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Homosexuality, the Public Service,
and National Security

Introduction

Two developments in recent years have an important bearing on security policy as it relates to homosexuality. One has been the emphasis on recognition of the rights of various minority groups. This of course has been an important factor in the evolution of the human rights legislation presently before Parliament. Another manifestation of this development has been the establishment in the Public Service Commission of the Anti-Discrimination Branch, which has become a focal point for grievances concerning employment practices, including those where security is a factor - an area where openness has of necessity not been a prominent characteristic and thus one which is regarded by activists, with suspicious interest. Second has been the development of increased permissiveness in various areas of human behaviour perhaps most dramatically in the attitude toward sex. Even among the public in general, there seems to be greater acceptance of such permissiveness, particularly with respect to forms of sexual behaviour that were taboo, or frowned upon, in the recent past.

Pressure has developed in recent years on the Government for more open access, indeed for unrestricted access, to employment by homosexuals, for declaration of such open access, and for specific information about any restrictions applied to such employment. This pressure has taken the form of many letters from homosexual individuals and organizations, for example, to the Solicitor General and to the Prime Minister.

Given these pressures, many departments are finding it increasingly difficult to make decisions about employment of homosexuals, and it is desirable that guidance be provided.

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Thus an examination of employment practices with respect to homosexuals (including lesbians), particularly in problem areas (senior officials, representatives abroad, employees located in isolated areas, employees in situations of close proximity for extended periods) seems opportune. In particular, there is a need to examine employment practices in the security context: should homosexuals be employed in positions where access to classified information is essential? In view of the increasing pressure on the Government to justify and make public the details of its security policy as it relates to homosexuals, it seems necessary to provide guidelines to departments, and a rationale provided which can be publicly justified.

The goal must be to arrive at a policy, and at practices, that will be acceptable to most Canadians. It is suggested that the strong, strident and usually well-publicized representations made by special interest groups should be viewed against the background of what is probably a silent majority. While generalization is difficult, it seems reasonable to argue that many Canadians would be uneasy if the more extreme demands for rights for homosexuals were implemented, to the extent, for instance, that prominent public servants, perhaps required to represent Canada, and particularly abroad, were ostentatiously different from the norm in their sexual or other behaviour.

In the preparation of this paper officials in the departments which handle large amounts of classified information have been consulted, with a view to setting out the relevant considerations and suggesting a possible approach to dealing with problems in this area. Effort has been made to reflect their views in the following pages.

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House of Commons debate, 1969

While it would be difficult to gauge public opinion in this matter in the absence of a detailed scientific study (and even a work like the Kinsey Report was the subject of much criticism on grounds of inaccuracy and bias), some enlightenment can be derived from the views expressed by Members of Parliament during the extensive debate, in 1969, on the proposed amendment of the Criminal Code to remove homosexual relations in private between consenting adults from the Code. (Obviously some allowance must be made for changing attitudes, including those of Members of Parliament. But in reading the debate, one is struck by the number of participants who are still active in the House of Commons, and one could argue that, since the Canadian public continues to have confidence in and elect them, the views of Canadians in general have perhaps not changed much in this matter in the intervening years.)

Many members participated in the protracted debate, and it is difficult to imagine that there could be a point of view that was not expressed. Virtually every participant began by emphasizing in one way or another his disapproval of homosexuality. The relevant pages of Hansard are strewn with words to this effect: repugnant, immoral, filth, muck, indecent, sinful, diabolical, corrupting, rotten, degrading. One or two references were made to earlier civilizations where homosexuality was regarded as acceptable, but the stronger view was that homosexuality was condemned in Judeo-Christian civilization, and that the proposed amendment could open the flood-gates, that it represented yet another phase in the general deterioration of the moral fibre of the nation, and thus a threat to society, to the family, to the young, and to future generations.

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There was however recognition of the fact that society's views on what is acceptable are subject to change. It was pointed out that at one time dancing on the Sabbath and consumption of alcohol were unacceptable and illegal.

The (British) Wolfenden Report had stated that homosexuality was not a disease, and that total reorientation of homosexuals seemed very unlikely. In the House of Commons there was extensive exploration of the idea that homosexuality was an illness. There seemed to be general acceptance of the view that there was no known effective medical treatment so far available. It was also pointed out that many homosexuals themselves did not accept the "sickness" approach, or the concept that they were not "normal" and therefore were not interested in "cure". In spite of these factors, over and over in the debate the view was expressed that homosexuality was a medical problem and certainly more in the domain of the doctor and the psychiatrist than of the courts and prisons. On several occasions emphasis was placed on the need for scientific study of the whole problem. There was frequent emphasis on the need for understanding, compassion and charity.

Many suggested that, instead of amending the Criminal Code and thereby directly or indirectly endangering public morality, the Government should channel its efforts to providing grants and establishing hospitals and clinics for treatment.

Those in favour of the amendment emphasized that it did not "legalize" homosexuality, that it merely removed from the Criminal Code a limited area of activity that should be regarded as private. On the other hand, it was emphasized that homosexuals generally could not control themselves, could not change, had compulsions to proselytize, and in view of these characteristics, the proposed change in

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the law would encourage activity outside the limited area involved, with consequent danger to the public, particularly to the young. A U.S. Senate investigation was cited, which indicated that young convicts were corrupted by older homosexuals.

There were many references in the debate to the young, and various estimates of their reaction. Many Members emphasized Parliament's responsibility to set an example, and felt that the amendment would encourage young people to believe that homosexuality was being condoned and endorsed. The young tend to equate morality with the law, and should not be told by legislators that what was illegal at age 20 was legal at age 21. It was pointed out that young people have ideals which would be offended by the amendment. On the other hand it was argued that it was characteristic of young people to rebel against restrictions, and therefore they would favour the liberalizing effect of the amendment.

Many members referred to expressions of opinions from their constituents which were said to be overwhelmingly opposed to the amendment. Several wondered about the source from which came the pressure in favour of the amendment. It was even suggested that the Government's attitude was colonial in following Britain's lead. There was unfavourable reference to Swedish policy.

If there was a general view, it was that the problem had many facets, and that not enough was known of the nature of homosexuality or of its social effects to permit classification or generalization. (This was also the theme of a confidential study carried out for the Privy Council Office in 1960.)

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Public service employment practices

The employment practices of the Public Service of Canada include no restrictions on the employment of homosexuals. Indeed the Public Service Employment Act (Section 12(2)) expressly prohibits discrimination in selection standards by reason of sex. While the intention of the legislators almost certainly was to indicate male and female, this provision could be interpreted by interested parties as including homosexuality. There is however built into the practices an element of judgment to be exercised by the employer. The phrase "personal suitability" is normally included in competition announcements as a requirement of employment. Presumably this area can be, has been, and is used to exclude homosexuals in some cases.

What defence can be made of any practice of exclusion of homosexuals from employment in the Public Service? Three can be suggested:

- (1) Public acceptance - In spite of changing attitudes and the much publicized views and demands of anti-discrimination activists, it seems likely (and the debate in the House of Commons seems to point to it) that the majority of Canadian tax-payers would not be comfortable knowing that there were no restrictions on employment of homosexuals in the Public Service. There is still a strong aura of immorality and decadence associated with it. One of the letters from a "gay" organization to the Prime Minister criticized the Government for "The enforcement of social prejudice directed against a minority group" - a succinct statement of the dilemma of a democratic government seeking to find an

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acceptable balance between following and guiding public opinion. Public acceptance of employment of persons who are discreet about practices that are not generally socially acceptable would probably be forthcoming, but openness (which seems to extend to the point of flaunting in the case of some gay groups) would probably be widely criticized. Disapproval would be especially strong in certain areas of employment. In general the senior levels of public service would present problems, because of their high visibility and their representative character, especially abroad. Canadians in general would likely expect them to behave "conservatively". Nevertheless, any rationale based on general unsuitability of homosexuals for employment in the Public Service is increasingly difficult to defend and justify when the emphasis is on individual and group rights, and when the concept of the public interest seems to be increasingly challenged.

- (2) The interests of the individual - It is not difficult to imagine situations of public employment in which a homosexual would be in an uncomfortable, even dangerous position, which only a martyr would covet, for example, in a barracks atmosphere where large numbers of persons of one sex are in close proximity and isolated from others, perhaps for long periods of time - soldiers, police, prison guards, ships' crews. While the problems seem obvious, justification of exclusion from employment on such grounds is rejected by the crusaders as a bowing to prejudice. One can cite the example of

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T/Sgt. Leonard Matlovich whose efforts to remain in the U.S. Air Force have so far failed, but who may take his battle as far as the U.S. Supreme Court. (Time, 29 Sep 1975). Closer to home, a recent newspaper report (Globe and Mail, 3 Oct 1976) indicates that the "National Gay Rights Coalition, which represents 33 homosexual groups in Canada, asked Solicitor General Francis Fox for a meeting to discuss discrimination against homosexuals by the Royal Canadian Mounted Police Coalition coordinator David Garmaise said his organization wanted assurances from Mr. Fox that homosexuality is not a consideration in the hiring of Mounties or in RCMP security clearances of other federal employees." The article stated that the coalition had also written to Justice Minister Ronald Basford, "asking that the proposed Human Rights Act included 'sexual orientation' among categories of prohibited discrimination".

- (3) Blackmail - Vulnerability to blackmail has been the traditional defence in the case of exclusion from public employment on security grounds. Obviously the problem is more general, is relevant to any employment involving high degrees of confidence and trust and cannot be restricted to the world of national secrets. The danger and vulnerability are likely to increase in direct ratio to the level of the potential victim in the hierarchy. And it seems possible that, the more senior the position, the more likely the incumbent would be to conceal his orientation.

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National Security

Government policy with respect to employment of homosexuals in positions where access to classified information is concerned is set out in Cabinet Directive No. 35 approved in 1963, and in Justice Minister Chevrier's statement on security policy in the House of Commons at that time. In fact that policy, intended for application in the specific and limited area of national security, has been in many cases applied beyond it (e.g. to customs officials and museum guards). It may well have been misapplied in this way with respect to sexual characteristics. If so, this would point up the need for a policy applicable in the broader context.

CD 35 states: "In addition to loyalty, reliability is essential in any person who is to be given access to classified information. A person may be unreliable for a number of reasons that do not relate to loyalty". The unreliability could come from "features of his character which may lead to indiscretion or dishonesty, or make him vulnerable to blackmail or coercion. Such features may be greed, debt, illicit sexual behaviour, drunkenness, drug addiction, mental imbalance, or such other aspect of character as might seriously affect his reliability." "Illicit sexual behaviour" has been interpreted to include homosexuality.

A revision of CD 35 is presently in preparation, in which the criteria for deciding on the granting of security clearances have been only slightly revised as they would apply to homosexuality. The proposed revised text states that clearance must be denied a person "whose reliability is in doubt because the person may be indiscreet, or vulnerable to blackmail or coercion, as a result of:

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- (a) features of character such as those relating to greed, indebtedness, sexual behaviour, alcohol or drug abuse, mental instability or criminal activity; ...".

In both CD 35 and the current proposed revision, the "features of character" provisions are separated from those relating to "loyalty", in order to provide that, with respect to the former, there is no blanket exclusion. The provision is that access to classified information should not be permitted "unless, after careful consideration of the circumstances, including the value of the person's services, the risk involved seems justified in the opinion of the deputy head." (This is the text of the proposed revision; the 1963 text is almost identical.)

CD 35 requires departments to make periodic reports (to the Privy Council Office) on the disposition of cases where access has been denied. However the statistics are supplied only in the two broad categories of "loyalty" and "reliability" and there is no requirement to indicate the feature of character involved. The breakdown for 1975 is set out in Annex A. (to be supplied)

The report of the Royal Commission on Security (1969) dealt with the question of homosexuality in relation to national security. It pointed out that this was "a contentious area, especially as social mores change". It pointed out that a large number of case histories demonstrated that "homosexuals are special targets for attention from foreign intelligence services". It stated that there was clear evidence that certain types of homosexuals are more readily compromised than non-deviate persons. It expressed the view that "each case must be judged in the light of all its circumstances, including

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such factors as the stability of the relationships, the recency of the incidents, the public or private character of the acts, the incidence of arrests or convictions, and the effect of any rehabilitative efforts." The Royal Commission concluded as follows:

In general, we do not think that past homosexual acts or even current stable homosexual relationships should always be a bar to employment with the Public Service or even to low levels of clearance. We do feel however that, in the interests of the individuals themselves as well as in the interests of the state, homosexuals should not normally be granted clearance to higher levels, should not be recruited if there is a possibility that they may require such clearance in the course of their careers and should certainly not be posted to sensitive positions overseas.

Recommendations in the Royal Commission report relating to security are shown at Annex B. (to be supplied)

Conclusion

There is no doubt that departments, particularly those concerned with large amounts of highly classified information, are finding it increasingly difficult to administer the policy set out in CD 35 with respect to employment of homosexuals in sensitive positions, in the light of the strong and growing pressure from human rights groups in general, and the gay community in particular. The major problem is the nebulous nature of homosexuality. The extensive study carried out under the direction of the Privy Council Office in the early 60's concluded with the view that further research was needed. In the years since, no breakthrough seems to have been achieved concerning homosexuality as a medical, psychological, or employment phenomenon. It is therefore suggested that further study along the lines of the Privy Council Office study would not be productive in any time frame that would be helpful. It therefore seems advisable to try to provide departments, on the basis of existing knowledge and experience, with

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more specific guidance to assist them in showing reasonable justification, backed up by a clear policy, when refusal of access, or employment, is considered necessary. Attached for consideration is a draft memorandum to deputy ministers and heads of agencies which attempts to provide such guidance.

Thought might also be given to a public statement, to be made by a minister, or an authorized senior official, in some appropriate context, which would set out the Government's position in some detail.

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