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MEMORANDUM

NOTE DE SERVICE

TO
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AWJ 87-02-13
DIRECTOR
RCMP POLICY & PROGRAMS

SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N / RÉFÉRENCE

YOUR FILE - V / RÉFÉRENCE

DATE

FEB 13 1987

FROM
DE

POLICY ANALYST
RCMP POLICY AND PROGRAMS

SUBJECT
OBJET

APPEARANCE OF THE MINISTER OF NATIONAL DEFENCE BEFORE THE
HOUSE OF COMMONS COMMITTEE ON HUMAN RIGHTS
WEDNESDAY, FEBRUARY 11, 1987

Mr. Beatty appeared before the House of Commons Committee on Human Rights on February 11, 1987 to report on the progress of his Department in promoting equality for women in the Armed Forces and to set out and defend that Department's response to the sexual orientation equality issue. Tab A attaches the four pages of his speech dealing with this latter issue. I summarize:

- Members of the Armed Forces must live and work together in close confinement, with no privacy and no choice with whom they associate.
- These circumstances extend for 24 hours a day for weeks or months on end. Their profession is fundamentally different in this respect from other activities in society.
- Because of the exceptional impact on personal privacy, the presence of homosexuals would be highly disruptive in the Armed Forces.
- With the added tensions of work, this disruption would seriously detract from the operational effectiveness of military forces.
- It is the strong conviction of the military leadership that the current policy must be maintained.
- Legal counsel believes that this policy is sustainable as a reasonable limitation as provided for in section 1 of the Charter.

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- . The courts will be the ultimate arbitrator on this issue and their searching and impartial review is entirely appropriate.
- . DND policy will, however, be amended so that the obligation to report suspected homosexuality will be removed and the continuing exclusion of homosexuals will be based on conduct or behaviour rather than on orientation alone.

Svend Robinson raised the question on the future status of currently serving homosexual members of the Armed Forces of which he thought there were some 4,000. He stated that some members of the Armed Forces had informed their superior officers of their homosexuality. The Chief of Defence Staff, General Manson, replied that it would depend on the interpretation that would be given to "unacceptable behaviour".

Mr. Robinson pointed out that if homosexual behaviour rather than homosexuality per se were grounds for dismissal, then the Department was applying the current Papal edict on homosexuality. It was accepting homosexuality but denying a member the right to practice it. He pointed out that in his discussions with the Embassy staff of those countries, neither Norway nor the Netherlands are experiencing any problems as a consequence of their policies of non-discrimination.

The Minister replied that the Task Force reviewed the matter closely and had determined that the presence of homosexuals would have a deleterious effect on the the operational effectiveness of the Armed Forces. He believed that differentiation on the basis of sexual orientation was a reasonable limitation as provided in section 1 of the Charter and looked forward to the courts making the final determination on this issue.

Mr. Robinson pointed out that with respect to recruitment, a homosexual seeking to become a member of the Armed Forces would have to undertake a vow of chastity. General Manson replied that the Armed Forces does not raise the question of homosexuality when interviewing prospective recruits.

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The Minister repeated that homosexual activity would be the criterion rather than the general preferences of the individual and that the regulations would no longer require members to inform on suspected homosexuals.

TASK FORCE REPORT

Attached also is a copy of the Task Force findings with respect to sexual orientation (Tab B). The Report acknowledges that the limitation on employment of homosexuals in the Armed Forces is not based on the ability of the individual to perform the essential duties of the occupation (i.e., BFOR), rather it is based on the reaction of other members to the "active distinguishing characteristic" of homosexuals, and it is therefore discriminatory (paragraph 64). The Report argues that the reaction of other members to the presence of homosexuals would have such severe adverse operational impact that it is a reasonable limitation to deny them equal employment opportunities in the Armed Forces.

Case law (R. v. Oakes) with respect to 'reasonable and demonstrably justified limitations (section 1, Charter) prescribes a proportionality test which includes three important elements:

- . the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective;
- . the means should impair "as little as possible" the right or freedom in question; and
- . there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of "sufficient importance".

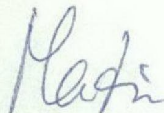
The Report concludes that in the pursuit of the two important objectives of enhancement of individual rights on the one hand and operational effectiveness on the other, the

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(not in
DND
Report,
but
important
consideration)

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diminished capability to provide for national security outweighs the loss of employment option to some members of society as a consequence of a policy of non-retention of homosexuals. The soundness of this position will ultimately be determined by the courts.



Martin Suo

Att.

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