



INTERNAL MEMORANDUM

To: 1. Mr Burden
2. Chief Executive

From: B W Musgrave

Date: 3.9.85

McBRIDE PRINCIPLES

1. Mr McAllister asked me some time ago to obtain, if possible, a copy of Counsel's opinion, prepared for General Motors.
2. Mr Bailie has now forwarded to me the attached copy, which I have copied to Mr Mayne as you requested.

B W MUSGRAVE

MILLS, SELIG & BAILIE
SOLICITORS

W. STRATTON MILLS
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Brian Musgrave, Esq.,
Industrial Development Board,
IDB House,
64 Chichester Street,
BELFAST, 1.

29th August, 1985.

Dear Brian,

Re: General Motors

As arranged and by agreement with General Motors, I enclose a copy of Mr. Michael Lavery Q.C.'s Opinion relative to the MacBride Principles. I hope it may be of assistance to you. As indicated, it is for your internal use only.

Yours sincerely,


Robin J. Bailie.



Re: GENERAL MOTORS

I have considered the papers herein.

Under the Fair Employment (Northern Ireland) Act 1976 it is unlawful to discriminate against any individual on the grounds of religion or politics in the matter of employment.

See Ss 16 and 17 of the Act.

Employers are also required to afford equality of opportunity in ~~obtaining~~ employment between persons of "different religious beliefs".

See S.3, S.12, S.13 and S.46 of the Act.

It follows from that that any individual seeking employment is entitled to have his or her application considered without regard to his religious or political beliefs subject only to the exceptions set out in Part V. of the Act dealing with clergymen, teachers etc. none of which is relevant here.

If, therefore, a member of the majority community were to apply for employment with Querists it would be unlawful to reject his application on the sole grounds that it might be more desirable in the interests of the Province as a whole to employ a member of the minority community albeit less well qualified than the applicant.

Accordingly my advice is as follows:

1. Principle 1. It is not unlawful to increase the representation of individuals from under-represented religious groups etc. provided this is not done by discriminating against individuals on grounds of the majority.
2. It is the duty of the state to provide security for all its subjects within the obvious limitations of resources etc. that apply in every country in the world. I do not see in practical terms how Querists could be expected to provide this.
3. This is acceptable.
4. This is acceptable provided that it is done to redress some disadvantage

that minority groups may presently suffer from. If the effect, however, was to deny equality of opportunities to majority grounds then it would be unlawful.

5.&6. This ought to be adapted to comply with the existing law.

7.&8. These are objectionable because quite clearly unless the same facility were afforded to majority employees then there will be a demise of equality of opportunity generally and very possibly discrimination in individual cases.

9. If this means affirmative action of the type I have described as objectionable or unlawful then it is clearly not open to Querists to engage in it.

In summary, therefore, to adopt Dr. Sean MacBride's principles in their entirety would be ultra vires and unlawful.

They would almost certainly bring Querists into conflict with individuals and the Fair Employment Agency.

They would put Querists at risk of being unable to tender for government contracts should that arise.

They would be at risk of being subject to injunctions by the Courts and claims for damages.

Failure to comply with an injunction could lead to attachment and sequestration although one would hope that in practice this would never arise.

Accordingly my advice is that it would only be open to Querists to adopt such measures as will not conflict with their obligations not to discriminate against any individual and to make equality of opportunity for all.

My advices should make it clear which measures cannot be adopted.

Nothing further occurs to me.

I return all the papers.

SIGNED: Michael Lavery Q.C.

23.1.1985.