

WARNING THIS FOLDER / DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH TREASURY BOARD CIRCULAR 1983-45 DATED 30 AUGUST 1983.	AVERTISSEMENT CE DOSSIER / DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA, LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE LA CIRCULAIRE 1983-45 DU CONSEIL DU TRÉSOR EN DATE DU 30 AOÛT 1983.
---	--

9 January 1986

BRIEFING NOTE FOR THE MINISTER AND
ASSOCIATE MINISTER OF NATIONAL DEFENCE

SUBJECT: Draft Consolidated Government Response to
Recommendations of Equality Rights Sub-Committee

ISSUE

1. The Minister signed a letter to the Minister of Justice dated 5 Jan 86, containing the Department of National Defence (DND) observations on the draft consolidated government response to the recommendations of the Equality Rights Sub-Committee, and the draft Memorandum to Cabinet (MC) thereon, prepared by the Department of Justice (Justice).

2. As a result of the Minister's letter, senior officials of Justice requested an urgent meeting with counterparts in DND to discuss revisions to the drafts. The meeting, held on 7 Jan 86, was attended by ADM(Per) from DND, ADM Public Law from Justice, and their staffs.

CURRENT STATUS

3. A substantially revised version of the draft MC was provided by Justice. While none of the differences in positions was changed, the revised draft represented a major effort to respond to the other DND concerns expressed in the Minister's letter. Further changes to both drafts were agreed to at the meeting. As a result, the draft MC was far more objective and balanced, and

.../2

A0141620_1-003578

WARNING THIS FOLDER / DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH TREASURY BOARD CIRCULAR 1983-45 DATED 30 AUGUST 1983.	AVERTISSEMENT CE DOSSIER / DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA, LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE LA CIRCULAIRE 1983-45 DU CONSEIL DU TRÉSOR EN DATE DU 30 AOÛT 1983.
---	--

-2-

better expressed DND's positions and concerns with the proposed implementation of those recommendations with which this Department disagrees. Also, in response to the Associate Minister's letter to the Minister of Justice dated 17 Dec 85, the draft MC now contains information on several studies of the consequences of abolishing mandatory retirement ages, as a result of which the Treasury Board and Labour Canada have concluded that there appear to be no significant financial and social implications.

4. In discussion, the Justice officials stated that careful consideration was given to the consequences of implementing those recommendations they support, but that that they arrived at decisions different from those of DND with full appreciation of all of the ramifications. Their concept is that the Canadian Human Rights Act (CHRA) complements the Charter of Rights and Freedoms (the Charter) by permitting the Government to provide greater protection of individual rights than does the Charter. It is implicit in their approach that:

- a. the Government accepts that there is in the first instance a need to extend the protection of individual rights as they propose; and
- b. the Government considers that this need is great enough to outweigh the consequent

.../3

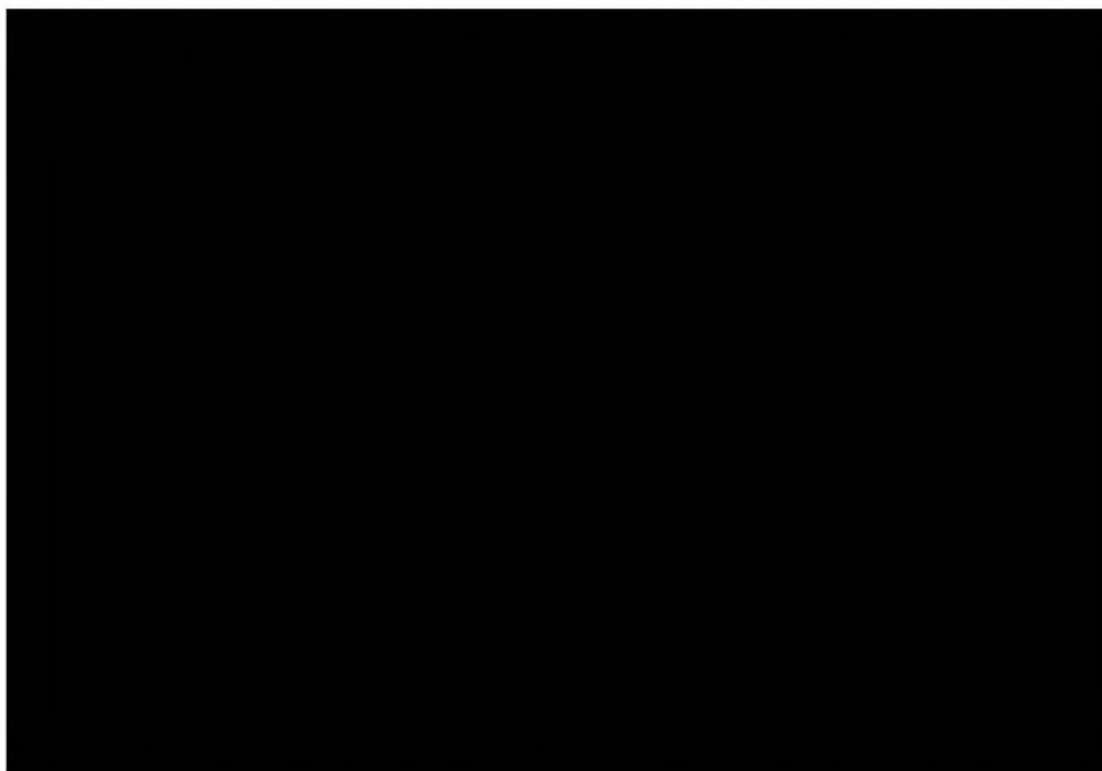
A0141620_2-003579

WARNING THIS FOLDER / DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH TREASURY BOARD CIRCULAR 1983-45 DATED 30 AUGUST 1983.	AVERTISSEMENT CE DOSSIER / DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA, LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE LA CIRCULAIRE 1983-45 DU CONSEIL DU TRÉSOR EN DATE DU 30 AOÛT 1983.
---	--

-3-

disadvantages of subjecting policies of national importance to a narrower defence, and the review of the validity of federal laws, to the Canadian Human Rights Commission and Human Rights Tribunals.

In short, the question is one of the balance between the addition of further protection of individual rights, and the surrender of further power from Parliament and courts of law to administrative or appointed bodies.



6. Justice officials advised this date that late on 8 Jan 86 the Privy Council Office (PCO) had insisted that the MC be changed. As a result it now contains only the issue, options, and recommendations. Discussions, including the concerns and objections of

.../4

<p>WARNING</p> <p>THIS FOLDER / DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH TREASURY BOARD CIRCULAR 1983-45 DATED 30 AUGUST 1983.</p>	<p>AVERTISSEMENT</p> <p>CE DOSSIER / DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. ILS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE LA CIRCULAIRE 1983-45 DU CONSEIL DU TRÉSOR EN DATE DU 30 AOÛT 1983.</p>
---	--

-4-

other departments, are now in a note attached to the MC, where they are less prominent than they were in the body of the MC. The Justice officials advised that because of this, it now may be more important for Ministers to emphasize their positions during Cabinet discussion.

RECOMMENDED ACTION

7. The Minister may wish to acknowledge informally to the Minister of Justice the considerable efforts of his staff to amend the draft submissions to Cabinet so as to present a more objective and balanced summary of the opposite positions that remain between DND and his Department.

8. It is recommended that Ministers:

- a. be prepared to give a more extensive presentation of their positions in Cabinet discussions;
- b. give the social and financial implications of abolishing mandatory retirement ages only normal attention rather than that accorded to a major concern; and
- c. stress the prerequisite for consultation with DND in drafting the required legislation, in the event there is a decision to proceed with exemptions for the CF from application of amendments to the CHRA.

.../5

A0141620_4-003581

WARNING THIS FOLDER / DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH TREASURY BOARD CIRCULAR 1983-45 DATED 30 AUGUST 1983.	AVERTISSEMENT CE DOSSIER / DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA, LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE LA CIRCULAIRE 1983-45 DU CONSEIL DU TRÉSOR EN DATE DU 30 AOÛT 1983.
---	--

-5-

RESPONDIBLE GROUP PRINCIPAL:	Lieutenant-General P.D. Manson Assistant Deputy Minister (Personnel) 992-7582
PREPARED BY:	Brigadier-General A. McLellan Chairman Charter Working Group 995-8984
OFFICER AVAILABLE TO RESPOND TO QUESTIONS:	Brigadier-General A. McLellan Chairman Charter Working Group 995-8984
DATE PREPARED:	9 January, 1986