



Government of Canada  
Gouvernement du Canada

MEMORANDUM NOTE DE SERVICE

TO : OIC POLICY, PLANNING AND EVALUATION SECTION

FROM : OIC CANADIAN HUMAN RIGHTS UNIT

SUBJECT: RCMP POLICY - SEXUAL ORIENTATION

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE - N / RÉFÉRENCE G117-7-5
YOUR FILE - V / RÉFÉRENCE
DATE 87-06-15

On 87-04-06, Mr. Arnold FRADKIN, Justice Counsel, suggested that the Force "conduct an enquiry to determine whether evidence can be obtained to substantiate the arguments set out in the Aide-Memoire" (copy attached). That paper was prepared some time ago by Internal Affairs Branch and is, in effect, a position paper for justifying the non-recruitment or retention of homosexuals into/within the RCMP.

2. Mr. FRADKIN was writing in respect of an associated case now before the courts, and his memorandum conveys the message that the Force might wish to develop a position, formally, on the matter one way or the other so as to avoid future litigation in similar cases.

3. By way of background, it can be stated that, unlike the Canadian Forces, the Force has no law or related prohibition respecting the recruitment or retention of homosexuals. In Quebec, sexual orientation is protected in their Charter of Human Rights and Freedoms, and has been so since 1977. In Ontario, a Bill to amend the Human Rights Code to afford similar protection has now received third and final reading; Royal Assent is anticipated within weeks. For the past few weeks, the Ontario Human Rights Commission has been processing sexual orientation complaints as if Royal Assent had, in fact, been given. It is their position that the law is operative.

4. No other provincial jurisdiction has as yet offered similar protection in this area, although it is interesting to note that during debate of the issue in Ontario, the position of the government was that it had to do so in order to bring the Ontario Code into line with the Canadian Charter of Rights and Freedoms (Section 15).

5. On 87-05-28 a meeting was held; in attendance were the OIC PP&E, NCO i/c CHRU, and Mr. Ken MacDONALD, Counsel, RCMP Legal Services. Mr. MacDONALD had given considerable thought to the aide memoire and to the elements requiring an in-depth examination, if we are to attempt to make the distinction that a person whose sexual orientation is homosexual cannot be successfully employed in the police role.

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6. The whole crux of the argument against the aide-memoire, (or perhaps, better put, position paper) is that it has no basis in fact, ie: it is, at best, speculative. Counsel agrees with this observation. It is fine to postulate that a homosexual cannot do this or that; it is quite another thing to prove that that is so. In that vein, then, the Force's position would have to be developed upon the following foundation, according to Counsel:

1. MILITARY POLICY - Can we develop anything useful from the very extensive study done by the Military? (The D/C(A) has their study.)
2. THE EFFECT INTERNALLY - This would necessitate a professional, scientifically defensible internal survey of members' perceptions and attitudes. Presumably, if the majority of members responded that as a matter of conscience they could not, or would not, work with a homosexual then that fact could form part of our "exclusion" defence.
3. THE EFFECT EXTERNALLY - Here again, a scientifically defensible external survey would have to be carried out to identify the perceptions and attitudes of our client agencies, and to the extent possible, the public.
4. THE POLICE COMMUNITY - What is the policy of the major police departments in Canada and the U.S.? Are there specific exclusions? If none exist in policy, then how are cases of homosexual conduct managed? To what extent, if any, will the condoned hiring/retention by one or more major U.S. departments prejudice our efforts?

Obviously, such an endeavour can only be sanctioned at the senior management level, and no further action will be taken here until their wishes are known.

7. I do, however, feel compelled to call attention to certain risks inherent in the above plan, if it were initiated. Items 2 and 3 pose a grave danger of putting the managers of the RCMP in a position of doing something, or trying to prove something, the end result of which is contrary to government policy. Our efforts could not be kept from the public eye, or especially from the scrutiny of certain interest groups. The question of why public money is being spent to make a case against the government's stated position will demand an answer.

8. The government's position was given in a press release by the Minister of Justice, John CROSBIE, P.C., Q.C., M.P., when the government responded to the Sub-Committee on Equality Rights report. His official response to Recommendations 10 and 11 of that report (Sexual Orientation) is as follows:

**RESPONSE**

The Government recognizes that the issue of sexual orientation addresses some of the most difficult moral and religious concerns of Canadians. There is no simple manner of reconciling deeply felt views.

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Though fully cognizant of the social dilemma that the issue raises, the Government is committed to the principle that all Canadians have an equal opportunity to participate as fully as they can in our society; no one should be denied opportunities for reasons that are arbitrary or irrelevant. In particular, persons should not be excluded from employment opportunities for reasons that are irrelevant to their capacity and ability to do the job.

The Government believes that one's sexual orientation is irrelevant to whether one can perform a job or use a service or facility. The Department of Justice is of the view that the courts will find that sexual orientation is encompassed by the guarantees in section 15 of the Charter. The Government will take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction.

The opinion of the Canadian Bar Association given in their submission to the equality rights hearing was that implicit in the wording of Section 15 of the Charter, protection for sexual orientation was already afforded. Of course, this will not be established conclusively until a case of this nature reaches the Supreme Court.

9. Initiatives were undertaken last year to give force and effect to the government's position on sexual orientation when several amendments were created to the Canadian Human Rights Act; sexual orientation was to be added as the eleventh ground of discrimination. The matter has yet to reach the Bill stage. Apparently other legislative priorities have overtaken it.

10. According to sources in Justice Department and elsewhere, any attempt to exclude homosexuals under the BFOR provisions of the Act will not meet with success. It would not be possible to prove that a homosexual could not perform the essential duties of a position. Indeed, DND itself appears to have disregarded a BFOR defense, relying instead on the defense that employment would have "serious adverse consequences on operational effectiveness", thus their Regulation in question is "defendable under the Charter" as a "reasonable limitation". It is difficult to identify another topic that has been the subject of so much discussion and debate, some of which tends to be based more on emotion than reason. It seems we have but two choices. The first is to conduct a full-blown defense of the "aide-memoire" position paper as earlier described. If we think we have done so successfully, then we would still have to enact a C.S.O., Regulations, or whatever, prescribing total exclusion on the basis of sexual orientation. Politically, one wonders if that would be attainable at all.

11 The second choice, which I think is the most logical, is to basically forget the word "homosexual" and manage any particular act emanating from "unnatural" sexual preference as an issue of conduct, or performance. We would not be discharging anyone on the basis of sexual orientation, but upon conduct, provided that the particular conduct was such as to bring the administration of Justice, or the standard of conduct for members, into disrepute.

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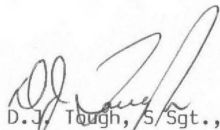
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12. The organization, quite properly, still has great discretion on the hiring end. Would we engage someone who told us that his/her religious beliefs precluded them doing shift work? Or working on Saturdays? Or who did not want to leave home? It seems to me that if an applicant is suspected to be homosexual, and this is confirmed, and that if every possible aspect of unsuitability is explored and ruled out, then that person should be hired.

13. I expect that the Commissioner would have to decide if the position described in the two preceding paragraphs is acceptable, and if so, whether it warrants a C.S.O.



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NCO i/c


Canadian Human Rights Unit.

A/O. I/C S.&P. BRANCH

FORWARDED, 87-06-16, for your perusal and furtherance to D.O.P. please. The N.C.O. i/c C.H.R. Unit has spelled out two alternative courses of action:

- (1) at paragraph 6, to develop a defense of the "aide-memoire" position paper - any or all studies mentioned would have to be sanctioned by senior management; or
- (2) at paragraph 11, manage as an issue of conduct or performance.

Whichever route, the question of whether or not there should be a governing C.S.O. comes into play. As the N.C.O. i/c C.H.R. Unit states in paragraphs 11 and 12, the most viable route may be to manage as an issue of conduct and performance. We will await direction relative to (1) and (2) above.



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