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File No. 301994

May 15, 1991

LCol. K. Watkin
Director of Law/Human Rights
and Information
Office of the Judge Advocate General
National Defence Headquarters
MG George R. Pearkes Building
Ottawa, Ontario
K1A 0K2



Dear Sir:

**Re: Canadian Forces Policy with respect to
Sexual Orientation**

We have now received the preliminary report of our final expert witness, Dr. Edward B. Harvey, incorporating the results of the new internal survey of Canadian Forces Personnel attitudes toward homosexuality. The JAG has been provided with Dr. Harvey's preliminary findings as well, and those findings are fairly consistent with those which were reported in the Charter Task Force Report.

As you are aware, counsel in the Douglas case has applied for trial dates, in Toronto, in the Fall. While the specific dates applied for are not available, it is possible that Counsel will be able to get somewhat later dates from the Court and that at least one, if not all, of the other cases, except Bordeleau, will be heard at the same time.

We have now had an opportunity to review all of the evidence which will be available for the trial and we continue to be of the view that these matters must be settled and that there is no arguable position to be advanced on behalf of the Canadian Forces. The enclosed opinion reviews all of the evidence which is available to be presented in respect of the section 1 defence of the policy and sets out our evaluation of that evidence and our reasons for concluding that there is no arguable position to be advanced.

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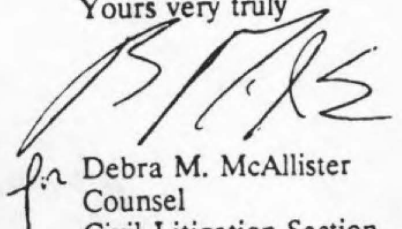
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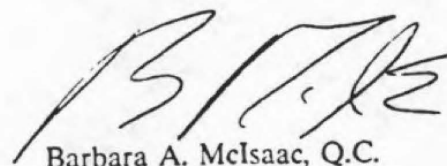
This opinion does not discuss the evidence relating to the specifics of the individual complaints, except insofar as those specifics relate directly to problems with the section 1 defence as they do in the Poirier and Morash situations. However, it must be remembered that the facts in the Douglas case, including the findings of the Board of Inquiry established to review the SIU involvement, are extremely negative and that the actions of the Canadian Forces in respect of former Lieutenant Douglas will likely be found by the Court to have been deplorable. These facts tend to support the thesis of the Plaintiffs that the Canadian Forces is a prejudiced, homophobic organization with an irrational fear of homosexuals. They can do nothing but impact in a very negative way on every aspect of the section 1 argument that the Canadian Forces wishes to make.

Once you have had an opportunity to review this opinion and to discuss it with the appropriate officials, we would like an opportunity to meet with the Chief of the Defence Staff to explain our position to him and to provide him with any further information which he feels he might need in order to make a final determination in the matter.

Finally, as you are aware, we have agreed with counsel for Ms. Douglas on a timetable for the exchange of expert reports and that timetable requires us to provide our reports 60 days prior to the commencement of the trial. If dates are available for a hearing in the Fall, it may be necessary for us to provide those reports some time in the summer, and it is our view that the decision to settle these matters must be made before any expert reports are delivered to Mr. Ruby.

Yours very truly


for Debra M. McAllister
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