

SECRET

Amendments to the Canadian Human Rights Act

Proposal

The Minister of Justice is proposing amendments to the Canadian Human Rights Act (CHRA) which, inter-alia:

- add sexual orientation as a ground of discrimination;
- abolish mandatory retirement;
- make the bona fide occupational requirement defence subject to reasonable accommodation by the employer;
- replace the Human Rights Tribunal Panel by a Canadian Human Rights Tribunal consisting of designated members of the Federal Court, Trial Division and other part-time lay members, subject to the approval of the Prime Minister;
- modify the functions of the CHR Commission to take away secondary functions that could conflict with its primary roles.

He is also seeking approval for Policy Reserve Funding in the following amounts:

<u>1988/89</u>	<u>1989/90</u>
\$200K	\$200K

Background

The Canadian Human Rights Act came into force in 1977. It provided protection against discrimination in areas of federal jurisdiction, a mechanism for the investigation and adjudication of complaints, and gave the CHR Commission a mandate to promote public understanding of the Act.

Concerns have been raised in recent years concerning possible conflicts between the roles of the Commission, the perceived lack of fairness in the process of investigation, conciliation and adjudication of complaints, the length of time taken to resolve a complaint, and the appointment of members of the Tribunal Panels. An overall review of the CHRA was formally announced by the Minister of Justice on March 4, 1986 when Toward Equality was tabled in response to the recommendations of the Parliamentary Committee on Equality Rights. Since then, extensive consultations have been held by the Department of Justice with government departments, interested groups and the private sector that led to the formulation of the current proposal.

PCO Comments

Mr. Hnatyshyn will have a Chart that summarizes the major proposed amendments. The Chart is not ready yet. We will provide you later today with the Chart and our comments. The major issues raised by Mr. Hnatyshyn are the following:

° Fairness

Rules will increase the fairness of the investigation process and the Tribunal hearings.

° Permanent Adjudication Tribunal

Replace the CHRA Tribunal Panel by a Permanent Tribunal consisting of Federal Court Judges and lay members.

° Sexual Orientation

Add sexual orientation to the grounds of discrimination.

° Mandatory Retirement

Abolish mandatory retirement.

° Reasonable Accommodation

The defence of bona fide occupational requirement will be subject to the employer making reasonable accommodation.

° Religious Organizations

It will be clarified that religious organization can give preference in employment, if it is a bona fide occupational requirement.

° Equal Pay

The Commission will be empowered to issue regulations on equal pay. Further changes to the implementation of this principle are under study.

Financial Consideration

The Minister of Justice is seeking funding from the Social Policy Reserve of \$200,000 in 1988-89 and 1989-90. This money will be used by the department of Justice to provide legal advice on the amendments made to the CHRA, and continue the follow-up on Toward Equality. Providing legal advice and reviewing legislation is normal business for Department of Justice and you may want to ask Mr. Hnatyshyn why this cost cannot be funded from his A-Base.

Finance and Treasury Board officials support this view. The document also indicates that the Minister of Labour will request funding at a later stage to fund the study on the impact of the abolition of mandatory retirement that will be required under the Act.

Communications

The Communications Plan adequately outlines the numerous interest groups and communications concerns that surround these amendments. Close scrutiny of this item can be expected from business and advocacy groups, although less interest is likely from the general public except to the degree that the media might focus on a particular issue such as sexual orientation.

Meeting

The Minister of Justice will introduce the subject with a short report on the implementation of Toward Equality. Given the complexity of his paper, you should ask Mr. Hnatyshyn to outline his proposals

using the chart which has been prepared as a summary of his recommendations. During the Committee discussion, the following Ministers will want to comment on the following issues:

- ° Mr. Beatty will indicate that DND intends to exclude homosexuals on the basis of bona fide occupational requirement, which is a defence available under the CHRA; if Mr. Beatty is not at the meeting -- he is currently scheduled to appear before the Standing Committee on Human Rights at the same time as the CCSD meeting -- you may want to ask Mr. Hnatyshyn whether he is aware of Mr. Beatty's position on homosexuals in the Armed Forces and whether he supports that position;
- ° Mr. McKnight will indicate his position on the abolition of the special exemption that removes the Indian Act from the application of the CHRA; and
- ° Mr. Cadieux will speak on the abolition of mandatory retirement and the review of the equal pay provisions.

Lafontaine/mj