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MEMORANDUM TO CABINET
MEMOIRE AU CABINET

April 25, 1977
le 25 avril 1977

BILL C-25, THE CANADIAN HUMAN RIGHTS ACT:
SEXUAL ORIENTATION AND POLITICAL BELIEF

BILL C-25, LOI CANADIENNE SUR LES DROITS DE LA PERSONNE:
ORIENTATIONS SEXUELLES ET OPINIONS POLITIQUES

Minister of Justice
Ministre de la Justice

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CABINET DOCUMENTS
SECTION

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BILL C-25, THE CANADIAN HUMAN RIGHTS ACT:
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I OBJECT

1. The object of this memorandum is to bring to Ministers' attention the considerable number of representations which have been made to include sexual orientation and political belief as prohibited grounds of discrimination in Bill C-25, to inform Ministers of the considerations involved in so extending the prohibited grounds of discrimination and to obtain Ministers' direction on the approach which should be taken on these issues. Bill C-25 is presently before the Justice and Legal Affairs Committee for clause by clause consideration.

II DECISION REQUIRED

2. Numerous groups and individuals in written briefs to the Minister of Justice and presentations before the Justice and Legal Affairs Committee and several Members of Parliament in second reading debate and in Committee proceedings have urged that Bill C-25 include sexual orientation and political belief as prohibited grounds of discrimination. The effect of including these as grounds would be to prohibit discrimination based on these factors in matters of employment and in the provision of services, facilities and accommodation within federally regulated areas. Ministers' direction is sought on the approach which should be taken to these representations.

III CONSIDERATIONS

A. GENERAL

1. Sexual orientation

3. Sexual orientation is not included as a prohibited ground of discrimination in human rights legislation in any of the Canadian provinces or, as far as can be determined, in the United States at either the federal or the state level. (It is included in some municipal anti-discrimination codes in both Canada and the United States.) The primary reason which has been given for not including sexual orientation as a prohibited ground of discrimination has been the efforts which have been made to ensure that the Commission not be overburdened initially. As sexual orientation is a

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novel ground about which no experience or precedents have been developed in related jurisdictions it has not been thought to be desirable to include it as a prohibited ground at this time. However, there are also both political and security reasons which must be taken into account in considering whether or not to include it.

4. From a political point of view, it is difficult to determine whether it would be advantageous to include sexual orientation as a ground. The groups which have presented the case for inclusion include the Canadian Bar Association, the Canadian Labour Congress, the Canadian Association of University Teachers, the National Action Committee on the Status of Women and the Women and the Law Association. While these groups are quite numerous and quite vocal, it is unclear whether the vast majority of Canadians would welcome such a move.

5. It should also be noted that from a practical point of view in areas other than those requiring security clearances for employment or promotion, federally regulated employers would probably not encounter a great deal of difficulty in conforming with a prohibition against discrimination based on sexual orientation. However, some consideration should be given to the effect on the provinces if the federal government were to include it as a prohibited ground: this undoubtedly would result in considerable pressure being placed on the provinces also to include it and it may be that greater problems would be faced in doing so at the provincial level particularly with regard to the way in which such a provision would be received by the small employer, landlord, boarding-house owner and so on.

6. It is understood that the Solicitor General probably will wish to comment further on the security aspects. However, basically it seems that the issue involved is whether sexual orientation per se is considered to be a sufficient reason to deny a person a security clearance for employment or promotion in the Public Service.

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*Section 41 of the Federal Court Act, R.S.C. 1970, 2nd Supp., c.10 provides:

"41.(1) Subject to the provisions of any other Act and to subsection(2), when a Minister of the Crown certifies to any court by affidavit that a document belongs to a class or contains information which on grounds of a public interest specified in the affidavit should be withheld from production and discovery, the court may examine the document and order its production and discovery to the parties, subject to such restrictions or conditions as it deems appropriate, if it concludes in the circumstances of the case that the public interest in the proper administration of justice outweighs in importance the public interest specified in the affidavit.

(2) When a Minister of the Crown certifies to any court by affidavit that the production or discovery of a document or its contents would be injurious to international relations, national defence or security, or to federal-provincial relations, or that it would disclose a confidence of the Queen's Privy Council for Canada, discovery and production shall be refused without any examination of the document by the court."

This section is made applicable to Bill C-25 under sub-clause 44(2) of the Bill.

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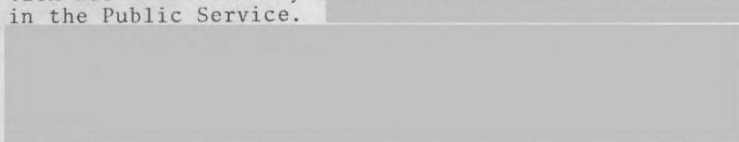
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However, such a provision would probably not be well received politically, particularly at this point in time when security qualifications within the public service are such a sensitive issue.

8. Ministers' direction is sought on whether or not an amendment ought to be proposed in Committee adding sexual orientation as a prohibited ground of discrimination. If it is decided that sexual orientation ought not to be included, direction is sought on the reasons which should be given for not doing so.

2. Political Belief

9. The primary reason for not including political belief as a prohibited ground of discrimination has been security considerations in employment in the Public Service.



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11. Ministers' direction is sought on whether or not an amendment ought to be proposed in Committee adding political belief as a prohibited ground of discrimination. If it is decided that political belief ought not to be included, direction is sought on the extent to which the failure to do so may be explained on the basis of security considerations.

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B. FINANCIAL CONSIDERATIONS

12. The matters discussed in this document do not involve any increase in expenditure.

C. CONSULTATIONS

13. Officials of the Department of Justice have consulted with officials of the Department of the Solicitor General on both of the issues raised.

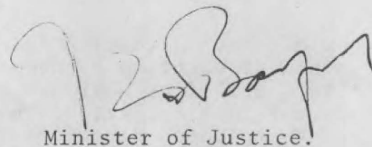
D. FEDERAL-PROVINCIAL RELATIONS

14. The matters discussed in this document do not have any implications for federal-provincial relations except for the possible indirect effect of pressure being placed on the provinces to follow the example of the federal government if sexual orientation were to be included as a prohibited ground of discrimination.

E. CONCLUSIONS

15. No recommendation is made on whether either sexual orientation or political belief ought to be included in Bill C-25 as prohibited grounds of discrimination. However, Ministers' direction is sought on these issues. In addition, if it is decided that either or both of these grounds ought not to be included as prohibited grounds, Ministers' direction on the extent to which the security considerations involved in not including them should be discussed.

Respectfully submitted,



Minister of Justice.

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