inclusion in the Act could be circumvented on the ground of bona fide occupational requirement. This approach removes senior management's right to decide on what "bona fide" job requirements are, in effect transferring this judgemental area to a group who may or may not have the necessary knowledge to make this decision and who do not have to live with any decision they may make. This undermines management's right and duty to be discriminating without being prejudiced. It would also have serious administrative and financial impact if government agencies are forced to defend every job requirement before the Human Rights Commission on a case by case basis.

Possibility of inclusion in the Act of a national security clause is also explored. I support such an inclusion if the clause is broadly worded bearing in mind the point raised in the discussion paper, that hearings of the Human Rights Commission are clearly not the forum to assess validity of discrimination on national security grounds.

The predictable consequences arising from inclusion in the Human Rights Act of the prohibited grounds highlighted here are such that I feel it necessary to personally discuss these matters with the Minister. While the theory of eliminating prejudice is one to which I heartily subscribe,

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it is not always a simple task to make that theory workable in the real world. A good deal of hard practical thought must be given these matters before any expansion of the Human Rights Act is undertaken.

Yours truly,

R.H. Simmonds,  
Commissioner.

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