

DRAFT LETTER

Ottawa, Ontario K1A 0P8  
August , 1979.

Mr. B.L. Strayer, Q.C.,  
Assistant Deputy Minister  
(Public Law),  
Department of Justice.

Subject: [REDACTED]

Dear Mr. Strayer:

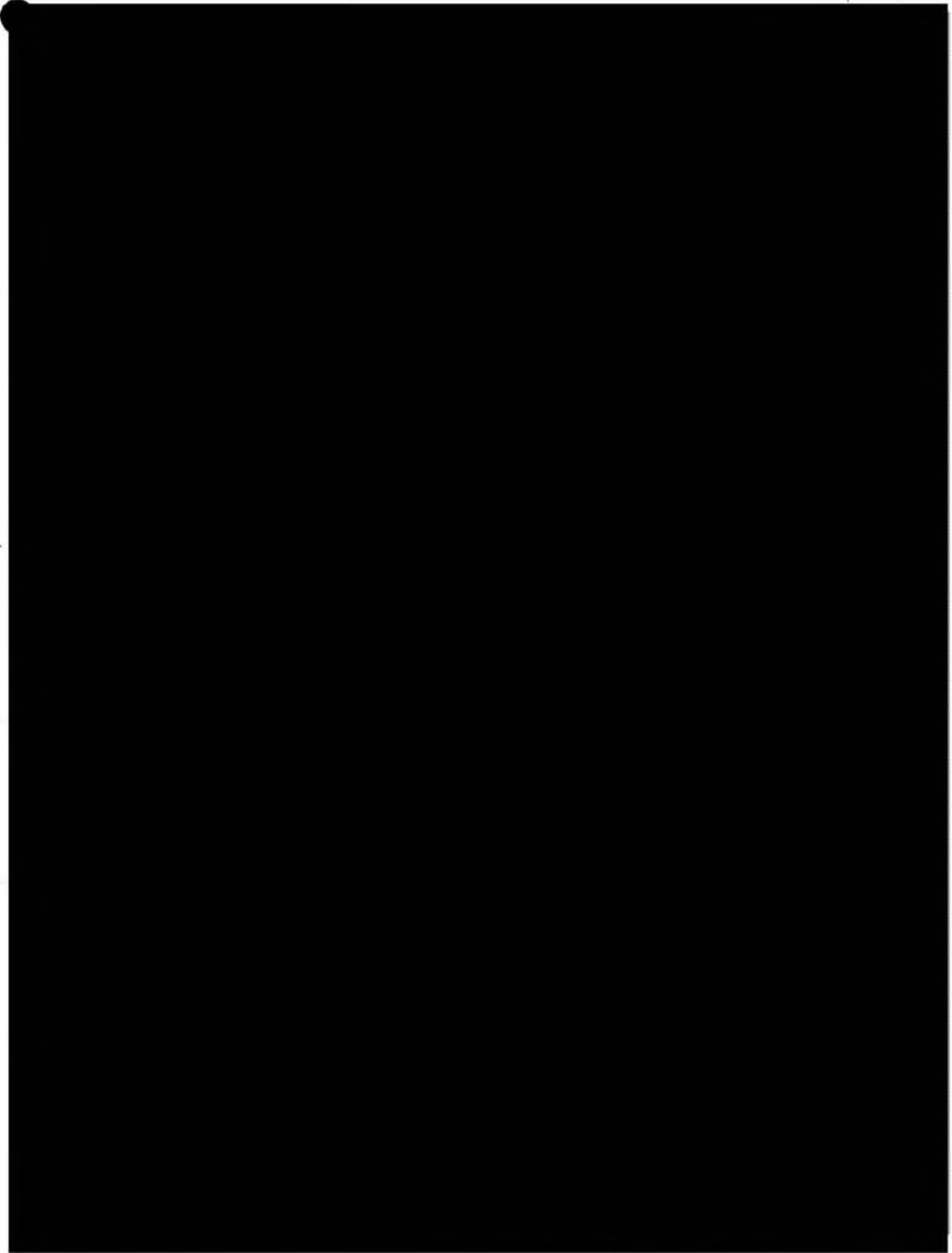
Thank you for your letter of 1 June 1979 requesting our  
comments [REDACTED]  
[REDACTED]

In order to respond to this request, a meeting was convened on 20 July of the Ministry Committee on Human Rights, consisting of representation from RCMP, the Correctional Service of Canada, National Parole Board, Police Security Branch, Policy Branch, Programs Branch, and Legal Services. The following are their comments on each of the recommendations as they would affect the Ministry of the Solicitor General particularly.

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individual. The possibility of blackmail of homosexuals in sensitive positions could create significant security problems. The substance of the RCMP position on this subject was submitted to Cabinet in 1977 during discussions on the creation of the Human Rights Commission, and is also contained in a memorandum which will reach the Solicitor General shortly.

The Correctional Service of Canada stated that it did not discriminate against homosexual offenders in their applications for programs such as temporary absences, transfers, and so on, though an inmate can be charged under the disciplinary code for committing homosexual behaviour in a penitentiary, which is considered a "public place" within the meaning of the Criminal Code. The CSC does not hire homosexuals in positions which involve direct contact with inmates, both in order to protect inmates from coercive situations and to prevent scandal and breaches of security.

As for the hiring of persons who have been convicted of crimes and served their sentences, the same types of problems were thought to apply, including the possibility of conflict of interest, breaches of security, and resultant scandal. The CSC mentioned that ex-inmates could be a useful manpower resource, but it was impossible to effectively keep sensitive material from such persons, and such persons could have difficulty working with persons formerly known to them as fellow inmates or as correctional staff. This type of problem might be less likely for persons who had remained law-abiding for some time following the service of their sentence.

An important set of questions was raised about the extent to which Section 14 of the Human Rights Act might protect employers like CSC and the RCMP from being forced to hire

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individuals who were not, for any of the above reasons, considered "suitable" employees. It was hypothesized that Section 14 created an exemption on the basis of a "general" occupational requirement, which might not prove sufficient to keep out "unsuitable" persons from specific positions, such as clerking positions, which do not involve security matters or close or sensitive contact with others. Furthermore, if such persons were hired into non-sensitive positions, it was not clear whether the employer could invoke Section 14 in order to refuse to allow such persons to be transferred to sensitive positions at a later date. A need was felt for a formal legal opinion on the matter.

One suggestion was made that Section 14 might be expanded to include exemptions for other specific problems which could arise from this recommendation, such as national security. The RCMP, however, expressed a general objection to having the onus placed on them to justify their hiring practices on these matters.

The sense of the meeting appeared to be that the preferred position of the Ministry was to reject the recommendation. A "fallback" position would be to exempt certain employers like the RCMP and CSC from these provisions, if they were to be accepted as policy by the government generally. Other options might include an amplification of Section 14 to specify the types of exemptions which would be permissible, such as for "national security". Finally, there is the possibility of using a more restrictive criterion for such notions as "political belief".

#### Recommendation III.9

"Section 2(a) of the Canadian Human Rights Act reads "conviction for an offence for which a pardon has been granted" and the Immigration Act uses the same

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wording, and persons not having a pardon may be refused both their guaranteed human rights as well as immigration rights. The pardon process requires knowledge of the system, time, influence and probably financial cost and such a system of pardon disadvantages persons lacking the above named attributes. Therefore, it is recommended that the Canadian Human Rights Commission investigate a system of a statute of limitations whereby a pardon is granted after a defined period of time without reference to the power or prestige of the individual and without the need for the pardon process to be initiated by the individual."

Since the thrust of this recommendation is simply that a study should be made of possible revisions to the pardon system, there was no strong feeling from the meeting that such a study should not be done. The RCMP, however, expressed the view that the proposed changes did not appear to flow from any real problems which had been pinpointed with the pardon system as it now operates. The Commission should be asked for clarification of why there is a perceived need for change. The NPB has already expressed to the Secretary of State its objections to the recommendation's implication that it requires extensive time, influence and cost to obtain a pardon.

Some confusion was expressed as to the meaning of the recommendation. The NPB expressed the view that it may not imply a "spent offences" system such as operates in Great Britain. The RCMP wondered about which records would be sealed, purged or stored separately as a result of the proposed system: would the records kept by courts be sealed, or only police records? Some reservations were also expressed about the cost of such revisions to the pardon system.

The CSC expressed the view that the interviews done with friends and neighbours pursuant to the pardon application might damage an individual's relations with his work and

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community, and that a "spent offences" system might alleviate this problem. The RCMP expressed the view that the present system motivates certain persons to remain law-abiding by providing for an investigation into their past and current conduct.

Recommendation VI.2

"It must be assured that the full protection of human rights, the application of the rule of law, the right to appropriate treatment facilities and the right to live in dignity, be available to all in Canada and extended to those living within institutions including but not limited to children, prisoners, senior citizens, the ill, the physically handicapped and the mentally handicapped."

The most relevant section of this recommendation to the Solicitor General is the provision for the full protection of the human rights of prisoners. The meeting noted the similarity between this and the recommendations of the Parliamentary Subcommittee that the rule of law apply to prisoners and that the Commissioner's Directives be elevated into law to make them legally enforceable. This would mean that administrative practices would be subject to the scrutiny of federal courts. If this is the intent of the present recommendation, it should be so clarified.

The Correctional Service of Canada said that the question of granting rights to inmates is currently under review, especially in view of the upcoming 1980 Sixth U.N. Congress on the Prevention of Crime and Treatment of the Offender, where the topic is expected to be extensively addressed. The RCMP noted that it could be difficult to apply this recommendation to prisoners in police lock-ups.

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It was resolved that this issue would remain until a Ministry policy position on the entire issue of inmates' rights and responsibility is developed.

We were pleased to have had the opportunity to review these recommendations, and hope that the above comments will be considered by you in adopting a position.

Yours truly,

André Bissonnette