



Deputy Minister of Justice / Sous-ministre de la Justice
Deputy Attorney General of Canada / sous-procureur général du Canada

Ottawa, Canada
K1A 0H8

1745-42

Sir
cc to you.

gll
CAPT(N)

29 May

March 15, 1990

NDHQ - CDS / VCDS / SEC
QGDN - CED / VCED / SEC
General Office
Bureau d'administration

referred passé à	DATE	by par
EA/CDS	29/3/90	gll

Mr. Robert Fowler
Deputy Minister of National Defence
National Defence Headquarters
North Tower, Executive Floor
101 Colonel By Drive
Ottawa, Ontario
K1A 1G5

①

Dear Mr. Fowler:

I write further to our meeting Thursday March 1, 1990 to discuss the impact on the Canadian Forces of our proposal to amend the Canadian Human Rights Act (CHRA) to add sexual orientation as a prohibited ground of discrimination.

⑤
Actual Reply
forwarded to
CPCSA
18 Apr 90 PA
18 Apr 90

As I advised you at our meeting I have some serious reservations about a recommendation that the Canadian Forces be granted an unqualified exemption from the prohibition. I believe that in the final analysis, the Supreme Court of Canada would find that Section 15 of the Charter encompasses sexual orientation, and that homosexuals and lesbians constitute a discrete and insular minority that is deserving of protection against discrimination. A full and unqualified exemption for the Canadian Forces from protection against discrimination on the grounds in the CHRA would raise the issue of equal protection of the law under section 15 of the Charter and as presently advised I do not believe, as indicated, that we could mount a satisfactory defence. We are continuing our review of the new evidence you have put forward in the context of the existing Charter cases that attack the Canadian Forces policies on sexual orientation and we will assess whether that evidence could serve to justify such an exemption.

④
DB CREW (Hm)
CPCSA
Appropriate response to CBS signature
P/S. Trial period - not in option -
Can you give me a "Sitrep" on what is happening?
Should I know?
legit J... 18 Apr 90

There are of course other options for dealing with your concerns in this area. One, which I outlined at our meeting would be to give the Canadian Forces a five year transitional period to seek to make adjustments to the environment in the Canadian Forces that militates against enrolling or retaining homosexuals. In my opinion if the courts could be assured that the Canadian Forces was moving to integrate homosexuals they might be receptive to

CABINET DU
RECEIVED
REQU
ENVOYER

③ ADM (Per)

20234
ADM (PER) OFFICE
Canada
3 1990

we should discuss
as soon as possible.

ASAD
31M
001419

- 2 -

arguments that they need a transitional period in which to make the changes to avoid a negative impact on the overall effectiveness of the Canadian Forces. I understand from our discussions that you and the Canadian Forces see difficulties in this approach, but I hope you will give it full consideration. My officials would of course be willing to discuss this further with your officials and with members of the Canadian Forces.

papers:

Another option is to amend the CHRA to add sexual orientation and not provide for a transitional period. The Canadian Forces would then proceed to pass a CFAO on inappropriate sexual conduct and we would defend the CFAO when it was challenged either under the Charter or the CHRA. Assuming that we can adopt changes to ensure that the same defences are available to the Government under both the Charter and the Act, I believe the outcome of either avenue would govern both. We would continue to work with you to develop the best defence possible and I can assure you that we would advance the most strenuous defence that is legally available. In this way the Government could argue that it was putting a controversial policy forward for determination by the courts.

As you know the issue of sexual orientation and the Canadian Forces is one of the most controversial questions we face in our consideration of amendments to the Canadian Human Rights Act. I look forward to hearing from you soon on the two options outlined above. If you have questions or need more information please do not hesitate to have your officials contact Martin Low of the Human Rights Law Section.

Yours truly,

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR

John C. Tait
Deputy Minister of Justice

cc: Gen. A.J.G.D. de Chastelain
Chief of Defence Staff
National Defence Headquarters

001420

AGC-1972_0002