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BY HAND

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The Honourable Jake Epp, P.C., M.P.  
Minister of National Health and Welfare and  
Chairman, Cabinet Committee on Social Development  
Room 256, Confederation Building  
House of Commons  
Ottawa, Ontario  
K1A 0A6

Dear Colleague:

I would first like to apologize for not being  
able to attend the January 15, 1986 Cabinet discussions on  
Section 15 of the Charter and the Government response to  
the Boyer Committee report.

As you are probably aware, I have expressed my  
concerns with Recommendations 10 and 11 of the Boyer  
Committee Report to the Minister of Justice and have asked  
that these recommendations be carefully considered by  
Cabinet before any decision is made.

Recommendation 10 of the Boyer Committee proposed  
that sexual orientation be added to the list of prohibited  
grounds of discrimination in the Canadian Human Rights Act.  
The Boyer Committee specifically addressed the application  
of such an amendment on DND and the RCMP in Recommendation  
11 which states that their policies and practices should be  
brought into line with such an amendment to the Canadian  
Human Rights Act.

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It is my understanding that the preferred position of the Department of National Defence would be to not implement Recommendation 10 of the Boyer Committee report thereby shifting the focus of a possible political controversy or legal challenges to the Government as a whole. The RCMP believes that the implementation of Recommendation 11 would have serious operational consequences. The proposed Government response currently supports the implementation of Recommendation 10, with an exemption for the RCMP and DND.

I do not believe that the proposed response provides any new or compelling arguments to justify this option nor does it adequately address the conclusions drawn by the Boyer Committee in the body of their report.

Any position taken on this issue will be open to criticism but I believe our decision must be based on the consideration of the various options available to us.

If the Government chooses to add sexual orientation as a prohibited ground of discrimination (adopt Recommendation 10), it could either: amend the policies and practices of DND and the RCMP to conform with an amended Act (adopt Recommendation 11); exempt the RCMP and DND from the application of an amended Act; or, state that the RCMP and DND have bona fide occupational requirements for their existing policies and practices.

Each of these possibilities has a number of pros and cons but I would like to point out that the exemption of the RCMP and DND would be seen as an admission that the current policies and practices are not based on bona fide occupational requirements. On the other hand, if we decide to affirm that the RCMP and DND have bona fide occupational requirements for their existing policies and practices, the Forces and the Police would have to defend their position before a Human Rights Tribunal. If the polices and practices are found not to be justifiable, the RCMP and DND would then have to modify policies and practices which they feel are necessary to the security, efficiency, discipline and morale of the Canadian Forces and the Police.

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With respect to the RCMP, I believe that an obligation to change their current practice with respect to the recruiting and retention of homosexuals would not necessarily jeopardize their operational efficiency, although I have no doubt that there is strong opposition to the admission of homosexuals from members of the Force itself. I believe that legitimate operational needs could be framed in an administrative context under a code of conduct. Sexual orientation could then become grounds for discharge only to the extent that it impinged directly upon a member's professional or public conduct.

There is also another option which could be considered by Cabinet: the Government could opt not to add sexual orientation as a prohibited ground of discrimination. Though this option would satisfy a significant constituency it could also become the focus of criticism for a vocal and articulate minority. It would also be difficult to defend on the basis of the Boyer Committee Report.

Once again I am sorry that I will be unable to attend the discussion on this issue as I am most concerned to see it resolved in the most appropriate way.

Yours sincerely,

Original Signed by  
Original signé par

Perrin Beatty

cc The Honourable John C. Crosbie, P.C., Q.C., M.P.  
Minister of Justice and Attorney General of  
Canada

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