



CANADA

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The Cabinet Committee on  
Social Development Policy

Le Comité du Cabinet chargé de  
la Politique du développement social

Minutes

A meeting of the Cabinet  
Committee on Social  
Development Policy was  
held in Room 323-S,  
House of Commons, on  
Tuesday, May 30, 1995  
at 3:15 p.m.

Procès-verbal

Une réunion du Comité  
du Cabinet chargé de  
la Politique du  
développement social a eu  
lieu dans la pièce 323-S,  
Chambre des communes, le  
mardi 30 mai 1995  
à 15h15.

POI Evidentiary Id / No. de preuve, BCP



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The Deputy Prime Minister and Minister of the Environment  
(Ms. Copps),  
in the Chair,  
The Leader of the Government in the House of Commons and Solicitor General of Canada  
(Mr. Gray),  
The Minister of Human Resources Development and Minister of Western Economic Diversification  
(Mr. Axworthy),  
The Minister of National Revenue  
(Mr. Anderson),  
The Minister of Public Works and Government Services and Minister for the Atlantic Canada Opportunities Agency  
(Mr. Dingwall),  
The Minister of Indian Affairs and Northern Development  
(Mr. Irwin),  
The Leader of the Government in the Senate and Minister with special responsibility for Literacy  
(Senator Fairbairn),  
The Minister of Citizenship and Immigration  
(Mr. Marchi),  
The Minister of Finance and Minister responsible for the Federal Office of Regional Development - Quebec  
(Mr. Martin),  
The President of the Treasury Board and Minister responsible for Infrastructure  
(Mr. Eggleton),  
The President of the Queen's Privy Council for Canada, Minister of Intergovernmental Affairs and Minister responsible for Public Service Renewal  
(Mr. Massé),  
The Minister of Justice and Attorney General of Canada  
(Mr. Rock),  
The Secretary of State (Multiculturalism) (Status of Women)  
(Ms. Finestone),  
The Secretary of State (International Financial Institutions)  
(Mr. Peters).

Étaient présents

La vice-première ministre et ministre de l'Environnement  
(Mme Copps),  
Présidente,  
Le leader du gouvernement à la Chambre des communes et solliciteur général du Canada  
(M. Gray),  
Le ministre du Développement des ressources humaines et ministre de la Diversification de l'économie de l'Ouest canadien  
(M. Axworthy),  
Le ministre du Revenu national  
(M. Anderson),  
Le ministre des Travaux publics et des Services gouvernementaux et ministre de l'Agence de promotion économique du Canada atlantique  
(M. Dingwall),  
Le ministre des Affaires indiennes et du Nord canadien  
(M. Irwin),  
Le leader du gouvernement au Sénat et ministre responsable de l'alphabétisation  
(Sénateur Fairbairn),  
Le ministre de la Citoyenneté et de l'Immigration  
(M. Marchi),  
Le ministre des Finances et ministre chargé du Bureau fédéral de développement régional (Québec)  
(M. Martin),  
Le président du Conseil du Trésor et ministre responsable de l'Infrastructure  
(M. Eggleton),  
Le président du Conseil privé de la Reine pour le Canada, ministre des Affaires intergouvernementales et ministre chargé du Renouveau de la fonction publique  
(M. Massé),  
Le ministre de la Justice et procureur général du Canada  
(M. Rock),  
Le secrétaire d'État (Multiculturalisme) (Situation de la femme)  
(Mme Finestone),  
Le secrétaire d'État (Institutions financières internationales)  
(M. Peters).

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TAlso Present

Mr. J. Stagg  
 Mr. D. Goodleaf  
 (Department of Indian  
 Affairs and Northern  
 Development),  
 Mr. M. Dawson  
 Mr. G. Thomson  
 Ms. L. Hitch  
 Ms. M. Brazeau  
 (Department of  
 Justice),  
 Mr. D. Lefebvre  
 (Department of National  
 Revenue),  
 Ms. E. Sarkar  
 (Treasury Board  
 Secretariat),  
 Ms. J. Kane  
 (Department of  
 Finance),  
 Mrs. L. Bergeron-  
 de Villiers  
 (Status of Women),  
 [REDACTED]

(Prime Minister's  
 Office),  
 Mrs. S. Southey  
 Mrs. A. Ratcliffe  
 Mr. C. Rocan  
 (Privy Council Office),

The Deputy Secretary to  
 the Cabinet (Operations)  
 (Mr. D.I. Glen).

Secretary

Mr. A. Himelfarb  
 (Privy Council Office).

Recording Secretaries

Mr. A. Treusch  
 Mr. C. Nixon  
 Ms. C. Latimer  
 Ms. E. Hornby  
 (Privy Council Office).

Étaient aussi présents

M. J. Stagg  
 M. D. Goodleaf  
 (Ministère des Affaires  
 indiennes et Nord  
 canadien),  
 M. M. Dawson  
 Mr G. Thomson  
 Mme L. Hitch  
 Mme M. Brazeau  
 (Ministère de la  
 Justice),  
 M. D. Lefebvre  
 (Ministère du  
 Revenu national),  
 Mme E. Sarkar  
 (Secrétariat du Conseil  
 du Trésor),  
 Mme J. Kane  
 (Ministère des  
 Finances),  
 Mme L. Bergeron-  
 de Villiers  
 (Condition féminine),  
 [REDACTED]

(Cabinet du Premier  
 ministre),  
 Mme S. Southey  
 Mme A. Ratcliffe  
 M. C. Rocan  
 (Bureau du Conseil privé),

Le Sous-secrétaire du  
 Cabinet (Opérations)  
 (M. D.I. Glen).

Secrétaire

M. A. Himelfarb  
 (Bureau du Conseil privé).

Secrétaires en séance

M. A. Treusch  
 M. C. Nixon  
 Mme C. Latimer  
 Mme E. Hornby  
 (Bureau du Conseil privé).

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Framework for the Implementation  
of the Inherent Right and the  
Negotiation of Self-Government

Cadre pour l'application du  
droit inhérent et la négociation  
de l'autonomie gouvernementale

The Committee had for discussion a Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01), dated May 11, 1995) from the Minister of Indian Affairs and Northern Development, the Federal Interlocutor for Métis and Non-Status Indians and the Minister of Justice seeking approval of a government-wide policy framework and initial negotiating guidelines for the implementation of the inherent right and of self-government generally; authority for enumeration of Métis and off-reserve Aboriginal people when cost-shared with provinces; and for transition arrangements for current community-based self-government negotiations. The cost to implement the policy would be \$182M over 5 years of which \$98.2M is new funding to come from within existing departmental reference levels. The Minister would report in the Fall on reactions to the policy.

In presenting this item, the Minister of Indian Affairs and Northern Development used a deck which was circulated at the meeting (Cab. doc. 1-2052-95DP(01), dated June 19, 1995) and in particular made the following points:

1. proceeding with the inherent right is a Red Book commitment and it is needed to build a new relationship and break the cycle of dependency;
2. Cabinet approved consultations based on a draft policy framework last December and these have been carried out;
3. the policy is pragmatic and flexible and will require the harmonization of laws and will not lead to sovereignty;
4. the cost of self-government is unavoidable but money will not be wasted on processes and any potential costs will be identified up front in the mandating process. It is not clear what the take-up will be but it is estimated that 70% of all costs will be DIAND's and that 30% will be other government departments';
5. provinces are not all in favour of the policy but enough of them will be willing to come to the table. Quebec's concerns have been addressed and it will not be isolated; proceeding should not be a threat to national unity;
6. regional Aboriginal groups will likely support the policy, but other than Native women it is not clear other national organizations will do so; and
7. the government should proceed with the policy now because if it is delayed support could slip.

The Federal Interlocutor for Métis and Non-Status Indians made the following points as well:

1. there are a large number of Aboriginal people off-reserve and while it is our view that they are largely the responsibility of provinces, there is a federal role;
2. self-government for the off-reserve will likely mean service delivery in a culturally supportive and effective way;
3. it will not provide a land base;


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4. enumeration will give us a better understanding of who will be covered by the policy but it will only be carried out if the province cost-shares; and
5. this policy does not mean much change for most off-reserve Indians but it will make a difference.

The Minister of Justice added the following points:

1. 
2. not everyone will agree with the legal framework but we need to proceed;
3. the Aboriginal Justice Initiative, which is sunsetting, in an important element of this policy and without it we will not be able to implement it; but
4. the lack of funds for this initiative should not hold up the inherent right policy.

In the ensuing discussion, Ministers made the following points:

1. the policy framework is a good piece of work which reflects the Red Book and helps define what the government stands for;
2. the public will need to be reassured about the policy and it should be portrayed as enhancing local decision-making. Third parties should be consulted during the negotiations;
3. regarding taxation, it will be important to ensure that there will be a level playing field as a result of negotiations and in doing so expectations will need to be contained;
4. much of the subject matter for negotiation falls under provincial jurisdiction. Provinces may see this as undermining their jurisdictions and some may also see it as federal off-loading;
5. the timing of any announcement of the policy would have implications for the referendum;
6. it is not clear what the long term financial implications of this policy are and how they will be managed especially when existing budgets may be reduced further. A more detailed implementation plan should be developed for the Fall, though it was also recognized there was a cost of not proceeding;
7. it is clear the government does not have the resources for all elements of DIAND's proposed agenda, therefore it would be important to set out the government's priorities in the Aboriginal area in the Fall;
8. Aboriginal people were part of a social under-class and this process may help to address this situation but it would take time;
9. it was recognized that the role of aboriginal women has been recognized in the policy; and
10. enormous care should be taken over who will be the government's negotiators.

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The Chair indicated that the attached letter from the Minister of Fisheries and Oceans should be considered as read into the record and sought reassurance that DIAND had commitments for all the necessary funds.

The Minister of Indian Affairs and Northern Development, supported by his Deputy, made the following points in reply to the costing issue:

1. the funding problem facing the Department of Fisheries and Oceans is due to a sunseting program but the Minister is supportive of the policy;
2. negotiations will not begin unless there are funds available;
3. the \$182M cost was arrived at with Finance and Treasury Board and based on the number of groups expected to come forward; and
4. this is the priority of DIAND.

More broadly, the Minister of Indian Affairs and Northern Development made the following points in response to Ministers:

1. this policy will allow other initiatives to proceed e.g. Manitoba dismantling;
2. we should proceed with this now and not wait; and
3. this should be a priority of the government - it is about dignity and respect.

The Interlocutor for Métis and Non-Status Indians added:

1. in relation to Métis and off-reserve Indians this policy is the least we can do;
2. we need to provide leadership in this area;
3. Aboriginal people in certain areas are a social "time bomb";
4. we would proceed in partnership with provinces and Aboriginal groups; and
5. we should proceed now.

The Chair concluded that there was a strong consensus on the policy framework and guidelines and that this item could proceed on condition that: the issue of timing should be resolved in consultation with PMO; funding concerns of the Department of Fisheries and Oceans and the longer term funding issues need to be clarified.

The Committee agreed that:

1. the policy approach for the implementation of the inherent right of self-government set out in Annex A of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01)), as a replacement for existing self-government policy, be approved. The main features are: recognition of the inherent right as an existing Aboriginal right under Section 35 of the Constitution Act, 1982; that the exercise of the right should be within the existing constitutional framework, harmonized with other jurisdictions and worked out through negotiations; protection of certain aspects of negotiated agreements as Section 35 treaties where parties so agree; and, that financing should be a shared responsibility of governments and Aboriginal people;



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2. the more detailed guidelines for matters to be negotiated set out in Annex B of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01)), which are intended as initial instructions to federal negotiators, be approved;
3. Ministers be authorized to negotiate self-government arrangements on the basis of the policy set out in Annex A of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01) and the initial instructions set out in Annex B of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01));
4. the Federal Interlocutor for Métis and Non-Status Indians be authorized to negotiate and enter into agreements for the enumeration of those individuals who may be covered by self-government agreements, and for an equal federal-provincial sharing of the cost;
5. the communication plan set out in Annex D of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01)) be approved and the Minister of Indian Affairs and Northern Development and the Federal Interlocutor for Métis and Non-Status Indians be authorized to issue a public statement based on Annex A of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01)). The announcement and all communication material will be subject to prior PMO/PCO approval;
6. the Minister of Indian Affairs and Northern Development and the Federal Interlocutor for Métis and Non-Status Indians provide Cabinet in the fall with a report on the reactions to the policy statement and a more specific implementation plan in the context of overall priorities, pressures and available resource levels;
7. the costs necessary to implement this initiative be approved as follows (details in Annex C of the Memorandum to Cabinet (Cab. doc. 8-0129-95MC(01)):

	<u>95/96</u>	<u>96/97</u>	<u>97/98</u>	<u>98/99</u>	<u>99/2000</u>	<u>TOTAL</u>
Present costs	16.8	16.9	16.9	16.9	16.9	84.4
Incremental costs*	4.0	17.5	27.1	22.7	26.9	98.2
<b>TOTAL COST</b>	<b>20.8</b>	<b>34.4</b>	<b>44.0</b>	<b>39.6</b>	<b>43.8</b>	<b>182.6</b>

\* To be funded from existing departmental reference levels

8. current Community-Based Self-Government funding authority be extended, subject to Treasury Board approval, until a new program is put in place for the inherent right.

Le Comité convient que :

1. l'approche concernant l'application du droit inhérent à l'autonomie gouvernementale, exposée dans l'annexe A au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01)), à titre de remplacement de la politique actuelle sur l'autonomie gouvernementale, soit approuvée. Les principaux éléments de cette approche sont les suivants : le droit inhérent est reconnu à titre de droit ancestral existant en vertu de l'article 35 de la Loi constitutionnelle de 1982; ce droit doit être exercé à l'intérieur du cadre constitutionnel actuel, il doit exister en harmonie avec les autres compétences et il doit être défini au moyen de négociations; certains aspects des ententes négociées doivent être protégés à titre de traités aux termes de l'article 35 si les parties en

conviennent; la responsabilité du financement doit être partagée par les gouvernements concernés et les Autochtones;

2. on approuve les lignes directrices plus détaillées sur les questions à négocier, exposées dans l'annexe B au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01)), celles-ci devant servir de directives initiales aux négociateurs fédéraux;
3. les ministres soient autorisés à négocier des ententes sur l'autonomie gouvernementale en respectant la politique exposée à l'annexe A au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01)) et les directives initiales présentées à l'annexe B au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01));
4. l'Interlocuteur fédéral auprès des Métis et des Indiens non inscrits soit autorisé à négocier et à conclure des ententes sur le dénombrement des personnes pouvant être visées par une entente sur l'autonomie gouvernementale et sur le partage égal des coûts entre le gouvernement fédéral et la province en cause;
5. le plan de communication exposé dans l'annexe D au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01)) soit approuvée et le Ministre des Affaires indiennes et du Nord canadien et l'Interlocuteur fédéral auprès des Métis et des Indiens non inscrits soient autorisés à publier une déclaration publique fondée sur l'annexe A au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01)). L'annonce et tous les documents relatifs aux communications devront être approuvés en avance par le BPM et le BCP;
6. le Ministre des Affaires indiennes et du Nord canadien et l'Interlocuteur fédéral auprès des Métis et des Indiens non inscrits présentent un rapport au Cabinet, à l'automne, sur les réactions à la déclarations de politique et un plan de mise en oeuvre plus spécifique dans la contexte des priorités globales, des pressions fiscales et des niveaux des ressources disponibles;
7. les coûts de mise en oeuvre de cette initiative soient approuvés tels qu'ils sont présentés ci-dessous (les détails sont données à l'annexe C au mémoire au Cabinet (doc. du Cab. 8-0129-95MC(01)) :

en millions de \$ courants

	<u>95/96</u>	<u>96/97</u>	<u>97/98</u>	<u>98/99</u>	<u>99/2000</u>	<u>TOTAL</u>
Coûts actuels	16.8	16.9	16.9	16.9	16.9	84.4
Coûts additionnels*	4.0	17.5	27.1	22.7	26.9	98.2
<b>TOTAL</b>	<b>20.8</b>	<b>34.4</b>	<b>44.0</b>	<b>39.6</b>	<b>43.8</b>	<b>182.6</b>

\* Financés à même niveaux de référence actuels du Ministère

8. l'autorisation actuelle pour le financement des négociations de l'autonomie gouvernementale avec les collectivités soit prolongée, sous réserve de l'approbation du Conseil du Trésor, jusqu'à ce qu'un nouveau programme soit mis sur pied pour l'application du droit inhérent.



Minister of  
Fisheries and OceansMinistre des  
Pêches et des Océans

Ottawa, Canada K1A 0E6

MAY 30 1995

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The Honourable Sheila Copps, MP  
Deputy Prime Minister and Minister of Environment  
House of Commons  
Room 509-S  
Centre Block  
Parliament Buildings  
Wellington Street  
Ottawa, Ontario  
K1A 0A6

Dear Colleague:

I am writing to you to re-iterate my earlier comments regarding the Inherent Right of Self-Government Memorandum to Cabinet which will be considered by the Cabinet Committee on Social Development on May 30, 1995. I regret that I will not be able to attend as I must attend the Standing Committee to address Main Estimates for the Department.

Firstly, I want to emphasize that I believe the proposed policy approach is pragmatic and certainly enjoys my support. However, I continue to be concerned with the proposed funding source identified. As you are undoubtedly aware this Department spends approximately \$22 M annually to support fisheries co-management in Aboriginal communities under the Aboriginal Fisheries Strategy (AFS). The AFS is a sunsetted program which will be largely unfunded by March 31, 1997. This program has been an essential ingredient in re-establishing local fisheries management involvement for Aboriginal communities in Canada's coastal areas. While it is my profound hope that it will be possible to maintain the current base of funding for the AFS, I'm sure you appreciate that the significant impact on DFO of Program Review will make this a challenge.

The proposed Memorandum to Cabinet supports advancing the same basic approach to fisheries co-management as is practiced under the AFS. Major differences however will be that self-government agreements will be ongoing rather than of a short duration and will be struck throughout Canada, and not just in coastal areas where the AFS currently applies. The M.C. further proposes that a number of Departments, including DFO, absorb additional costs which escalate as implementation of agreements proceeds. I appreciate that DIAND officials believe that the incremental costs are not onerous. However, given the precarious nature of existing co-management funding under the AFS, I cannot support a commitment of any incremental funds from my Department for implementation of this initiative.

I regret that it has not been possible to resolve this matter prior to Cabinet's consideration of this M.C. I assure you that my officials would be willing to meet their counterparts within the sponsoring departments to seek an acceptable solution. I recommend quick action in this regard so that DFO's involvement in this important initiative can be clarified.

Sincerely,

Brian Tobin

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Personal Relationships and the Federal Law: A Strategic  
Approach to the Management of Litigation and Policy

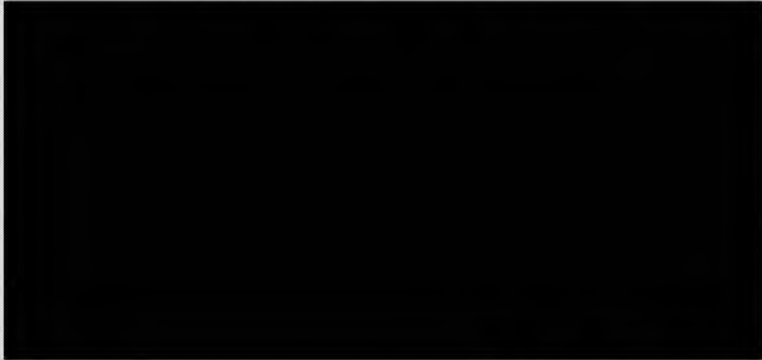
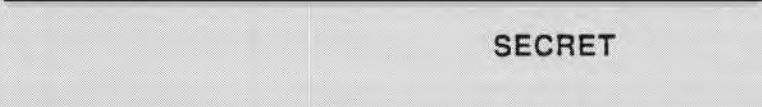
Les communautés domestiques et le droit fédéral : une  
approche stratégique face aux litiges et aux politiques

The Committee had for consideration a Memorandum to Cabinet (Cab. doc. 8-0120-95MC(01), dated May 15, 1995) from the Minister of Justice proposing an interim strategy to manage litigation and policy regarding benefits to same-sex partners; settlement of a Canadian Union of Postal Employees (CUPE) case; and returning to Ministers with a Memorandum to Cabinet outlining longer-term options for policy, legislative and regulatory changes.

In introducing the item, the Minister of Justice made the following points:

1. the May 25, 1995 Supreme Court ruling in the *Egan and Nesbit* case, which upheld by a narrow margin the denial of spousal benefits to same-sex partners as justifiable under the Charter, gave the government some more time to address the issue;
2. considering the issue of same-sex benefits in the broader context of personal relationships would allow the government to also recognize those who live in non-sexual but dependent relationships and avoids the need to redefine "marriage" or "family" which is an explosive issue for some;
3. timing is important given that the sentencing reform bill was misunderstood as a "gay rights" bill and the proposed amendments to the *Canadian Human Rights Act* includes adding sexual orientation as a prohibited ground of discrimination;
4. 
5. a further memorandum will be brought forward in the fall proposing policy options, such as extending benefits to same-sex partners, redesigning programs to avoid derivative benefits, or providing benefits based on need.

In the ensuing discussion, the following points emerged:

1. Ministers supported the approach of considering same-sex benefits in the broader context of personal relationships and recognized that, while a politically sensitive issue, the proposals are consistent with Red Book equality commitments;
2. 
3. 

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The Committee agreed that:

1. support be given to the strategic approach adopted by the Minister of Justice to managing the issue of personal relationships (same-sex partners) in both litigation and policy including:

(1)

(a)

(b)

(c)

and

- (2) the communications strategy, that the Minister of Justice will use in response to questions on litigation in this area centring on:

- (a) recognition that this complex issue is more appropriately dealt with by Parliament than by the courts;
- (b) that the issue of same-sex partners (the subject of the *Egan* case) is but one small piece of the picture, and all personal relationships must be considered; and
- (c) that neither the Court nor gay and lesbian Canadians are "changing our society", rather social change has happened over the last 50 years, leaving many of our laws treating personal relationships in need of modernization in order to reflect the reality of Canadians, while reaffirming the importance of traditional family relationships;

(3)

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(4) the Minister of Justice in consultation with the President of Treasury Board, return to Cabinet in advance of the Memorandum to Cabinet, if necessary, to obtain policy direction [REDACTED]

2. approval be given to the development of immediate changes to policies, legislation and regulations in category 1 (such policy change will not alter the definition of spouse) by affected Ministers, in consultation with the Minister of Justice;
3. [REDACTED] and
4. no additional resources are being sought at this time.

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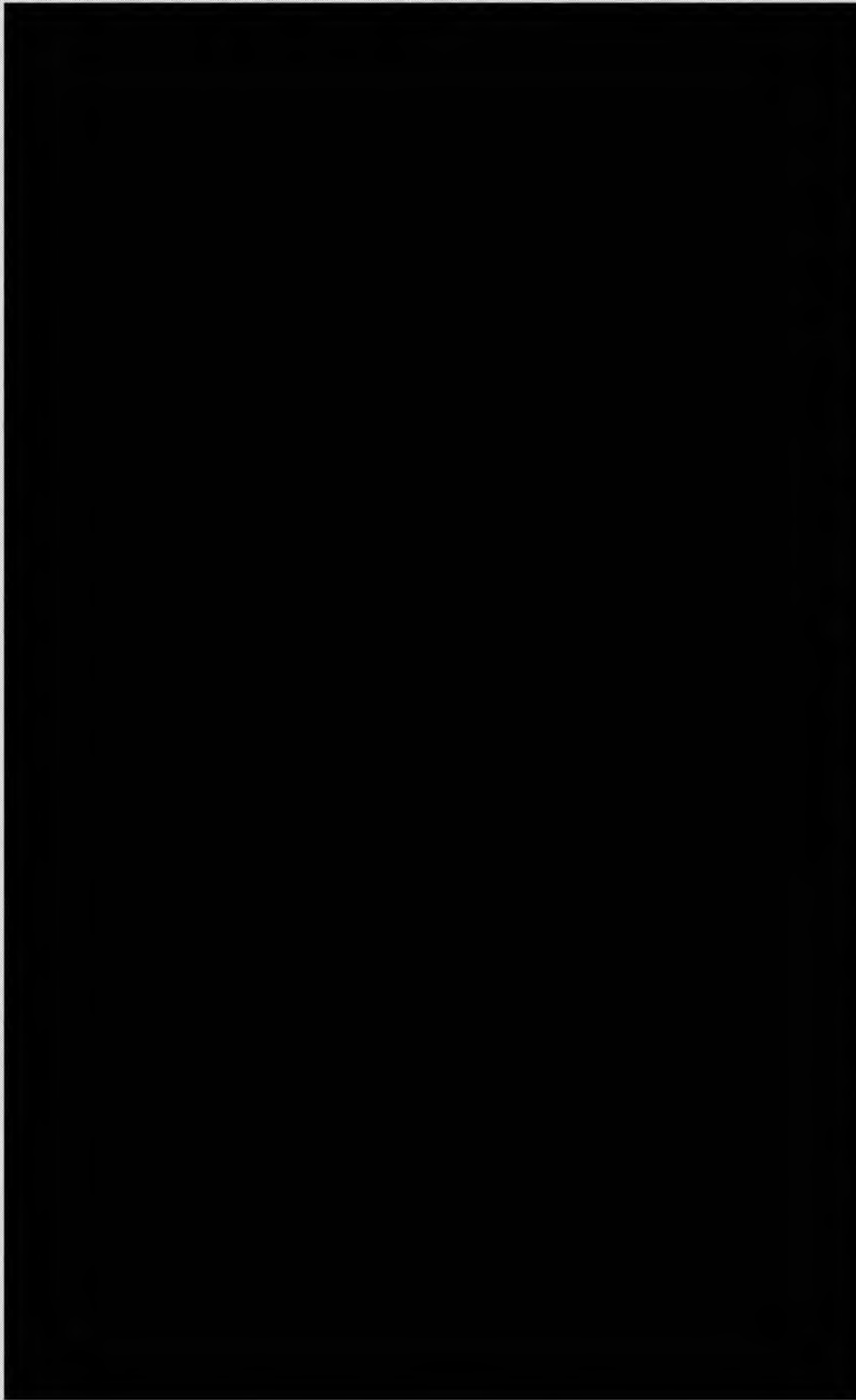
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ANNEX A

APPLICATION OF THE CABINET-APPROVED LITIGATION STRATEGY

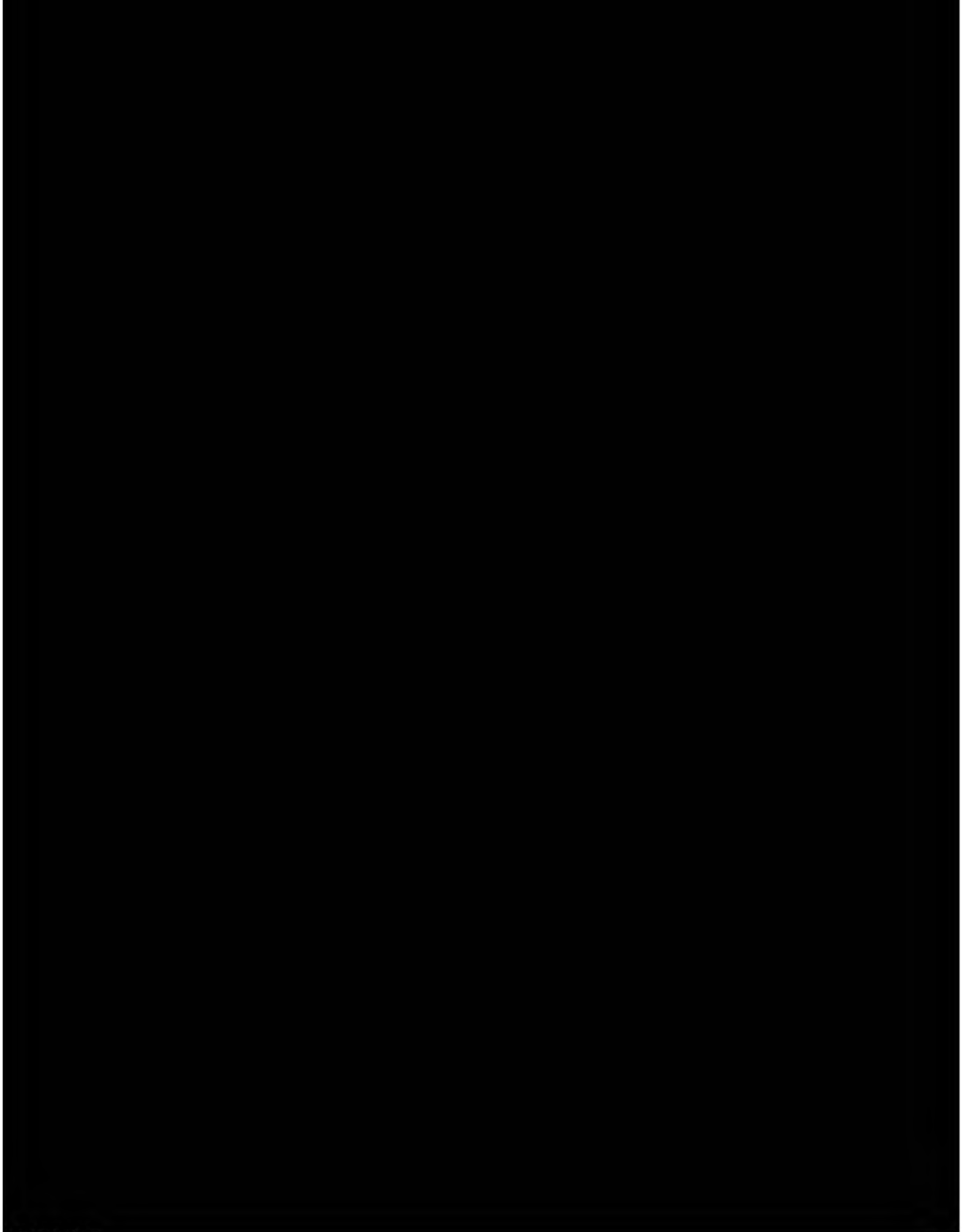
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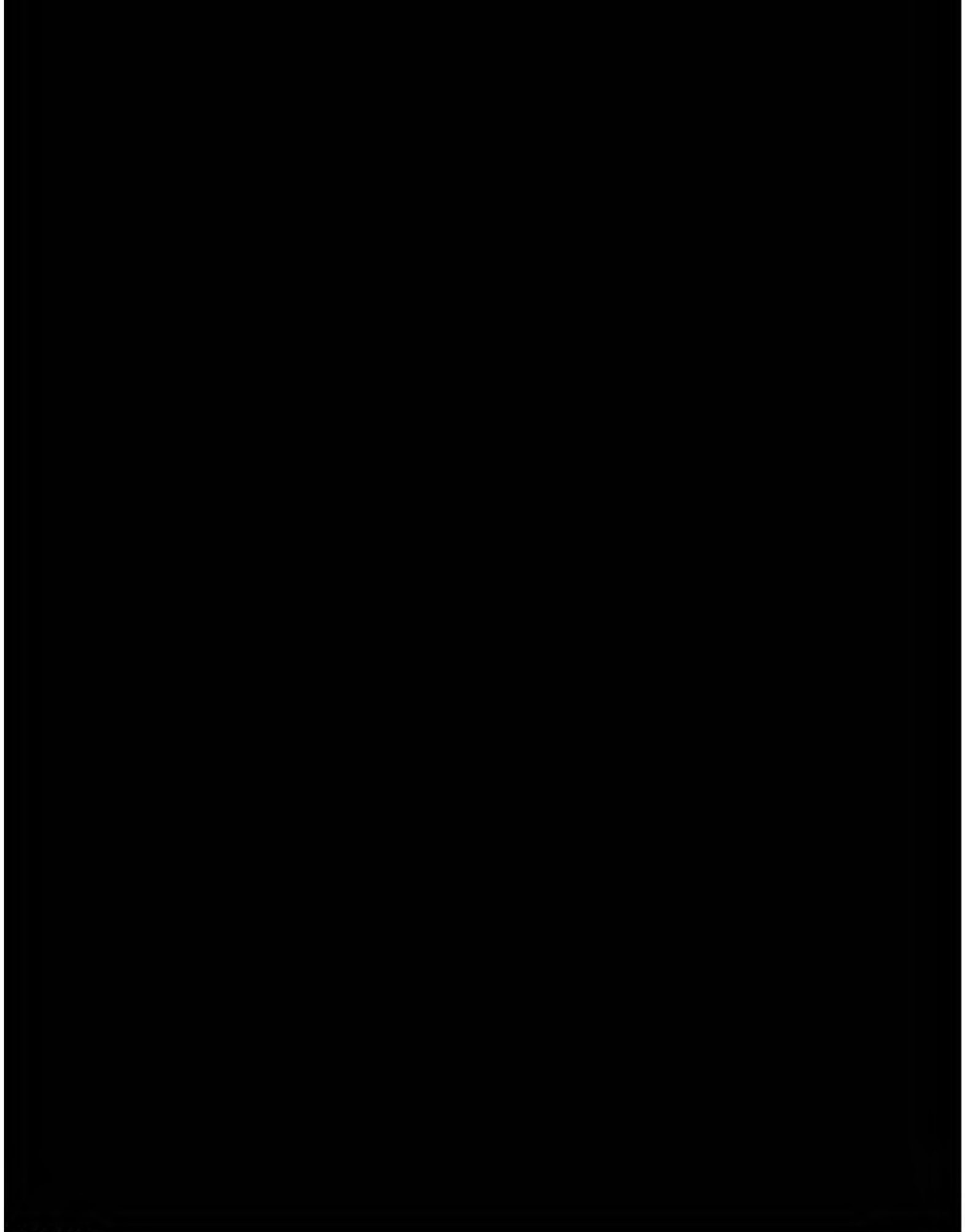


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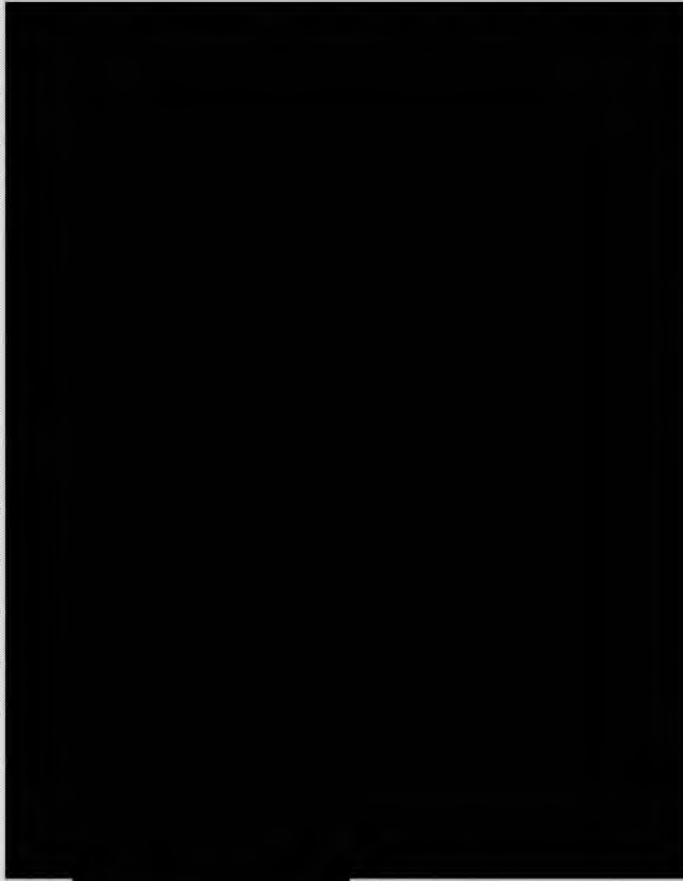
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Le Comité convient que :

1. d'appuyer l'approche stratégique adoptée par le ministre de la Justice en ce qui a trait à la question des communautés domestiques (partenaires du même sexe) à l'égard des litiges et des politiques, notamment :

(1)



et

- (2) la stratégie de communication que le ministre de la Justice utilisera pour répondre aux questions sur le contentieux dans ce domaine sera axée sur :
- (a) la reconnaissance qu'il serait plus approprié que cette question complexe soit abordée par le Parlement plutôt que par les tribunaux;
  - (b) le fait que la question des partenaires du même sexe (la question soulevée dans l'affaire *Egan*) n'est qu'un aspect de la question et que tous les types de relations personnelles doivent être envisagés; et
  - (c) la réalisation que ni les tribunaux, ni les homosexuels et les lesbiennes du Canada ne «changent le tissu de notre société», mais plutôt que la société a changé au cours des cinquante dernières années, de sorte que plusieurs de nos lois visant les relations personnelles ont besoin d'être modernisées afin de refléter la réalité canadienne, tout en réaffirmant l'importance de la relation familiale traditionnelle;

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(3)



- (4) s'il le faut, que le ministre de la Justice, de concert avec le président du Conseil du Trésor, consulte à nouveau le Cabinet avant la présentation du mémoire afin de [REDACTED]



2. d'approuver l'élaboration des modifications immédiates aux politiques, aux lois et aux règlements en ce qui a trait aux causes de la première catégorie (ce changement de politique n'aura aucune incidence à l'égard de la définition de conjoint), par les Ministres visés, en collaboration avec le ministre de la Justice;

3.



4. on ne demande pas de ressources additionnelles à ce moment.

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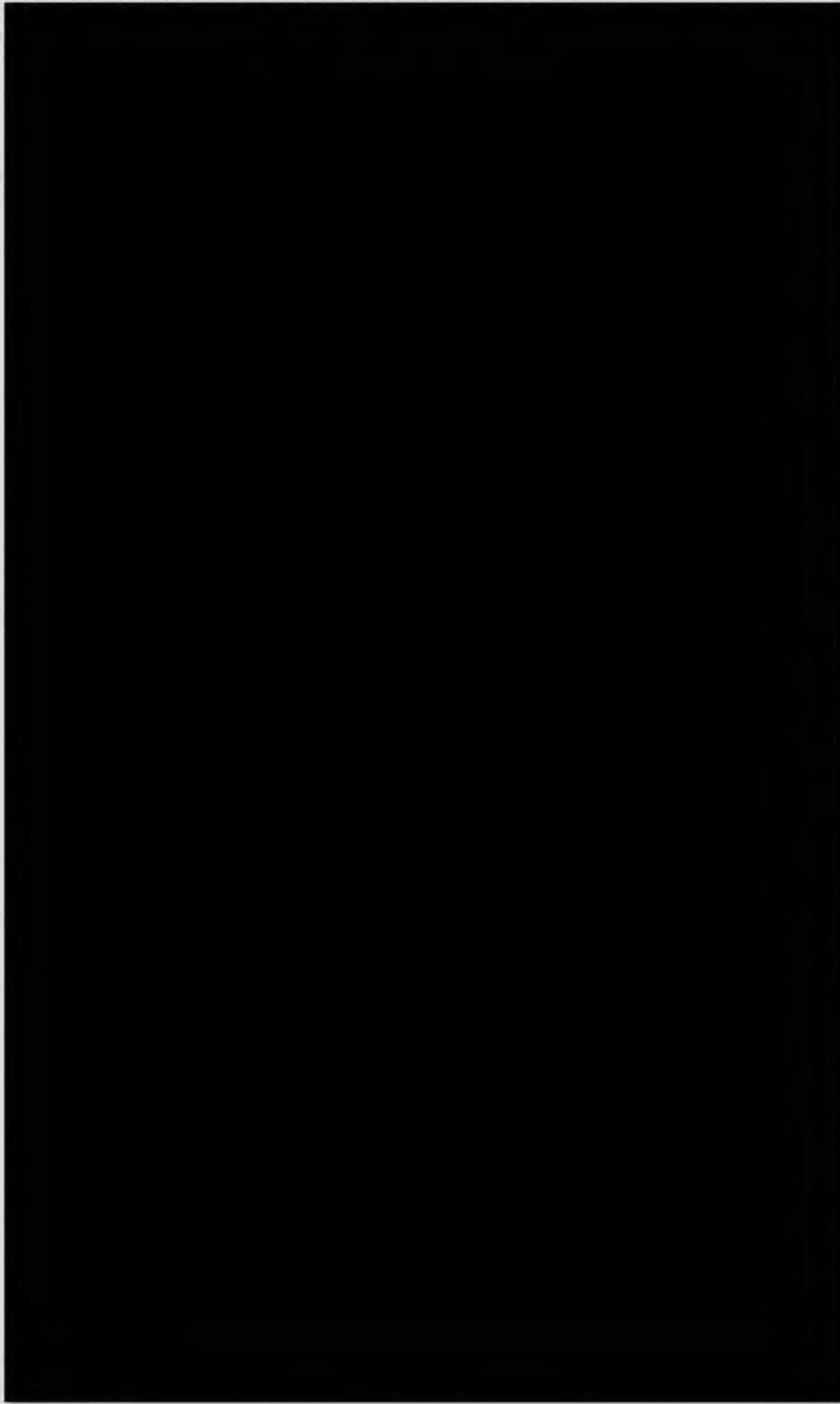
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ANNEXE A

APPLICATION DE LA STRATÉGIE EN MATIÈRE DE LITIGES  
APPROUVÉE PAR LE CABINET

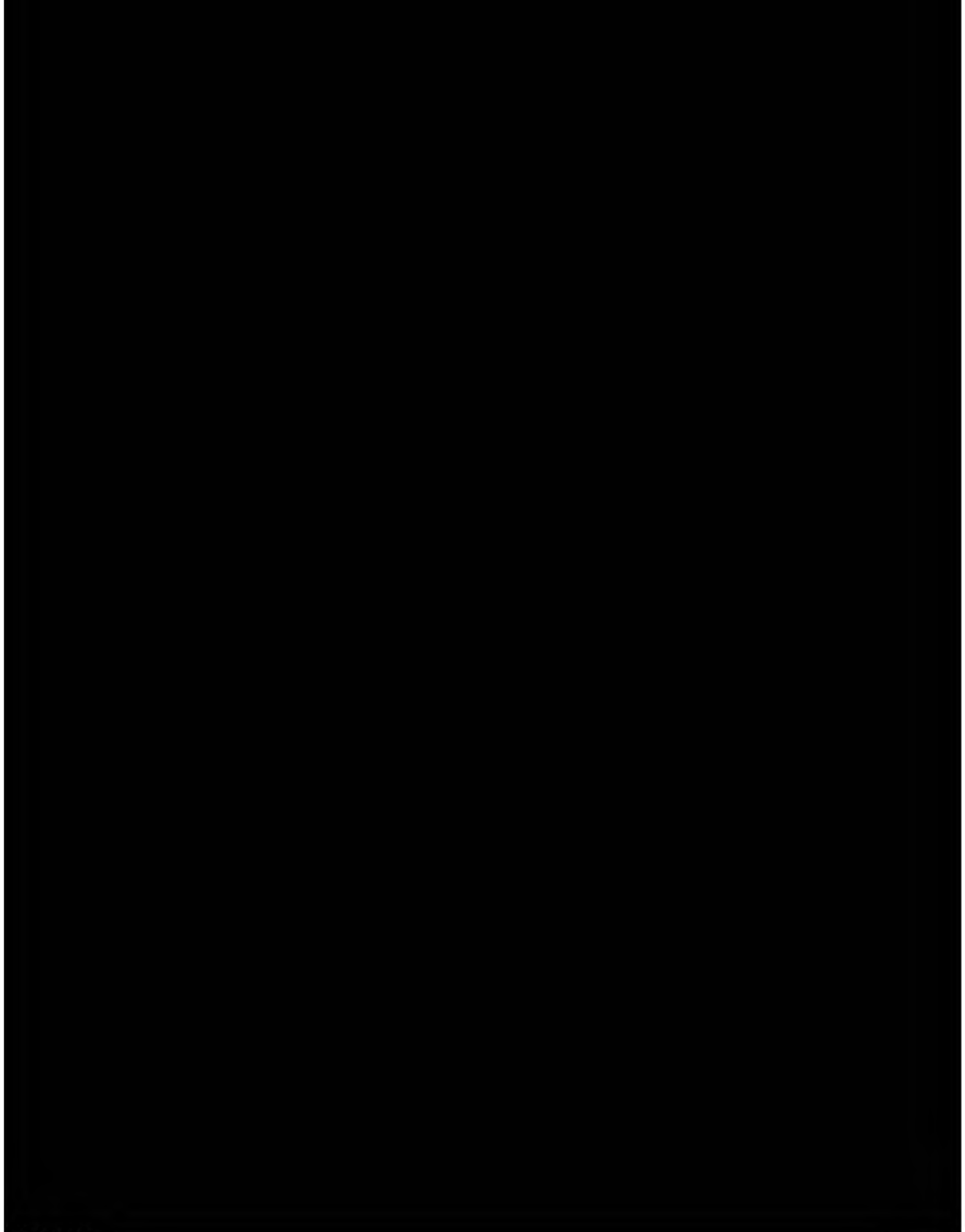
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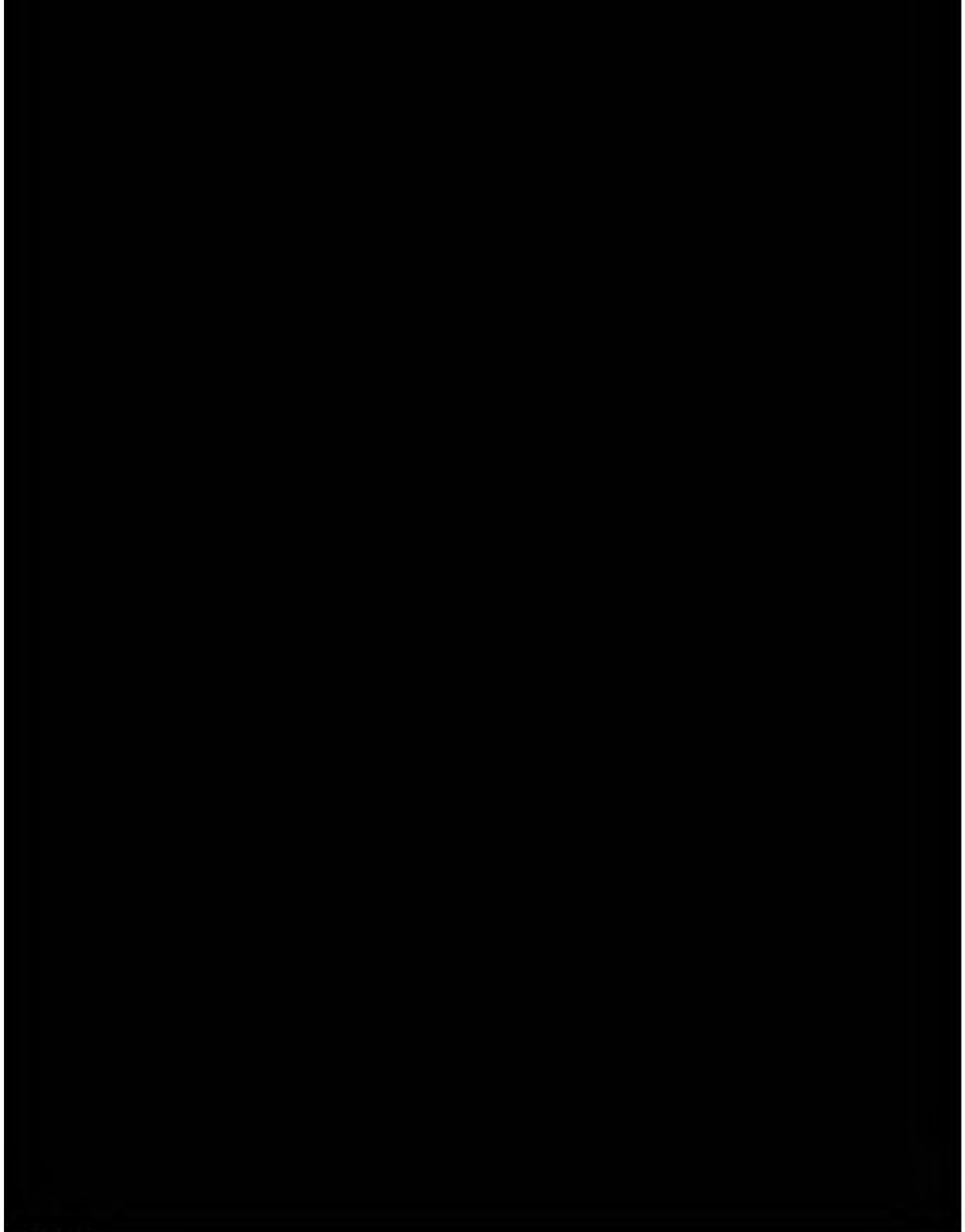
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Secretary  
Alex Himelfarb  
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