

CONFIDENTIAL

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Minister of National Defence



Ministre de la Défense nationale

The Honourable Jake Epp, P.C., M.P.
Minister of Health and Welfare Canada
House of Commons
Room 256-CONF
Ottawa, Canada
K1A 0A6

Dated 14 Aug.

Dear *J. Epp* Colleague:

Further to our discussion, I am writing to you concerning the Canadian Forces policy whereby persons who engage in acts of a homosexual nature are ineligible for enrolment or, if already serving, further service. You will recall that on February 11, 1987 I made a statement before the Standing Committee on Human Rights on the matter of sexual orientation as it affects the Canadian Forces. Having recognized the various factors which were taken into consideration in arriving at the present policy, including the opinion of my senior military staff that operational effectiveness will be seriously affected if the policy is not maintained, I concluded my statement as follows:

"Nevertheless, it is my intention to ensure that this reaffirmed policy is no more restrictive than it must be. The obligation for members to report suspected homosexuality will be removed. Most importantly, the continuing exclusion of homosexuals will be based on conduct or behaviour rather than on orientation alone."

To give effect to my statement, my officials prepared a Canadian Forces Administrative Order entitled "Policy and Procedure - Inappropriate Sexual Conduct and Behaviour." By definition, sexual acts with persons of the same gender are subject to the provisions of the Order which include, as a final step, honourable release from the Canadian Forces as being not advantageously employable. It is intended that the Order will be issued by the Chief of the Defence Staff as required by Section 18(2) of the

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National Defence Act. However, because of the nature of the subject matter, he has quite properly sought my concurrence before taking this action.

I am now in receipt of a letter dated June 29, 1987 from our colleague, the Honourable Minister of Justice, wherein he indicates that he has considered the proposed draft Order, and believes that there is a serious risk that it would be in conflict with the Canadian Charter of Rights and Freedoms. However, following a meeting between legal officers of my Department and the Department of Justice, the Judge Advocate General of the Canadian Forces has expressed the view that the policy of refusing to enrol or releasing individuals for homosexual conduct as reflected in the Order would stand a good chance of being justified under Section 1 of the Charter, even if it is determined to violate Subsection 15(1). I am very much inclined to follow this opinion since, apart from considerations of military cohesion and operational effectiveness, I have consistently taken the view, as indicated in my February 11, 1987 statement, that the Courts will ultimately have to decide this question.

It is imperative that the question of the issue of the proposed Canadian Forces Administrative Order be resolved as soon as practicable, since at last count there are 24 cases of alleged or acknowledged homosexual conduct awaiting disposition. Serious problems of morale and efficiency are being caused as the result of the inability of Service authorities to resolve these cases in the absence of approved relevant policy. In at least one case, the individual concerned has complained by way of a formal application for redress of grievance, to which the Chief of the Defence Staff is obligated to reply, both legally and morally, at the earliest possible date.

In light of the foregoing, it is my present intention to direct the Chief of the Defence Staff to proceed with promulgation of the applicable Order, and to apply its provisions both to the list of cases awaiting disposition and to other cases of homosexual activity as they arise in future. Before doing so, I would value

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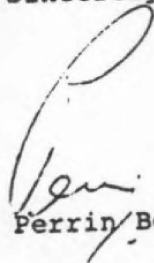
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any comments you may have, and specifically, whether, from your point of view, you see any difficulties in my proceeding as described above.

Your kind cooperation, and anticipated early reply, are both very much appreciated.

Sincerely,


Ferrin Beatty

John - Could I please have your comments as soon as possible. Further delay would be unfair to the individuals whose careers are at stake.



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