

Court File No: T-160-90

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N :

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

AND B E T W E E N:

DERRICK COLIN DWYER

Plaintiff

- and -

**HER MAJESTY THE QUEEN
and THE MINISTER OF DEFENCE**

Defendants

**ANSWERS TO UNDERTAKINGS ON THE EXAMINATION
FOR DISCOVERY OF BRIG. GEN. MUNRO (COMMON)
HELD OCTOBER 25 AND 26, 1990**

Page 24, Question 89

- Q. To use best efforts to obtain copies of the three policies which applied to the Army, Navy and Air Force prior to unification in 1967.
- A. The policy at Tab 1 dated July 10, 1961 applied to members of the Canadian Army. The policy at Tab 2 dated April 10, 1962 applied to members of the Royal Canadian Navy, and the policy at Tab 3 dated January 31, 1964 applied to members of the Royal Canadian Air Force.

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Page 27, Question 104

- Q. To produce a copy of the first version of CFAO 19-20.
- A. The document at Tab 4 is CFAO 19-20 issued May 12, 1967 and superseding the policies at Tabs 1 to 3 inclusive.

Page 28, Question 107

- Q. To advise if it turns out that the 1967 policy was not developed subsequent to the removal of homosexuality as a crime under the Criminal Code.
- A. The Criminal Law Amendment Act, 1968-69 had the effect of decriminalizing certain types of homosexual behaviour. CFAO 19-20 issued May 12, 1967 (Tab 4) was developed prior to that amendment to the Criminal Code of Canada.

Page 28, Question 110

- Q. To produce a copy of the first amendment to CFAO 19-20 which was made in 1972.
- A. CFAO 19-20 issued on March 10, 1972 (Tab 5) superseded the document at Tab 4.

Page 29, Question 113

- Q. To produce a copy of the second amendment to CFAO 19-20, which was made in 1973.
- A. CFAO 19-20 issued on October 26, 1973 (Tab 6) superseded the document at Tab 5. Note that this version of the policy was, in turn, superseded by CFAO 19-20 issued on July 9, 1976 and produced at discoveries in Ex. 1, Tab 46 and Ex.2, Tab 1.

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Pages 34-39, Questions 136-154

- Q. General Munro stated that "homosexual acts are inappropriate behaviour", and was then asked to define "homosexual acts".
- A. Upon reviewing the transcript, General Munro wishes to clarify his testimony at pages 34 through 39 regarding the military's policy. All homosexual acts are considered to be inappropriate behaviour. A person engages in a homosexual act when he or she engages in an act of a sexual nature with another person of the same sex. An act of a sexual nature would include, for example, kissing and hand holding, if done for a sexual purpose, whether in private or in public. The critical feature is the sexual nature of the act, and it is not intended to include non-sexual expressions of affection between members of the same sex. This policy would not apply to a person who was the subject of an unsolicited and unwelcome homosexual act.

Page 67, Question 266

- Q. Advise whether or not the Canadian Forces made representations to the Parliamentary Committee on Equality Rights chaired by Mr. Boyer
- A. The Minister of National Defence accompanied by the Chief of the Defence Staff and other officials appeared before the Parliamentary Sub-Committee on Equality Rights on June 19, 1985. A copy of the Minutes of Proceedings and evidence from that appearance has been produced and marked as Exhibit 6 (See p. 174, Q.665).

Page 68, Question 272

- Q. To advise whether the Committee on Equality Rights had available to it the document that was produced at Ex. 1, Tab 48 (and Ex.2, Tab 3).
- A. There is no record that the Parliamentary Sub-Committee on Equality Rights was provided with this document.

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Page 122, Question 483

- Q. To produce written directive referred to by General Therriault.
- A. Question 470 at p.118 of the transcript concerns the existence of written documentation incorporating the policy that was contained in Mr. Andre's statements to the Standing Committee on National Defence on April 15, 1986. In response to question 470, it is clear that at the time General Thériault appeared before the Standing Committee on Human Rights on June 17, 1986, a written directive containing the policy enunciated by Mr. Andre had not been published. Subsequent questions in the transcript lead to General Thériault's response to a question by Mr. Robinson ("Mr. Chairman, has a written directive to this effect been prepared?"). In response to questions 481 and 483, it appears that Mr. Robinson's question on page 514 of the committee proceedings (Exhibit 1, Tab 57; Exhibit 2, Tab 12) relates to General Thériault's preceding statement that "--- cases of this nature would not be disposed of, short of the assistant deputy minister of personnel (sic) or myself having reviewed the specific circumstances involved." Thus, when General Thériault said "I have seen the direction in writing", he presumably was referring to the direction contained in paragraph 3 of the memorandum signed by the assistant Deputy Minister (Personnel) on 17 March 1986 (Exhibit 1, Tab 55; Exhibit 2, Tab 8).

Page 123, Question 490

- Q. Were any members of the Canadian Forces released on grounds of homosexuality between March and September, 1986?
- A. Between March 1, 1986 and September 30, 1986, eleven non-commissioned members of the Canadian Forces were released on the grounds of homosexuality. The number of officers released, if any, is not known as no record has been maintained.

Page 130, Question 518

- Q. To produce Reference A and B to document produced at Ex.1, Tab 58 and Ex.2, Tab 14.

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- A. A copy of the document identified as reference A is attached as Tab 7. The document or notation identified as reference B has not been located. The difficulty in locating these documents appears to be the result of an invalid file number being used. There is no departmental file with the number 1605-12-20. Consequently, it is assumed that the file copy was misfiled.

Page 134, Questions 530-531

- Q. To advise whether any releases were effected pursuant to the interim application of the policy on homosexuality between November 7, 1986 and the date of the decision about the Charter Task Force Report recommendations.
- A. The decision about the Charter Task Force recommendations, at least insofar as they related to sexual orientation, was made personally by the Minister of National Defence and was announced on February 11, 1987. Between November 7, 1986 and February 11, 1987 no non-commissioned members were released on the grounds of homosexuality. The number of officers released, if any, is not known as no record has been maintained.

Page 134-135, Questions 532-535

- Q. To advise when the recommendations of the Charter Task Force regarding homosexuality were accepted.
- A. The decision about the Charter Task Force recommendation concerning homosexuality was made by the Minister and announced on February 11, 1987 (Ex. 1, Tab 59; Ex. 2, Tab 15). Thus, there is no document signed by the Chief of the Defence Staff that would "---pinpoint the time at which we were no longer dealing with the policy under review, but rather with the policy that had been accepted." However, the letters at Tabs 8 and 9 dated November 13, 1986 and January 26, 1987 respectively from the Chief of the Defence Staff to the Minister of National Defence address the Charter Task Force recommendations.

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Page 142, Questions 556-557

- Q. To provide available statistics which would indicate how many cases there have been since March, 1986 where investigations into homosexuality were conducted, and people were not released because the conclusion was that of propensity rather than actual act.
- A. Since March 1986, there is no record of any non-commissioned members who were not released from the Canadian Forces because it was concluded they had a homosexual propensity but had not engaged in homosexual activity. However, two officers are being retained to whom these circumstances apply. Both were male officers who expressed concern to medical personnel that they thought they might be homosexual, although they denied having engaged in homosexual acts. In both cases it was confirmed that no homosexual acts had occurred. The officers were counselled regarding CFAO 19-20 and were retained having been advised that the matter would be reopened if they were to engage in homosexual activity.

Page 149, Question 573

- Q. To produce any direction that policies with respect to sexual orientation in the Canadian Forces must go before the Governor-in-Council.
- A. The proposed revisions to CFAO 19-20 have been referred to the Cabinet. We are not aware of any written direction.

Pages 165-166, Questions 636-640

- Q. Does an investigation under CFAO 19-20 necessarily mean a review of an individual's security clearance?
- A. CFAO 19-20, as it was applied prior to August 29, 1990, required two levels of investigation. Paragraph 3 of the CFAO required the commanding officer to conduct a preliminary investigation. If that investigation did not tend to substantiate the information leading to the investigation, the matter would have been closed and there would not normally have been a review of the individual's security clearance.

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When, as a result of a preliminary investigation, the commanding officer requested the local Special Investigation Unit (SIU) to conduct an investigation in accordance with paragraph 4 of CFAO 19-20, this would normally have led to a review of the individual's security clearance.

Effective August 29, 1990 (see the response to questions 652 to 658), the investigation of acts of homosexuality per se was removed from the mandate of the SIU. Since August 29, 1990, only if an investigation pursuant to CFAO 19-20 were to identify a security concern, would a separate review of the individual's security clearance be undertaken..

Page 167, Question 642

- Q. To provide figures broken down by year, sex and between officers and non-commissioned members for the number of people that have been released pursuant to CFAO 19-20, since 1976.

- A. Records have not been identified that provide the number of Canadian Forces (CF) members who were released pursuant to CFAO 19-20 between 1976 and 1980 inclusive.

Correspondence on old subject files indicate that the following number of CF members were released pursuant to CFAO 19-20 in each of the years 1981 to 1984 inclusive (a breakdown of males and females, officers and non-commissioned members, is not available).

<u>Year</u>	<u>Total</u>
1981	37
1982	45
1983	44
1984	38

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The following number of non-commissioned members were released in each of the years 1985 to 1990 inclusive:

<u>Year</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
1985	13	5	18
1986	11	2	13
1987	4	2	6
1988	6	1	7
1989	5	5	10
1990	1	3	4

Although a comparable record for officers has not been maintained, it is known that at least one female officer (Ms. Douglas) was released in 1989 and one male officer in 1990.

Pages 167-168, Questions 643-644

- Q. To provide the numbers of people, broken down by year, sex and between officers and non-commissioned members who have remained in the Canadian Forces subject to career restrictions imposed by the interim policy issued on January 20, 1988.
- A. Since January 20, 1988, a number of non-commissioned members have been retained subject to the career restrictions imposed by the interim policy. Not all are still serving. The following figures show the number originally retained and, in brackets, the number still serving:

<u>Year</u>	<u>Male</u>	<u>Female</u>	<u>Total</u>
1988	4 (1)	5 (1)	9 (2)
1989	1 (1)	5 (3)	6 (4)
1990	6 (5)	1 (1)	7 (6)

Although a comparable record for officers has not been maintained, there are no known cases of officers who have been retained subject to the career restrictions imposed by the interim policy.

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Page 169, Question 649

- Q. To provide a copy of the Marin report.
- A. The Marin Report is attached at Tab 10.

Page 170-171, Questions 652-658

- Q. To produce copies of changes in orders with respect to the conduct of the investigations by the S.I.U. resulting from the Marin report.
- A. At page 170, question 652 of the transcript, Brigadier-General Munro responded to a question concerning the conduct of investigations in the Special Investigation Unit (SIU) by saying "There have been no changes yet" (as a consequence of the report (Ex. 4) of the "External Review of the Canadian Forces Special Investigation Unit"). He was not aware that, although all the recommendations contained in the report had not yet been actioned, specific direction had already been given to the SIU concerning the conduct of investigations into alleged homosexuality.

CFAO 22-3 (attached as Tab 11) provides direction for the operation of the SIU. Following review of the report of the "External Review of the Canadian Forces Special Investigation Unit", it was decided to remove specific references to homosexuality and abnormal sex from the mandate of the SIU. The enclosed memorandum at Tab 12 dated August 29, 1990 from the Chief Intelligence and Security directs changes to the policy contained in CFAO 22-3. Although a revised version of CFAO 22-3 has not yet been published, the policy changes took effect forthwith. In addition, CFAO 19-20 (Ex.1, Tab 46; Ex.2, Tab 1) was amended by message on November 21, 1990 (Tab 13). A revised version of CFAO 19-20 has not yet been published.

Pages 194-195, Questions 751-756

- Q. To advise of the nature of General De Chastelain's visits to Canadian Forces bases and the feedback sessions which took place, as well as the number of bases visited and whether this is an ongoing process.

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- A. Between October 5, 1989 and June 7, 1990, the Chief of the Defence Staff (CDS) visited 36 military bases in Canada and Europe. The purpose of these visits was to familiarize himself with the situation at each base, to speak to base personnel, and to identify issues of concern. Typically, each visit began with an introductory briefing to the CDS by the base commander and base staff. This briefing was followed by a series of meetings with base personnel.

Normally, there were three separate meetings at each base: a meeting with officers; a meeting with senior non-commissioned members (Chief Warrant Officer to Sergeant inclusive); and a meeting with junior non-commissioned members (Master Corporal and below). These meetings were held in various locations (base theatres, messes, social clubs, gymnasiums, officer buildings) depending on the facilities available and the size of the audiences. No record of attendance was kept.

At each of these meetings, the CDS was introduced, gave a short address, and then accepted questions from the audience. He answered those questions for which he had an answer, noted others, and in some cases undertook to have answers provided later. In addition to these formal meetings there was normally an opportunity for informal discussion with base personnel at one or more social events.

At the conclusion of each visit, the CDS produced an outline of points for staff action as well as a list of information points. Sexual orientation was raised at least twice during these meetings but the context is not clear. The CDS does not recall how often the issue of sexual orientation came up but believes it was raised on a number of occasions, mostly by senior non-commissioned members and officers. On some occasions individuals expressed negative views about the possibility of a policy change; on other occasions individuals urged resolution of the uncertainty engendered by the interim policy.

The CDS' visit program is continuing and he is now in the process of visiting smaller stations and establishments.

Pages 215-216, Questions 840-842

- Q. To produce the qualifications of Major Zuliani.
- A. A curriculum vitae for former Major R.A. Zuliani is attached as Tab 14.

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Page 217, Question 850

- Q. To produce the qualifications of Chief Warrant Officer Simpson.
- A. The qualifications of Chief Warrant Officer (CWO) Simpson are attached at Tab 15.

Page 218, Questions 851-853

- Q. To produce the two references noted in Memorandum 5077-3-3.
- A. Reference A is attached at Tab 16, and Reference B is attached at Tab 17.

Pages 219-222, Questions 857-867

- Q. To advise whether or not the number of Military Police case history files dealing with investigations conducted into sexual deviancy and homosexuality from 1966 to 1986 equal 344. If not, what was the actual number and what was the basis for the selection of the 344? Is a distinction made between sexual deviancy and homosexuality and, if so, what number of the 344 files related to homosexuality? What number of files related to homosexuality between 1966 and 1986?
- A. There is no documentation to show the basis on which CWO Simpson selected the sample for his case history study of homosexuals in the CF. The total number of military police case history files dealing with sexual deviancy and homosexuality from 1966 to 1986 is not known and it is not clear whether or not the 344 identified by CWO Simpson represent the full number of such files.

The extent to which, and the basis on which, any distinction between categories of sexual behaviour was made by CWO Simpson is not known. Consequently, the number of files that he considered that actually related to homosexuality is not known.

CWO Simpson has no independent recollection of the basis on which he selected the sample.

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Page 222, Questions 870-871

- Q. Advise whether any other cases studies of this sort have been conducted by the Canadian Forces.
- A. Tab 17 is the report of a review of sexual deviancy and homosexuality files covering the period 1976 to 1984. Two further studies were conducted in 1989 and 1990, neither of which are relied on, and are attached at Tabs 18 and 19 respectively.

Page 223, Question 873

- Q. How was the term "sexual deviancy" defined for the purposes of the study? If it included both homosexual and heterosexual conduct, what was the breakdown between these categories?
- A. The term "sexual deviancy" was not defined. However, it is clear from the study that the term included both homosexual and heterosexual conduct. The breakdown of the incidents was not provided and CWO Simpson does not recall.

Page 226, Question 878

- Q. To advise of the number of false claims to homosexuality contained in the 344 files, and the number of false claims to homosexuality contained in Military Police case history files dealing with homosexuality from 1966 to 1986.
- A. The numbers of false claims to homosexuality that are contained in the 344 military police case history files and in the military police case history files dealing with homosexuality from 1966 to 1986 are not known. Again, CWO Simpson has no independent recollection.

Pages 226-227, Questions 880-882

- Q. To advise of the basis on which cases were chosen for samplings in Annex A to the study.

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- A. There is no documentation to show the basis on which the cases included at Annex A to the study were selected. However, CWO Simpson has stated that he attempted to illustrate consequences.

Page 227, Questions 883-884

- Q. Is CWO Simpson still in the military?
- A. CWO Simpson is still a member of the Canadian Forces.

Page 230, Question 899

- Q. To produce any new set of costings for the refitting of ships.
- A. No new or additional estimates of the cost of ship renovations to accommodate homosexuals have been done since the completion of the Charter Task Force Final Report.

Page 231, Questions 900-901

- Q. To advise what criteria were used to determine what kinds of renovations would be necessary.
- A. Despite best efforts, the criteria that were used to develop the estimates of the cost of ship renovations to accommodate homosexuals have not been located or identified.

Page 235, Question 919

- Q. Advise whether the following documents went to Cabinet for consideration: Ex. 1, Tab 50 and Ex. 2, Tab 5; Ex. 1, Tab 52 and Ex. 2, Tab 10; Ex. 1, Tab 60 and Ex. 2, Tab 16; Ex. 1, Tab 61 and Ex. 2, Tab 19.

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- A. It is confirmed that none of these documents were provided to Cabinet for consideration.

Page 263, Question 1000

- Q. Produce a copy of CFAO 19-38, entitled "Mixed Gender Relationships."
A. A copy of CFAO 19-38, Mixed-Gender Relationships, is attached at Tab 20.

Page 265-266, Question 1009

- Q. To advise whether there are any circumstances where some form of parental consent is needed for persons to enlist in the Canadian Forces.
A. The requirement for parental consent is contained in the National Defence Act as quoted by Mrs. McIsaac in response to question 1009.

Pages 270-271, Questions 1025-1028

- Q. To advise if there were any criminal convictions as a result of the investigations referred to in paragraph 4 at page 2 of annex D.
A. It has not been possible to determine the number of criminal convictions, if any, resulting from the seven cases referred to by CWO Simpson in paragraph 4 of his case history study of homosexuals in the Canadian Forces. Only one of the seven cases has been positively identified and no criminal convictions resulted from that case.

Page 274, Question 1037

- Q. To advise whether there were guidelines which were issued to Major Zuliani in drawing up his report.

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- A. No written terms of reference, minutes or guidelines for former-Major Zuliani have been located or identified.

Page 274, Question 1038

- Q. To advise whether there was a written contract with CROP setting out what the terms of reference were for their research.
- A. The survey entitled "Canadian Attitudes Towards Military Service For Minorities" (discussed at Annex B to Part 4 of the Charter Task Force Final Report) was completed under the terms of a standing contract with CROP Inc. The contract (copy attached at Tab 21) entitled the Department of National Defence to the use of CROP Omnibus services and the survey questions were incorporated in an omnibus survey at the request of the Department.

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