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G530-14-813

SEXUAL ORIENTATION
(POSITIONAL PAPER)

At the request of the D.P.S.A., the Recruiting Section has been requested to formulate a positional paper on sexual orientation covering the following areas:

- (a) reasons why "homosexuals" and other sexual deviants are unsuitable for employment in the Force;
- (b) legal support for exclusion;
- (c) legal support for expulsion;
- (d) present approach;
- (e) weaknesses in present position or law re exclusion or expulsion; and
- (f) requirements for studies.

2. In covering the aforementioned topics, most available research material dealt with "homosexual" males and females. Subsequently, the main emphasis of this paper is "homosexuals". Yet, one can apply several of the arguments raised to other forms of sexual deviation and should be considered in that light.

3. The topic areas noted above will be discussed in sequence as follows:

(a) Suitability versus Unsuitability

i) Attitude

Although society's mores are in a constant change creating a more lenient attitude towards previously held social taboos,

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of which sexual orientation is a part of, all of Canadian society does not support the moral changes to equal degrees.

Members of the Force, as was evident in the reaction to a farcical article in "Weekend Magazine" about homosexual members, have not changed their attitude to a degree permissive of homosexuals or other sexual deviation. This resistance to attitudinal change creates several problems which are discussed throughout this paper.

Further, it is felt that the "silent majority" have not changed their attitudes. The most prevelant areas of change are noted in large cities where coincidently the largest homosexual populations are located. The support for laxer laws on homosexuality are receiving a strong minority vocal support but should not be interpreted as the attitude of Canadians at large. If the Force bowed to the minority and accepted homosexuals, we would experience a withdrawal of support by the public through loss of faith. Any open exhibition of homosexuality by members, which would have to be allowed, would be viewed as repugnant by the public and heterosexual members.

Although there are several biased statistics arguing against, most psychologists/sociologists agree that

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complete homosexual acceptance is not here yet. People's attitudes cannot be changed by legislation. This requires an effective education program which is in its fledgling stages with only minimal results achieved to date. Subsequently, the majority of members and the public would be very resistant to homosexuals or any other sexual deviants allowed employment in the Force.

ii) Recruit Training

The RCMP is a paramilitary establishment which is evident in recruit training where barrack life is a unique experience requiring confinement of social space. This creates an excellent medium for problems whereby heterosexual males and females are vulnerable to promiscuous homosexuals. This constant potential would result in heterosexual members losing trust in homosexual members resulting in a breakdown of cohesiveness, trust, discipline, and troop unity which are all an integral part of recruit training and future service.

The homosexual, being in the minority, would quickly be identified by troop members with a strong potential for psychological or physiological injury to same. This potential for physical harm is real and still

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prevalent in today's society (see Appendix A).

The homosexual in recruit training could result in a complete breakdown of the recruit training foundation through:

- (a) potential for promiscuous homosexuals;
- (b) hetero-versus homosexual distrust;
- (c) potential injury to homosexual;
- (d) loss of unit pride and personal pride;
- (e) loss of discipline; and
- (f) loss of cohesiveness.

iii) Isolated posts and Daily Duties

The atmosphere evident and necessary in recruit training is carried on to the field and especially in isolated posts. Isolated posts are unique also in that they demand close social and functional proximity with a high degree of independence. This forced close association and trust is also demanded at any work site. The previously mentioned distrust and anxiety that will no doubt result with a hetero/homosexual mix would undermine the required characteristics thereby creating unharmonious and dangerous working conditions. If you have a great dislike for the homosexual, would you trust him/her in circumstances requiring absolute confidence?

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Every-day investigations could also create problems and a blatant example would be a homosexual member investigating an offence committed by a homosexual. Objectivity and creditibility may be lost in these instances and place the homosexual member in an embarrassing situation if his/her sexual orientation becomes the knowledge of Defence Counsel.

iv) Guarding & Searching Prisoners

Our duties naturally involve a constant contact with the criminal element leading to the guarding and searching of said persons upon arrest. Once again, we have a high potential for exploitation by homosexual members.

To avoid exploitation or accusations by a female prisoner, our present policy dictates that male members will not guard or, in particular, search female prisoners. What policy would apply for homosexual members? Although he may have a sexual preference for males, his physical makeup still identifies him as a male. The male homosexual member would be unable to search either male or female prisoners to avoid repercussions, thereby having lost an important part of his powers as a peace officer.

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Further, it^{is} well known that the criminal element has a dislike for homosexuals, especially amongst males. This could result in over-violent reaction to any arrest effected. If homosexual members are unidentified, the criminal element would label all of us as homosexual and create constant verbal and physical confrontations placing all members under added stress.

v) Youth Programs

In order to be effective in several communities, members have realized the benefits of community and youth programs to gain the support of local youth and elders alike.

These programs will be seriously jeopardized in that parents would not trust their children to the homosexual member's leadership and guidance for fear of psychological or physiological harm. This distrust would rapidly spread to the youth themselves resulting in a lack of trust and respect for members or their efforts in bettering police/community relationships.

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vi) Discipline

Discipline, loyalty, morale, and performance is difficult to presently maintain with the flux of social change. If homosexuals were allowed in the Force, all these factors would deteriorate rapidly and possibly serve as the "last straw" for heterosexual members.

Further, would heterosexual members accept and comply to orders issued by a known homosexual unit commander?

vii) Survivor Benefits

Although it may appear minor on the surface, the effect on present policy would be great if homosexual members, either cohabited or married.

There is no present definition of "spouse" to include a homosexual bride and would require a massive rethinking in policy effecting benefits, pensions, etc. offered by the Force.

viii) Homosexual Profile

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The homosexual still/leading/generally unacceptable life style thereby tending to remain

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anonymous in order to lead a routine life free of harassment, etc. This anonymity would create false suspicions amongst heterosexual members and create a steady atmosphere of distrust with possible false accusations and psychological damage to heterosexual members.

Homosexuality is still illegal in some parts of the world. The potential for arrest and international embarrassment is there for any homosexual members who travel or work abroad.

The "Kinsey" report, although criticized, reports that homosexual males were often very promiscuous whereas women limited themselves to one or two partners. (more than half of 575 males interviewed had more than 500 different partners). This promiscuity plays an important part in several previously mentioned areas such as recruit training, youth programs, isolated posts, small communities, etc.

There are an estimated two to three million homosexuals in Canada who tend to live in large

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cities where homosexual contact is accepted and readily available. In smaller communities, of which we police many, they must go underground to reach contacts of often questionable character which opens the opportunity for exploitation of member and/or institution.

Homophobic attitudes are prevalent in police organizations and homosexuals are the second most disliked group of police clientele (A. Niederhoffer: Behind the Shield- The Police in Urban Society page 122). This dislike by police often leads to the homosexual being subjected to rough treatment and sometimes brutality. How then would heterosexual members react to homosexual members or vice versa if the heterosexual member was displaying dislike towards the homosexual?

Although increasing, there are few psychological or social assistance programs for homosexuals. In order to avoid identity and resultant harassment, the homosexual must always be on the alert. As a result, it has been found that homosexuals are under constant pressure/stress resulting in psychological problems and a three to four times the average rate of alcoholism. This coupled with

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the normal pressures of police duty could result
in effective policing at the public's expense.

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There is not enough known about homosexuals to
permit the classification or make generalizations.
We do know that it is not an inherent factor.
Rather, it is learned through time and not easily
cured if at all. From this we can see that if any
problems arose with the homosexual members in the
Force, the problem could not be easily or quickly
remedied, if at all. The only solution to the
problem is a change in present day attitude which
is long-term and may never be accepted by the
majority or by members of the Force.

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Available studies have shown that the homosexual is prone towards "proselytization". In other words, he/she will endeavour to make a convert of heterosexual persons to the homosexual orientation. Once converted, they will in turn attempt to proselytize others thereby being an augmentative process. This is an ongoing attempt by the homosexual to develop a base of homosexuals around him/her to allow for an easily accessible outlet for his/her sexual preference.

Some may argue that this is natural and should be allowed, however, this is only valid for adult members of society who make the decision knowing the full ramifications. When dealing with minors or teenagers, a valid argument against can be presented. As reports indicate, several males have homosexual encounters early in life through a sexual experimental process. The important point here is not the numbers, which is used as supportive data for homosexual supporters, but rather, that it is experimental. These encounters do not normally involve a homosexual proselytizing a heterosexual. They usually involve the experimentation of two heterosexuals who still return to the socially accepted heterosexual orientation.

Due to this experimentation process in the formative years, minors and teenagers are targets for homosexuals who will

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attempt to sway them from the norm to another sexual orientation which can lead to devastating psychological results if the person affected did intend on a heterosexual lifestyle. To accomplish this swaying of thinking, the homosexual must be forceful or prey on the youth who are in an emotional uprooting.

As a peace officer and a figurehead in the community, the homosexual can enjoy both worlds. His position in society can now be used effectively to bring others over to his/her sexual preference. Also, he will be constantly in contact with youth who are undergoing emotional instability and open to anyone who will act as a friend - no matter what their sexual preference be. The results can be irreparably damaging.

A case in point, is the Paul Head incident presently faced by the OPP. HEAD is a homosexual who was a member of the OPP that has been ordered reinstated after the Divisional Court ruled he was pressured to resign while under emotional upset. An appeal on this ruling has recently been allowed. Through all the legal hassle and cry for "gay rights", there is an often forgotten factor - a victim. HEAD introduced a 13 year old male youth to his first sexual experience, which was a homosexual one, in a toilet stall. The youth was confused and very lonely prior to this encounter being ideally suited for a friend to enter his life. Here enters HEAD who is described by the youth as "a big man . He was strong. He had a car. He told me he worked for the government. I wondered why

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a person like that wanted to be my friend." With reference to Appendix H and Appendix I, one can see the psychological stress this has placed on the youth. During an interview, the youth was reported to state, "I've made it with girls, but even then I wonder if I'll ever be able to get married, to have kids. I keep putting myself down. It seems so gross to me now. I always wonder why I did it." The reporter best summed this up as stating that the youth "fluctuates between blaming HEAD for taking advantage of a lonely boy, and blaming himself - thinking that what he did once at an early age will dictate the rest of his life."

Providing a homosexual with the powers of a peace officer and placing him in a figurehead position in society creates a very strong medium for abuse which can result in numerous incidents similar to the HEAD situation. All these factors can at best be summed up by the words of one young victim "don't let Paul Head become a policeman again."

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ix) Security

There are several areas of concern with regards to security when talking about the homosexual members. However, this area will not be commented on with comment left for our Security Branch.

(b) Exclusion - Legal Support

Based on the material available, exclusion policy for homosexual applies to:

1. British Armed Forces
2. Federal Bureau of Investigation
3. Central Intelligence Agency
4. Holland Military

Number 4 is of particular interest because sexual attitude in Holland is very relaxed yet homosexuality is not accepted in a military establishment.

The only legal support to exclude homosexuals from the Force would be if the applicant had committed offenses under Sections 155, 156, 157 or 193 of the Criminal Code of Canada. In fact, legal support is swaying towards homosexuals with Quebec presently including sexual orientation in their Human Rights Code. Saskatchewan, Alberta, and Ontario Human Rights Commissions are also asking for inclusion. It should be further noted that Toronto and Ottawa have included sexual orientation for municipal

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employees. In March of 1979 the Canadian Human Rights Commission issued a policy statement whereby they supported the principle that a person should not be discriminated against in employment or other matters by reason of their sexual orientation. At present, they are strongly pursuing the objective of making this policy statement part of the Canadian Human Rights Act. (see Appendix B). Of legal interest will be the definition of "sexual orientation" that will be adopted by the Canadian Human Rights Commission. Present definitions are very vague and open-ended. For example, in Part 10 of the proposed revision to the Ontario Human Rights Code, "sexual orientation" is defined as including heterosexuality and homosexuality. In Quebec, sexual orientation is not clearly defined and open to wide interpretation. The Minister of Justice has aided interpretation by defining it as "an individual's sexual tendency, preference, and behaviour, be he male or female". In Dade County, U.S.A., an ordinance was passed whereby sexual orientation was defined as "affectional or sexual preference by a person for another person regardless of the sex of the person involved". Toronto presently defines sexual orientation as including hetero, homo, and bi-sexuality.

Some support for refusing homosexuality can be found in a ruling by the Supreme Court of Canada in favour of the Vancouver Sun Newspaper whereby they were granted the right to refuse material contrary to their views, being refusing to publish a classified advertisement dealing with homosexuality.

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The judge's comments are of interest in that "if a bias is honestly entertained, then it is reasonable and acceptable".

Section 146, 151, and 152 of the Criminal Code of Canada identifies the age of consent for heterosexual acts between unmarried persons is 18 for males and 16 for females. However, Section 158 (1)(b) of the Criminal Code of Canada states that a homosexual act is allowed only if:

- (a) it is in private;
- (b) it is between consenting adults; and
- (c) both participants are 21 years of age.

Since many of our applicants are 19 and 20 years of age, they may be in contravention of the Criminal Code if they are a homosexual applicant.

(c) Legal Support - Expulsion

There is no mention of sexual orientation in the Staffing & Personnel Manual except for mental illness which doesn't cover homosexuality, etc. Chapter II.7 of the Staffing and Personnel Manual allows for psychiatric referral for anyone noted to have abnormal behaviour.

In the RCMP Act, major service offenses are noted under Section 25 (o) which states "conducts himself in a scandalous, infamous, disgraceful, profane, or immoral manner" and Section 25 (p) which states "attempts to commit, or aids, abets, counsels or procures any other person to commit any act specified in this Section". Section 38 of the RCMP Act allows

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for dismissal whereby "a convicting officer may, if he sees fit, recommend that the convicted member be dismissed from the Force".

Once again, Section 158 (1)(b) of the Criminal Code of Canada stipulates when homosexual acts will be allowed. The only other offenses related to homosexuality will be under Section 155 Buggery, Section 156 Indecent Assault on Male, Section 157 Gross Indecency and Section 193 Common Bawdyhouse.

In the Operational Manual, Appendix II-8-2, the field investigator is directed to seek out any character weakness leading to indiscretion, dishonesty or vulnerable to blackmail with homosexuality specified as an example. Field investigators also are directed to ascertain the applicant's indulgence in illicit sexual behaviour or sexual deviation. There presently are numerous arguments that homosexuality does not fall within these categories. Of interest is a ruling in Wisconsin by a U.S. District Judge that the discharge of an avowed lesbian who's sexual preference made no difference in her performance as a soldier, violated the First Amendment. The judge ordered the immediate reinstatement of this female member, (see Appendix D).

A ruling on the 27th of March 1980 by the Divisional Court of the Ontario Supreme Court ordered the reinstatement of a homosexual O.P.P. Constable. Follow-up material on this case is provided as Appendix E. On the 21st of May 1980, the

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O.P.P. won the right to appeal the court order reinstating this homosexual officer. This case is presently being followed with interest (Appendix F).

(d) Present Approach

There is a general consensus that homosexuals are not wanted in the Force. However, there is no specific policy or guideline to follow in meeting this consensus.

From a Recruiting standpoint, the NCO interviewer, upon being faced with a homosexual applicant, usually resorts to one of three methods of rejecting the applicant:

1. rejection on security grounds;
2. rejection on other areas of suitability; and
3. applicant withdraws voluntarily through discussion with the interviewer after an explanation is given to him concerning duties in the Force, the applicant's personal safety, etc.

(e) Weaknesses

The major weakness, as noted above, is that there is no policy or guidelines governing expulsion or exclusion of homosexual applicants or members. When dealing with homosexual applicants or homosexual members, personal interpretations come into light with different interpretations conceivably given for each case. It is evident that the Force must adopt a policy one

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way or the other prior to the Canadian Human Rights Commission forcing acceptance of homosexuals on to us before being prepared for same.

(f) Studies Recommended

Since the attitudes/opinions of serving members in the Force is of prime importance when discussing this issue, it is felt that a full membership study should be conducted in order to ascertain:

1. the present attitude towards homosexuals or any other sexual deviation;
2. how their working relationship would differ if homosexuals, etc. were allowed into the Force; and
3. any areas of concern by members with regards to this issue.

Further, as per Appendix G, a follow-up study should be made with police forces who presently allow homosexuals to apply and/or police forces who have successfully excluded homosexuals from their institution.

CLOSING COMMENTS

The area of sexual orientation in the work world is still relatively new as is evident by the lack of clear definitions, laws, policies, and guidelines. However, sexual orientation is rapidly becoming an issue under Human Rights and will, no doubt,

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be a prohibited ground of discrimination in the near future.

We feel that neither the membership nor the public at large are ready, at this time, to accept homosexuals in the Force. Although it may be considered discriminatory, it is an attitude that cannot be changed by legislation. Only a thorough education program resulting in eventual acceptance, if any, by members and the public will create a different medium to handle this issue.

Due to unacceptance by the membership, and all the ramifications thereof, it is felt that the Force can effectively argue that homosexuals should not be allowed in the RCMP nor any other military establishment. A Policy Planning Report prepared for the Canadian Human Rights Commission in August of 1979 on sexual orientation emphasizes that the attitude of the individual and the institution towards homosexuals is at least partially responsible for discrimination continuing. Only the change of attitude through education can change this. However, the author pushes for legislation instead of going for attitudinal change which is not upon us at this time and crucial to the entire matter.

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FOOTNOTE:

We are aware that several thoughts, etc. expressed in this positional paper have not been adequately documented or supported by reference to studies, etc. However, supportive documentation is available and would strongly suggest that research be conducted to obtain this documentation prior to the final Force positional paper being presented.

ATTACHMENTS: Appendices A - I

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