

AIDE MEMOIRE FOR SENIOR MANAGEMENT

SUBJECT CANADIAN CHARTER OF RIGHTS AND FREEDOMS - EQUALITY  
ISSUES IN FEDERAL LAW

AIM

1. To advise senior management of the results of an interdepartmental meeting convened by the Department of Justice and held on 25 Jul 85 to discuss the thrust of recommendations likely to be made by the Equality Rights Subcommittee through the Standing Committee on Justice and Legal Affairs to Parliament respecting, inter alia, the five major equality rights issues that affect the CF which were included in the Discussion Paper on Equality Issues in Federal Law.

BACKGROUND

2. The five major equality rights issues that are contained in the discussion paper on equality issues in federal law that affect the CF are:

- a. mandatory retirement ages;
- b. the employment of women in the CF;
- c. the exclusion of persons with physical or mental disabilities from employment in the CF because of medical standards;
- d. the CF policies with respect to common law relationships; and
- e. the CF policy on homosexuals.

3. An Equality Rights Subcommittee of the Standing Committee on Justice and Legal Affairs has been conducting public hearings on the issues raised in the discussion paper issued by the Minister of Justice. Hearings have been held in Ottawa and at various locations throughout the country other than the Atlantic provinces. The Subcommittee has received hundreds of briefs and oral presentations from a wide variety of groups and individuals. Additional hearings are proposed to be held in Ottawa later in July and in the Atlantic provinces, Ottawa and perhaps the north and western provinces later in August.

4. The Subcommittee was originally expected to report to Parliament through the Standing Committee by 9 Sep 85. That date has since been extended and the report is now due to be made to Parliament through the Committee by 15 Oct 85. It is not

expected that the report of the SubCommittee will be presented to the Standing Committee for consideration until approximately one week prior to the due date of 15 Oct. It is possible that the Standing Committee may not agree with all of the recommendations made by the SubCommittee.

5. Once the report has been submitted to Parliament, the government must respond to it in Parliament within 120 days. Accordingly, while it is not yet clear what recommendations will be made by the SubCommittee, nor what response the government will make, officials from the Department of Justice urged at the interdepartmental meeting on 25 Jul 85 that departments should now be seeking to determine what approach might be taken in respect of those issues where there is an indication of the type of recommendations that will be made by the SubCommittee. Those officials stated that if the government does decide to take action on some or all of the recommendations, it will probably wish to do so quickly.

6. The Department of Justice officials suggested that if legislative action is required in respect of any of the recommendations, it would be desirable to explore now the manner in which that action could be taken. In this respect, another Omnibus Charter Bill has been contemplated by the Department of Justice for some time, but it may not be possible to prepare that type of a bill within an appropriate time frame to deal with all of the legislative action that might be required. Departmental officials have been asked to identify any separate legislative packages that they already may have commenced, or that are being contemplated, that might be suitable vehicles for incorporating some parts of the legislative action that might be required. It was suggested, for example, that proposed amendments to the Income Tax Act resulting from the proposals in the budget or the proposed pension reforms currently being examined within Treasury Board, might be useful in some ways.

#### DISCUSSION

7. Department of Justice officials have been able to determine, on an informal and unofficial basis from the staff of the SubCommittee, that it appears that the SubCommittee is tending towards recommendations that sexual preference should be added to section 15 of the Charter (and possibly also to the Canadian Human Rights Act) as a particular prescribed ground of discrimination, and that the briefs and presentations to the SubCommittee have been overwhelmingly opposed to the present CF policy on homosexuals. It is expected that the SubCommittee will recommend that that policy be changed and that homosexuality be no bar to enrolment or continued service in the CF. It also appears that the Committee will recommend that there is no justification for the present CF policy of excluding women from combat. Department of Justice officials indicated that they



have suggested to the staff of the SubCommittee that if such a recommendation is made, it would be helpful if the SubCommittee indicated how they see the change being implemented within the CF, particularly in terms of the gradual phasing in of a new policy.

8. There is also an indication that the submissions made to the SubCommittee generally favour abolition of mandatory retirement ages and that such a recommendation will be made. It is expected, however, that the recommendation would be in general terms that might permit the retention of mandatory retirement ages in occupations, such as the CF and RCMP, where mandatory retirement ages can be justified as a bona fide occupational requirement.

9. It is also expected that the Committee will recommend many steps to ensure increased access by the disabled, though it is not clear whether they will recommend increased employment opportunities for the disabled in the CF. However, it was suggested by Justice officials that the SubCommittee would be seeking further information as to the present regulations and policies of the CF with respect to disabilities.

10. Finally, it was indicated that the members of the SubCommittee may not yet be in agreement as to what appropriate recommendations should be made with respect to discrimination on the basis of marital status in so far as common law relationships are concerned. It may be that the difficulty is not whether such relationships should be recognized, but how such relationships should be defined.

11. It was indicated that a similar meeting should be held early in Sep, at which time the recommendations that the SubCommittee is likely to make may be more clear. However, in the meantime Justice officials urged that departmental representatives ensure that action is begun now to permit the government to be in a position to respond quickly and appropriately to the recommendations that might be made. In particular, departmental officials were urged to develop arguments with respect to any bona fide occupational requirement exceptions or reasonable limits that they might wish to urge the government to accept. Those officials suggested that research should be completed and files brought up to date as soon as possible and that, to the extent possible, arguments be based upon hard data or expert opinion capable of being proven. Departmental officials were also urged to consider the approach that should be taken by their departments, and by the government on issues with respect to which departments hold strong views in opposition to those that have been presented to, and that are perhaps held by, members of the SubCommittee. It was suggested that both sides of the issues need to be studied with a view to both strengthening the departmental case and responding to issues

raised before the SubCommittee.

12. A CF Position Paper with respect to each of the major issues has been developed under the sponsorship of the Charter Working Group. In some cases, it is possible to determine the general thrust of presentations that were made to the SubCommittee from the minutes of their proceedings, but the detailed data used to support those presentations are, for the most part, contained in briefs that have been filed with the SubCommittee. Those briefs are not yet available, although Justice officials hope to obtain a catalogue of them in the near future. It is doubtful that much can be added to the information that is already available with respect to the justification of current CF policies.

RECOMMENDATION

13. It is recommended that the Minister, DM and CDS be advised of the recommendations that the SubCommittee is likely to make. If they consider it desirable, they may wish to issue direction to CF officials with respect to any additional information or other action they wish to have taken before they are required to make a decision with respect to whether any modification should be made to the relevant existing CF regulations, orders and policies.

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