NTF

25 Jan 90

PROPOSED AMENDMENTS TO CHRA
CONCEPT OF MANDATORY RETIREMENT AGE

1. A Justice meeting was called for 0900 hrs on Thursday 25 Jan 90 in Conference Room 3C, Justice Building. In attendance for this Department were the undersigned and George Logan. In total there were 10 persons present including John Scratch and the same two other lawyers working for him (Steve and Jim) as had been present in the meeting the previous day on "Reasonable Accommodation". The representatives included members of Treasury Board, Justice, Labour, Finance, Status of Women and DND.

2. Mr. Scratch said that the 5 Feb 90 date to Operations would now seem to not be a possible target but that the MC would be tabled as soon as possible after then. He could not commit himself to any subsequent date. He then indicated that the new MC, containing if possible, all of the options, accommodations, etc., raised in both the bilateral meetings that Justice was having with other government departments and in these larger multi-lateral negotiations would be ready for a week from tomorrow i.e. Friday 2 Feb 90. Mr. Scratch said that at that time, he would be asking those involved for a simple yes/no response as to whether they could live with the MC as it would then be prepared.

3. After these introductory remarks, Mr. Scratch got into the main subject which was the recommendation to abolish mandatory retirement ages. He said that the meeting would not deal with specific concerns such as those raised by DND/CF but rather would concentrate on the transitional rules that would be implemented. He stated that the original MC circulated on 22 Dec 89 "fudged" the idea of transition since in the 1987 negotiations a 3/5 year position had originally been opposed and that for most people, this had been considered as being a three year transition period. He questioned whether or not a transition period was now required and, if so, whether three years was still necesary. He immediately proposed two options:

a. start the transition period from the date of proclamation of the amendments and give a three year period; or

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b. start the transition period from the time the benefit regulations were registered - again with a three year implementation period.

4. Labour and Treasury Board appeared to prefer option B because of the requirement for time to negotiate with insurance companies. Mr. Scratch pointed out that if option B were the one actually used there could not be a long time taken in developing the regualtions, because politically he felt it could not be more than one year. He also said that there would be pressure from the Commission and indicated that the Quebec experience (whereby Quebec abolished mandatory retirement ages approximately 5 years ago) would be cited by the Commission as an example of how few problems had actually arisen and how information could be disseminated quickly and regualtions implemented quickly. The concern that Mr. Scratch sought politically was that any decision to delay further the implementation of the Crosby announcement of February 1986 to abolish mandatory retirement age would be politically embarrassing to the government. Mr. Scratch said that they really needed something that was defendable in terms of responding to the Chairman of the CHRC when the latter would be called as an expert before the Parliamentary Committee assembled to review the Bill. He questioned whether or not the problem of collective agreements might not be a special one which could receive special consideration, even though this might be a nightmare to draft. The Department of Finance rep indicated that most collective agreements were in three year cycles hence one substantiation for giving a maximum of three years to implement. It was then noted that employers are not compelled to follow the **CHRA** regulations in this respect but that if they do so follow the regulations, they are immuned from **CHRA** challenge.

5. At this stage, almost as if it had been pre-orchestrated, a third proposal was given by Justice saying "is it really necesary to include any transition period length at all? Would it not be preferable to include transition periods to be in regulations?" Because the other two options had been hotly debated and because various government departments had taken differing sides it would seem that placing transition periods, timings, etc., in regulations would be an option that they could not - because of their prior stand - disagree with. It was well orchestrated to this extent and it would seem that once consensus had been reached on this issue, there was little left to talk about. Mr. Scratch then thanked everyone and the meeting formally adjourned.

6. At that point as I was sitting next to the Justice

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representatives, I indicated to him that when we were dealing with mandatory retirement, sexual orientation or any of the other concerns that we had, we would not agree to having our concerns simply stated in regulations rather than in the Act itself. I also pointed out that because of the agreement in the MC that the RCMP, the CF and Judges would be exempt, the "optical" problem of meeting our needs would be simply resolved by making reference to CF, RCMP and Judges in the Ministerial Recommendation on the matter. I did again emphasize that we had some options that would not include the protection of our interests in regulations.

7. Dealing with the above as in the side, I would certainly suggest that no amendment be made to 15(b) but that the 37 identified Acts be amended as consequential amendments leaving the **Judges Act**, the **RCMP Act** and the **NDA** in their present form, thereby ensuring that mandatory retirement remained for those groups alone. This is probably the position that the Department of Justice will adopt, although I am sure that they will initially try to cater to our concerns by revoking 15(b) and leaving our protection to "regulations". I do not see them exceeding to our desire to be specifically mentioned in the Act along with the Judges and the RCMP and, by highlighting our specific status in this regard, I am not quite sure of what practical legal effect would obtain (although we would be more visible and therefore more subject to possible challenges re unconstitutionality of the provision of 15(b)).

8. Mr. Scratch said that he would be dealing with the Department on a one-to-one basis once the drafting commenced on these amendments. I do feel, however, that it would be preferable for us to again outline our position on this specific aspect in a letter so that they have a full understanding of our needs.

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