

Watered down
Version - ie
compromise.

29 July 87

SUGGESTED REPLY

I refer to your letter of 29 June 1987 wherein, with respect to the proposed new Canadian Forces Administrative Order on inappropriate sexual conduct, you state "I cannot give my approval to the proposed C.F.A.O. in its present form."

Further to discussions between legal officers of the Canadian Forces and lawyers of your department, held with the goal of ascertaining in more detail the basis for your "view that there is a serious risk that it (the CFAO) would be in conflict with the Canadian Charter of Rights and Freedoms", I am informed that it is your view that the identification of homosexuals as a group in paragraph 4.B. of the proposed order may engender problems under section 15 of the Charter in that the Canadian Forces would not be affording these persons equality before the law.

I am also informed that it was understood as a result of the aforementioned discussions that your lawyers believe it may be possible to cure to some extent the offending provision in a manner which could address both of our concerns. That is to say, by substituting for the overt reference to homosexuals in paragraph 4.B., terminology which would encompass any sexual activity by any person or person, thus heterosexual or homosexual, which would be of such a nature as to jeopardize military discipline, morale, cohesion or the maintenance of the effective operational capability of the Canadian Forces, the risk of conflict with the Charter would be substantially lessened.

While this solution represents a compromise, and the desired position of the Canadian Forces remains firm that homosexuality cannot

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be tolerated under any circumstances, the inpassé that we have reached is presently imposing an even more intolerable burden on the day to day operations of the Canadian Forces and must be resolved expeditiously. In anticipation of our being able to resolve this matter in the very near future, a new draft of proposed CFAO 19-36 has been prepared and a copy thereof is enclosed. I seek your comments with respect thereto.

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