INTRODUCTION

The entrenchment of the equality guarantees of the **Canadian Charter of Rights and Freedoms** on April 17, 1982, opened new vistas for Canadians in their quest for equal opportunity. Individuals gained the right to go to court and challenge laws that may discriminate unfairly.

But the Government of Canada is not satisfied to place the entire burden of enforcement on individual Canadians concerned enough to undertake court battles that could be long and costly. It is not satisfied to wait for the courts to lead the way before searching out and correcting federal laws and policies that offend the equality rights set out in section 15 of the Charter. Rather, the Government is committed to ending any and all discrimination that keeps individuals in Canada from fully realizing their potential; it embraces its duty to take a leading role in making sure that federal laws and policies meet the high standards of the Charter.

An important step was taken on January 31, 1985, when the Minister of Justice tabled in the House of Commons a discussion paper entitled Equality Issues in Federal Law. This paper was intended to provide a basis for consultations with Canadians, before the Government acted, on the far-reaching implications of section 15.

Parliament took up the challenge, creating the Subcommittee on Equality Rights to consider the discussion paper, to offer all Canadians a chance to voice their hopes and concerns and to report to Parliament with recommendations. The Subcommittee consulted with Canadians extensively through oral hearings across Canada and written submissions presented to it, and on October 25, 1985, it presented the House with a report entitled Equality for All, identifying a number of federal laws and policies that it believed must be changed to bring about equal opportunity.

The present document outlines the Government's response to the Subcommittee's 85 recommendations. Some are easy to accept, for the current law or policy concerned is, upon reflection, clearly contrary to the Charter guarantees. But others present genuine problems. Some necessitate a major reassessment of the Government's priorities and the reallocation of resources that are scarce in these times of restraint. Some issues remain unclear, with strong arguments both for and against change, and the Government finds itself obliged to seek compromises.

Making choices that are both sensitive and responsible is complicated by the fact that equality rights are relatively new to Canadian constitutional law, and there is correspondingly little experience to show the path. The exact scope of the four

guarantees set out in section 15 -- equality **before** the law, equality **under** the law, **equal protection** of the law and **equal benefit** of the law -- can, as yet, only be guessed at. Section 15 has opened up new horizons for individual rights, but the breadth of these horizons will only be determined as courts decide individual cases and governments create new social policy.

It is important for governments when creating social policy to interpret section 15 in an open, progressive and generous way. This we believe it has done, by recognizing the broad scope of section 15 in covering Government laws and activities, by supporting the interpretation that section 15's list of grounds of discrimination is open-ended, and by holding that section 15 applies to systemic discrimination as well as discrimination which appears on the face of legislation and that equality and non-discrimination sometimes require different rather than identical treatment for individuals.

Nearly two centuries of experience in the United States, where judicial interpretation of the 1791 Bill of Rights continues to evolve in lockstep with society, supports this analysis and also suggests that the scope of section 15 will never be fixed once and for all.

In Canada and elsewhere, the concept of equality has undergone dramatic transformation -- both in what it is understood to mean and in the issues it raises. The original concern was for the "formal" or "procedural" concept of equality. As A.V. Dicey describes the formal approach in his Introduction to the Study of Constitutional Law (1985), it entailed "the equal subjection of all classes to the ordinary law ... of the land as administered by the ordinary courts." It is this formal approach to equality that the courts read into the Canadian Bill of Rights of 1960.

In its day, formal equality represented a giant leap forward in Western society from the inequalities of earlier, hierarchical societies in which each class had a different set of rights and obligations. But it had weaknesses too. The major criticism was that by treating as equals different individuals who had unequal access to power and resources, it created merely an illusion of equality while it allowed real economic and social disparities to grow.

This criticism of formal equality reflected a concern for "substantive" equality -- that is, the enjoyment of equal opportunity in daily life, which is taking its place in the second half of this century as the dominant approach. In the historic Brown decision of 1954, the U.S. Supreme Court ruled that "separate but equal" facilities did not afford "equal protection of the laws" as required by the constitution. In Canada, Parliament and the legislatures enacted human rights laws. These laws sought to bring about substantive equality by prohibiting discrimination in employment, accommodation and the provision of services. At the international level, too, the

1960s and 1970s saw sharper focus on equality of opportunity and a new recognition that treating every kind of person in exactly the same way sometimes resulted in unintentional discrimination against some, as it does not make allowances for the special needs of some kinds of person. The preferred means for ending discrimination is now to seek complete and meaningful equality of opportunity for all individuals.

In this respect, it is important for governments to go beyond the Charter, to adopt their own policies on equality and social justice.

For this Government, equality and social justice require that persons be treated on the basis of their own qualities, not on the basis of any stereotype or other assumptions.

Equality and social justice require that individuals be treated fairly, that is, similarly in like situations, and differently when respect for individual characteristics so requires.

Equality and social justice require that individuals be given a fair chance to make their own way in society and that when opportunities are not fairly distributed, positive action is taken to ensure that they are.

Equality and social justice require that social benefits be distributed to those who need them most and according to the principles mentioned above.

Complete and meaningful equality must also take in "systemic" discrimination -- that is, discrimination which arises when a law or procedure has an unnecessary, unintentional and unfair impact on certain kinds of people. It has often happened and will surely continue to happen that legislatures adopt measures with unintended discriminatory effects. And overcoming systemic discrimination deeply rooted in tradition is not simply merely a matter of avoiding obvious discrimination; in some cases, positive action may be necessary.

Policies aimed at ensuring equality and social justice must be based on respect for the other important values in Canadian society, the freedom of the individual, the values of Canadian federalism and of Parliamentary democracy and the rights and interests of other individuals and society as a whole.

Section 15 must be able to grow along with the society for which it was enacted. A look into the past is suggestive. When Canada's first constitution, the British North-America Act was adopted in 1867, discrimination against women seemed perfectly normal to many people. It was only in 1927 that the term "person" in this Act was ruled to include women for purposes of appointment to the Senate. But by the 1980s, when the Constitution Act, 1982 was adopted, sex discrimination had become so fundamentally offensive to Canadians that it was forbidden in not one but two separate sections of the Charter (ss. 15 and 28).

In this regard, the open-ended list of grounds on which discrimination is banned by section 15 is extremely important. In a striking metaphor, Canada's constitution was described by the Privy Council in its decision in the Persons case, opening the doors of the Senate to women for the first time, as a "living tree." Throwing out new braches that correspond to new currents in society, it constantly grows and offers new protection where necessary. No doubt, future generations will look to the constitution for protections that we in our time can hardly imagine.

The action the Government proposes on the recommendations made by the Subcommittee in **Equality for All** is aimed at ensuring that federal laws and policies are changed wherever possible to spare individual Canadians the need to seek protection of their rights in the courts and at making other policy, and legal changes to reflect a progressive understanding of what equality means in Canada today. However, there are some areas in which further study and consideration are clearly called for -- where the balancing of fundamental concerns remains to be accomplished.

Nevertheless, the Government is pleased to be able to agree with most of the Subcommittee's recommendations and move forward on them. It believes that this response represents another major milestone along the way towards the new horizons revealed by the Charter.

OVERVIEW

The Government is currently engaged in a number of reform processes relevant to recommendations in **Equality for All.** Some of these recommendations refer to matters that are small parts of larger reforms not entirely related to the Charter. As a consequence, the Government believes it important to highlight these reform processes, to set the framework for the specific response to each recommendation.

Maternity Benefits

On July 4, 1985, a Commission of Inquiry was appointed to study the entire Unemployment Insurance program and maternity benefits are one important element of this review. The Commission is scheduled to report in the first half of 1986.

Pensions

Currently, the Government is engaged in a number of major reforms concerning pensions.

Canada Pension Plan

In the May, 1985, budget, the Government announced its intention to enter into discussions with the provinces on a wide range of pension reform issues. Subsequent discussions with the provinces brought agreement in principle on a number of major improvements to the Canada Pension Plan, which will address several of the Subcommittee's recommendations. It is hoped to have amending legislation before Parliament in 1986.

Homemakers' Pensions

Although the Subcommittee made no formal recommendation on a homemakers' pension, the Government would like to point out that this issue has been the subject of recent discussions with the provinces as part of the package of proposed improvements to the Canada Pensión Plan.

A consensus has not developed on proposals for homemakers' pensions, including the proposal developed by the Parliamentary Task Force on Pension Reform. Nevertheless, the Government recognizes the importance of work done in the home and would like to ensure that all women will be able to look forward to their retirement years without fear about their financial security. The Government intends therefore to examine how best to accomplish this objective and will make its findings public before any decisions are taken.

Public Service Pensions

The Government has been giving close attention to reform of public service pension plans for several months. Many of the

general concerns expressed by the Subcommittee had already been identified as part of this exercise. That is, in addition to assessing explicit pressures for change (such as National Pension Reform initiatives and observations of the Canadian Human Rights Commission), the Government has been examining various elements of the pension schemes to see what changes, if any, are necessary in light of changes that have taken place in Canadian society since the plans were first devised.

Two areas of particular concern for the Subcommittee, where the Government certainly agrees with the objective of having the pension plans reflect current realities and meet current needs, are coverage for part-time employees and survivor benefits.

As far as part-time employees are concerned, and as discussed in the response to recommendation 58, there is a commitment to bring the public service pension plans generally into line with all the requirements of the Pension Benefit Standards Act, including providing part-time employees with access to pension coverage.

The thrust of the public service pension reform process as far as survivor benefits are concerned is to provide appropriate and adequate protection for the spouses and former spouses of plan members. There are no objections to the changes the Subcommittee recommends to the survivor benefit provisions (subject to the reservations with respect to recommendation 22 and the qualification of recommendation 19); in fact most items had already been recognized as needing change. The Government considers, however, that comprehensive protection for spouses could be accomplished by larger-scale reforms such as the joint and survivor method of paying pensions and the availability of credit-splitting mechanisms.

The status of common law spouses is also under study in public service pension reform. The major plans have long recognized the claims of common law spouses. Consideration is being given to having this recognition provided in all federal public service pension statutes. It is also agreed that the statutes should set out the criteria for recognition without any intervening discretion. However, flexibility will be required to deal with competing claims from legal and common law spouses.

In summary, the Government's commitment to reform of public service pension plans includes improvements in those plans to meet the concerns of the Subcommittee. It must be noted, though, that changing these plans takes time. The reforms contemplated are extensive, there will have to be many changes in a number of statutes, and adequate transitional arrangements will have to be developed. In addition, consultation with public service unions is an essential part of this review.

Pension Benefits Standards Act

On December 17, 1985, the Minister of Finance tabled in Parliament a package of amendments to the Pension Benefits

Standards Act containing, among many others, amendments to ensure coverage of part-time workers, to ensure that pension benefits are provided equally to men and women and to provide for pension credit-splitting in accordance with provincial property laws.

The Canadian Human Rights Act

The Government approaches the Canadian Human Rights Act on the same broad basis as the Subcommittee did, guided by the letter and spirit of the equality guarantees of the Charter. While not all of the changes suggested by the Subcommittee might be required by section 15, the Government has given careful consideration to the recommendations, keeping in mind the principle -- as expressed in section 2 of the Canadian Human Rights Act -- that every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have.

An overall review of the Canadian Human Rights Act was announced by the Minister of Justice before the Subcommittee tabled its report. This review involves the examination of proposals or ideas for changes to the Canadian Human Rights arising not only out of the Subcommittee's report, but out of Equality Now!, the Report of the Special Parliamentary Committee on the Participation of Visible Minorities in Canadian Society, and Annual Reports of the Canadian Human Rights Commission, as well as other sources.

Some changes proposed by the Subcommittee require further consideration because of the difficult issues they raise and these will be considered as part of the overall review.

Meanwhile, the Government will not delay action on recommendations it can accept without further study. It will be bringing forward legislation to amend the Canadian Human Rights Act as outlined in the responses to individual recommendations.

Some of the Subcommittee's recommendations were directed to the Canadian Human Rights Commission, which is responsible for the administration and enforcement of the Canadian Human Rights Act. The Commission functions independently of the Government, so the responses to these recommendations reflect the views of the Commission.

In responding to the recommendations of the Subcommittee, the Government has recognized that, although the protections offered by the Charter will overlap considerably with the protections offered by the Canadian Human Rights Act, the Charter can have only an indirect effect on private sector conduct, unlike the Canadian Human Rights Act which directly regulates such conduct. For this reason, the Government has endeavoured to ensure that the Canadian Human Rights Act provides equivalent protections against discrimination whenever possible and appropriate.

The Canadian Human Rights Act contains no general provision like section 1 of the Charter, which allows reasonable limits to be placed on Charter rights, including the equality guarantees. This means that there may be legitimate distinctions that might be upheld under the Charter equality guarantees but not under the Canadian Human Rights Act. The Charter, as part of the Constitution, is the supreme law of Canada, and in that sense is the ultimate standard of human rights. The Government therefore believes that if a distinction made by it would be upheld under the Charter, it would be consistent with human rights principles to create an exception, if necessary, for that distinction in the Canadian Human Rights Act.

In particular, the Government believes such an exception may be necessary for the Canadian Forces in respect of their policy on mandatory retirement. While this policy may not satisfy a bona fide occupational requirement under the Canadian Human Rights Act, there are justifiable social policy reasons for keeping the current system, which the Government believes would be consistent with the Charter equality guarantees.

MATERNITY AND PARENTAL BENEFITS

RECOMMENDATIONS

1. We recommend that Parliament amend the Unemployment Insurance Act to recognize a two-tier system of benefits relating to childbirth:

   the first tier (maternity benefits), to be available to women only, during late pregnancy and the period following birth; and

   the second tier (parental benefits), to be available to either or both parents, during the period following maternity leave.

2. We recommend that parental benefits (for both natural and adoptive parents) under the Unemployment Insurance Act be available to either or both parents, the total amount of benefits provided not to exceed the maximum available to one parent.

3. We recommend that no distinction be made between the qualifying periods for regular benefits and for special benefits under the Unemployment Insurance Act and that the Act be amended so that the current eligibility requirement for regular benefits applies in respect of all benefits.

4. We recommend that section 22(3) of the Unemployment Insurance Act be amended to remove the present 15-week aggregate benefit limit so that the availability of sickness benefits is separate and distinct from any maternity, adoptive or parental benefits to which a person may be entitled.

RESPONSE

Maternity and adoptive or parental benefits are only one element of a far-ranging scheme. As a consequence, rather than consider changes to these benefits in isolation, the Government believes that it should delay its response until it can consider the recommendations of the Commission of Inquiry appointed on July 4, 1985, to study the entire Unemployment Insurance program. A report is due by March 31, 1986. Meantime, the Subcommittee's recommendations will be considered by the Commission of Inquiry.

RECOMMENDATION

5. We recommend that maternity leave provisions for employees under federal jurisdiction, including the Armed Forces and public service employees not covered by collective agreements, be brought into line with the provisions of the Canada Labour Code.

RESPONSE

The Government agrees that maternity leave provisions for employees under federal jurisdiction should be as uniform as possible, subject to special employment needs. At the present time, there is one set of maternity leave provisions for all Public Service employees for whom the Treasury Board is the employer, whether or not they are represented in the collective bargaining process. These provisions, together with provisions for leave without pay for the care and nurturing of pre-school-aged children, are more generous than comparable provisions of the Canada Labour Code.

The Canadian Armed Forces have been examining possible changes to their maternity leave provisions, but are awaiting the reports of the Commission of Inquiry on Unemployment Insurance and the National Task Force on Child Care before making final decisions. Both reports are expected to make recommendations which could affect the design of these provisions.

The Royal Canadian Mounted Police is now in the process of amending its maternity leave provisions to more closely reflect those of the Public Service.

MANDATORY RETIREMENT

RECOMMENDATION

6. We recommend that mandatory retirement be abolished by

   a) amending the Canadian Human Rights Act so that it is no longer a defence to a complaint of age discrimination that an employee who is forced to retire has reached the "normal age of retirement"; and

   b) amending the Canadian Human Rights Act so that it is no longer a defence to a complaint of age discrimination that an individual whose membership in an employee organization is terminated has reached the "normal age of retirement."

RESPONSE

The Government agrees in principle with this recommendation, that the Canadian Human Rights Act be amended to, in effect, remove the concept of a normal age of retirement for purposes of terminating membership in an employee organization or for termination of employment.

However, since abolition of mandatory retirement will have an impact on labour relations in the private sector, the Government will consult with private sector employers and employee organizations before taking any action, in order to determine the most effective way to implement the Subcommittee's proposal.

Many collective agreements either refer directly to a retirement age or, more commonly, refer to stipulations of a company pension plan which specify an age of retirement. Most of these plans are set up under legislation that will also have to be revised in order to bring about maximum individual choice in retirement decisions. Consequently, to prevent any undue hardship, the Government would accompany implementation of the proposal with transitional rules that would ensure the orderly abolition of mandatory retirement in the private sector.

RECOMMENDATION

7. **We recommend that those provisions of the Public Service Superannuation Regulations providing for mandatory retirement at age 65, as well as comparable regulations affecting public servants who do not contribute to the Superannuation Account, be revoked.**

RESPONSE

The President of the Treasury Board will immediately ask the Treasury Board to revoke both:

a) the provisions of the Public Service Superannuation Regulations which provide for mandatory retirement at age 65 for contributors under the Public Service Superannuation Act; and

b) corresponding provisions in the Non-Contributor Retirement Regulations.

Treasury Board hopes to establish a system to monitor the impact of the removal of mandatory retirement in a number of areas of personnel management and human resources and to provide data for use in any studies that are needed in future on this issue.

RECOMMENDATION

8. **We recommend that the Canadian Human Rights Act be amended so that it applies to all mandatory retirement policies embodied in legislation, regulations or orders.**

RESPONSE

The Government agrees in principle, but action must await a re-examination of the defences available under the Canadian Human Rights Act.

The only defence now available is the one concerning bona fide occupational requirement (BFOR). The concept of BFOR may be applied where it can be established that the age limitation is reasonably necessary to assure efficient and economical performance of the job without endangering the employee, fellow employees or the general public.

But the concept of BFOR does not necessarily include all the kind of justifications that may nonetheless provide a basis for a valid defence under section 1 of the Charter.

The government agrees with the Parliamentary Subcommittee when it notes that some exceptions, in addition to BFORs, might be necessary to prevent undue hardship as a result of a general prohibition of mandatory retirement.

Therefore, before implementing this recommendation, the Government will identify any possible case where mandatory retirement could be justified under the Charter and decide how these exceptions will be dealt with in the Canadian Human Rights Act.

RECOMMENDATION

9. **We recommend that Parliament and the Government of Canada adopt measures to facilitate flexible retirement, so that individuals will have a greater degree of choice in the timing of their retirement, to complement the abolition of mandatory retirement.**

RESPONSE

The Government is committed to policies facilitating flexible retirement. A number are already in place, and the Government will continue to seek ways to provide for flexible retirement for all employees.

Federal and provincial ministers are currently discussing a number of proposed amendments to the Canada Pension Plan (CPP), including the possibility of offering actuarially-reduced retirement benefits as early as age 60 and actuarially-increased benefits for those choosing to start receiving them as late as age 70. While a consensus on this amendment has been reached in principle, it should be noted that a change of this nature to the CPP requires the approval of two-thirds of the provinces having two-thirds of the population of Canada in addition to the approval of Parliament. It is hoped that there will be amending legislation before the House in 1986 with an implementation date of January 1, 1987.

Federal public service pension plans already contain certain of the measures suggested. For example, the statute covering the largest groups, the Public Service Superannuation Act, provides for unreduced pensions at age 55 for those with 30 years of service or at age 60 for those with 5 years of service, as well as reduced pensions as early as age 50. There is also a feature which allows for continued accrual of pension benefits as long as the contributor remains in the workforce.

Within the overall context of public service pension reform, further considerations will be given to other measures which might be introduced to facilitate flexible retirement. This will require consultation with employees and various decision-making authorities.

SEXUAL ORIENTATION

RECOMMENDATION

10. We recommend that the Canadian Human Rights Act be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds, which are race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, and conviction for an offence for which a pardon has been granted.

RESPONSE

The Government is committed to the principle that all Canadians have an equal opportunity to participate as fully as they can in our society; no one should be denied opportunities for reasons that are arbitrary or irrelevant. In particular, persons should not be excluded from employment opportunities for reasons which are irrelevant to their capacity and ability to do the job.

The Government believes that one's sexual orientation is generally irrelevant to whether one can perform a job or use a service or facility. On this basis, the Government will ask Parliament to amend the Canadian Human Rights Act, making sexual orientation a prohibited ground of discrimination. As with all prohibited grounds of discrimination in this Act, legitimate distinctions are permissible if they are based on a bona fide occupational requirement or a bona fide justification.

After careful consideration, the Government of Canada has decided that the Canadian Armed Forces and the Royal Canadian Mounted Police will be exempted from this amendment, as discussed in the response to recommendation 11.

RECOMMENDATION

11. We recommend that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the Canadian Human Rights Act as amended to prohibit discrimination on the basis of sexual orientation.

RESPONSE

The Canadian Armed Forces fully support the principles underlying the equality rights set out in section 15 of the Canadian Charter of Rights and Freedoms. Indeed a fundamental precept of effective military leadership has always been the importance of respect for the individual, concern for the welfare of members, and fairness and impartiality in dealing with people. The Canadian Forces have an enviable record in ensuring that differentiation involving people is restricted solely to those limitations that are necessary in the interests of the security of Canada.

The Canadian Forces policy concerning sexual orientation has been carefully and thoroughly examined in terms of section 15 of the Canadian Charter of Rights and Freedoms. The experience and policies of other democratic societies were sought and carefully considered. This examination showed that these nations also have been unable to find a means of maintaining the effectiveness of their armed forces without limitations concerning sexual orientation.

It is therefore the conclusion of this government that at the present time it is reasonable to continue the current policy of imposing limitations concerning the sexual orientation of a member.

R.C.M.P.

The government believes that at the present time it is not advisable to engage homosexuals or lesbians as uniformed members of the R.C.M.P. The R.C.M.P. performs police and community work in large and small communities including isolated postings and work with youth groups. Members who are homosexuals or lesbians may not be accepted by these communities and as a consequence may effect detrimentally the ability of the Force to police these areas. In addition, there may be problems when members are asked to search prisoners. Therefore, the government believes that at the present time the policy of exclusion of certain members because of their sexual preference, is a practice that is justifiable.

RECOMMENDATION

12. We recommend that the federal government security clearance guidelines covering employees and contractors not discriminate on the basis of sexual orientation.

RESPONSE

Sexual orientation is currently not a grounds for denial of a security clearance, rather, the criteria applied are loyalty to Canada and reliability.

RECOMMENDATION

13. We recommend that the Criminal Code be amended to ensure that the minimum age or ages at which private consensual activity is lawful be made uniform without distinction based on sexual orientation.

RESPONSE

The Minister of Justice will give careful consideration to the possibility of amending the Criminal Code to ensure that the minimum age or ages at which private consensual activity is lawful be made uniform without distinction based on sexual

orientation. Both the Report of the Committee on Sexual Offences Against Children and Youths (Badgley Committee) and the Report of the Special Committee on Pornography and Prostitution (Fraser Committee) suggested that since the age of majority in most provinces is 18, this would be an appropriate uniform age of consent. Department of Justice officials are studying these recommendations and, following consultation with provincial governments and private sector groups, the Minister will announce the government's response to these recommendations.

RECOMMENDATION

14. We recommend support in principle for Bill C-225 and urge the Government to enact legislation reflecting the principle of the Bill as outlined in this Committee's recommendations.

RESPONSE

As outlined in the response to recommendation 10, the Government supports the addition of sexual orientation to the list of prohibited grounds of discrimination in the Canadian Human Rights Act, as proposed in Bill C-225. The Government will bring forward legislation to provide for this and other amendments to this Act.

MARITAL OR FAMILY STATUS

RECOMMENDATION

15. We recommend that the Income Tax Act be amended to extend the meaning of the words "spouse" and "married person" and similar expressions to include a common law spouse, and the word "marriage" to include a common law relationship, so that the same tax treatment is afforded taxpayers in established common law relationships as now applies to taxpayers who are legally married.

RESPONSE

The Government does not feel that it is possible to amend the Income Tax Act at this time.

At present, the Income Tax Act makes many distinctions based on marital status. There are benefits conferred upon legally-married spouses, such as the spousal deduction, inter-spousal transfers of interest, dividends, pension and disability deductions, capital gains roll-overs and a deduction for a spousal registered retirement savings plan.

The Act also includes provisions that place married persons at a disadvantage vis-à-vis single persons, such as the non-arm's length status of spouses and the income attribution rules which prevent the splitting of income. Also, there are certain benefits under the Act that are normally available to all individuals but may be denied an individual who is legally married because the benefit is available only to one spouse (e.g. one principal residence).

The impediment to extending equal treatment to common law spouses is that Revenue Canada would be unable to administer a definition of common law spouse with a high degree of accuracy. If a provision of the Income Tax Act is not subject to proper verification, it will be impossible to apply it fairly and it will be open to abuse. This in itself will create unfairness.

The problem with a definition of common law spouse from the viewpoint of the Income Tax Act is that such a relationship must be identifiable as a common law relationship as soon as it begins -- not just after it has stood the test of time.

Characterization of a relationship as a common law relationship could not depend on a voluntary statement of the parties but must be based on a definition capable of precise application. To leave such a characterization to the parties concerned could create an unfairness to legally married spouses.

Therefore, unless a definition of a common law relationship can be developed that is capable of being administered with a high degree of efficacy and fairness, the present distinctions in the Income Tax Act based on marital status appear to be justifiable.

RECOMMENDATION

16. We recommend that when benefits are conferred or obligations imposed upon partners in a legal marriage by federal law or policies, such benefits and obligations apply in a similar manner to common law spouses.

RESPONSE

Common law relationships already carry the same benefits and obligations as legal marriages in a number of federal statutes, regulations and policy guidelines. The major federal public service pension plans, public service group insurance plans and some employment-related assistance programs recognize common law spouses. In addition benefits are payable to common law spouses under the Canada Pension Plan Act and the Old Age Security Act.

These provisions provide protection for those in common law relationships.

The Government is committed to the preservation of marriage and the family unit. In recognition of the differences between legal marriages and common law relationships, and in recognition of the wishes of those who have chosen not to have a legal marriage, the Government does not agree that wherever benefits and obligations are provided for legally married people, those in common law relationships should be included.

RECOMMENDATION

17. We recommend that a consistent definition of common law relationships be incorporated in all federal laws and policies that recognize such relationships, and for this purpose, we recommend that the definition require that the parties be of the opposite sex, reside continuously with each other for at least one year, and represent themselves publicly as husband and wife.

RESPONSE

Where federal laws and policies recognize common law relationships, a consistent definition would be desirable. However, there may be problems in finding a definition that is appropriate in all cases. In pension law, it is necessary to ascertain the relationship of the parties for a fixed period of time in the past, but that would not be suitable for determining who should be entitled to on-going benefits -- under the Foreign Service Directives, for example. Some federal laws such as the Income Tax Act and the Government Employees Compensation Act must use provincial definitions of "common law spouse" in order to be consistent with other, similar benefits provided and obligations imposed in particular provinces.

It may be necessary to vary the definition for different classes of benefits and obligations - i.e., pension and insurance, taxation and ongoing benefits such as moving expenses and health benefits. This is an area which requires further consideration. Where additional requirements are added to the definition there should be valid reasons for it.

Further consideration will have to be given to the definition of a common law relationship set out in the recommendation. Before adopting new definitions of common law relationships, the Government will consult with provincial authorities about the inter-relation between federal and provincial laws and programs.

Where changes are made to federal laws and policies to recognize common law relationships, steps must be taken to ensure protection for the rights of legal spouses.

EQUALITY ISSUES IN PENSIONS

RECOMMENDATION

18. We recommend that section 56 of the Canada Pension Plan be amended so that surviving spouse's benefits are awarded without reference to disability, age or family status.

RESPONSE

The original rationale behind the eligibility criteria governing the payment of CPP survivors' benefits reflected the assumption that the older the widow was at the time of the contributor's death, the less would be her chances of finding a paying job and supporting herself or of remarrying. Consequently, older women would require financial assistance when their husbands died, and benefits were discontinued on remarriage. Similarly, the presence of dependent children or ill health would make it difficult for a widow to provide for herself. At the time, legislators felt that these provisions would ensure that larger benefits would be payable to surviving spouses who were generally regarded as being in greater financial need.

The rationale for these eligibility conditions reflects the social norms of the early 1960s when the growth in the labour force participation rate of women had barely begun to make itself felt and when the traditional family with only one wage-earner was prevalent. (Note: Until 1975, survivors' benefits were payable to widows only).

The government recognizes, however, that social programs must evolve to reflect changing social conditions. A number of proposals to amend the current survivors' benefit provisions under the CPP have been put forward. Consensus has been reached on continuation of benefits on remarriage, but there is no widespread agreement on the best way to deal with the present age-based structure of pre-retirement survivor benefits. As a result, in 1983, the Parliamentary Task Force on Pension Reform recommended further study. More recently, the federal government has been discussing with the provinces a number of improvements to CPP benefits including provisions to continue survivor benefits on remarriage and to provide pre-retirement survivor benefits which would not be affected by the age of the survivor. It is the intention of the government to work with the provinces to find an acceptable consensus on this issue.

It should be noted that the proposed changes may require, in accordance with the CPP legislation, that a three-year notice of intention be tabled in Parliament. Amendments to the CPP require the consent of two-thirds of the provinces having two-thirds of the Canadian population as well as of Parliament.

RECOMMENDATION

19. We recommend that federal superannuation plans and other employer pension plans under federal jurisdiction be required to provide benefits for surviving spouses of deceased contributors without distinctions that would offend section 15 of the Charter, whether the contributing spouse dies before or after retirement.

RESPONSE

Except as dealt with under recommendations 20, 21 and 22, the provisions of federal superannuation statutes do not:

a) base eligibility for a surviving spouse's pension on any of the listed grounds in section 15, directly or indirectly; or

b) make a distinction in eligibility for an amount of such a pension on the basis of whether the contributing spouse dies before or after retirement.

RECOMMENDATION

20. We recommend the repeal of provisions of the Canada Pension Plan and federal superannuation plans requiring that the benefits to which a surviving spouse is entitled terminate when he or she remarries.

The federal and provincial governments have reached a consensus in favour of repealing the provisions which terminate survivor's benefits upon remarriage. The Government plans to introduce the necessary legislation in 1986 for implementation effective January, 1987.

Any major changes to the CPP, however, require not only the approval of Parliament, but also the consent of two-thirds of the provinces having two-thirds of the Canadian population.

This issue is also being studied as part of the public service pension reform process now taking place. Decisions on specific recommendations can only be made in the context of the entire review.

RECOMMENDATION

21. We recommend the repeal of provisions in federal superannuation plans that require that the amount of a benefit to a surviving spouse be reduced where the surviving spouse is 20 or more years younger than the deceased contributor.

RESPONSE

This recommendation is being studied as part of the overall review of public service pensions. A decision cannot be made at this time since the design to be chosen for survivor benefits is still under consideration.

RECOMMENDATION

22. We recommend the repeal of provisions in federal superannuation plans that disentitle a surviving spouse to benefits where the marriage took place after the contributing spouse retired or reached age 60.

RESPONSE

The Government would not want to commit itself to such a change as it would involve a significant increase in employee and employer costs. Providing benefits as recommended is virtually unknown under private pension plans. However, the public service pension reform study will address the possibility of changes to accommodate spouses who married a contributor aged 60 or more or who was already retired.

RECOMMENDATION

23. We recommend that federal superannuation plans extend surviving spouses' benefits to common law spouses who fall within the definition of a common law spouse (see recommendation 17), in the same manner as benefits are granted to surviving spouses who were legally married to a contributor.

RESPONSE

The Government will consider, as part of the public service pension reform process, having the criteria for common law spouses spelled out in the statutes, without any added discretionary features about such status. The Government will also consider including such recognition in those federal public service pension statutes where it is not now present.

RECOMMENDATION

24. We recommend that the value of Canada Pension Plan credits earned during the marriage be split equally between the spouses automatically upon marriage breakdown - which would include divorce, separation or the termination of a common law relationship - except when the parties agree otherwise after having received independent advice.

RESPONSE

In the course of discussions about amendment of the Canada Pension Plan federal-provincial consensus has been reached to provide for credit splitting upon divorce and breakdown of common-law relationships and for sharing of pensions on retirement. As indicated in the response to recommendation 20, the Government will introduce legislation in 1986 to bring this about, subject to approval by two-thirds of the provinces having two-thirds of the Canadian population.

RECOMMENDATION

25. We recommend that the Spouses Allowance under the Old Age Security Act be replaced with an equivalent benefit that is available without reference to marital status.

RESPONSE

In 1985, the Government extended the Spouses Allowance Program to encompass all needy widows and widowers. This was done in recognition of the needs of this segment of Canadian society. The Government acknowledges that there are other near-elderly persons in need who still do not have the financial protection offered by the spouses allowance. However, as was recognized by the all-party Task Force on Pension Reform in 1983, the Government is unable at this time to go beyond the most recent extension of the program to needy individuals aged 60 to 65. However, it is the intention of the government, when resources permit, to continue this extension of benefits to other needy individuals aged 60 to 65.

RECOMMENDATION

26. We recommend that provisions in the Canada Pension Plan and federal superannuation plans that allow unmarried surviving children under 25 and in full-time attendance at an educational institution to claim benefits, be amended to permit eligibility regardless of the marital status of the surviving child.

RESPONSE

The Government intends to introduce an amendment to the Canada Pension Plan to eliminate the criteria of marital status in the consideration of eligibility for childrens' survivor benefits.

In addition, the Government is considering making this change in the eligibility requirements for a child's benefit as part of the public service pension reform review.

RECOMMENDATION

27. We recommend that Parliament amend the Pension Benefits Standards Act to require that sex-based mortality tables be replaced by unisex mortality tables.

RESPONSE

The Government has introduced amendments to the Pension Benefits Standards Act which will result in equal pension benefits for men and women.

The issue of ending the practice of providing distinct monthly pension benefits based on the sex of the worker received considerable discussion during pension reform discussions. In 1983, the Parliamentary Task Force on Pension Reform recommended a change, in practice similar to recommendation 27. Following this, the Department of Finance established a private sector Ministerial Advisory Committee of experts representing a cross-section of Canadians to examine this issue. The recommendations of this Committee formed the basis of the proposals to amend the Pension Benefits Standards Act, contained in the budget of May 23, 1985. The budget proposals require equal periodic pension benefits to be paid to plan members retiring in identical circumstances, regardless of their sex. Employers would be permitted to achieve this through

a) the use of annuity factors which do not differentiate on the basis of sex;

b) the provision of additional employer contributions to ensure an equal pension benefit even if sex-based annuity tables were used, or

c) any other method acceptable to the Superintendent of Insurance.

This approach provides for greater flexibility than is proposed in recommendation 27. Therefore, it is the view of the Government that once the budget proposal is given force of law, it will meet the spirit and letter of recommendation 27.

RECOMMENDATION

28. We recommend that the War Veterans Allowance Act and the Civilian War Pensions and Allowance Act, which provide for benefit eligibility at different ages for men and women, be amended to provide that benefits for both male and female veterans be available at age 55.

RESPONSE

The Government does not believe that the current differences for eligibility between men and women constitute discrimination since

the purpose was to assist a disadvantaged population; women who did not have the opportunity to participate as fully as males in the labour force and are thus more vulnerable to financial insecurity as they age. The legislation primarily affects women now over age 50. Therefore, the government does not intend to change the rules relating to eligibility.

WOMEN AND THE ARMED FORCES

RECOMMENDATION

29. We recommend that all trades and occupations in the Canadian Armed Forces be open to women.

RESPONSE

The Government is fully committed to the expansion of the role of women in the Canadian Armed Forces. Indeed, the progress of the Forces in pursuit of that objective is evidenced by the fact that the number of women in the Forces has increased five-fold over the past decade and a half. Canada is among the world leaders in this regard. Only two nations are known to have a higher proportion of women in their armed forces than this country; in NATO, Canada stands second only to the United States in the participation of women in the armed forces.

The Canadian Armed Forces have conducted extensive trials with the objective of determining the extent to which the employment of women can be further expanded. Another indication of the success of these efforts is that while women now compose 8.9 percent of the Forces, the proportion of women among new trainees stands at over 12 percent. The scope for broader participation is obvious from the identification of some 29,000 positions that could be filled by women, compared with the present strength of about 7,400.

The Government has considered most carefully the suggestion to open all activities in the Canadian Armed Forces to women. Historical evidence and the experience of other nations has been examined.

However, the Government has not been able to find the assurances that it would need to make responsible decisions in light of the very serious consequences. In many other activities, comparable change could be contemplated with less certainty as to the resultant effects, because the change could be reversed. But unproven innovation in staffing Armed Forces, however well-intentioned, could bring increased risks to the lives of those who serve their country and reduced effectiveness of the Armed Forces in securing the rights and freedoms enjoyed by all Canadians. If experimentation failed the test of battle, the results could be tragically irreversible for members of the Forces and for the nation. The Government noted that no major nation admits women to combat roles in their armed forces.

It would, therefore, be imprudent to make major changes to the staffing of the Canadian Armed Forces until there is reasonable certainty that such changes could be effected without risk to national security.

Nevertheless, the Canadian Armed Forces will use every appropriate means in a continuing effort to expand the employment of women, and policies to that end will be introduced as soon as they can responsibly be implemented.

RECOMMENDATION

30. We recommend that Canadian Armed Forces practices relating to the employment and promotion of women be monitored by the Canadian Human Rights Commission and that progress in revising policies in the manner we recommend be evaluated by the Commission at regular intervals.

RESPONSE

The employment practices of the Canadian Forces are already subject to the Canadian Human Rights Act and the Canadian Human Rights Commission has indicated that it will not become involved in monitoring employers, including the Canadian Forces, for compliance with the Canadian Human Rights Act, but will continue to enforce the Act in response to complaints. The Government agrees with the Commission that it should not become involved in monitoring employers.

IMMIGRATION

RECOMMENDATION

31. We recommend that section 3(f) of the Immigration Act be amended to state, as an objective of Canadian immigration policy, that such policy should ensure that the Act, the Immigration Regulations and immigration guidelines contain standards of admission that do not discriminate in a manner prohibited by the Canadian Charter of Rights and Freedoms.

RESPONSE

Section 3(f) of the Immigration Act, 1976 states that Canadian immigration policy should not discriminate on grounds of race, national or ethnic origin, colour, religion or sex.

Section 15 of the Charter introduced additional grounds of discrimination, in particular age and disability, and such other grounds as may be identified by the courts. Therefore, the government accepts the Committee's recommendation in principle and proposes to amend subsection 3(f) to provide that standards of admission should not discriminate in a manner prohibited by the Charter.

RECOMMENDATION

32. We recommend that the medical standards for admission to Canada, applied pursuant to the Immigration Act, be made public and be reviewed and modified in order that they be more flexible in their application.

RESPONSE

All persons making application for immigration to Canada must undergo medical examinations. Certain categories of visitors -- such as students, seasonal agricultural workers and long stay visitors -- must also meet this requirement. The Immigration Act makes applicants medically inadmissible if they would:

a) be a danger to public health or safety; or

b) place an excessive demand on health or social services.

The medical examinations (including chest x-rays for those aged 11 and older and certain laboratory tests) are conducted by local Designated Medical Practitioners and the reports are assessed by Immigration Medical Officers of the Department of National Health and Welfare. The completed assessment is then passed on to a Canadian visa officer. The two major admissible criteria, referred to above, are supported by additional considerations for medical suitability, including: the probable response to treatment of any existing condition, the need for any medical

surveillance or follow-up, and the potential employability of the applicant in Canada.

To assist medical officers in the assessment of presented medical records, the Department of National Health and Welfare has a Handbook to provide some guidance to appraisal of the more common medical conditions reported. The Handbook is frequently revised to reflect new standards in relation to specific conditions or amendments to previous texts. Apart from the administrative procedures that are also included, most medical guidelines are contributed by medical specialists from outside of the Public Service. These physicians are members of the Immigration Medical Review Board (IMRB) which serves as an advisory body. Some of these guidelines are discussed with provincial health authorities before implementation.

The Medical Officer's Handbook on Immigration Medicine, is available for examination upon request. Its contents are constantly under review; the Handbook has undergone three revisions in the past six years. The Goverment believes that the ongoing review procedures are adequate to ensure that the guidelines are as flexible and as reasonable as possible.

RECOMMENDATION

33. We recommend that the Immigration Regulations be amended so that a permanent resident who has been in Canada for at least three years is entitled to sponsor a parent without regard to the age, ability to work, or marital status of that parent, as is the case if the sponsor of a parent is a Canadian citizen.

RESPONSE

The Government will amend the Immigration Regulations to eliminate this distinction.

RECOMMENDATION

34. We recommend that the Immigration Regulations be amended so that an undertaking of support given by a permanent resident who has been in Canada for at least three years confers the same benefit on an "assisted relative" seeking admission to Canada as an undertaking of support given by a Canadian citizen.

RESPONSE

The distinction between Canadian citizens and permanent residents with respect to the undertaking of support given to an assisted relative was eliminated by amendments to the Immigration Regulations, 1978 (P.C. 1985-3246) enacted on October 31, 1985, to become effective on January 1, 1986.

RECOMMENDATION

35. **We recommend that common law relationships be recognized, under the Immigration Regulations, for immigration purposes, so that a party to such a relationship may be admitted to Canada as an accompanying dependent of his or her common law spouse or may be sponsored for admission to Canada by his or her common law spouse. (For these purposes the definition of a common law spouse would be that set out in recommendation 17)**

RESPONSE

The Government regrets that it is unable to agree to this recommendation at this time. Although the recommendation would remove an obstacle to admission in the case of genuine common law relationships, the Government is concerned that it would open the door to a completely new avenue of fraudulent practice. Checking cohabitation and public representation for the relevant period would be most difficult where residence has occurred in other countries. Unscrupulous applicants could seize the opportunity to allege common law relationships that would enable them to claim spousal benefits. Because family reunion is such a fundamental goal of policy and law, these claims might be difficult to resist.

Recognition of common law relationships would also benefit not only the spouse but the spouse's relatives, who could later become eligible as members of the family class or as assisted relatives.

If a large number of imposters -- and eventually their relatives -- were to gain admission, without regard to their personal qualifications, the size and proportion of the family class movement under the annual immigration levels would increase, perhaps dramatically. On the other hand, if significant resources had to be diverted to the control of fraud, this could hamper the admission of genuine applicants.

RECOMMENDATION

36. **We recommend that the Immigration Regulations be amended so that a legally adopted child is treated in the same way as a natural child and can, therefore, accompany a parent or parents immigrating to Canada or join a parent or parents already in Canada as a family class member, notwithstanding the age at which the child was adopted.**

RESPONSE

The Government agrees with this recommendation where parents are immigrating to Canada with a legally adopted child. The Immigration Regulations, 1978 will be amended to allow such a child to qualify as a dependent in the same way as a natural

child, notwithstanding the age at which the adoption took place. Dependent status will be denied, however, where the adoption of a child after age 13 was entered into primarily for the purpose of gaining admission to Canada as a member of the family class.

The Government also agrees with the comments of the Subcommittee that there is a distinction between, on the one hand, persons who adopt a child and subsequently immigrate to Canada and, on the other, those already in Canada who seek to adopt a person living outside Canada. In the latter situation, the potential to use adoption as a means of qualifying as a dependent a person who would otherwise be inadmissible is very real. For that reason, the government considers that the age limit of 13 should be maintained where a Canadian resident goes abroad for the purpose of adopting a person or seeks to bring a person to Canada for the purpose of adoption.

RECOMMENDATION

37. **We recommend that the federal government make provision for instruction in one of the official languages to all immigrants, regardless of sex, marital or family status, dependency or length of time in Canada.**

RESPONSE

The Government makes language training available to any immigrant not registered in educational programs, regardless of sex, marital or family status, dependency or length of time in Canada. Classes are operated by provincial education authorities, funded by the Department of the Secretary of State and the Canada Employment and Immigration Commission.

Under the Citizenship and Language Training Agreements, the Department of the Secretary of State reimburses 50 percent of provincial expenses for language training for citizenship purposes. The Department also pays up to 100 percent of the cost of printing teaching materials. Courses are flexible, to meet the varied needs of students; they may be full-time or part-time, day or evening, and they are sometimes offered in community facilities which offer such support as child care services.

Language training under the National Training Program administered by the Canada Employment and Immigration Commission provides language skills to adult immigrants who are unable to find employment because of a lack of knowledge of one of the official languages. Training, normally on a full-time basis, is purchased from the provinces and private institutions according to the terms of federal/provincial training agreements.

While language training is therefore available to all immigrants, allowances are provided only to those whose admission to Canada has not been sponsored by a relative. The reason for this

distinction is that sponsors are legally responsible for the establishment of their relatives in Canada. To extend language allowances to all immigrants would have serious cost implications estimated to be in excess of $30 million annually.

RECOMMENDATION

38. We recommend that the general preference in favour of Canadian citizens in job competitions in the Public Service, pursuant to the Public Service Employment Act, be eliminated so that permanent residents may compete for public service jobs on an equal footing with Canadian citizens.

RESPONSE

The Government does not agree with this recommendation. It takes the view that the current preference granted to citizens is a reasonable and justified limitation, permitted by the Charter and the International Covenant on Civil and Political Rights.

This view is based on considerations of the nature of citizenship and its relation to the role of the Public Service. In their work, public servants serve and represent the Canadian community by guaranteeing its security, by ensuring its safety, by advancing its physical and economic welfare and by representing its interests, in Canada and abroad.

Citizenship carries with it both privileges and responsibilities. The privileges include the right to vote; one responsibility is to promote the security and welfare of the country and to protect the country's way of life. The Government is of the opinion that one of the legitimate benefits of Canadian citizenship should be the right to seek and receive employment in the federal Public Service on a preferential basis. This right is subject to certain obligations such as the limitations on political activity, but it remains one of the advantages of citizenship and a recognition of the value placed on citizenship by Canadian society.

It is to be noted that this view seems to prevail in other Western democracies, some of which (e.g., United States, France, Great Britain, Australia) go farther than Canada in making citizenship a requirement for entry to the civil service, rather than a preference.

Under the current system, non-Canadians can be employed in the federal Public Service if there are no qualified Canadian citizens.

RELIGIOUS OBSERVANCE

RECOMMENDATION

39. We recommend that the Canada Labour Code and the federal Public Service Terms and Conditions of Employment Regulations be amended so that there is provision for a determinate number of statutory holidays that an employee may elect, upon being employed, in accordance with his or her religious observance requirements or personal beliefs.

RESPONSE

While accepting the objective of this recommendation -- that is, the fair and equitable accommodation of religious observance which take place on days other than those provided for in general holidays under the Canada Labour Code -- the Government notes a number of obstacles to implementation.

Most, if not all, enterprises under federal jurisdiction other than those in continuous operation, are closed on the listed holidays. To allow for individual substitution of holidays, rather than group substitution, as is provided for under section 51 of the Code, could cause hardships, financial and otherwise, to employers and might well create other, and perhaps more widespread inequities, for fellow employees.

In light of this, the Government prefers the general approach proposed in recommendation 80 concerning amendment of the Canadian Human Rights Act to require "reasonable accommodation" -- that is, "such special provisions as would not cause undue hardship to employers, in response to the needs peculiar to those classes of employees who are protected from discrimination by the terms of the Act." In this case it would be reasonable accommodation to provide time off, if possible, for the religious observances not now covered by the general holidays provided for under the Canada Labour Code.

Treasury Board is willing to consider altering the Terms and Conditions of Employment Directives to provide reasonable accommodation for employees wishing to take other than the religious holidays now provided. Bargaining agents will be consulted before any changes are implemented. The question of providing fixed and floating statutory holidays is still under consideration and further study is necessary.

RECOMMENDATION

40. We recommend that the Minister of Justice refer to the Uniform Law Conference of Canada and to provincial ministers responsible for human rights the consideration of amendments to provincial hours of business and employment standards legislation to provide for days of rest that respect freedom of conscience and religious belief on a consistent basis.

RESPONSE

In recognition of the responsibility of provincial governments for legislation regulating hours of business and employment standards legislation, the Minister of Justice will raise with the Uniform Law Conference and provincial ministers responsible for human rights the question of weekly days of rest which respect freedom of conscience and religious belief. The matter will also be raised at the meeting of federal and provincial ministers of labour.

ACCESS BY THE PHYSICALLY DISABLED

RECOMMENDATION

41. We recommend that interpreter services for the hearing impaired be available upon request at federal public hearings, including those of parliamentary committees.

RESPONSE

The Government agrees in principle that interpreter services for deaf and hard of hearing persons should be available to ensure greater access to all government services. As resources permit, these interpreter services will be expanded.

RECOMMENDATION

42. We endorse the recommendation of the Obstacles report concerning access to facilities and services and urge the Government and Parliament of Canada to take all measures necessary to implement them without further delay.

RESPONSE

As a demonstration of commitment to the Obstacles report, the government announced on December 10, 1985, that it would develop an implementation plan for those recommendations still outstanding from the Obstacles report. In the next six months, all government departments and agencies must establish timetables to implement remaining Obstacles recommendations. The implementation plan drawn from these timetables will be submitted to the Parliamentary Subcommittee on the Disabled and the Handicapped.

The Government has also announced Canada's participation in the World Decade of Disabled Persons and adoption of the World Programme of Action concerning Disabled Persons. Canada has thus made a commitment to new areas of endeavour for disabled persons, such as providing services meeting the government's newly clarified definition of rehabilitation, promoting the development of organizations composed of disabled persons, and providing them with channels to effectively advise all levels of government on policies designed to effect the full participation of disabled persons in Canadian society and the economy.

RECOMMENDATION

43. We recommend that a federal co-ordinating agency be made responsible for supervising the implementation of programs designed to help disabled people, including programs designed to provide accessibility to facilities and services, and that the agency actively promote the rights of disabled people.

RESPONSE

On December 10, 1985, the Government of Canada announced the permanent establishment of the Status of Disabled Persons Secretariat. The Secretariat will play a major role in the implementation of Government programs designed to assist disabled persons and will actively promote the rights of disabled persons. The major responsiblities of the Secretariat are to:

a) develop a comprehensive federal policy for disabled persons;

b) monitor and coordinate the development and implementation of federal policies for disabled persons;

c) analyze federal, provincial, territorial and international initiatives in this area;

d) promote the full integration of disabled persons through education, information and legislation; and

e) engage the private and voluntary sectors.

RECOMMENDATION

44. We recommend that this co-ordinating agency and the Minister responsible for it be given statutory recognition and be required to report annually to Parliament, the report to be automatically and permanently referred to the Subcommittee on the Disabled and the Handicapped.

RESPONSE

The Minister responsible for the Secretariat will report annually on its activities in a form that will permit Parliament to consider Government programs and activities to assist disabled persons.

RECOMMENDATION

45. We recommend that the mandate of the parliamentary Subcommittee on the Disabled and the Handicapped be expanded so that the Subcommittee is authorized to initiate inquiries and make proposals concerning programs for the disabled.

RESPONSE

The Subcommittee on the Disabled and the Handicapped was established in April, 1985, as part of this Government's commitment to disabled persons. The program of reform of the House of Commons announced by the Government in October included a recommendation that Standing Committees be empowered to

initiate inquiries and make proposals concerning programs. This recommendation has been adopted by all political parties in the House and came into force in January, 1986, for a one-year trial.

RECOMMENDATION

46. We recommend that, in consultation with the Minister Responsible for the Status of Disabled Persons, all departments and agencies immediately establish priorities and timetables for implementing programs to provide access by the disabled to facilities and services under federal jurisdiction. These priorities and timetables should be tabled in Parliament and referred to the Subcommittee on the Disabled and the Handicapped.

RESPONSE

In July, 1985, the Treasury Board directed that all federal facilities, both Crown-owned and leased, should be upgraded to ensure accessibility to the level of the Barrier Free Design Standard developed by the Department of Public Works. This program of upgrading is expected to be completed in 1994-95 at a cost of $110 million.

As announced on December 10, 1985, the Minister responsible for the Status of Disabled Persons is required to table in six months an action plan for the implementation of all outstanding Obstacles recommendations.

RECOMMENDATION

47. We recommend that disabled people be consulted in the development of cost-efficient programs and measures designed to provide access by the disabled to facilities and services under federal jurisdiction.

RESPONSE

The Government strongly supports the involvement of disabled people in the development of cost-efficient programs and measures designed to provide access by disabled persons to facilities and services under federal jurisdiction, as enunciated in principle 4 of the December 10, 1985, declaration by the Prime Minister. Compliance with this declaration is assured through three major vehicles:

a) international scrutiny of Canada's reports to the United Nations General Assembly;

b) the newly-announced funding of the disabled consumers' movement in Canada; and

c) enhanced scrutiny of the Status of Disabled Persons Secretariat by the Parliamentary Subcommittee on the Disabled and the Handicapped.

RECOMMENDATION

48. **We recommend that the federal government use its statutory powers under the Canadian Human Rights Act, the Ferries Act, the Canada Shipping Act, the Transport Act, the National Transportation Act, the Railway Act and the Aeronautics Act to secure the full implementation of standards for accessibility by disabled people to facilities and services under federal jurisdiction.**

RESPONSE

Considerable effort has been directed toward finalizing accessibility standards for all federally regulated modes of transportation through close consultation with both disabled and industry representatives. It is expected that final accessibility standards will be available in the next 18 months for all federally regulated modes of transportation.

In order to ensure these standards are seen to form the basis for the provision of non-discriminatory services in the transport sector, the Government is prepared to enact regulations under section 19.1 of the Canadian Human Rights Act. The progress of carriers and operators to comply with these accessibility standards will be closely monitored and, if there are serious problems with non-compliance after three years of enactment, the Government would force compliance through specific regulations under the appropriate legislation. Crown Corporations will be asked to prepare accessibility standards for adoption under section 15.1 of the Canadian Human Rights Act.

The Government is also committed to ensuring that disabled Canadians have adequate access to telecommunications services and to examining standards of access by the disabled to television, radio and other modes of communications.

A National Consultative Committee on Telecommunications and Physical Disability composed of 11 disabled consumers has already been established and its recommendations for a proposed national policy on telecommunications and physical disability are under consideration.

An ad hoc technical committee, including representatives from major telephone companies, manufacturers of telephone equipment and hearing aids, consumer associations, federal and provincial governments and hearing impairment groups has been established, to present recommendations concerning access to telecommunication services by hearing impaired persons. The Committee has recommended that, in the short term, technical performance criteria should be developed leading to improved technical equipment and performance. In the long term, further research on hearing aid - telephone coupling should be made. The Canadian Standards Association has since issued standards which provide for hearing aid compatibility with telephones, and the Department

of Health and Welfare is developing standards for hearing aids to ensure that they will be compatible with telephone equipment.

Once a national policy on access by the disabled to telephone services is established, consideration will be given to the need for regulations in this area.

In the spring of 1984, the Minister of Communications established the Broadcasting Task Force with a mandate to propose an industrial and cultural strategy for the broadcasting system, to be in effect until the end of the century. This task force has been charged specifically with identifying the needs of special audiences, and making recommendations on meeting them.

Meantime, steps are being taken to improve closed-captioned television for the hearing impaired and radio reading services for the visually impaired and print handicapped. In 1984, Canadian Satellite Communications Inc. (CANCOM) agreed to provide, at no cost, a satellite sub-carrier to deliver throughout the country both French- and English-language radio reading services. The Department of Communications is examining means for establishing such service, and in the recently circulated discussion paper Initiatives for the Radio and Sound Recording Industries, the Department set forth a proposal which is under consideration by the Government.

At this time, it is not anticipated that regulation in the areas of closed-captioned television programming or radio reading services will be necessary. However, once the Minister has received and reviewed the recommendations of the Broadcasting Task Force, and once a national policy on telecommunications and physical disability has been approved, the Government will be in a better position to determine whether there is a need for regulations.

RECOMMENDATION

49. We recommend that the Canadian Human Rights Commission adopt new guidelines to ensure that any restrictions on the right of access by the disabled to facilities and services under sections 14(g) and 41(4) of the Canadian Human Rights Act are carefully limited and clearly defined.

RESPONSE

The Canadian Human Rights Commission has already adopted Interim Policies on bona fide justification under the Canadian Human Rights Act. These policies, which the Commission has proposed to issue eventually as guidelines under subsection 22(2) of the Act, define generally what restrictions on access are and are not permissible under the Act, and have been designed with the interests of disabled persons in mind. Apart from these policies, the Commission does not propose further guidelines. The Act already provides for the creation of accessibility

standards for the benefit of disabled persons in specific areas such as transportation; section 19.1 permits the Government to establish such standards by regulation. The Government's plans to develop such regulations if they prove necessary are discussed above in the response to recommendation 48.

RECOMMENDATION

50. We recommend that the federal government develop priorities and timetables, in collaboration with provincial governments, for implementing programs to provide access to facilities and services by the disabled, that the government report to Parliament, by July 1, 1986, on progess towards this end, and that the report be referred to the Subcommittee on the Disabled and the Handicapped.

RESPONSE

The Government recognizes the importance of close collaboration with provincial governments to ensure access to facilities and services for disabled persons. The continuing conference of Federal-Provincial- Territorial Ministers responsible for Human Rights considered the text for the Declaration for the Decade of Disabled Persons as announced by the Prime Minister on December 10, 1985.

The Minister Responsible for the Status of Disabled Persons is consulting his provincial colleagues with a view to holding a federal-provincial conference on the status of the disabled in the near future. Progress in this area will be reported to Parliament by the Minister.

MENTAL DISABILITY

RECOMMENDATION

51. **We recommend that federal laws and policies providing benefits or protection to the mentally disabled be appropriately amended so that they cover those with a mental disability in the comprehensive sense, that is, mental retardation or impairment, learning disability and mental disorder.**

RESPONSE

The Government agrees in principle that the definition of mental disability should include mental retardation or impairment, learning disability and mental disorder. The Treasury Board recently revised its definition to include these elements, and the definition of mental disability used by the Canadian Human Rights Commission includes retardation, learning disability and psychiatric or emotional illness.

RECOMMENDATION

52. **We recommend that section 14(4)(f) of the Canada Elections Act be repealed so that the mentally disabled have the same right to be enumerated and to vote as all other Canadians.**

RESPONSE

The Government will take the appropriate action to ensure that the mentally disabled have the full right to vote.

RECOMMENDATION

53. **We recommend that the Minister of Justice bring forward amendments to the Criminal Code at the earliest opportunity to eliminate instances where the mentally disabled are not accorded equal protection and equal benefit of the law.**

RESPONSE

The Minister of Justice plans to introduce legislation early in 1986 which will eliminate any instances where the mentally disabled offender may not have been accorded equal protection and equal benefit of the law.

The amendments will deal comprehensively with the rules of evidence and procedure in relation to mental disorder and the criminal law. From the standpoint of section 15 of the Charter, the most important amendments relate to procedure with respect to the work of boards established to review the cases of persons found not guilty or unfit to stand trial by reason of insanity and being held indefinitely as a result. Under the proposed amendments, review boards will no longer merely advise provincial

authorities whether detention should continue but will make the decision. Boards would have to follow procedural rules prescribed which should satisfy the Charter requirements of sections 7, 9 and 15. These rules would, for example, guarantee the right to counsel at review board hearings, the right to disclosure of documents, the right to question witnesses, the right to be present at the hearing, the right to present evidence and make submissions, and the right to appeal a decision of a board in a court of law. A guiding principle for both the courts and the review boards would be that in choosing between alternative dispositions, the least restrictive disposition consistent with protection of the public should be employed.

The proposed amendments would also empower the courts to order that mentally disabled offenders who have been convicted serve their sentences in hospitals rather than prisons. This would be subject to the consent of the hospital, and also would exclude certain serious offences that involve mandatory minimum sentences, such as first degree murder.

PART-TIME WORK

RECOMMENDATION

54. We recommend the adoption of a definition of part-time work that would cover all categories of part-time work, including seasonal work, as follows: a part-time worker is one who works fewer than the normally scheduled weekly or monthly hours of work established for persons doing similar work.

RESPONSE

It would be desirable from an equality standpoint to have a common definition of part-time work. However, there may be difficulties in establishing one. There is some concern with the proposed definition in that it does not clarify whether the part-time worker definition can be applied to an individual employee who also has a full-time job with another employer, such as all members of the Canadian Armed Forces Reserves. Further, the inclusion of the phrase "similar work" may reduce or eliminate existing rights or eligibility to the minimum labour standards legislation if the individual part-time employee was hired to do a job which is not "similar work" to any other job done by a full-time employee for that employer.

The Public Service Commission has recommended the revocation of the Part-time Work Exclusion Approval Order and Public Service Part-time Regulations and a revision of the Public Service Employment Act and Regulations to adopt a definition similar to that proposed.

The Government does not wish to impose any definition of part-time work where a distinction between part-time and full-time workers is not now made and a distinction might reduce or eliminate existing rights or eligibility. The Canada Labour Code, Part III, does not distinguish between part-time and full-time workers, as it operates on the number of months of attachment to an employer rather than the number of hours worked during this period; imposition of such a distinction could reduce benefits part-time workers now enjoy.

RECOMMENDATION

55. We recommend that all federal employment standards legislation and policies be amended to ensure that part-time workers, including seasonal workers, receive the same statutory benefits on a pro rata basis as full-time workers.

RESPONSE

The Government accepts the principle that wherever possible, benefits conferred on full-time employees should be extended to part-time employees. There are already a large number of

benefits extended to part-time employees, including those provided in the March 1, 1985, amendments to the Canada Labour Code, extending prorated statutory holiday benefits to part-time workers. Others, notably pension coverage, are now under active consideration. Several statutory benefits currently extended under Part III of the Canada Labour Code to all eligible workers would be less generous if prorated than as currently applied -- maternity benefits and bereavement leave, for example. However, some benefits are not appropriately divisible on a pro rata basis.

In the case of an indivisible benefit, a comparable or equivalent benefit may be more to the advantage of the part-time employee than the "same" statutory benefit, prorated, as the recommendation suggest. Further, although cost factors should not overshadow the interests of fairness, programs should not be implemented that cost more than the value of the benefits conferred.

The Public Service Commission has recommended the revocation of the Part-time Work Exclusion Approval Order and the Public Service Part-time Regulations and the adoption of a new definition of part-time work similar to that proposed in recommendation 54. This would give part-time workers the same rights as full-time workers under the Public Service Employment Act and Regulations to enter closed competitions and enjoy rights on lay-off.

RECOMMENDATION

56. We recommend that federal laws and policies be amended to ensure that part-time workers, including seasonal workers, who work eight hours a week or more and who have worked for their employer for at least one year, contribute to and be eligible for benefits, on a pro rata basis, under employer-sponsored pension and insurance plans applicable to full-time workers.

RESPONSE

The Government agrees in principle with extending employer-sponsored pension and insurance plans to eligible part-time employees and agrees that some reasonable, standardized degree of attachment to the work force of the employer should be a condition of coverage.

However, there are some problems with the suggested minimum qualification periods of "eight hours a week or more" and "at least one year." Weekly hours may exclude part-time workers who have irregular schedules, such as members of the Canadian Armed Forces Reserves.

Also, there is concern that programs should not be extended where such extension would cost more than the value of benefits

conferred, as this would be unfair to other employees already enrolled in such plans.

Further study will have to be undertaken to make an appropriate choice between:

a) time criteria, such as that suggested and the one-third of full-time hours with no qualifying period of prior employment required under the Disability Insurance Plan and the Public Service Management Insurance Plan; or

b) a monetary or equivalency criteria, such as that included in the proposed amendments to the Pension Benefits Standards Act, which would require 35 percent of the Canada Pension Plan's Yearly Maximum Pensionable Earnings in two consecutive years or an equivalent calculation.

The proposed amendments to the Pension Benefits Standards Act will provide pension coverage for a number of individuals, subject to federal jurisdiction who do not come within public service pension schemes.

RECOMMENDATION

57. We recommend that the requirement that an employee work 15 hours per week to contribute to and be eligible for benefits under the Unemployment Insurance Act be reduced to reflect better the work schedules of part-time workers, and that the hourly limit that is set be not less than eight hours per week.

RESPONSE

On July 4, 1985, a Commission of Inquiry was established to study the entire Unemployment Insurance program and rather than consider changes to these benefits in isolation, the government believes it preferable to delay its response until it has had an opportunity to consider the Commission's recommendations. The Commission is to report by March 31, 1986. Meantime, the Subcommittee's recommendation will be considered by the Commission of Inquiry in the context of its entire review.

RECOMMENDATION

58. We recommend that federal laws and superannuation plans reflect the particular needs of part-time workers for early pension vesting and portability rights.

RESPONSE

Amendments have now been introduced to the Pension Benefits Standards Act which will ensure that part-time workers are

treated in the same way as full-time workers in terms of the various standards including vesting, portability, and survivor benefits.

The President of the Treasury Board has already announced his intention to make public service plans generally meet the requirements of the federal Pension Benefits Standards Act at least. Development of a scheme to provide pension coverage for part-time employees is part of the current public service pension review.

EMPLOYMENT EQUITY

RECOMMENDATION

59. We recommend the adoption of legislation providing for employment equity programs at the federal level and obliging employers to (a) develop and maintain employment practices designed to eliminate discriminatory barriers and (b) improve where necessary the participation of qualified women, native people, disabled people and underrepresented visible minorities in the workplace, without necessitating the use of quotas.

RESPONSE

The Government anticipated this recommendation by introducing Bill C-62, the Employment Equity Act.

Once enacted by Parliament, it will require private employers and Crown corporations with more than 100 employees to implement employment equity for women, aboriginal peoples, disabled persons and persons who belong, because of race or colour, to visible minorities. By June 1, 1988, employers will have to file reports annually on the representation of these groups in their work forces, with fines of up to $50,000 for non-compliance.

RECOMMENDATION

60. We recommend that employment equity legislation apply to all federal public sector employers and to employers under federal jurisdiction, with necessary adjustments being made by regulation for small businesses and agencies.

RESPONSE

By exempting employers with fewer than 100 employees, Bill C-62 meets the concern expressed about adjustments for small business and agencies.

The Government considers it unnecessary to make the federal Crown subject to the legislation, as Treasury Board has already taken the lead in the field of employment equity through the 1983 Guidelines on Affirmative Action in the Public Service. Bill C-62 will bring the federally-regulated private sector and Crown corporations up to the level of the Treasury Board as regards employment equity.

The Government has had an affirmative action policy and program for women, native persons and disabled persons in place since 1983. It requires departments and agencies for whom Treasury Board is the employer (including civilian employees of the RCMP and the Department of National Defence) to develop and maintain employment practices which are non-discriminatory and to correct the underrepresentation of these target groups through numerical targets and special measures.

The President of the Treasury Board included visible minorities as a designated group in July, 1985, and has announced special measures of a general nature to improve their representation in the Public Service. Specific measures will be announced in the near future.

Because members of the Canadian Forces are not employees of the Treasury Board, the 1983 Guidelines do not apply. But the Forces are nonetheless committed to such programs as are consistent with the overriding criteria of maintaining an effective operational Force to ensure the security of Canada. In those areas where the unique structure of the Forces permits, there are programs consistent with the intent of the 1983 Guidelines. The Native Peoples' Development Program has been in effect for 14 years. The number of women employed in the Forces has increased from 1.8 percent in 1971 to 8.9 percent today, and it will continue to increase. (However, the fundamental purpose and structure of the Forces precludes the employment of disabled persons.)

RECOMMENDATION

61. We recommend that representatives of the appropriate designated groups (women, underrepresented visible minorities, native peoples and disabled people) be involved, as the case may require, with management and labour in developing employment equity programs.

RESPONSE

The Government recognizes the importance of involving all interested parties in the development of employment equity programs. With respect to the Public Service, the President of the Treasury Board has in place advisory committees for each of the designated groups. In addition:

a) guidelines to be issued under section 10 of Bill C-62 will encourage the involvement of the designated groups in the planning and implementation of employment equity, and

b) Bill C-62 will also be amended to require employers to implement employment equity in consultation with employee representatives.

RECOMMENDATION

62. We recommend that legislation on employment equity contain enforcement mechanisms providing for the review of special programs by the Canadian Human Rights Commission, and that the Commission be given additional financial and human resources for this purpose.

RESPONSE

The Government is of the view that the reporting requirements in the Act, together with making such reports available to the public, are sufficient to ensure compliance.

It is considered that the risk of adverse publicity which an employer would face unless progress in implementing employment equity is demonstrated in the reports, as well as the possibility that such reports may afford to the Canadian Human Rights Commission grounds upon which to initiate an investigation under the Canadian Human Rights Act, will provide adequate inducement to employers to achieve the desired results.

This Bill is a first step toward the Government's goal of achieving employment equity. It attempts to balance the needs of the designated groups against the Government's desire not to interfere unduly in the operations of employers. The Government will review the results of Bill C-62 after several years.

RECOMMENDATION

63. We recommend that, to assure employment equity, a contract compliance program be established by legislation and that it apply to all firms providing goods and services to the Government of Canada, with necessary adjustments being made, by regulation, on the basis of the size of the firm or the volume of its business with the Government.

RESPONSE

The Government supports this recommendation in principle and has acted on it. Some suppliers will be covered by the proposed Employment Equity Act (Bill C-62). Furthermore, Cabinet has agreed to the introduction of an Employment Equity for Federal Contractors Program applicable to contractors with at least 100 employees and supplying goods and services worth more than $200,000.

However, for a number of reasons it is not possible to apply this to all contracting action taken by the federal government.

A requirement that all firms doing business with the Government have an employment equity program would result in unknown direct cost increases to the government for goods or services provided by these firms. If only firms that have an employment equity program in place are allowed to bid for government work, cost savings that result from free and open competition may not materialize.

The Government must buy many goods from sole source suppliers, both in Canada and in foreign countries. Sole source requirements and foreign requirements would have to be exempted from any program of employment equity unless the government was prepared to do without a particular good or service.

In addition, an attempt to impose contract compliance abroad would amount to extraterritorial application of Canadian laws and policies in a manner that may conflict with the laws of foreign countries. Since Canada itself is sensitive to the extraterritorial application of foreign laws in Canada, consistently holding it to be improper under international law, it would be inconsistent for the Government to impose a contract compliance program abroad. Quite apart from the matter of principle involved, its practicality or enforceability is doubtful. First, in many countries, local laws, customs and cultures seriously impede the imposition of a contract compliance program of the type envisaged. As well, if some foreign contractors refuse to adhere to such conditions, there is no likelihood that their competitors would adhere in order to obtain the business of Canadian missions, which is negligible in the overall economic picture abroad. Finally, that in many countries, especially in Eastern Europe and the USSR, Canadian missions must contract with agencies of the local government for goods and services and it clearly is out of the question that one sovereign state could impose such conditions on another state in the other's territory.

Current policy thrusts to encourage the contracting out of certain federal operations may be thwarted if employment equity is made a mandatory condition in all contracts with federal agencies.

Any proposals which intrude upon the operations of a firm in the private sector will be considered artificial interference in the open market. This development would be contrary to federal programs already accepted for deregulation and reduction of the paper burden.

The Government hopes to bring about employment equity by encouraging Canadian businesses towards this goal. For example, an employer who makes an effort to achieve employment equity would receive a Ministerial Citation for Excellence.

RECOMMENDATION

64. We recommend that Statistics Canada provide, through the Census, relevant data to be used for devising and evaluating employment equity programs.

RESPONSE

The 1986 Census will include new questions, and modifications to previously-used questions, that will permit more precise identification of the size, characteristics and geographic distribution of minority population groups, including disabled persons and aboriginal peoples. Planning for the decennial Census of 1991 has begun, and Statistics Canada will ensure that information needed in devising and evaluating employment equity programs are given full consideration in the development of recommendations to Cabinet for questions to be asked then.

Censuses, however, cannot collect the full range of information needed to precisely identify visible minority groups, however defined, or to fully explain their economic or social circumstances compared to those of the population in general. Additional information will be required both to design policies and programs targeted at specific minority groups and to assess their impact.

While sample surveys and data extracted from administrative files can meet some of the identified requirements, in-depth information on particular minority groups can be developed most effectively through post-Census surveys directed at target groups identified through the Census. Statistics Canada will work with both government and private sector data users toward the development of such statistical programs.

Currently, the agency is designing a post-Census survey of disabled persons which, if funded, will provide needed information about the nature and extent of their disabilities and the impact of these disabilities on employment, education, transportation and other activities.

RECOMMENDATION

65. We recommend that employment equity legislation provide for regular review of special programs and that they be adjusted or terminated according to changing circumstances.

RESPONSE

The discussion preceding this recommendation seems to indicate the Subcommittee's concern that employment equity programs, once approved, might remain in place indefinitely even when the need for them has ceased.

Under the proposed Employment Equity Act (Bill C-62), employers would be required to file statistical reports indicating the progress they are making towards employment equity. As the Bill does not propose that employers be required to submit their special programs for approval by government, there is no need for it to provide for a regular review; once employers achieve equitable representation of the designated groups in the workforce, further measures will have to be taken.

In the federal public sector, the Public Service Commission has instituted a number of special programs for designated groups through the use of Exclusion Approval Orders pursuant to section 39 of the Public Service Employment Act. Such Orders include a termination date and are only renewed if, after careful review and evaluation of their effectiveness, it is determined that they are still needed to meet affirmative action objectives.

RECOMMENDATION

66. We recommend that federal training and education programs be made accessible to women, disabled people, Native people and members of underrepresented visible minorities to assist in achieving employment equity.

RESPONSE

The Government has already taken steps in line with this recommendation. The recently implemented Canadian Jobs Strategy is premised on the principle of equity for the designated groups. Fair access by designated group members at the local, regional and national level is a basic requirement for each of the new programs. Specific measures to implement this recommendation are:

a) financial support has been increased to permit individuals to take the needed training, part-time as well as full-time;

b) employers can receive up to $10,000 to defray costs for structural renovations to the workplace required to hire persons with disabilities under Canadian Jobs Strategy programs;

c) designated group representatives will participate in local advisory councils; and

d) specific targets have been set for each program for the participation of women, aboriginal people, persons with disabilities and visible minorities.

In the public sector, the Public Service Commission has taken, and will take, a number of initiatives to ensure such accessibility in the training activities it conducts under delegated authority from the Treasury Board.

RECOMMENDATION

67. We recommend that the Canadian Human Rights Commission pursue actively the implementation of equal pay for work of equal value performed by men and women working in the same establishment, as provided in section 11 of the Canadian Human Rights Act, in all areas under its jurisdiction.

RESPONSE

The Canadian Human Rights Commission will continue to pursue actively the implementation of equal pay for work of equal value in all areas under its jurisdiction. According to figures kept by the Commission, as of October 31, 1985, settlements under the equal pay provisions of the Canadian Human Rights Act resulted in some 4,800 Canadian workers receiving about $22 million in

retroactive pay as well as an additional $13 million in annual pay increases in the first year after settlement of their complaints. The Commission recently obtained, with the approval of the Minister of Justice, additional resources for the enforcement of the equal pay provisions of the Canadian Human Rights Act, which will reinforce its efforts in this area.

Labour Canada also plays a role in the implementation of equal pay for work of equal value. Section 38.1 of Part III of the Canada Labour Code empowers Labour Canada field officers to carry out inspections relating to equal pay and to refer apparent cases of sex discrimination in pay to the Canadian Human Rights Commission for formal investigation action. To support and complement this function, Labour Canada set up an equal pay for work of equal value program in the summer of 1984. This program, carried out by the Equal Pay Unit, Operations, promotes the implementation of the equal pay for work of equal value principle by informing and consulting with all the parties involved -- employers, unions, labour organizations, employers' associations and employees.

Treasury Board is committed to implementing equal pay for work of equal value performed by men and women in the federal public service. As part of this commitment, the President of the Treasury Board announced in March, 1985, the formation of a senior-level, union-management committee to make recommendations regarding a detailed plan for the implementation of equal pay. The committee is actively pursuing this goal.

RECOMMENDATION

68. We recommend that the federal government review the present provisions of section 11 of the Canadian Human Rights Act to ensure that the principle of equal pay for work of equal value is not unduly restricted by the present wording of the Act.

RESPONSE

The Subcommittee's concern was the provision that job comparisons are to be made within the same establishment. After careful consideration, the Minister of Justice agrees with the position taken by the Canadian Human Rights Commission in its 1984 Annual Report, which is that the "same establishment" concept should be retained, although it must not be given a narrow interpretation. The Commission has since proposed a guideline that contains a broad interpretation of the term "same establishment," which should resolve concerns about the application of section 11. This guideline, when it is officially issued, will be binding on the Commission and on the tribunals that hear and adjudicate complaints under the Canadian Human Rights Act.

In conformity with the Commission's proposed guideline on equal wages, it has been the practice of Treasury Board, as employer

for that portion of the Public Service specified in Part I Schedule I of the Public Staff Relations Act, to broadly interpret "same establishment" to include all employees within an occupational group, regardless of their geographic location.

RECOMMENDATION

69. We recommend that the Income Tax Act be amended so that disabled persons are entitled to a deduction for the cost of special aids and devices, including extra transportation costs, incurred because of their disability and necessary for their employment.

RESPONSE

The question of special tax concessions for disabled persons has been addressed by the Department of Finance on a number of occasions. The new broader definition of "disabled" introduced in the most recent budget will provide additional financial assistance to disabled persons in the work force who were not previously considered disabled for the purposes of the Income Tax Act. The deduction now available is intended to help compensate for all disability-related costs, whether work-related or not. However, the government will consider a deduction especially for work-related costs imposed by a disability, subject to the adminstrative feasibility of determining how these costs can be identified.

RECOMMENDATION

70. We recommend that the Canadian Human Rights Commission ensure that physical and medical tests required of job applicants in employment under federal jurisdiction relate only to the ability of the individual to perform the essential duties of the job in question.

RESPONSE

Bona Fide Occupational Requirements Guidelines issued by the Canadian Human Rights Commission in 1981 provide that employers should, in testing an individual's performance of a job, use only methods that evaluate the ability of the individual to carry out, in any reasonable way, the essential tasks of the job. In 1984, the Commission released new Interim Policies on Bona Fide Occupational Requirement and Bona Fide Justification, which it is proposing to issue ultimately as guidelines under the Canadian Human Rights Act. The interim policies provide that an occupational requirement is bona fide only if it relates to the essential components of the job. In responding to complaints of discrimination under the Act, the Commission will continue to apply these standards to employers.

The Government is committed to ensuring that disabled persons have equal access to employment opportunities in the Public

Service. It is the policy of the Government that occupational requirements -- in particular, physical and medical tests -- in the Public Service should relate only to the ability of the individual to perform essential occupational duties.

The Canadian Armed Forces, because of their unique responsibilities, recruit personnel for broad occupations as opposed to specific jobs; members of the Forces are required to be capable of performing a range of jobs as they may be assigned to several jobs during their careers. While members of the Forces may perform tasks comparable to those in other organizations, all members may be called on to participate in armed conflict or other emergency duties. The Government believes that Forces policies and practices meet the standards of the Canadian Human Rights Act and, in particular, constitute bona fide occupational requirements under section 14(a) of the Act.

RECOMMENDATION

71. We recommend that the federal government move quickly, in consultation with its provincial counterparts, to ensure that child care services across Canada are adequate, accessible and affordable.

RESPONSE

Adequate, accessible and affordable child care is clearly essential if equality is to be achieved.

Each year the Department of Health and Welfare monitors the growth in child care spaces and presents its findings through the Status of Day Care in Canada report. The Department is also contributing to a national research project that will attempt to determine more precisely the types of child care arrangements that parents are now using and the kinds that parents think would be most helpful to them.

The federal Government is looking forward to receiving the report of the National Task Force on Child Care, expected to be released early this spring. In addition, the Department of Health and Welfare has proposed a Parliamentary Task Force on Child Care. The combined findings of these two task forces is expected to greatly assist the Government, in collaboration with the provinces, in expanding and improving the child care system in Canada.

FURTHER EQUALITY ISSUES

RECOMMENDATION

72. We recommend that all federal laws henceforth be drafted in non-sexist language.

RESPONSE

The Government supports the principle that federal laws be drafted so as to avoid the use of sexist terms, and this is the policy of the Legislation Section of the Department of Justice, as elaborated below. This principle must be applied within the context of the current state of development of the language -- English or French -- and in such a way as not to unduly strain the language by deviating from accepted terminology and structures of the language or attempting to create new terminology. Furthermore, the principle should be balanced against another important goal, that of drafting laws in plain language, in a style that is easy to read.

The application of the principle of avoiding the use of sexist terms will vary depending on which language version of legislation is being considered. The practical problems differ for the English and French versions.

English Language Version

It is the policy of the Department of Justice to avoid, where possible, any nouns that might carry with them an unintended sexual connotation. For example, the word "waiter" carries with it a male connotation since there exists a well-established feminine counterpart, "waitress." The term "waiter" for that reason would not be used, or, if it were used, would be accompanied by the word "waitress." Other words that may carry a male connotation, such as "fireman," have no feminine counterpart, so the drafter might seek a neutral term such as "firefighter." On the other hand, there are some words like "prosecutor" (feminine counterpart, "prosecutrix") or "lawyer" (containing the masculine suffix "er" but having no feminine counterpart) which probably do not offend on sexist grounds because they have attained a neutrality through the development of the language.

Pronouns in the English version of legislation, more specifically the pronoun "he," are somewhat more difficult to deal with. There are those who would suggest that the pronoun "he" should never be used on its own in legislation to refer to a person whose sex is not identified. Because of this sensitivity, drafters have replaced the pronoun "he" with its corresponding noun where this is possible without creating an excessively cumbersome or ambiguous provision. Other techniques, such as drafting in the plural, may be used as well but may lead to ambiguity in certain situations.

It is sometimes suggested that the words "he or she" be substituted for the word "he" wherever it appears. This suggestion creates several problems. Perhaps the most obvious is that in much of our legislation, the pronoun "he" replaces the word "person", which includes corporations as well as living individuals. A simple substitution of "he or she" would not suffice in those cases. Another problem is that, even where a particular enactment relates only to living individuals, sometimes the subject-matter is complex and involves a number of different individuals. Constant reference to "he or she" in these provisions can become very cumbersome and difficult to read.

At this stage in the development of the English language, the pronoun "he" does not exclude female individuals. Although "he" carries with it a male connotation in certain circumstances, it is submitted that, except where the context of legislation indicates that men are the only people covered, the pronoun "he" is clearly non-sexual. The danger in starting a practice of using the expression "he or she" in more than the most restrictive circumstances is that it will have the effect in the long run of actually creating uncertainty for those cases where "he" is used alone.

French Language Version (Translation)

Whereas there are a large number of neutral terms in English, in French all nouns and adjectives are either masculine or feminine. For example, there are certain feminine nouns with broad "semantic fields", such as "personne" (person), which when used with the adjective "physique" (physical) encompasses all humanity and when used with "morale" (moral) has a very broad meaning in law, covering all associations, companies, corporations and other similar organizations. Mr. Dupond is as much "une personne physique" as Mrs. Durand, and ALCAN, Canadian National and Unimédia are "personnes morales". These examples show that in French the masculine and feminine are primarily grammatical categories and do not necessarily indicate sex or natural gender. "Un soprano" (a soprano) is always a woman, "une basse" (a bass) always a man and "une sentinelle" (a sentry) generally a man.

Legislative style requires that there be no ambiguity. It is therefore necessary to respect the rule of syntax that an adjective modifying a maculine noun and a feminine noun is masculine plural. The same applies to a past participle that relates to two nouns, one feminine and the other masculine. The social cost of the litigation that would inevitably result from a failure to observe these fundamental rules of grammar, which have nothing to do with sex, would be too high to justify trying to alter them. It is not the drafter's role to reform language but rather to use words in their ordinary meaning, to observe existing rules of syntax and to follow the evolution of language rather than make it evolve.

It is also necessary to rule out cumbersome graphic presentations in which the agreements for the two genders are given in parentheses or separated by slashes, such as: "Sous l'authorité de conseil d'administration, le (la) président/e est responsable de ... et il (elle) est tenu/e ... etc." There are practical ways of avoiding this problem, in cases where it might be necessary to refer to the two genders, such as using the plural or epicene nouns such as "personne." It is obviously not possible to set rigid rules. Each law must be drafted according to its particular circumstances, with all possible care being taken to avoid any ambiguity or redundancy.

Finally, there remain doublets, masculine and feminine forms, such as "citoyens, citoyennes", "candidats, candidates", "ouvriers, ouvrières", "moniteurs, monitrices", which are being increasingly used in written French to let the reader know that women have not been forgotten. Since the masculine and feminine genders are grammatical categories rather than an indication of sex, the general use of that practice would lead to texts unnecessarily length and cumbersome. (End of translation)

It has been noted in **Equality for All** that subsection 26(6) of the Interpretation Act provides that "words importing male persons include female persons and corporations." The Government recognizes that this one-way presumption has sexist overtones and will, for that reason, introduce an amendment to that provision to provide the converse rule. This proposal would allow, for example, for the use of the pronoun "she" in legislation where the incumbent of a position is female. Should a male person replace her, no legal problems would have been created.

The policy reflected in this response will be in effect beginning on February 21, 1986.

RECOMMENDATION

73. We recommend that governor-in-council appointments, including judicial appointments, be made in a manner that reflects the composition of Canadian society, in keeping with the objectives of section 15 of the Charter, and that the criteria for the selection of judges take into account the policy role they perform in interpreting and applying the Charter.

RESPONSE

Governor in Council appointments are and will continue to be made with due regard to merit, the specialized requirements of the position and the composition of Canadian society.

In August 1985, the Prime Minister announced an unprecedented process for the scrutiny of Order in Council appointments by Standing Committees of the House of Commons. This process came into force in January 1986.

In addition, the Prime Minister has stated that the Government intends to make important changes to the process of selecting judges.

The way that judges are appointed at the federal level is currently under review. The Minister of Justice plans extensive consultations on this subject during 1986, with a view to improving the system. While it is as yet too early to comment upon the mechanisms which might be adopted, it is clear that one of the overall criteria, in addition to merit, must be that appointees be broadly representative of Canadian society. The Minister of Justice has publicly stated that the representation of women and of individuals with diverse cultural and ethnic backgrounds must be increased. Appointments now generally reflect this concern. In particular, the number of women appointed to the bench has markedly increased.

The new responsibilities conferred upon the judiciary by the Charter make it all the more important that conscience and commitment be essential attributes of candidates for judicial office, as much as qualifications in the law and standing in the community. This does not imply that only individuals of a particular legal or moral philosophy should be appointed. Rather, it indicates how important it is to seek out men and women able to assume a more profound legal policy as well as with the interpretation of discrete points of laws.

RECOMMENDATION

74. We recommend that the Public Service Superannuation Act be amended to eliminate the minimum age of 18 for contributors to the Superannuation Account so that there will be no minimum age limitation for those purposes.

RESPONSE

As part of the review of public service pension plans, the Government will consider the desirability of retaining this limit on contributory status. It is noted that the provision is part of the scheme for integrating benefits and contributions under the PSSA with those under the Canada Pension Plan; if a similar change to the CPP were not practical, integration would suffer.

RECOMMENDATION

75. We recommend that the Criminal Code be amended so that sexual offences that can be committed only by a male person in relation to a female person be extended to cover similar conduct by a female person in relation to a male person.

RESPONSE

The Minister of Justice will give careful consideration to the possibility of amending the Criminal Code to ensure that sexual

offences that can be committed only by a male person in relation to a female person be extended to cover similar conduct by a female person in relation to a male person. Both the Report of the Committee on Sexual Offences Against Children and Youths (Badgley Committee) and the Report of the Special Committee on Pornography and Prostitution (Fraser Committee) contained specific recommendations in this area. Departmental officials are studying these recommendations and, following consultations with provincial governments and private sector groups, the Minister will announce the government's response.

RECOMMENDATION

76. We recommend the Government improve its monitoring of women's health care and hygiene products, including drugs; exert, through the Departments of Consumer and Corporate Affairs and National Health and Welfare, a larger measure of control over the labelling, packaging and promotion of such products; and increase the level of funding directed to research into women's health needs.

RESPONSE

Controls now in place with respect to drugs, cosmetics and devices are adequate to respond to existing concerns.

All health care and hygiene products are regulated under the Food and Drugs Act and Regulations administered by Health and Welfare Canada, as drugs, devices or cosmetics. The Departments of Consumer and Corporate Affairs and National Health and Welfare are jointly responsible for the administration of the Consumer Packaging and Labelling Act to the extent that it, too, applies to the labelling of cosmetics.

Cosmetics

In addition to the general provisions of the legislation which prohibit the sale of any cosmetic which may cause injury to the health of a person who uses it as directed or as is customary, there are specific regulations intended to prevent recognized hazards.

For example, a regulation has been established to help ensure that deodorants sold in pressurized containers and intended for use in the genital area are employed safely. Further regulations control the level of acidity of cosmetic teeth whiteners and promote the safe use of coal tar preparations and hair dyes.

Other regulations govern the labelling and advertising of cosmetics. Mandatory declaration of ingredients on labels of cosmetics, although not in force at the moment, is an issue that is reviewed regularly. Although it is conceivable that such label information might be useful under some circumstances, it is not clear that a net benefit for consumers would be achieved.

There are a number of practical difficulties involved that tend to interfere seriously with the usefulness of ingredient declaration, particularly in relation to avoidance of chemical substances. For example, most cosmetic ingredients contain significant amounts of a number of related substances that may vary from one supplier to another and, not being ingredients, would not be listed on the label. The regulatory requirement for notification of cosmetics and the review of the compositional information that must be submitted in that regard are considered to be a superior alternative to label declaration of ingredients as a means of protecting the consumer from hazards involving cosmetics.

Drugs

Health care and hygiene products which are classified as drugs are subject to all the requirements of the Food and Drugs Act and regulations which pertain to such products.

This legislation covers the safety, efficacy, manufacturing conditions, labelling and advertising of such products. The introduction of new drug products to the Canadian market is subject to screening by officers of the Health Protection Branch.

In addition to the general requirements, there are specific regulatory provisions which address recognized hazards. Recent changes in the information provided to users of oral contraceptives were made under such regulations.

The Food and Drug Regulations also provide for the labelling of medicinal ingredients but contain no mandatory requirement for the listing of nonmedicinal ingredients. This has been supported over the years on the grounds that medicines are used for specific purposes, for which they are labelled, and the listing of non-contributing chemicals could confuse consumers more than it would help. Generally, individuals will avoid using products which they have previously found to cause allergies, sensitivites or even discomfort. The rare individual who suffers extreme allergic reactions normally avoids using any product until he or she can determine that it is free of the causative allergen. In this latter case, the manufacturers are generally responsive to consumer requests for information concerning the specific allergen. On occasion, the Health Protection Branch has been able to help get such information for consumers or health professionals. Associations of drug manufacturers are presently considering voluntary label declaration of a number of ingredients which are more frequently asked about by consumers.

Post marketing evaluations of drug products also take place mostly through the Drug Manufacturers Inspection Program. In addition, reviews of various categories of products are undertaken under a number of circumstances such as reports of a previously unsuspected health hazard or of evidence of widespread misuse of products.

Radio and television advertisements of drug products must be cleared by the Department of National Health and Welfare before broadcast. Although print advertisements do not require clearance before publication, they are screened through monitoring of newspapers and magazines.

Medical Devices

Health care or hygiene products in the category of medical devices are subject to the Medical Devices Regulations under the Food and Drugs Act. These regulations provide for the pre-marketing evaluation of several categories of devices. For example, when certain tampons were found responsible for Toxic Shock Syndrome (TSS) a few years ago, the Health Protection Branch instituted pre-market review for all new products of this kind. However, there is not sufficient reason to require manufacturers to declare the components of such products on labels. Providing information to consumers on proper use of the products through labelling is considered more useful, and this is done.

Promotion

There are aspects of promotion which do not come under the purview of the legislation, such as tactfulness and good taste. Such issues are usually self-controlled; as social values change, it becomes self-defeating to depict attitudes which are contrary to the views of the general public.

Research

The Department of National Health and Welfare does provide support in several areas related to women's health, through the National Health Research and Development Program (NHRDP), the Advisory Committee on Reproductive Physiology and other programs.

Under the NHRDP, the Department supports specific research projects in such areas as adolescent pregnancies, breast-feeding, anorexia nervosa and cancer. Forty-nine projects were funded in 1983-84 and the same number in 1984-85.

Other programs provide financial support for activities of interest to women and conducted by community groups. In 1983-84, the Department more than doubled the number of organizations receiving such grants as a result of a $3.2 million increase in program funds. Issues dealt with under these projects included childbirth education, rural women, working immigrant women, mental health, DES and premenstrual syndrome.

RECOMMENDATION

77. We recommend that the Canada Elections Act be amended so that spouses and dependent children accompanying Canadian

Armed Forces personnel and public servants posted outside Canada are entitled to vote, in general elections, in the electoral district where they declare themselves to be ordinarily resident in Canada. For this purpose, spouses and dependent children should be required to complete a declaration of residence comparable to that currently required of the members of the Forces and public servants whom they accompany outside Canada.

RESPONSE

The Government will propose an amendment to the Canada Elections Act to implement this recommendation.

RECOMMENDATION

78. We recommend that section 32 of the Public Service Employment Act be amended to ensure that no greater limitations are imposed on the political rights of public servants than are necessary to maintain a politically neutral public service.

RESPONSE

The Government agrees with the principle that limitations on the political rights of public servants should be no greater than necessary to maintain the public perception of a politically neutral public service. This matter now is the subject of review and study to determine what those limitations should be.

THE PROCESS OF SECURING EQUALITY

RECOMMENDATION

79. We recommend that the Canadian Human Rights Act be amended by the addition of a primacy or override clause that will confirm its priority over conflicting federal laws unless they purport specifically to apply notwithstanding the Canadian Human Rights Act.

RESPONSE

The Government of Canada agrees that human rights legislation should in general have primacy over other laws. The Supreme Court of Canada stated recently in Winnipeg School Division No. 1 v. Craton that human rights legislation will have primacy over other laws except where there is a "clear legislative pronouncement" to the contrary. The Department of Justice is conducting a review of the Canadian Human Rights Act, and it is considering whether, in light of the Craton case, it is necessary to amend the Act. Another factor that will be taken into account is that federal laws are already subject to the equality guarantees of the Charter which overlaps the protections of the Canadian Human Rights Act. Federal laws that are inconsistent with the Charter are of no force or effect.

RECOMMENDATION

80. We recommend that the Canadian Human Rights Act be amended so that employers are obliged to make "reasonable accommodation," that is, such special provisions as would not cause undue hardship to the employer, in response to the needs peculiar to those classes of employees that are protected from discrimination by the terms of the Act.

RESPONSE

The Government of Canada agrees in principle that the Canadian Human Rights Act should be amended to incorporate the concept of reasonable accommodation. In light of the recent Supreme Court of Canada decisions in Bhinder and Canadian Human Rights Commission v. Canadian National Railway Company and O'Malley and Ontario Human Rights Commission v. Simpsons-Sears Limited, further consideration will have to be given to the best way of amending the Canadian Human Rights Act to include the concept of reasonable accommodation.

RECOMMENDATION

81. We recommend that the Canadian Human Rights Act be amended to ensure that it covers systemic discrimination, that is, practices that may not be obviously discriminatory in their formulation or nature but that, in their result, have an adverse impact on those who are protected from discrimination by the Act.

RESPONSE

In its decision on December 17, 1985, in Bhinder and Canadian Human Rights Commission v. Canadian National Railway Company, the Supreme Court of Canada held that adverse effect (or systemic) discrimination is prohibited by the Canadian Human Rights Act. Thus there is no need for the amendment proposed by the Subcommittee.

As suggested by the Equality Rights Committee, the Government of Canada will, as part of the review of the Canadian Human Rights Act being conducted by the Department of Justice, give consideration to amending the Act so that it states expressly that adverse effect discrimination is prohibited.

RECOMMENDATION

82. We recommend that the Canadian Human Rights Act be amended to include political belief and criminal conviction or criminal charges as prohibited grounds of discrimination, subject to the usual defences of bona fide occupational requirement and bona fide justification, as applicable.

RESPONSE

The Government will, as part of the review of the Canadian Human Rights Act by the Department of Justice, consider making political belief and criminal conviction or criminal charges prohibited grounds of discrimination under the Act. The Government believes there is a need for closer examination of the potential impact of such a change on the private sector as well as on the public sector.

RECOMMENDATION

83. We recommend that the Standing Orders of the House of Commons be amended to provide for a Standing Committee on Human Rights with responsibility for overseeing the protection of human rights, including equality rights.

RESPONSE

Acting on a recommendation by the Government in its package of House reforms, the House of Commons created such a committee in December, 1985.

RECOMMENDATION

84. We recommend that the annual report and estimates of the Canadian Human Rights Commission and those portions of the annual reports of any government departments, including the Departments of Justice, Secretary of State, and Employment and Immigration, dealing with human rights and equality rights, including employment equity, be referred to the Standing Committee on Human Rights.

RESPONSE

The Government agrees in principle with recommendation 84 and will study it further to determine whether splitting annual reports is feasible.

RECOMMENDATION

85. We recommend that the Canadian Human Rights Act be amended to provide that the Canadian Human Rights Commission report direct to Parliament.

RESPONSE

It is the practice in Canada for human rights commissions to report to legislative bodies through ministers of the Crown, usually the Minister of Justice or the Minister of Labour. This enables a minister to defend the commission's estimates in Cabinet and before the legislative body. It also allows the minister to table the commission's reports and prepare amendments to the human rights legislation.

The absence of conflict and the strict regard for the independence of the Canadian Human Rights Commission indicate that the present system, under which the Commission reports through the Minister of Justice, is satisfactory. The Commission indicated in its 1983 Annual Report that the current system is acceptable.