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EXECUTIVE SUMMARY

ISSUE

The nature and content of the Government's response to the recommendations in the Equality For All Report.

RECOMMENDATIONS

It is recommended that:

1. The Government table a comprehensive response to the recommendations in Equality For All indicating where the Government has already acted what recommendations the Government will accept and reject and where further study is required.
2. The Government accept the responses to the recommendations in Equality For All as set out in Annex A.
3. The Minister of Justice co-ordinate the implementation of the response to Equality For All and report to Cabinet on June 15, 1986 on the progress of the implementation of the responses to the recommendations.

4. The following funding arrangements be approved:

- (a) Implementation of the equal pay provisions of the Canadian Human Rights Act

	1986/87	1987/88	1988/89
Estimated	\$482,000	\$580,203	\$775,322
Person years	8.5	10.75	14.75

- (b) Co-ordination of the implementation of the response and the review of the Canadian Human Rights Act

	1986/87	1987/88
Estimated	\$138,000	\$143,420
Person years	4	4

- (c) Implementation of recommendation 64 - Provision of data by Statistics Canada to devise and evaluate employment equity programs.

- Specialized Tabulations from the 1981 and 1986 census

	1986/87	1987/88	1988/89
Estimated (million)	0.35	0.45	0.55
Person years	6	8	8

The financial recommendation is explained on page .

RATIONALE

5. The Government has already decided that social justice issues are one of its priorities for the coming year. The responses to the recommendations in the Equality For All Report will provide the Government with a key opportunity to indicate its position on a number of important issues in this area.

6. At the time the Discussion Paper on Equality Issues in Federal Law was tabled in the House of Commons in January, 1985, the Minister of Justice indicated that upon receipt of the report of the Subcommittee the Government would be prepared to make changes in federal laws to ensure conformity with the guarantee of equality rights in section 15 of the Charter. There is a public expectation that the responses to the recommendations of the Equality For All Report will indicate where the Government is prepared to make these changes.

7. Overall, the proposed response is very positive and indicates that the Government is prepared to accept approximately 80% of the recommendations of the Subcommittee. The response indicates agreement in principle with the recommendations relating to the Canada Pension Plan and the Public Service Superannuation Act. While agreeing in principle with the recommendation to abolish mandatory retirement, the response indicates that where there are bona fide occupational reasons or other societal reasons (such as independence of the judiciary) mandatory retirement would be permitted. Similarly, while agreeing in principle to add sexual orientation as a prohibited ground of discrimination in the Canadian Human Rights Act, an exemption would be made for the Canadian Forces and the RCMP. The response advocates acceptance in principle for a number of other recommendations relating to the Canadian Human Rights Act, such as those dealing with primacy, reasonable accommodation and systemic discrimination. There is also agreement in principle for most of the recommendations relating to immigration, disability and for some of the recommendations relating to employment equity. In addition, the Government has already taken action to implement a number of the recommendations relating to pensions and employment equity.

The recommendation to replace the spousal allowance under the Old Age Security Act with an equivalent benefit that does not refer to marital status has been rejected because it would involve an expenditure of \$1.5 billion. The recommendations respecting an enforcement mechanism for employment equity and removal of the citizenship preference for public service employment have also been rejected.

The proposed response to the recommendation on women in combat indicates that DND will continue to expand the role of women in the Canadian Forces and is thus neither an acceptance nor a rejection of the recommendation. ///

8. The response as a whole seems likely to be politically viable. It deals with a number of complex social issues where the opinions of Canadians on what ought to be done to ensure conformity with section 15 differ widely. The approach is moderate, yet positive and the response indicates that the Government has agreed to a number of changes which will appeal to a wide segment of the community. In some areas, such as mandatory retirement and sexual orientation, the response sets out a compromise position which takes into account differing points of view. The precise method of implementing the recommendations relating to the Canadian Human Rights Act will be worked out in the major review of the Act now being carried out by the Department of Justice. This review will also deal with other concerns, such as those raised by Mr. Nielsen's Task Force. ///

POSSIBLE ADVERSE CONSEQUENCES

9. In areas such as sexual preference, we will be seen by some as moving too far to accept the recommendations of the Report. Any expansion of the role of the Canadian Human Rights Commission is also likely to be controversial to these segments of the Canadian public. //

10. Others may perceive that the responses such as those on women in combat, sexual preference, the Old Age Security Act and marital or family status do not go far enough to ensure consistency with the equality rights guarantees in section 15.

DEPARTMENTAL POSITIONS

11. The Minister of Justice has co-ordinated the preparation of the response. The appropriate departments were given responsibility for the preparation of the response for each recommendation. In a number of areas (i.e., mandatory retirement, marital status, employment equity, amendments to the Canadian Human Rights Act and pensions) inter-departmental consultations were organized.

12. (a) The Treasury Board does not support the expansion of the definition of mental disability in recommendation 57.

(b) While the Department of the Secretary of State supports the addition of sexual orientation as a prohibited ground of discrimination under the Canadian Human Rights Act, it has concerns about the exemption for the Canadian Forces and the RCMP. The Department of the Secretary of State also has concerns about the responses to recommendations 15-17, 25, 27.

(c) The Department of National Defence is of the opinion that the Government should table a very brief response, acknowledging the recommendations of the Subcommittee, but withholding any commitment to recommendations other than those for which the consequences are clearly not in doubt. The Department is especially concerned about the proposed expansion of the role of the Canadian Human Rights Commission and about proposed amendments to the Canadian Human Rights Act dealing with sexual orientation, mandatory retirement, primacy, reasonable accommodation and systemic discrimination.

*DND
concerns*

POLITICAL CONSULTATIONS

13. Following Cabinet direction, the Caucus Chairman met with staff from the offices of the Ministers of Justice and Health and Welfare to develop a program of caucus consultation. There will be an announcement at the first National Caucus meeting in January inviting all interested members to attend a meeting of the Justice Policy Caucus Committee which will co-ordinate briefings for caucus and provide a forum for caucus response to the report.

COMMUNICATIONS

14. A synopsis and detailed plan (Annex B) are attached.

MAJOR THEMES

15. The proposals contained in the response satisfy in general Charter equality guarantees and meet the federal Government's stated objective of advancing social justice. Through progressive changes to federal laws and policies in support of equality rights, individual Canadians will be assured of equality of opportunity and will not have to unnecessarily seek protection of their rights in the courts.

RESPONSE TO POSSIBLE CRITICISMS

16. Q. Why has the federal Government chosen not to open all activities in the Canadian Armed Forces to women?

A. We have given careful consideration to whether women should be recruited into military trades which would oblige them to enter combat. Canada's record in terms of providing opportunities for women to serve their country in their Armed Forces compares favourably to that of other countries. Those women who entered the Forces in the 1970's, when the opportunity to serve was expanded, are now moving into positions of leadership in their field. The results of extensive trials involving servicewomen in non-traditional environments are being analyzed and will guide us in making further changes while ensuring the continued operational effectiveness of the Canadian Forces.

Minister of Justice
Ministre de la Justice

MEMORANDUM TO CABINETBACKGROUND

1. The guarantee of equality rights in section 15 of the Charter came into force on April 17, 1985, three years after the Proclamation of the Charter. As part of the review of federal statutes, regulations and policies for consistency with the Charter, the Minister of Justice tabled a Discussion Paper on Equality Issues In Federal Law in Parliament in January, 1985.

2. This Discussion Paper was referred to a Subcommittee of the Standing Committee on Justice and Legal Affairs. After public hearings and extensive consultations, the Subcommittee reported to Parliament on October 25, 1985, setting out 85 recommendations. Under the rules of the House of Commons, the Government must table a response to the recommendations by February 21, 1986.

OPTION 1

3. To prepare a comprehensive response, indicating in some detail where the Government has already acted, where the Government plans to act, areas where further consideration is needed and recommendations to which the Government cannot agree.

ADVANTAGES

- (a) This gives the Government a better opportunity to rebut criticism that it has been slow in changing federal laws and policies to ensure consistency with the Charter;
- (b) This permits a more positive response in areas in which the recommendations are very general and wide-ranging.

DISADVANTAGES

- (a) The Government is required to make decisions on difficult issues in a short period of time.
with few reaching consequences.

OPTION 2

4. To prepare a very brief response to the recommendations indicating that the Government is considering the recommendations.

ADVANTAGES

- (a) The Government has more time to study difficult issues.

DISADVANTAGES

- (a) The Government would be accused of not doing enough to implement the equality rights in section 15;
- (b) Delays in ensuring conformity with section 15 will increase the likelihood of court challenges to federal laws and policies.

Court challenge either way

*Also of Option 1
see para 10
even discussing*

CONSIDERATIONSTHE CANADIAN HUMAN RIGHTS ACTGENERAL

5. The Recommendations in the Equality For All Report raise difficult questions about the interrelationship between the Charter and the Canadian Human Rights Act. An expansion of the grounds of discrimination under the Act will mean that employers will be precluded from justifying distinctions under the Charter because the individual has the choice of seeking a remedy, either under the Canadian Human Rights Act or under the Charter. The Act does not contain a general provision like section 1 of the Charter which permits reasonable limits on rights. The Act does provide for defences of bona fide justification and bona fide occupational requirements, but these may not be as broad as permissible limits under the Charter. In the view of the Department of National Defence, this expansion of the role of the Canadian Human Rights Commission is neither desirable nor necessary to ensure that the Charter is respected. The Department of National Defence believes that the Charter provides a better mechanism for assessing laws because it permits the rights of individuals to be balanced against the collective rights of society.

*agrees
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not*

6. Many of the recommendations of the Equality For All Report have been under consideration by the Government and the Canadian Human Rights Commission for some time. There is already a major review of the Canadian Human Rights Act under way by the Department of Justice. In addition to considering the issues raised in the Equality For All Report, this review will also be taking into account the concerns raised by the Nielsen Task Force review of the operations of the Canadian Human Rights Commission.

SEXUAL ORIENTATION

7. The response indicates agreement in principle with recommendation 10 that the Canadian Human Rights Act be amended to add sexual orientation as a prohibited ground of discrimination. It appears likely that sexual orientation will be one of the grounds given protection under the equality rights guarantees of the Charter and that the Government will, in any event, be prohibited from making distinctions on the basis of sexual preference unless there is a section 1 justification.

While there is controversy over the provision of protection against discrimination on the basis of sexual orientation, there is some evidence that a majority of Canadians would support such protection. [A Toronto Star survey in 1977 indicated that 52% of respondents supported this protection and 68% of respondents in a 1979 survey for the Canadian Human Rights Commission agreed that professional qualifications should take preference over sexual orientation in hiring practices.] However, by offering such protection the Government would not be condoning homosexuality, but would be ensuring that persons are not excluded from employment opportunities for reasons which are irrelevant to their capacity and ability to do their job or from other opportunities for similarly irrelevant reasons.

X ←

8. The RCMP and DND have serious concerns about their ability to integrate homosexuals and lesbians. They believe that discipline and morale problems, with a resulting decrease in the efficiency of

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the Canadian Forces and the Police, will occur if this recommendation is accepted. The concerns of DND and the RCMP can be accommodated by specifically exempting these organizations from the prohibition against discrimination on the basis of sexual orientation (see response to recommendation 11). In this way, legitimate concerns about security, efficiency, discipline and morale can be addressed. The Department of National Defence is opposed to adding sexual orientation as a prohibited ground of discrimination and is concerned that they will be subjected to criticism for seeking exclusion from this provision of the Canadian Human Rights Act.

PRIMACY

9. The consequence of agreeing to recommendation 79, that the Canadian Human Rights Act be amended to provide a primacy or override clause, would be that the Canadian Human Rights Commission and Human Rights Tribunals would be involved in considering the validity of federal laws. They may have this power already. In a recent decision, the Supreme Court of Canada held that the Manitoba Human Rights Act has primacy over the provisions in the Manitoba Public Schools Act. The broad terms of the decision indicate that it may well apply in circumstances relating to the Canadian Human Rights Act. The Department of National Defence is concerned that a primacy clause would fundamentally change the role of the Human Rights Commission.

10. The arguments against putting a primacy clause in the Canadian Human Rights Act are similar to those outlined in paragraph 5. If primacy is adopted, it is possible that there are legitimate distinctions in federal legislation which would be upheld under the Charter, but not under the Canadian Human Rights Act.

*O'guy
not*

11. The arguments in favour of giving primacy to human rights legislation are:

- (a) The Government would in general be subject to the same standards as the private sector, which usually cannot defend its actions on the basis that they are authorized by legislation. Legitimate distinctions in federal legislation could be protected by ensuring that they constitute a "clear legislative pronouncement" that the human rights legislation is overridden.
- (b) Procedures for complaints of discrimination in respect of legislation are more accessible under the Canadian Human Rights Act. While under the Charter an aggrieved person must sue in the regular way, under human rights legislation the Human Rights Commission investigates and usually provides counsel.

REASONABLE ACCOMMODATION

12. Recommendation 80 proposes that the Canadian Human Rights Act be amended so that employers are required to make reasonable accommodation for needs peculiar to employees protected from discrimination by the Act. In Canadian National Railway v. Bhinder and the Canadian Human Rights Commission, the Supreme Court of Canada held that the existence of the bona fide occupational requirement defence in section 14(a) of the Canadian Human Rights Act negated any obligation to make reasonable accommodation. However, the Supreme Court held in O'Malley v. Simpsons-Sears that

under the Ontario Human Rights Code (prior to being amended in 1981), which did not expressly provide for a bona fide occupational requirement defence, an employer has an obligation to take reasonable steps to accommodate at least those special needs arising out of a person religion or creed, where it would not cause undue hardship to the employer. In agreeing to recommendation 80, the Government proposes to incorporate the concept of reasonable accommodation in the Canadian Human Rights Act and make it applicable not only to employment, but to other areas covered in the Act, such as provision of goods and services, and accommodation. The need of disabled persons, for instance, to obtain reasonable accommodation in the area of facilities is probably just as pressing as those in employment.

agree to
80

13. As pointed out by the Subcommittee, in creating an obligation of reasonable accommodation, it would not be fair to impose an unlimited burden to make accommodations. While the Subcommittee suggested that "undue hardship" should be the test of the burden that may be imposed, the meaning of this phrase is not certain and would appear to warrant further consideration. In the United States, the case-law indicates that it is an undue hardship if the employer has to bear more than a de minimis cost in accommodating the employee.

further studies
on how

14. Consideration is being given to integrating the concept of reasonable accommodation into the bona fide occupational requirement and bona fide justification defences. Since these defences only come into play when a prima facie case of discrimination is made out, this would ensure that an employer or purveyor is required to make reasonable accommodation only where she has denied an opportunity to someone or has otherwise differentiated adversely. However, as a result of the Bhinder case, further study is required to determine how best to integrate the concept of reasonable accommodation into the Canadian Human Rights Act.

SYSTEMIC DISCRIMINATION

15. Since the Government has taken the position that section 15 of the Charter applies to systemic discrimination, it may be desirable on policy grounds to amend the Canadian Human Rights Act to define the scope of systemic discrimination. The Supreme Court of Canada held in the Bhinder case that the Canadian Human Rights Act prohibits adverse effect (or systemic) discrimination. This issue will be considered as part of the review of the Act being carried out by the Department of Justice.

when & where

CONCERNS

16. DND is opposed to recommendations 79, 80, and 81 dealing with primacy for the Canadian Human Rights Act, reasonable accommodation and systemic discrimination. In their view, the process of balancing the rights of the individual against the rights of society that is necessary in cases involving complaints of systemic discrimination and reasonable accommodation should be carried out by courts rather than the Human Rights Commission or Human Rights Tribunals. [DND considers that since the Canadian Human Rights Commission and Human Rights Tribunals are appointed administrative bodies which function independently of the courts; they should not have the power to consider the validity of federal laws.] DND believes that policies which are important to the achievement of legitimate objectives of Canada should be subject to examination only under the Constitution in the Courts.

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MATERNITY AND PARENTAL BENEFITS

17. The recommendations in this Part involve fundamental changes to the provision of maternity and parental benefits under the Unemployment Insurance Act. If accepted, the recommendations would also probably involve substantial expenditure. Since the Unemployment Insurance Act is being reviewed by a Commission of Inquiry, which is to report in the first half of 1986, it would be premature at this time for the Government to respond to the recommendations.


18. The response will indicate some progress on the issue of consistency of maternity benefits within the Public Service, but it is impossible to reach a final decision until the Forget Commission completes its investigation.

MANDATORY RETIREMENT

19. Presently under the Canadian Human Rights Act, it is not a discriminatory practice to terminate the employment of an individual because that individual has reached the normal age of retirement for employees working in similar positions (section 14(c)). The Act has a similar exception for a trade union or other employee organization that terminates an individual's membership in the organization because he or she has reached the normal age of retirement (section 9(2)). As a consequence, it has not constituted discrimination to retire an individual at a particular age even if the facts show that there is no justification other than that such age of retirement is a widespread and systematic practice.

20. In the federal public sector, the mandatory retirement age for employees under the Public Service Superannuation Act is 65. Different age or service limitations apply to members of the Royal Canadian Mounted Police, members of the Canadian Armed Forces, members of various federal boards, commissions and tribunals. The retirement age for Justices of the provincial Superior Courts and for senators is fixed, by the Constitution, at age 75. In the federal private sector, the age of retirement is not provided by law but is instead enforced through the employer's personnel policy, employment contract, pension or superannuation plan or collective agreement.

21. The inclusion of age as a prohibited ground of discrimination in section 15 of the Charter raises the issue of whether federal legislation setting a mandatory retirement age for some persons may be declared inoperative



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22. The decision to implement the Committee's recommendation to abolish mandatory retirement in the federal public sector (recommendation 7) makes it logically necessary for each department that is responsible for the administration of legislation or regulations setting a mandatory age of retirement, to review the relevant statutory instruments and decide whether reference to mandatory retirement at a given age should be deleted or whether it could be defended as being a case of bona fide occupational requirement or whether there is any other valid justification for maintaining an age of retirement. Consideration will also have to be given to the normal age of retirement of judges. The Committee has not given any indication as to what categories in the federal public sector could continue to be subject to a mandatory retirement age.

23. The implementation of the Committee's recommendation that the Canadian Human Rights Act be amended so that the concept of a normal age of retirement for the purposes of terminating membership in an employee organization or for termination of employment be removed (recommendation 6) will have an important impact on the private sector. It would no longer be possible to use the "industry standard" in order to justify a mandatory retirement practice. However, an employer would continue to be entitled, in appropriate circumstances, to raise the defence that an employment limitation tied to age is a bona fide occupational requirement. Since abolition of mandatory retirement has an impact on the labour relations of the private sector, it would seem desirable for the Department of Labour to consult with the private sector on different means that would facilitate the implementation of a flexible retirement policy (recommendation 9).

24. Another issue raised by the abolition of mandatory retirement is performance reviews. A commonly held view is that removal of mandatory retirement would necessitate the implementation of stringent and effective performance review measures and that sufficient time should be devoted to development of these measures given their importance in a flexible retirement program. Within the Federal Public Service, performance measurement is a way of life and should prove readily adaptable to any removal of the mandatory retirement age. However, since performance reviews could take on a higher profile if the mandatory retirement age is removed, particularly in the case of older workers released on grounds of incompetence, the Government will have to ensure that the current system is effective and provides a proper assessment of the individual's capacity to work and that the necessary statutory changes are made to allow release for failure to meet a standard of performance. In the private sector, opposition to ending mandatory retirement has been largely based on a concern that without an age ceiling people could continue working indefinitely. In order to avoid "carrying" older workers who were not producing, employers might feel the need to institute rigorous performance testing which could result in increased dismissals, not only for older workers. To date, evidence from the U.S. and from Quebec suggests that raising or eliminating the retirement age has not had a significant effect on the age at which most people retire. As a result, there has been no evidence of changes in performance review resulting in increased dismissals of employees.

25. Benefit available to employees such as pension plans, profit sharing plans and long-term disability plans are normally directly linked to a retirement age: pension plans, for the most part, provide for commencement of benefits at a specific age, virtually

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always taken to be synonymous with retirement or cessation of employment. Some of the other plans, most notably long-term disability plans, provide for the discontinuance of coverage and/or benefits upon reaching retirement age. The abolition of mandatory retirement will require that pension plans be revised to accommodate a flexible retirement policy, and other benefit plans will have to be examined in light of such a policy. Moreover, since one of the major concerns of abolishing mandatory retirement is that older workers may block career development opportunities for younger employers, pension plans may have to be revised to ensure there is sufficient incentive to retire.

26. The financial and social implications of mandatory retirement have been carefully considered by two government departments - the Treasury Board and Labour Canada - by a Special Senate Committee on Retirement Age Policies, plus others such as the Manitoba Commission on Compulsory Retirement (1982) and the Conference Board of Canada (1980). In its 1981 study, the Treasury Board concluded that there would be no major social or financial implications for the federal public service if the general mandatory retirement policy was abolished. Labour Canada's studies show that in jurisdictions where mandatory retirement has been abolished there have been no significant financial or social implications. The impact on pensions of such changes has been considered and again there appears to be no major problems.

27. While the response indicates that the Government is prepared to remove the legal provisions requiring mandatory retirement in the public service (i.e., Public Service Superannuation Regulations) and to amend the Canadian Human Rights Act to abolish the defence of "normal age of retirement" there may still be instances where mandatory retirement can be justified. In some instances such as the Canadian Forces and the judiciary, a legislative provision will have to be enacted to permit mandatory retirement because there may not be grounds to establish a bona fide occupational requirement under the Canadian Human Rights Act.

It is the view of the Department of National Defence that there should be no agreement with the recommendation to abolish mandatory retirement because of the effect this would have on the retirement policies of the Canadian Forces. In their view, the enactment of a legislative provision to exempt the Canadian Forces from the abolition of mandatory retirement could itself be subject to a challenge under the Charter which might result in the Canadian Forces having to abolish mandatory retirement without ever having the opportunity to defend their retirement policies in a court under the Charter. The Department of Justice however, believes there is little risk that such a challenge would be successful. *not true: must be*

SEXUAL ORIENTATION

28. Considerations involved in the response to add sexual orientation as a prohibited ground of discrimination under the Canadian Human Rights Act (Recommendation 10) have been outlined in the comments under the Canadian Human Rights Act. As pointed out, there are strong legal and policy reasons for making this amendment and the concerns of DND and the RCMP can be accommodated by specifically excluding them from the provision. As indicated in paragraph 8, DND would still be opposed to adding sexual orientation as a prohibited ground of discrimination and is concerned about the legal effects of a legislative enactment to DND. There do not appear to be similar problems with respect to security clearances.

MARITAL OR FAMILY STATUS

29. Recommendations 15, 16 and 17 propose that benefits and obligations in federal laws and policies for married people (especially in the Income Tax Act), be extended to people in common law relationships. The response indicates that while the Government will continue recognition of common law spouses where this already occurs (i.e., pension schemes, group insurance plans, etc.) it will not extend other benefits or obligations.

could go either way.

30. The reasons for this position is that a number of people enter into common law relationships because they do not wish to have the obligations which attach to those who are legally married. Recent changes to the Divorce Act will mean that there are now fewer impediments to marriage and therefore fewer people will be living in common law relationships because they cannot marry.

31. This position may be subject to attack on the basis that the failure to recognize common law relationships means that some spouses do not receive equal benefit of federal laws. All provincial human rights laws prohibit discrimination based on marital status and some define marital status to include common law relationships. The response may also appear inconsistent on policy grounds because common law spouses are already recognized in federal laws such as the Canada Pension Plan Act and the Old Age Security Act.

32. The response to recommendation 17 indicates that where common law relationships are recognized in federal laws and policies there will be an attempt to standardize the definition of a common law relationship. There are a number of practical problems to be overcome before this can be achieved and it is not clear yet that a single consistent definition of common law relationships would be appropriate in all cases. There may be different requirements needed for the purpose of assessing a relationship for a pension scheme or employee benefits. The recommended requirement that there be a public representation that the parties are spouses may also pose problems. There needs to be further study on the question of a common definition.

EQUALITY ISSUES IN PENSIONS

33. The recommendations concerning pensions relate to the Canada Pension Plan, the spouses allowance of the Old Age Security Act, the Public Service pension statutes and the Pension Benefits Standards Act. The responses indicate that, as part of the considerations for reform of the CPP, the Government of Canada will make the recommended changes if the requisite consent of the provinces is attained. In addition, the responses indicate the Government is examining the possibility of Homemaker Pensions as part of the review.

34. Recommendation 25 stated that the Spouses Allowance program under OAS should be replaced with an equivalent benefit that is available without reference to marital status. The response indicates that the Government is aware that there are needy individuals within the age group 60-64 who are not covered by the program. However, the program was recently extended to cover needy widows and widowers. To extend the benefit to all needy individuals within this age group would cost approximately \$1.5 billion in the first year alone. The response therefore indicates it is impossible to extend the program further at the present

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time. There are legal risks in adopting this response and the response should contain a commitment to implement recommendation 25 as resources permit.

35. Currently the Government is giving close attention to reform of public service pension plans. The response to the recommendations relating to Public Service pension plans indicates that all of the recommendations are being considered. They also indicate agreement in principle to coverage for part-time workers. Consideration is also being given to mechanisms for permitting splitting of pension credits upon divorce or marriage breakdown. The cost of the overall reform package will be set out in a separate Memorandum to Cabinet.

36. The recommendation relating to the Pension Benefits Standards Act has been included as part of the recently tabled amendments to the Act. The Act will require employers to provide equal pension benefits to men and women, will provide coverage of part-time workers who earn a specified amount or work an equivalent number of hours and will permit pension credit splitting in accordance with provincial property laws.

37. The Department of Veterans Affairs believes the response to recommendation 28 recommending that the age of 55 for eligibility for women and 60 for men for benefits under the War Veterans Allowance Act and the Civilian War Pensions and Allowance Act should be negative on the basis that this constitutes an affirmative action program pursuant to section 15(2) of the Charter. The rationale put forward by the Department of Veterans Affairs is that women are disadvantaged because they did not have the opportunity to participate as fully as males in the labour force and thus they are more vulnerable to financial insecurity as they get older. The Department of Justice has serious doubts about the ability of the Department of Veterans Affairs to produce sufficient evidence to sustain this approach in a Charter challenge and believes there is a serious legal risk if this position is adopted.

The Department of Veterans Affairs has considered other options, the most viable being to lower the age requirement for males to age fifty-five over a five year period. In 1986-87 the cost of this option is estimated at \$9.1 million if all eligible were to take up this benefit. The cost over five years is estimated at \$85 million. If the age was lowered in one step the estimated cost over a five year period would be 125.6 million dollars.

WOMEN AND THE ARMED FORCES

38. The response to recommendation 29, that all trades and occupations in the Canadian Armed Forces be opened to women, indicates that the policy of the Forces to expand the employment of women will be continued. However, it is implicit in this response that the Government is not at the present time accepting the recommendation that women be given the opportunity to work in trades and occupations which involve combat. While the response may be interpreted by some as further stalling on this issue by the Canadian Forces, it is the opinion of the Department of National Defence that the current policy can be defended under the Charter. There appear to be arguments to support a steady progression with testing and assessments being made of the success of women in new roles in the Canadian Forces. Even though sex is a prohibited ground of discrimination under the Charter and the Canadian Human

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Rights Act, it may be possible to justify the present policy if continued expanses of the role of women and tests to assess their effectiveness are carried out on a reasonable basis. If the trials conducted by the Canadian Forces to test women in combat situations reveal problems, this would be a factor for consideration by the Canadian Human Rights Commission and the courts.

IMMIGRATION

39. With the exception of recommendation 35 and the issue of subsidies for language training in recommendation 37, the response to recommendations 31 to 37 indicates that the Government will make or has already made changes recommended by the Subcommittee. This will ensure that standards of admission to Canada do not discriminate in a manner prohibited by the Charter, medical standards for admission are public, permanent residents have rights of sponsorship similar to Canadian citizens, treatment of adopted children who are coming with their family is similar to natural children, and language instruction is available to all immigrants, although allowances are not paid to sponsored immigrants.

40. The Canada Employment and Immigration Commission is not prepared to recognize common law relationships for immigration purposes because of the difficulty of ascertaining the nature of relationships occurring outside Canada and the opportunity for fraud.

41. The response to recommendation 38 indicates the Government is not prepared to remove the preference for Canadian citizens for jobs in the public service authorized by the Public Service Employment Act. The primary justification is that one of the privileges of citizenship is the access to public service employment.

RELIGIOUS OBSERVANCE

42. There would appear to be a number of practical problems with implementing the proposal for determinate and floating statutory holidays in recommendation 39. Many private enterprises under federal jurisdiction now close on listed holidays and to allow for substitution in many cases involving few employees would result in financial hardship and unpredictable work schedules. Even in the public service, there would appear to be difficulties and the matter needs further consideration.

43. The best way to resolve these difficulties and to balance the needs of employers and employees would be through reasonable accommodation under the Canadian Human Rights Act (see response to recommendation 80). This approach would require employers to make provisions for special needs of employees protected by the Canadian Human Rights Act (i.e., accommodate days of religious observance) that would not cause undue hardship to the employer. A further advantage in proceeding in this manner is that there is already a system in place under the Canadian Human Rights Act to adjudicate disputes which might arise.

ACCESS BY THE PHYSICALLY DISABLED

44. The major recommendations in this portion of the Equality For All Report were put forward in the Obstacles Report. The Subcommittee noted the slow progress in implementing the Obstacles recommendations and urged the Government to move more quickly, especially in the area of access to facilities and services.

45. The thrust of the responses to recommendations 41 to 50 is that the Government is accelerating the pace of implementing the recommendations of the Obstacles Report. The permanent establishment of the Status of Disabled Persons Secretariat (announced by the Secretary of State December 10, 1985) will mean that there is a central organization to co-ordinate and advocate programs for disabled persons.

46. The response to recommendation 48 means that, at least in the transportation field, accessibility regulations will be passed pursuant to section 19.1 of the Canadian Human Rights Act. Complaints of discrimination in this area would then be handled by the Canadian Human Rights Commission.

47. The carrying out by Statistics Canada of a Post-1986 Census survey of disabled persons would provide much-needed information to support the design, implementation and monitoring of programs designed to promote equality rights for the disabled. A Memorandum to Cabinet seeking approval and funding of the proposed survey is in preparation.

MENTAL DISABILITY

48. The proposed response indicates that the Government is prepared to act to implement the recommendations in this area. Amendments to the Canada Elections Act to remove the disqualification for mentally disabled voters will be brought forward (Ontario has already done this and Saskatchewan has legislation pending), (recommendation 52). The Minister of Justice plans to introduce legislation early in 1986 to deal with the rules of evidence and procedure in relation to mental disorder and the Criminal Code (recommendation 53). Some progress has been made in broadening the definition of mental disability used in federal laws and policies providing benefits or protection to mentally disabled persons, but further consideration needs to be given to the implications of this proposal (recommendation 51).

PART-TIME WORK

49. The response indicates agreement in principle with Recommendations 54-58, with the exception of recommendation 57 which has been deferred pending the report of the Forget Commission, on part-time work but there are some specific proposals which cannot be implemented because to do so would be detrimental to part-time workers. While it might be desirable to have a consistent definition of part-time work, to adopt that proposed by the Subcommittee might deny benefits and protection to individuals currently receiving them. Recommendations dealing with pension benefits for part-time workers have been taken into account in recent amendments to the Pension Benefits Standards Act and will be provided for in expected changes to the Public Service Superannuation Act. The Department of Labour is currently engaged in a major review of part-time work and recommendations are expected in the new year.

EMPLOYMENT EQUITY

50. In essence, the major recommendations in this portion of the Equality For All Report have been incorporated in the Employment Equity Act which is before Parliament. The Act does not contain a new enforcement mechanism as proposed in recommendation 62 and there appears to be no good reason for making this change since a

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full discussion of this issue occurred when consideration was given to the proposed Employment Equity Bill. Criticism from certain interest groups can be expected for failure to act on this recommendation.

51. The development and evaluation of employment equity initiatives will require statistical information which is not currently available. Recommendation 64 calls upon Statistics Canada to provide relevant data through the Census. The response indicates that while some of the needed data can be provided through the 1986 and 1991 Censuses, other information can only be developed through special surveys and analyses of employment equity target populations. Additional resources will be needed to undertake this work.

FURTHER EQUALITY ISSUES

52. There are no major problems anticipated in the responses to the recommendations in this section. In many instances (drafting laws in non-sexist language, considerations in making Governor in Council appointments and procedures for dependant voters under the Canada Elections Act) plans are already under way to implement the recommendations. The proposals respecting sexual offences under the Criminal Code and political activities of public servants are under review by the Government.

THE PROCESS OF SECURING EQUALITY

53. The major substantive recommendations in this portion of the Report (recommendations 79, 80 and 81) have been discussed in the comments under the Canadian Human Rights Act.

54. The response indicates that the Government needs more time to study the proposed amendment to the Canadian Human Rights Act to include political belief and criminal conviction as prohibited grounds of discrimination. The meaning of the term "political belief" is unclear and there needs to be more work on the implications of prohibiting discrimination in employment (both for the public and private sectors) on this ground. The implications of prohibiting discrimination on the grounds of criminal conviction or criminal charge also need further study. This study would be undertaken as part of the overall review of the Canadian Human Rights Act.

55. The response to recommendation 85 indicates that the Government disagrees with the recommendation that the Canadian Human Rights Commission should report directly to Parliament. A similar response was made in the response to Equality Now!

FOLLOW-UP TO RESPONSE TO EQUALITY FOR ALL

56. It is important to provide for a mechanism to ensure follow-up of the response to Equality For All. The Report covers a very broad range of topics and a number of Government Departments have responsibilities for implementing recommendations. The only common factor is the Charter and since I, as the Minister of Justice, have already been given responsibility for ensuring Charter compliance, it would be appropriate for me to continue in this role as coordinator and to report back to Cabinet in six months on progress in implementing the response to Equality For All.

FINANCIAL57. (a) Implementation of recommendation 67 - equal pay provisions of the Canadian Human Rights Act.

In the 1984 election campaign, the Prime Minister indicated a commitment to the concept of equal pay for work of equal value as provided in the Canadian Human Rights Act, and emphasized the need to raise general awareness and understanding of the issues involved. Subsequently, in November, 1984, the Royal Commission on Equality in Employment, headed by Judge Rosalie Abella, recommended that greater resources be allocated for the enforcement of the equal pay provisions of the Canadian Human Rights Act. However, at the time of the announcement of the Government's response, the question of additional resources was being studied by the Canadian Human Rights Commission and was to be reviewed by the Department of Justice. While the Abella Commission recommended that the concept of equal pay for work of equal value be made part of employment equity, the Government has not incorporated this concept as part of Bill C-62, the proposed Employment Equity Act, as it is already covered by the Canadian Human Rights Act.

While the Equality For All Report has recommended the Canadian Human Rights Commission actively implement the equal pay provisions, the Commission is currently working to capacity in this regard.

The Commission currently has a six person unit, including support staff, assigned to the implementation of the equal pay provisions. Members of the unit answer inquiries about the equal pay provisions, process all equal pay complaints from across Canada, participate in informational and educational activities relating to equal pay, provide technical advice to employers, and provide support in equal pay litigation. The Commission has been engaged in preparing equal wages guidelines pursuant to section 22(2) of the Canadian Human Rights Act, which should clarify the application of the equal pay provisions for the benefit of employers and employees. In order to maintain these functions and deal with an increasing workload, it would appear that the Commission will require the following additional resources:

	1986/87	1987/88	1988/89
Estimated	\$482,000	\$580,203	\$775,322
Person Years	8.5	10.75	14.75

(b) Co-ordination of the implementation of the response and reviewing the Canadian Human Rights Act.

In order to ensure the necessary follow-up on commitments outlined in the response, the Department of Justice will need two additional lawyers, an administrative support staff person and a secretary for two years. The co-ordination will involve working with a number of other Government departments and agencies to ensure that changes are made in a manner consistent with section 15 and, in some instances, the preparation of legislation to

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implement the responses. Consideration will be given to the preparation of an Omnibus Charter Bill for the fall of 1986. The review of the Canadian Human Rights Act is a major undertaking and extensive consultation will be required both within the Government and with the private sector. In order to carry out these functions, the following additional resources will be required:

	1986/87	1987/88
Estimated	\$138,000	\$143,420
Person Years	4	4

- (c) Implementation of recommendation 64 - Provision of data by Statistics Canada to devise and evaluate employment equity programs.

1981 and 1986 Censuses of Population

Data from the 1986 Census of Population will not be available until the Spring of 1988. In the meantime, the 1981 Census will be used to provide data relating to three of the employment equity target groups (women, visible minorities and native persons). Existing tabulations are not suitable and so these derivations from the 1981 Census data base will involve new work. The relevant tabulations from the 1986 Census base are not part of the package of tabulations destined for publication and included in the 1986 Census budget. They will, therefore, involve a net addition to the 1986 Census workload.

Special retrievals from the 1981 and 1986 Census bases will have to be done on a cost-recovery basis. The expenses are estimated to be as follows:

<u>Fiscal Year</u>	<u>1986-87</u>	<u>1987-88</u>	<u>1988-89</u>	<u>Total</u>
Person-Years	6	8	8	20
Estimated (millions)	0.35	0.45	0.55	1.35

CONCLUSIONS

58. The tabling of a comprehensive detailed response to the recommendations of the Equality For All Report is a key opportunity to indicate the Government's position on a number of important social justice issues.