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No use to expelled soldier

New human rights bill has many flaws and inadequacies

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OTTAWA — Martin Hogarth, an Ottawa civil servant, was discharged from the Canadian Armed Forces in 1973 because he is a homosexual.

Mr. Hogarth, 34, was expelled after 11 years of service when he was classified as "not advantageously employable" a few days following his admission to an army special investigator about his homosexuality.

The former corporal, now a pay clerk in the Supply and Services Department, said he talked to an armed forces pastor about appealing the decision but was told there was no point trying.

And while the proposed Canadian Human Rights Act (Bill C-25) is supposed to end discrimination in federal jurisdiction, which includes more than a million workers, the bill has many flaws and inadequacies. It wouldn't have done anything for Martin Hogarth.

David Garmaise, spokesman for the National Gay Rights Coalition representing 35 groups across the country, maintained that Bill C-25 should be amended to prohibit discrimination against homosexuals and lesbians in the federal Government, where he and others are being prevented from getting senior executive jobs.

Without changes in the bill,

federal organizations such as the Canadian Broadcasting Corp. will continue to discriminate against homosexual groups, he said. The CBC has refused to carry unpaid public service announcements by the Gays of Ottawa group.

Comparison

Mr. Garmaise, manager of the mail order stamp collection service in the Post Office, said the B.C. Human Rights Commission is empowered to stop "discrimination without reasonable cause." This resulted recently in a ruling by the commission forcing a Vancouver newspaper to carry advertisements by a homosexual group. The ruling was upheld in the B.C. Supreme Court.

This type of discrimination could not be prevented under the proposed act at the federal level, Mr. Garmaise maintained.

The bill would not prohibit discrimination against people for their political beliefs, either.

Even with Bill C-25 implemented at the federal level, the people named in a recently revealed Government blacklist of alleged Marxist radicals would have no legal means to combat discrimination against them in obtaining jobs and promotions in the federal Government and industries under federal juris-

dictions such as the railways and banks.

Such inadequacies are the focus of the fight brewing in the Commons over Bill C-25.

Liberal MP Pierre De Bane (Matane) has joined Conservative and New Democratic MPs in calling for substantial amendments to what they consider to be a weak bill.

Canada still lacks legislation at the federal level guaranteeing basic human rights, and Justice Minister Ronald Basford wants quick Commons approval for Bill C-25 so that it can be implemented by June 30.

In his recent statement to the Commons standing committee on justice and legal affairs, he rejected the proposals from critics for substantive amendments to Bill C-25 and he pleaded with the committee not to stall the bill for fear that it may be delayed for several years.

However, opposition MPs and Mr. De Bane are not permitting themselves to be moved by this tactic.

According to Tory MP Gordon Fairweather (Fundy-Royal), "the best way for Mr. Basford to get the bill through is to make reasonable amendments."

This approach is backed up by Stuart Leggatt (New Westminster), who is leading the NDP campaign for improvements to the bill.

Mr. De Bane, in particular, is breaking the tradition that Government backbenchers

support Cabinet ministers in the Commons committees.

Saying the bill is "very important" to him, Mr. De Bane explains that "questions of civil liberties are above partisan politics." And for the former law professor and assistant to Pierre Trudeau when he was Justice Minister 1967-68 intends to seek the co-operation of other Liberal MPs to "pass a bill of which we will be proud."

Bill C-25, as currently drafted, essentially has three main parts.

First, it prohibits, in certain areas, discrimination on the grounds of race, national or ethnic origin, color, religion, age, sex, marital status, conviction for which a pardon has been granted and, in matters related to employment, physical handicap. A human rights commission is proposed to review cases of discrimination in the areas of employment and the provision of services, facilities or accommodation.

New principle

Second, the commission also would enforce a new principle articulated in federal legislation for the first time of "equal pay for work of equal value" for men and women working in the same establishment. Advocates of equal opportunities and pay for women are happy with the inclusion of this principle in the



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proposed bill; but they want amendments to ensure it is applied in a tough way.

Third, a special "privacy commissioner" would be appointed to guard against the unauthorized use of personal information contained in government information banks.

The opposition MPs feel the privacy section is just too riddled with loopholes for the bill to be credible, and they will be focussing most of their attention on amending this part of the bill.

However, in the initial stages of clause-by-clause review of Bill C-25, the critics will be pushing for additions to the prohibited grounds of discrimination and for tougher enforcement mechanisms.

Mr. Leggatt is particularly insistent that the prohibited grounds of discrimination be expanded to include "political affiliation" and "sexual orientation." Otherwise, he believes, Canada would end up with human rights legislation that permits discrimination against homosexuals and lesbians and against people with political views different from the views of the party in power.

In fact, Mr. Leggatt would like a catch-all clause that would prohibit discrimination on any grounds, such as exists in the British Columbia human rights act.

Speaking in the debate in the Commons on second reading of Bill C-25, Mr. De Bane

agreed with Mr. Leggatt that sexual orientation and political opinions should be prohibited grounds of discrimination. In addition, he would like to see "language," "social circumstances," and "illegitimacy" also included in the clause. And he wants the prohibited ground of discrimination of "religion" changed to "religious persuasion" or "religious liberty."

Acute issue

On language, Mr. De Bane pointed out that a recent report of the Official Languages Commissioner supported the view that French-speaking Canadians were being discriminated against within Air Canada and the proposed Bill C-25 would not be able to stop that.

"We are all aware, I hope, of the acuteness of the linguistic issue in this country, and I find it absolutely strange and astounding that the bill fails to mention this concern which, for a large part of the population, namely francophones, constitutes in our view a discriminatory practice which has been investigated in depth, among others by the Royal Commission on Bilingualism and Biculturalism," Mr. De Bane stated.

He raised three other points:

—While the bill prohibits discrimination against convicted persons who have been given pardons, it would permit discrimination against persons who have not been granted a pardon but who have been rehabilitated and who have paid their debt to society;

—The bill would exempt the Indian Act and therefore the discrimination against Indian women permitted by the Indian Act could not be stopped;

—The bill is written in the complicated terminology of English common law and therefore it is difficult to understand for lay persons and lawyers educated in Quebec

civil law.

Mr. Fairweather said in an interview that he will support amendments calling for the inclusion of sexual orientation and political affiliation in the clause on prohibited grounds of discrimination. But he agrees with Mr. Basford that the question of language should be left to the Official Languages Act.

In a detailed rebuttal presented to the justice and legal affairs committee, Mr. Basford argued against widening the prohibited grounds of discrimination so that the human rights commission would not be overburdened to start with. The grounds cited in the bill were limited to those which are fairly well established in Canadian or American anti-discrimination legislation and about which, consequently,

some experience and precedents have been developed, he stated.

Furthermore, the question of discrimination against francophone should be left to the Official Languages Act, and the proposed prohibition of discrimination based on ethnic origin would be enough to protect people who speak languages other than French and English, Mr. Basford said. He also emphasized that the commission, on its own or on request of the Minister of Justice, could study and recommend ways to extend the protection of human rights or freedoms.

There also have been criticisms levied against the proposed bill from outside organizations. Alan Borovoy, general counsel for the Canadian Civil Liberties Association, believes the bill is weak on several grounds, including the protection of privacy of information held in government information banks.

In particular, he would like to remove the section prohibiting the use of telephone messages that advocate hatred and contempt. Mr. Borovoy feels this provision is too broad and could be used at some time to suppress political dissent, just as the

Criminal Code sanctions against hate literature were used by Toronto police to suppress "Yankee-go-home" pamphlets at a Shriner's parade. In Britain, similar legislation was used against black power advocates.

Mr. Borovoy also believes the proposed bill is not strong enough in prohibiting discrimination in the area of business practices. He sees nothing in the bill that would prohibit the situation where a business refuses to buy from a black or East Indian supplier, or where Jewish businessmen lose business due to the Arab boycott of Israel.

Standards?

There is no doubt in anyone's mind that the proposed human rights bill is important. As Mr. Basford told the Commons, "there are no comprehensive guarantees against infringement within federal jurisdiction by corporations, citizens or government of many basic egalitarian rights Canadians should enjoy."

While the Canadian Bill of Rights of 1960 provides principles for courts and officials to follow in interpreting federal laws, that law, however, does not set standards for behavior or impose any sanctions.

"Right now," Mr. Basford said, "a Pakistani who was refused service in a dining car on the CNR because the waiter disliked his looks would probably have no legal avenue of redress."

Next: Privacy loopholes big enough for bulldozer.

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