

CONFIDENTIAL

March 23, 1982

MEMORANDUM FOR MR. PITFIELD
(via B. D. Dewar)
c.c. Mr. Kirby

Implementation of the Charter of Rights:
Amended letters for the
Prime Minister's signature to Ministers

BACKGROUND

On March 11, 1982, the Prime Minister responded to Mr. Chrétien's letter of February 15, 1982, which outlined his plans for the implementation of the Charter of Rights and suggested the Prime Minister write to Ministers to ensure priority is given to implementation tasks.

In his reply, you will recall that the Prime Minister requested Mr. Chrétien to undertake a broad planning exercise, culminating in a Memorandum to Cabinet, and sought Mr. Chrétien's agreement to inform Ministers accordingly. He also indicated his intention to write to Ministers as soon as possible and not await patriation, as Mr. Chrétien had originally suggested. At the same time, the letters to Ministers, which we had redrafted for the Prime Minister's consideration, were approved.

Today*, the Assistant Deputy Minister of Justice (Policy), on Mr. Chrétien's behalf, confirmed agreement with the Prime Minister's approach. Hence, the letters to Ministers can be forwarded to the Prime Minister for signature.

(on March 19, 1982)



Government of Canada
Privy Council Office

Gouvernement du Canada
Bureau du Conseil privé

BT from info
TS

Francine Sarrazin

Regarding the letter of June 4 to you from Gerry Rayner on Human Rights and Sec. of State, I have already been in discussion with the Department and given my preliminary views. I have also consulted with Jack Ross and Christine Hewett (Machinery) and we appear to be of the same mind:

1. there is no point in considering this set of proposals in isolation from Justice's implementation of the Charter document: they should be seen as complementary and at the same time by DMs and Ministers
2. while some of the program approaches appear to be good, there is a rather helter-skelter approach, without much sense of prioritizing and with an unrealistic hope of new resources: an effort should be made with the Department of

Canada

NEW ISSUE

In the interim period, there have been media reports of remarks, attributed to aides of the Minister of National Defence and DND officials, which may be considered to undermine the government's position on the Charter (clipping attached). In particular, it appears that DND may seek exemption from some of the Charter's provisions (e.g., the right to counsel). In addition, DND appears to continue to fear the effects on the armed forces of extending the grounds of protection from discrimination in the Canadian Human Rights Act, particularly in relation to physical and mental handicap, political belief and sexual orientation. (The Cabinet Committee on Social Development has just approved a number of amendments to the Canadian Human Rights Act, in the context of the government's response to the Obstacles report, including the protection against discrimination on the basis of disability, whether mental or physical, but leaving to later consideration the grounds of political belief and sexual orientation.)

The Sub-Committee on National Defence of the Standing Senate Committee on Foreign Affairs reflected these concerns in its January, 1982, report, which recommended that DND "urgently package its requirements for exemptions from the Charter of Rights and Freedoms and draft such consequential amendments to the National Defence Act as may be necessary." It apparently came to this conclusion on the basis of the view that the Canadian forces exist to train service-people for combat and that the structures and standards relating to human, civil and legal rights, which the Charter would impose, could be inappropriate and difficult to enforce in that context. [REDACTED]


[REDACTED] We understand the Department of Justice has prepared a letter to Mr. Lamontagne for Mr. Chrétien's consideration upon his return, which suggests that concerns regarding the Charter should be raised in Cabinet, not publicly.

COMMENTS

In our view, which is shared by FPRO (Alan Nymark in Mr. Kirby's absence), DND'S remarks could open the door to further 'in-house' criticism and weaken seriously public confidence in the Charter upon patriation. We, therefore, suggest expansion of the Prime Minister's letter to Ministers on the implementation of the Charter to include a request that there be no public contradiction of the government's policy to bring federal legislation, regulations and practices into conformity with the Charter nor attempts to circumvent the entrenched rights of Canadians, through the use of notwithstanding provisions or otherwise. We have consulted with the Department of Justice, which supports the inclusion of such a 'reminder' at this time to deter further public pronouncements of detriment to the Charter's impact.

CONCLUSION

FPRO's paragraph has, therefore, been added to the text of the letters, which the Prime Minister had originally approved. We have prepared letters to all Ministers for the Prime Minister's signature accordingly and a covering memorandum explaining the addition is attached for your consideration, which have been reviewed with FPRO, Justice and Foreign and Defence Policy.


F. Sarrazin

Attach.
J. Cohen Sulzenko/jd