

2724-2
SECRET

FEBRUARY 10, 1986

PROPOSED SCENARIO

PRIORITIES AND PLANNING MEETING OF
TUESDAY, FEBRUARY 11, 1986, 9:30 A.M., 323-S

ALL MINISTERS PLAN TO ATTEND EXCEPT MISS CARNEY
(ATLANTIC ACCORD ANNIVERSARY IN ST. 'JOHN'S) AND
MR. CROSBIE (FEDERAL-PROVINCIAL ATTORNEYS GENERAL
MEETING IN VANCOUVER).

TENTATIVE TIME ALLOCATIONS ARE INDICATED NEXT TO EACH
ITEM.

NOTE THAT PROGRAM REVIEW TASK FORCE COMMUNICATIONS AND
"EQUALITY FOR ALL" RESPONSE ARE REPEATED AS ITEMS 3 AND
4 GIVEN THE LIKELIHOOD THAT TIME WOULD NOT PERMIT THEIR
COMPLETION AT MONDAY'S MEETING.

1. GENERAL DISCUSSION

A) JAPANESE-CANADIAN REDRESS (5 MINS.)

-- MR. EPP TO PROVIDE A PROGRESS REPORT (NOTE
UNDER TAB 1A).

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B) PRIVY COUNCIL APPOINTMENT (5 MINS.)

- YOU MIGHT INFORM MINISTERS OF YOUR INTENTION TO RECOMMEND APPOINTMENT OF GORDON OSBALDESTON TO PRIVY COUNCIL IN KEEPING WITH TRADITIONAL PRACTICE (NOTE UNDER TAB 1B).

2. HOUSE BUSINESS (5 MINS.)

- ASK MR. HNATYSHYN TO OUTLINE HOUSE BUSINESS FOR THE COMING WEEK.

3. PROGRAM REVIEW TASK FORCE: (30 MINS.)
COMMUNICATIONS

- THE PROGRAM REVIEW COMMUNICATIONS STRATEGY WHICH YOU OUTLINED AT P&P LAST TUESDAY (FEBRUARY 4) IS CLOSELY LINKED TO BUDGET PREPARATIONS.
- AS YOU REQUESTED, MR. NIELSEN HAS PREPARED A DRAFT MAJOR SPEECH ON TASK FORCE ACHIEVEMENTS FOR CONSIDERATION BY THE COMMITTEE (COPY UNDER

TAB 3). THE TEXT WILL BE AVAILABLE FOR CIRCULATION TO MINISTERS AT THE MEETING.

-- AFTER GIVING MINISTERS 10 MINUTES TO READ THE PROPOSED TEXT, YOU MIGHT SEEK COMMENTS. CONCERNS WILL LIKELY CENTER ON WHETHER THE IMPLICATIONS OF PUBLISHING RECOMMENDATIONS WHICH THE GOVERNMENT HAD DECIDED NOT TO ADOPT IS ADEQUATELY DEALT WITH IN THE TEXT. OTHER QUESTIONS WHICH WILL NEED TO BE ADDRESSED ARE THE TIMING OF MR. NIELSEN'S SPEECH (BEFORE OR AFTER BUDGET) AND HOW CLOSELY RELATED IT IS TO THE RELEASE OF STUDY TEAM REPORTS. (NOTE: IT IS NOT STRICTLY ACCURATE TO REFER TO THESE AS "PRIVATE SECTOR" REPORTS, SINCE THE STUDY TEAMS WERE JOINTLY LED AND STAFFED BY PRIVATE SECTOR AND PUBLIC SERVICE MEMBERS.)

-- AT THE CONCLUSION, YOU MIGHT WISH TO DRAW ATTENTION TO THE REFERRAL OF STUDY TEAM REPORTS TO THE NEW PARLIAMENTARY COMMITTEES - SPECIFICALLY TO THE NEED TO ENSURE THAT COMMITTEE REVIEWS ARE ORCHESTRATED IN A WAY

ACCEPTABLE TO THE GOVERNMENT -- THE ROLE OF THE COMMITTEE CHAIRMEN AND CAUCUS MEMBERS ON THE COMMITTEES; THE NEED TO ENSURE THAT MINISTERS CALLED BEFORE COMMITTEES SPEAK WITH ONE VOICE AND FOR THE GOVERNMENT NOT TO BE RUSHED - AS WITH "EQUALITY FOR ALL" - INTO RESPONDING IN 120 DAYS TO VOLUMINOUS AND CONTENTIOUS RECOMMENDATIONS.

-- RATHER THAN SEEKING TO DETERMINE AT THIS MEETING WHAT "CONTROL MECHANISMS" ARE REQUIRED, YOU MIGHT ASK MESSRS. NIELSEN, HNATYSHYN AND BEATTY (WITH CHARLEY McMILLAN'S HELP) TO LOOK INTO THIS MATTER THOROUGHLY.

4. "EQUALITY FOR ALL" REPORT

(30 MINS.)

-- AT THE P&P MEETING ON THURSDAY, MINISTERS CAME SOME DISTANCE TOWARDS THE VIEWS WHICH YOU EXPRESSED AT LAST TUESDAY'S P&P, ON WOMEN IN THE ARMED FORCES AND MANDATORY RETIREMENT. ON THE ISSUE OF SEXUAL ORIENTATION, HOWEVER, THE CONSENSUS VIEW FAVOURED THE RESPONSE PROPOSED BY CCSD WHICH APPEARED TO STRIKE AN APPROPRIATE BALANCE BETWEEN COMPETING VIEWPOINTS. IT WAS ARGUED THAT ALTHOUGH THE

RECOMMENDED RESPONSE ON THIS LAST POINT WOULD BE PORTRAYED AS A "WEAK" RESPONSE BY THE MEDIA, IT WOULD BE PALATABLE TO BOTH CAUCUS AND CONSTITUENTS.

- A DETAILED BRIEFING NOTE IS INCLUDED UNDER TAB 4. IT SUMMARIZES THE DISCUSSION AT P&P ON THURSDAY, ATTACHES THE REVISED RESPONSES PROPOSED BY P&P MINISTERS (AVAILABLE FOR CIRCULATION AT THE MEETING) AND DISCUSSES THE ISSUE OF PRIMACY OF THE CANADIAN HUMAN RIGHTS ACT.
- IF YOU DISAGREE STRONGLY WITH P&P MINISTERS' RECOMMENDATIONS, IT WILL REQUIRE VIGOROUS LEADERSHIP ON YOUR PART TO ARRIVE AT A STRONGER RESPONSE.
- ON THE QUESTION OF PRIMACY, HOWEVER, STRENGTHENING THE PROPOSED RESPONSE ALONG THE LINES OF MR. CROSBIE'S ORIGINAL RECOMMENDATION WOULD INVOLVE LESS CONTROVERSY. IT IS AN IMPORTANT SYMBOLIC POINT THAT HAS ALREADY BEEN DECIDED BY THE COURTS.

- IN CONCLUSION YOU MIGHT STRESS THE PARTICULAR IMPORTANCE OF A WELL-CONCEIVED AND COORDINATED COMMUNICATIONS STRATEGY AND SUGGEST THAT MR. CROSBIE AND MR. EPP WORK CLOSELY WITH MR. BEATTY AND HIS COMMITTEE.

5. PHARMACEUTICALS

(20 MINS.)

- PURPOSE OF DISCUSSION IS TO:

- A) 'GIVE APPROVAL IN PRINCIPLE FOR PACKAGE PROPOSED BY MR. CÔTÉ.
- B) 'GIVE MR. CÔTÉ STRONG SUPPORT FOR HIS NEGOTIATIONS WITH PHARMACEUTICAL MULTINATIONALS FOR SUBSTANTIAL COMMITMENTS OF BENEFIT TO CANADIANS.

- AT P&P 'JANUARY 28, YOU ASKED THAT MESSRS. CÔTÉ, EPP, KELLEHER AND MRS. MCDUGALL REVIEW MR. CÔTÉ'S LATEST RECOMMENDATIONS ON PHARMACEUTICALS. THESE WERE REVIEWED AT CCERD ON FEBRUARY 4 (BRIEFING NOTE UNDER TAB 5).

PROGRAM REVIEW AND THE REPORTS I AM TABLING TODAY IS A STEP IN THE REFORM OF PUBLIC ADMINISTRATION IN CANADA. PARLIAMENTARY REFORM IS REFORM TO DECISION MAKING BY ELECTED REPRESENTATIVES. WE MUST JOIN THESE REFORM INITIATIVES TO POLICY MAKING IN CANADA.

SIR, THE GOVERNMENT HAS BEEN ASKING CANADIANS TO JOIN OUR COMMITMENT TO THE REFORM OF GOVERNMENT AS PART OF THE MANDATE FOR ECONOMIC RENEWAL GIVEN BY THE PEOPLE OF CANADA IN SEPTEMBER, 1984. THE TABLING OF THESE DOCUMENTS SHOWS BEYOND ANY REASONABLE DOUBT THAT THIS GOVERNMENT REMAINS COMMITTED TO POLICIES OF ECONOMIC RENEWAL IN A CLIMATE OF OPENNESS AND PUBLIC DIALOGUE. WE ARE COMMITTED TO IMPROVING THE MANAGEMENT OF GOVERNMENT AND PROVIDING BETTER SERVICE TO THE PUBLIC.

SECRET

Response to the Recommendations in the
Equality for All Report

ISSUE

To determine the Government's response to the report of the Parliamentary Sub-Committee on Equality Rights.

DOCUMENTS

Proposed responses to the recommendations on mandatory retirement, sexual orientation, women in the Armed Forces, and primacy of the Human Rights Act as agreed by P&P Ministers at their meeting of February 7, are attached as Annex 1 for your review. A note on primacy is also attached as Annex 2.

BACKGROUND

At the special meeting of P&P on Thursday, February 5, Ministers attempted to develop a consensus (bearing in mind your comments at the previous Tuesday's meeting) on each of the major issues.

1. Mandatory Retirement. Mr. Crosbie proposed that his original recommendation -- which was acceptable to caucus but not to CCSD Ministers -- be reinstated. This would indicate that the Government agrees in principle to the abolition of mandatory retirement subject to consultation with employer/employee organizations on implementation and to bona fide occupational requirements. Treasury Board would also revoke mandatory retirement provisions.

Other Ministers indicated that CCSD's original concern was with the lack of information on the potential impact on the employment of youth, women and visible minorities and for income security programs which assume retirement at age 65.

It was agreed that Mr. Crosbie's original response be accepted with a reference that the Government would ensure that the change would not have a negative impact on the position of youth, women and visible minorities.

2. Sexual Orientation. Mr. Crosbie's original response indicated that the Government was committed to the principle that all people are equal and would consider prohibition of discrimination on the basis of sexual orientation except in the Armed Forces and RCMP. He indicated, however, that there were strong views on both sides of the issue. The CCSD response attempted to strike a balance between these views.

The major issue was whether the Government should lead public opinion by indicating it is committed in principle to adding sexual orientation as a prohibited ground of discrimination, or whether,

Mr. Epp argued that the CCSD response would be accepted by caucus. He indicated that a stronger response would prove divisive. There had been extensive discussion of the issue during the Charter debate, and the Liberal government had chosen not to act.

Mr. Hnatyshyn acknowledged that the response proposed by CCSD would be portrayed as weak by the press. But a stronger response would be interpreted by others as a sign of concurrence and would divide caucus and alienate constituents. In his view, the Government should endorse the CCSD proposal and be prepared to accept criticism that the response was weak.

It was agreed that P&P Ministers would recommend the CCSD proposal to the Prime Minister. In addition, the response dealing with the Armed Forces and the RCMP (recommendation 11) would be changed to indicate the Government's view that current policies could be justified pursuant to Section 1 of the Charter.

3. Women in the Armed Forces. Mr. Crosbie noted that CCSD had suggested two alternative responses for consideration by P&P. He indicated that caucus was against women in combat, but wanted a positive approach to be adopted on the employment of women. He suggested that Mr. Andre's proposal be strengthened with the addition that the Government agrees with the objectives of the recommendation that all trades be open to women, and the deletion of the reference to the need to demonstrate that they contribute to essential military requirements before more occupations are opened.

The discussion at CCSD had centred around the definition of combat roles. The need to avoid the impression that the Government believes women can not perform in the Armed Forces was recognized. The Government cannot imply that women are excluded just because they are women. Operational requirements of the military would by themselves screen out women who cannot perform, but that this should be done on an objective basis that does not preclude women.

The good record of the Canadian Armed Forces in employing women was noted. Many occupations have different testing procedures for men and women. This is defensible because it recognizes differing abilities. If gender was not considered, opportunities for women might be reduced rather than increased.

It was agreed that the proposed response be amended to include a reference to the Government's continued support of the objective that all trades be open to women and that the reference to particular care being required in areas crucial to operational effectiveness be removed.

4. Primacy. Mr. Nielsen stated that the broad issue was whether the role and jurisdiction of an administrative tribunal should be enlarged by giving the Canadian Human Rights Act (CHRA) primacy over other legislation. He suggested the CCSD proposal be accepted, indicating that primacy would be addressed in the context of the review of the CHRA. It was indicated that Mr. Crosbie's

position was that the Government should accept primacy in principle as outlined in his original recommendation. Primacy was an important symbol at no cost given previous court decisions.

It was agreed that the CCSD proposal be retained.

PCO COMMENT

On two of the four major issues (women in the Armed Forces and mandatory retirement) P&P Ministers have come some distance toward the views you expressed on February 4. On the question of sexual orientation, however, there remain strong views against going as far as you indicated your own preference to be. In many Ministers' opinion, the CCSD response on sexual orientation strikes a careful balance between the various perspectives. They recognize that the press will argue that the response is weak, but are willing to accept criticism in order to maintain caucus and constituent solidarity.

If you disagree strongly with P&P Ministers recommendations, it will require vigorous leadership on your part to arrive at a stronger response. On the question of primacy, however (separate note under Annex 3), a strengthening of the proposed response along the lines of Mr. Crosbie's original proposal would involve less controversy. This is an important symbolic point with little cost given past court decisions.

You might also stress the importance of a well-developed and co-ordinated communications strategy and ask Mr. Crosbie and Mr. Epp to work closely with Mr. Beatty and his committee.

Smith/ft

MANDATORY RETIREMENT

RECOMMENDATION

6. We recommend that mandatory retirement be abolished by
- a) amending the Canadian Human Rights Act so that it is no longer a defence to a complaint of age discrimination that an employee who is forced to retire has reached the "normal age of retirement"; and
 - b) amending the Canadian Human Rights Act so that it is no longer a defence to a complaint of age discrimination that an individual whose membership in an employee organization is terminated has reached the "normal age of retirement."

COMMENT

CCSD recommended that a single response be given to recommendations 6, 7 and 8 (see CCSD response under recommendation 8 below). P&P Ministers proposed that the original response recommended by the Minister of Justice be adopted with the addition of a sentence to the effect that the Government would ensure that the abolition of mandatory retirement would not have an adverse impact upon women, youth and visible minorities as highlighted below.

RESPONSE

The Government agrees in principle with this recommendation, subject to the comments made in the response to recommendation 8.

However, since abolishing mandatory retirement will have an impact on labour relations in the private sector, the Government will consult with private sector employers and employee organization before taking any action, in order to determine the most effective way to implement the Subcommittee's proposal.

Many collective agreements either refer directly to a retirement age or, more commonly, refer to stipulations of a company pension plan which specify an age of retirement. Most of these plans are set up under legislation that will also have to be revised to bring about maximum individual choice in retirement decisions. Consequently, to prevent any undue hardship, the Government would accompany implementation of the proposal with transitional rules that would ensure the orderly abolition of mandatory retirement in the private sector.

RECOMMENDATION

7. We recommend that those provisions of the Public Service Superannuation Regulations providing for mandatory retirement at age 65 , as well as comparable regulations affecting public servants who do not contribute to the Superannuation Account, be revoked.

COMMENT

CCSD recommended that a single response be given to recommendations 6, 7 and 8 (see CCSD response under recommendation 8 below). P&P Ministers proposed that the original response recommended by the Minister of Justice be adopted.

RESPONSE

The President of the Treasury Board will immediately ask the Treasury Board to revoke both:

- a) the provisions of the Public Service Superannuation Regulations which provide for mandatory retirement at age 65 for contributors under the Public Service Superannuation Act; and
- b) corresponding provisions in the Non-Contributor Retirement Regulations.

Treasury Board hopes to establish a system to monitor the impact of the removal of mandatory retirement in a number of areas of personnel management and human resources and to provide data for use in any studies that are needed in future on this issue.

RECOMMENDATION

8. We recommend that the Canadian Human Rights Act be amended so that it applies to all mandatory retirement policies embodied in legislation, regulations or orders.

COMMENT

CCSD recommended that a single response be given to recommendations 6, 7 and 8. P&P Ministers proposed that the original response recommended by the Minister of Justice be adopted.

RESPONSE

The Government agrees in principle. This will be carried out as part of the general review of the Act which will include a re-examination of the defences available under the Canadian Human Rights Act.

The only defence now available is the one concerning bona fide occupational requirement (BFOR). The concept of BFOR may be applied where it can be established that the age limitation is reasonably necessary to assure efficient and economical performance of the job without endangering the employee, fellow employees or the general public.

But the concept of BFOR does not necessarily include all the kind of justifications that may nonetheless provide a basis for a valid defence under section 1 of the Charter.

The Government agrees with the Parliamentary Subcommittee when it notes that some exceptions, in addition to BFORS, might be necessary to prevent undue hardship as a result of a general prohibition of mandatory retirement.

Therefore, in conducting its review, the Government will identify any possible case such as the Canadian Forces where mandatory retirement could be justified under the Charter and decide how these exceptions will be dealt with in the Canadian Human Rights Act.

~~(The recommendations of the Committee raise fundamental questions about the impact of abolition of mandatory retirement upon women, youth and visible minorities who are struggling to gain equal opportunity in the workplace. While the Government has studied mandatory retirement in the past, these issues were not sufficiently addressed by those studies. The Government believes it is necessary to ensure that adherence to the Committee's recommendations would not result in jeopardizing equal opportunity for those individuals before making such a major change to the structure of our society. In addition, since recommendations 6 and 8 require changes to the Canadian Human Rights Act, it would be inappropriate to make such changes while the major review of the Act is underway.)~~

RECOMMENDATION

9. We recommend that Parliament and the Government of Canada adopt measures to facilitate flexible retirement, so that individuals will have a greater degree of choice in the timing of their retirement, to complement the abolition of mandatory retirement.

COMMENT

P&P Ministers proposed that the CCSD recommended response, which is the same as recommended by the Minister of Justice, be adopted.

RESPONSE

The Government is committed to policies facilitating flexible retirement. A number are already in place, and the Government will continue to seek ways to provide for flexible retirement for all employees.

Federal and provincial ministers have agreed on a number of proposed amendments to the Canada Pension Plan (CPP), including proposals to provide for actuarially-reduced retirement benefits as early as age 60 and actuarially-increased benefits for those choosing to start receiving them as late as age 70. While a consensus on this amendment has been reached in principle, it should be noted that a change of this nature to the CPP requires the approval of two-thirds of the provinces having two-thirds of the population of Canada in addition to the approval of Parliament. It is hoped that there will be amending legislation before the House in 1986 with an implementation date of January 1, 1987.

Federal public service pension plans already contain certain of the measures suggested. For example, the statute covering the largest groups, the Public Service Superannuation Act, provides for pensions as early as age 55 for those with 30 years of service or more or as

early as age 60 for those with at least 5 years of service which are not actuarially-reduced, as well as reduced pensions as early as age 50. There is also a feature which allows for continued accrual of pension benefits as long as the contributor remains in the workforce, subject to the maximum accrual of 35 years of pensionable service.

Within the overall context of public service pension reform, further consideration will be given to other measures which might be introduced to facilitate flexible retirement. This will require consultation with employees and various decision-making authorities.

SEXUAL ORIENTATION

RECOMMENDATION

10. We recommend that the Canadian Human Rights Act be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds, which are race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, and conviction for an offence for which a pardon has been granted.

COMMENT

P&P Ministers proposed adoption of the CCSD recommended response without change.

RESPONSE

The Department of Justice is of the view that the courts will find that sexual orientation is encompassed within the guarantees in s.15 of the Charter. As part of the Canadian Human Rights Act review, consideration will be given to whether it is desirable or necessary to add sexual orientation as a prohibited ground to the Canadian Human Rights Act.

RECOMMENDATION

11. We recommend that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the Canadian Human Rights Act as amended to prohibit discrimination on the basis of sexual orientation.

COMMENT

P&P Ministers proposed adoption of the CCSD recommended response with the changes highlighted below.

RESPONSE

The Canadian Armed Forces' policy concerning sexual orientation has been carefully and thoroughly reexamined in terms of the Canadian Charter of Rights and Freedoms. Experience within the Canadian Forces was reviewed, and the experience and policies of other democratic societies were considered. This examination failed to provide a means of maintaining the effectiveness of armed forces without limitations on the participation of homosexuals.

It is, therefore, the conclusion of this Government that it is reasonable to continue the current Canadian Armed Forces policy (~~of imposing limitations~~) concerning sexual orientation, and

~~(It is also the conclusion of this Government that at this time it is reasonable to continue)~~ the current RCMP policy (~~of limitations~~) concerning the sexual orientation of a regular member of the RCMP. The Government feels that these policies could be justified pursuant to Section 1 of the Charter.

COMMENT

P&P Ministers proposed adoption of the CCSD recommended response without change.

RECOMMENDATION

12. We recommend that the federal government security guidelines covering employees and contractors not discriminate on the basis of sexual orientation.

RESPONSE

Sexual orientation is not a ground for denial of a security clearance, rather, the criteria applied are loyalty to Canada and reliability.

SECRET

WOMEN AND THE ARMED FORCES

RECOMMENDATION

29. We recommend that all trade and occupations in the Canadian Armed Forces be open to women.

COMMENT

CCSD proposed two alternative texts in response to this recommendation for further consideration by P&P (Annex 2 to 3-008-86CR(01)). At its meeting of February 6, P&P Ministers proposed adoption of Alternative 2 with the changes highlighted below.

RESPONSE

Alternative II (proposed by Mr. Andre)

The Government continues to support the objective of this recommendation and is fully committed to expanding the role of women in the Canadian Armed Forces. Pursuit of that objective has resulted in a five-fold increase in the number of women in the Forces over the past 15 years. Only two countries in the world, Israel and the United States, are known to have a higher proportion of women in their armed forces than Canada. Within NATO only the United States, with 9.5%, exceeds the 8.9% participation of women in this country's Forces. Continuing progress is evident from the fact that over 12% of current trainees are women.

Constant review has resulted in an increase in the proportion of occupations in which women participate, from 19% in 1971 to the present 65%. This means that some 29,000 positions could now be filled by women. Thus, as vacancies occur and suitable applicants become available, there is considerable scope for expanding the present strength of about 7,400 women.

The Canadian Armed Forces have conducted extensive trials with and will continue to use every appropriate means to expand further the employment of women. ~~(Particular care in the case of those roles crucial to the operational effectiveness of armed forces, and in which no major nation of the world currently employs women, will be required. Women will be employed in additional occupations when it can be demonstrated that their participation contributes effectively to the essential military requirements of the Canadian Armed Forces.)~~

SECRET

THE PROCESS OF SECURING EQUALITY (PRIMACY)

RECOMMENDATION

79. We recommend that the Canadian Human Rights Act be amended by the addition of a primacy or override clause that will confirm its priority over conflicting federal laws unless they purport specifically to apply notwithstanding the Canadian Human Rights Act.

COMMENT

P&P Ministers proposed adoption of the CCSD recommended response without change.

RESPONSE

The Supreme Court of Canada stated recently in Winnipeg School Division No. 1 v. Craton that human rights legislation will have primacy over other laws except where there is a "clear legislative pronouncement" to the contrary. As part of the review of the Canadian Human Rights Act, consideration is being given, in light of the Craton case, to whether it is necessary to amend the Act. Another factor that will be taken into account is that federal laws are already subject to the equality guarantees of the Charter which overlap the protections of the Canadian Human Rights Act. Federal laws that are inconsistent with the Charter are of no force or effect.