

WARNING THIS FOLDER / DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL OF 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 "PRIVÉ" 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.
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13 January, 1986

BRIEFING NOTE FOR THE MINISTER AND
ASSOCIATE MINISTER OF NATIONAL DEFENCE

SUBJECT: Meeting of Cabinet Committee on Social
Development 15 Jan 86

ISSUE

1. The Minister of Justice will be presenting his proposals for the Government response to the recommendations in the Equality for All report at the 15 Jan 86 meeting of the Cabinet Committee on Social Development.
2. Briefing information for the Ministers, who will be attending the meeting, is contained in this Note or will be provided separately.

CURRENT STATUS

3. An advance copy of the Memorandum to Cabinet (MC) has confirmed the information contained in a Briefing Note on this subject dated 9 Jan 86. The previous Executive Summary has been condensed and re-titled as a Ministerial Recommendation. This contains only very brief reference to the DND positions and concerns. The body of the original MC is now at page 131, following the proposed responses to each of the 85 recommendations. Although this section contains the more balanced presentation of the Department of Justice vs DND positions, these are much less prominent because of their location.

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4. Tabular summaries of the recommendations, and DND's position regarding the response proposed in the MC, are attached as annexes. DG Pol Sec (Mr Rodal) will provide Talking Points for the main issues separately.

5. Because they were considered to be beyond the purview of the analysis of the draft MC, the following general recommendations of the Minister of Justice were not given comment:

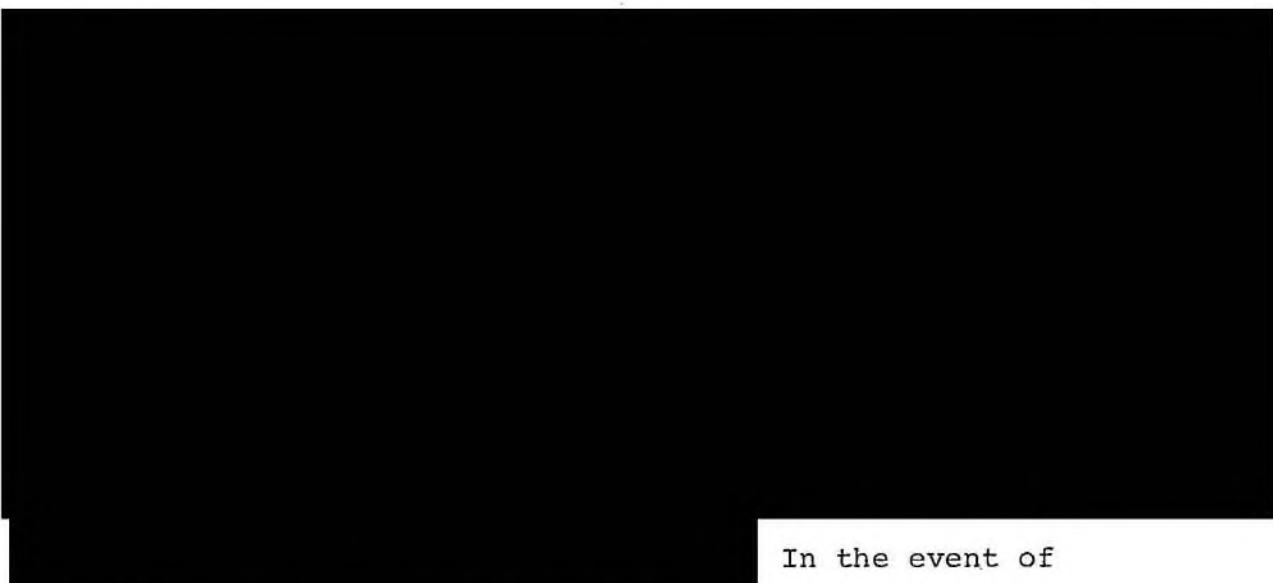
- a. the Minister of Justice coordinate the implementation of the response to Equality for All and the communication plan, and report to Cabinet on June 15, 1986 on the progress of implementation of the responses, and funding be approved for additional person years (PYs) for this purpose;
- b. funding be approved to provide additional PYs to the Canadian Human Rights Commission to hasten implementation of equal pay provisions of the Canadian Human Rights Act; and
- c. funding be approved to provide PYs to enable Statistics Canada to devise and evaluate employment equity programs.

The total resources for these recommendations, over the period 1986/87 to 1989/90, would be 105 PYs at a cost of \$9,013,499. Follow-on related resource requirements of an additional 93 PYs at a cost of \$8,280,000 will be submitted in a separate MC.

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6. Additional resources needed to implement recommendations relating to the Canada Pension Plan (CPP) are estimated as averaging about 250 PYs per year over the period 1986/87 to 1990/91. The MC states that the resources for these PYs would come from the CPP fund.

7. The MC notes that while there are no direct major costs associated with the abolition of mandatory retirement in the Public Service, there may be some costs which cannot be determined until specific options have been chosen.



In the event of reconsideration, it may be important to note that the costs of implementation, mentioned only on page 159 of the MC, are \$1.5 billion and \$85-125 million respectively.

RECOMMENDED ACTION

9. It is recommended that Ministers:
- a. rely on presentation of their positions in Cabinet discussions rather than on the MC presentation, which now lacks prominence as it does not begin until page 131; and
 - b. consider the positions to take regarding the recommendations on implementation for which costs have been identified as noted above.

WARNING	AVERTISSEMENT
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RESPONSIBLE 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	13 January, 1986

A0051549_4-003581

SUMMARY OF DND POSITION

VIS-A-VIS

PROPOSED GOVERNMENT RESPONSE TO EQUALITY FOR ALL

Recommendation	Code	Draft Government Response	DND Position Re Govt Response			
			No Interest	Agree	Agree With Reservation	Disagree
	Y - Agree to implement Y* - Agree to implement with condition, i.e. Canadian Forces excepted YP - Agree in principle, will study implementation TUA - Take under advisement N - Do not agree to implement					
	Gist of <u>Equality for All</u> Recommendation					
	<u>Maternity and Parental Benefits</u>					
1	Amend UIA - recognize two-tier system	TUA		X		
2	Amend UIA - parental benefits to both parents	TUA		X		
3	No distinction under UIA - regular and special benefits	TUA		X		
4	Amend UIA - remove 15 week benefit limit	TUA		X		
5	Maternity leave for Federal employees as per Canada Labour Code	YP		X		
	<u>Mandatory Retirement</u>					
6	Abolish mandatory retirement by amending CHRA	YP				X
7	Amend Public Service superannuation regs to prevent mandatory retirement	Y	X			
8	Amend CHRA to override other mandatory retirement legislation	YP				X
9	Flexible retirement	YP			X	
	<u>Sexual Orientation</u>					
10	Amend CHRA to add sexual orientation as prohibited ground of discrimin- ation	Y*				X
11	Canadian Forces and RCMP employ homosexuals	N		X		
12	Security clearance guidelines ignore sexual orientation	Y		X		
13	Amend Criminal Code - uniform age of consent	TUA	X			
14	Support Bill C-225 re sexual orientation	Y*				X

SUMMARY OF DND POSITION

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	<u>Gist of Equality for All Recommendation</u>					
	<u>Marital or Family Status</u>					
15	Amend Income Tax Act - recognize common-law	N	X			
16	Recognition of benefits and obligation of legal marriage for common-law	N		X		X
17	Consistent definition for common-law relationship	TUA			X	
	<u>Equality in Pensions</u>					
18	CPP benefits for surviving spouses	TUA	X			
19	Surviving spouse benefits - Federal superannuation plans	YP	X			
20	CPP benefits for surviving spouse on remarriage	Y	X			
21	Surviving spouse benefits - difference in age	TUA	X			
22	Surviving spouse benefits - marriage after retirement	TUA	X			
23	Surviving spouse benefits - common-law relationship	TUA				X
24	Split of CPP benefits on marriage breakdown	Y			X	
25	Spouses allowance - no reference to marital status	N	X			
26	CPP benefits to children under 25 at school	TUA	X			
27	Amend Pension Benefits Standards Act - Abolish sex based mortality tables	Y	X			
28	War Veterans Allowance & Pensions - Male and female - Age 55	N	X			

SUMMARY OF DND POSITION

VIS-A-VIS

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	Y - Agree to implement Y* - Agree to implement with condition, i.e. Canadian Forces excepted YP - Agree in principle, will study implementation TUA - Take under advisement N - Do not agree to implement					
	<u>Gist of Equality for All Recommendation</u>					
	<u>Women and the Armed Forces</u>					
29	All trades and occupations in CF open to women	N		X		
30	CF policies re women monitored by CHRC	N		X		
	<u>Immigration</u>					
31	Standards of admission in line with Charter	YP	X			
32	Medical standards for admission to Canada more flexible	Y	X			
33	Permanent resident 3 years in Canada can sponsor parent	Y	X			
34	Undertaking of support by 3 year permanent resident	Y	X			
35	Common-law relationship recognized for immigration	N	X			
36	Amend immigration regulations re adopted child	Y*	X			
37	Instruction in official languages for all immigrants	Y*	X			
38	Eliminate preference for Canadian citizens - Public Service hiring	N		X		
	<u>Religious Observance</u>					
39	Floating statutory holidays for religious observance	YP	X			
40	Day of rest respect religious belief	YP	X			
	<u>Access by the Physically Disabled</u>					
41	Interpreter service for hearing impaired - public hearings	YP	X			
42	Endorse Obstacles Report - Access for disabled	Y		X		

SUMMARY OF DND POSITION

VIS-A-VIS

PROPOSED GOVERNMENT RESPONSE TO EQUALITY FOR ALL

		DND Position				
		Re Govt Response				
Recommendation	Code	Draft Government Response	No Interest	Agree	Agree With Reservation	Disagree
	Y - Agree to implement					
	Y* - Agree to implement with condition, i.e. Canadian Forces excepted					
	YP - Agree in principle, will study implementation					
	TUA - Take under advisement					
	N - Do not agree to implement					
	<u>Gist of Equality for All</u> Recommendation					
	<u>Access by the Physically Disabled</u> Cont'd					
43	Agency to coordinate implementation of programs	Y		X		
44	Coordinating agency to report annually to Parliament	Y		X		
45	Expand mandate of sub-Committee on Disabled and Handicapped	Y		X		
46	Establish priorities and timetables for implementing programs	Y		X		
47	Consult disabled people on programs	Y		X		
48	Amend Transportation Acts to ensure standards of accessibility	Y*		X		
49	CHRC adopt new guidelines on rights of access	Y		X		
50	Federal and Provincial Governments adopt priorities and timetables	Y		X		
	<u>Mental Disability</u>					
51	Federal laws and policies to cover mentally disabled in comprehensive sense	YP	X			
52	Amend Canada Elections Act to allow mentally disabled to vote	Y	X			
53	Amend criminal code to give mentally disabled equality	Y	X			
	<u>Part-Time Work</u>					
54	Adopt definition covering all categories of part-time work	TUA		X		
55	Part-time workers to receive statutory benefits pro rata basis	YP		X		

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SUMMARY OF DND POSITION

VIS-A-VIS

PROPOSED GOVERNMENT RESPONSE TO EQUALITY FOR ALL

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Recommendation	Y - Agree to implement Y* - Agree to implement with condition, i.e. Canadian Forces excepted YP - Agree in principle, will study implementation TUA - Take under advisement N - Do not agree to implement					
	Gist of <u>Equality for All</u> Recommendation					
	<u>Part-Time Work Cont'd</u>					
56	Part-time workers - pensions and insurance plans on pro rata basis	YP		X		
57	Hours per week requirement under UIA reduced	TUA		X		
58	Pension vesting and portability for part-time workers	Y		X		
	<u>Employment Equity</u>					
59	Employment equity for target group at Federal level	Y		X		
60	Employment equity legislation apply to Federal public sector employers	Y			X	
61	Appropriate designated groups help develop employment equity programs	Y		X		
62	Enforcement mechanisms by CHRC	N		X		
63	Contract compliance programs	YP		X		
64	Stats Canada, through census, supply employment equity data	Y	X			
65	Regular review of employment equity programs	N		X		
66	Federal training and education programs open to designated groups	Y	X			
67	CHRC pursue actively equal pay for work of equal value	Y		X		
68	Review section 11 of CHRA ensure not unduly restrictive	N		X		
69	Amend Income Tax Act - Disabled deduct cost of special aids	TUA	X			

SUMMARY OF DND POSITION

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PROPOSED GOVERNMENT RESPONSE TO EQUALITY FOR ALL

Recommendation	Code	Draft Government Response	DND Position Re Govt Response			
			No Interest	Agree	Agree With Reservation	Disagree
	Y - Agree to implement Y* - Agree to implement with condition, i.e. Canadian Forces excepted YP - Agree in principle, will study implementation TUA - Take under advisement N - Do not agree to implement					
	Gist of <u>Equality for All</u> Recommendation					
	<u>Employment Equity Cont'd</u>					
70	CHRC ensure physical and mental tests only for essential duties of job in question	Y		X		
71	Federal govt ensure adequate, accessible and affordable child care service	YP			X	
	<u>Further Equality Issues</u>					
72	Federal laws drafted in non-sexist language	YP		X		
73	Governor-in-Council appointments reflect composition of Canadian society	YP	X			
74	PSSA amended to eliminate minimum age of contribution	TUA	X			
75	Criminal Code amendment - sexual offences - female to male	TUA	X			
76	Government improve monitoring of women's health care products	Y	X			
77	Amend Canada Elections Act - re spouses of CF members	Y				X
78	Political Rights of Public Servants	YP		X		
	<u>Process of Securing Equality</u>					
79	Primacy clause for CHRA	YP				X
80	"Reasonable Accommodation" amendment for CHRA	YP				X
81	Amend CHRA to ensure it covers systemic discrimination	YP				X
82	Amend CHRA to include political belief and criminal conviction as prohibited grounds	TUA		X	X	

SUMMARY OF DND POSITION

VIS-A-VIS

PROPOSED GOVERNMENT RESPONSE TO EQUALITY FOR ALL

		DND Position Re Govt Response			
Recommendation	Code	Draft Government Response	No-Interest	Agree	Agree With Reservation
	Y - Agree to implement				
	Y* - Agree to implement with condition, i.e. Canadian Forces excepted				
	YP - Agree in principle, will study implementation				
	TUA - Take under advisement				
	N - Do not agree to implement				
Gist of <u>Equality for All</u> Recommendation					
<u>Process of Securing Equality Cont'd</u>					
83	Provide for Standing Committee on Human Rights	Y	X		
84	Annual reports referred to Standing Committee on Human Rights	YP	X		
85	CHRC to report direct to Parliament	N	X		

ANNEX B

TO: Briefing Note for the Minister
and Associate Minister

DATED 13 January 1986

PROPOSED RESPONSES

WITH WHICH DND AGREES

WITH RESERVATIONS

Recommendation #9 (To adopt measures to facilitate flexible retirement.)

Proposed response agreed to except that it contains the statement that current Public Service Superannuation Act allows for continued accrual of pension benefits as long as the contributor remains in the workforce. To avoid misunderstanding among public servants who might think that Act has been amended, statement should clarify that accrual still includes only up to a maximum of 70% of average of six best years' pensionable earnings, i.e., the Act has not changed in that important respect.

Recommendation #17 (To adopt a standard definition of common-law relationships.)

Agree with response committing only to consideration. However, response speculates on possibility of different definitions for different classes of benefits; this would create more potential for inequality than present situation.

Recommendation #24 (To split automatically and equally CPP credits on marriage breakdown including termination of a common-law relationship.)

No disagreement except that what constitutes the breakdown of a common-law relationship is not defined. If definition of what constitutes the beginning of a common-law relationship cannot be found, how can commitment be made which requires definition of breakdown?

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A0051549_12-003589

DATED 13 January 1986

Recommendation #60 (To apply employment equity legislation to all federal public sector employees.)

Without consultation, Department of Justice changed DND text from "The fundamental purpose and structure of the Forces precludes the employment of disabled persons" to "The fundamental purpose and structure of the Forces makes it difficult to employ disabled persons." Because of the shortage of time, the revision that contained this unauthorized change was not made available for DND perusal before it was submitted to the Privy Council Office. This is an example of the unsatisfactory consequences of trying to provide a comprehensive response with too little time available to do so.

Recommendation #71 (To ensure that child care services across Canada are adequate, accessible, and affordable.)

First para of response states:

"Adequate, accessible, and affordable child care is clearly essential if equality is to be achieved."

This statement is an implied commitment. It would seem prudent to delete that paragraph considering that costs to do so have been estimated to be as much as an additional \$5 billion annually for all levels of government (press clipping attached).

Recommendation #82 (To add political belief and criminal conviction or charges to proscribed grounds of CHRA.)

Agree with no commitment in response but disagree with implementation in future.

Daycare in Ontario should be a right 150 at meeting told

By John Ferri Toronto Star

Daycare in Ontario should be a universal right administered by the Ministry of Education, a Toronto conference was told yesterday.

Unlike schools, it would not be compulsory for parents to enroll their children in daycare, said Julie Mathian, author of a brief presented to the one-day conference called to discuss who would have jurisdiction over a universal daycare system.

Daycare in Ontario is now administered through the Ministry of Community and Social Services. Mathian said only children whose parents are wealthy or poor enough to qualify for subsidies now have access to daycare.

She said it's estimated there are almost 170,000 children in Ontario who would attend daycare if it was available. For pre-schoolers, the full cost ranges between \$3,000 and \$5,000 a year.

Transferring responsibility to the education ministry would be the most sensible way to provide daycare to "the average child in the average family," Mathian's report says.

One system

"It seems only logical to have one, rather than two universal systems, especially when the user(s) . . . — children and their families — are the same."

Mathian, a Toronto Board of Education program advisor, said she has not worked out a breakdown on how much implementing such a system would cost in Ontario. But, she said, it's estimated that on a national basis it would cost \$6 billion to provide universal access.

With a third of the national population, Mathian agreed Ontario would probably assume a third — \$2 billion — of the cost. Currently, the entire government contribution, both federally and provincially, in Canada, is about \$800 million, she said.

The cost of underwriting daycare for the needy is now shared equally between the federal and provincial government through the Canada Assistance Program.

One exception

The only exception is Ontario, where the province pays 30 per cent and municipalities make up the remaining 20 per cent of that portion.

A legislative committee set up to study the daycare issue reported this week that "substantially more daycare facilities" are needed in Ontario and must be made available to more than just those working parents who are considered needy.

In an interview, Mathian agreed universal access to daycare might seem a low priority at a time when existing forms of universal benefits have been questioned by the new Progressive Conservative government.

But, she said, "this isn't the time for us to back off."

The conference, which attracted about 150 daycare workers, trade unionists and other interested parties, was not meant to provide a blueprint for action, said conference organizer Barbara Lampert said.

DND DISAGREEMENT
WITH
DRAFT GOVERNMENT RESPONSE TO EQUALITY FOR ALL

<u>Recommendation</u>	<u>Subject</u>	<u>Reason</u>
6	MANDATORY RETIREMENT removes defence mechanisms from CHRA	DND does not believe that, as a general principle, the retirement policy of the Federal public sector, and of the Canadian Forces in particular should be subject to the CHRA. Rationale is in talking points on Mandatory Retirement.
8	MANDATORY RETIREMENT gives CHRA jurisdiction over other legislation with respect to mandatory retirement	DND does not agree that CHRA should have jurisdiction over other legislation, regulations and orders, insofar as mandatory retirement is concerned. Rationale in talking points on Mandatory Retirement.
10	SEXUAL ORIENTATION adds sexual orientation as prohibited ground of discrimination in CHRA	Each addition to the proscribed grounds of discrimination in- creases areas in which policies important to national objectives are subject to review and over- turning under narrow scrutiny of CHRA by appointed tribunals, rather than broader scrutiny under the Charter by courts of law. Ration- ale in talking points on Sexual Orientation.

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DATED 13 January 1986

<u>Recommendation</u>	<u>Subject</u>	<u>Reason</u>
14	SEXUAL ORIENTATION support for Bill C-225 same as rec 10	See reason in recommendation 10 above.
23	MARITAL STATUS gives survivor benefit to common-law spouses in federal super- annuation plans	This is contradiction of Government response to recommendation 16.
77	CANADA ELECTION ACT spouses and dependant children of CF personnel outside Canada would be entitled to vote in electoral district of declared ordinary residence	The draft Government response commits the Government to an amendment of the Canada Elections Act which affects DND, without any consultation with DND or Chief Elections Officer.
79	AMENDMENT TO CHRA gives CHRA primacy or override clause confirming its priority over con- flecting federal laws	The Canadian Human Rights Commission and Human Rights Tribunals should not have the power to consider the validity of federal laws. Rationale in talking notes on amendments to CHRA.
80	AMENDMENT TO CHRA amends CHRA to oblige employers to make reasonable accommodation in response to peculiar needs of employees protected by Act	DND does not consider that the role of the CHRC should be expanded. The balance of in- dividual rights against the collective rights of society should be addressed under the Charter. Rationale in talking points on amendments to CHRA.

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ANNEX C

TO: Briefing Note for the Minister
and Associate Minister

DATED 13 January 1986

Recommendation

Subject

Reason

81

AMENDMENT TO CHRA
to state expressly that
adverse effect discrim-
ination is prohibited

See reasons on recommendation 80
above.

RECOMMENDATIONS OF
EQUALITY FOR ALL
ALREADY IMPLEMENTED

Recommendation

Subject

- 43 Access by the Physically Disabled. The Status of Disabled Persons Secretariat has been provided with additional funding over the next five years to enable them to play a major role in the implementation of Government programs designed to assist disabled persons and to actively promote the rights of disabled persons.
- 44 The Minister Responsible for the Status of Disabled persons will report annually in a form that will permit Parliament to consider government programs and activities to assist disabled persons.
- 45 The Government's recommendations to reorganize Standing Committees and enhance the powers to initiate inquiries are under study by the House of Commons and a decision on adopting them is expected shortly.
- 46 As announced on December 10, 1985, the Minister responsible for the Status of Disabled Persons is required to table in six months an action plan for the implementation of all outstanding Obstacles recommendations.
- 50 The Minister Responsible for the Status of Disabled Persons is consulting his provincial colleagues with a view to holding a federal-provincial conference on the status of disabled persons in the near future.