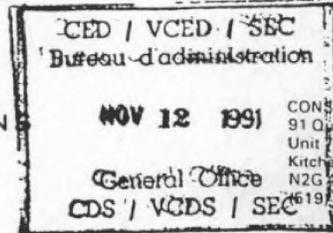




HOUSE OF COMMONS  
CANADA

JOHN H. REIMER, M.P.  
Kitchener



CONSTITUENCY OFFICE  
91 Queen St. S.  
Unit  
Kitchener, Ontario  
N2G 4M7  
(613) 742-2930

OTTAWA OFFICE  
Room 552  
Confederation Building  
House of Commons  
Ottawa K1A 0A6  
(613) 996-3003

Ottawa  
November 7, 1991.

General A. John G.D. de Chastelain,  
Chief of the Defence Staff,  
Major General G.R. Pearkes Building,  
101 Colonel By Drive,  
OTTAWA, Ontario.  
K1A 0K2

Dear General de Chastelain:

Thank you for your recent appearance before the Conservative Caucus members concerning the proposed changes to the CFAOs.

Because I was required to be in Manitoba at the time of your appearance, I sent my assistant to attend the meeting in my stead. My assistant heard you say that up until three weeks ago you were willing to proceed with your court cases, but then you were informed by the Justice Minister herself that you were "breaking the law".

If my assistant has quoted you correctly, may I respectfully point out that this is one person's interpretation of what might be against the law (albeit a very important person, the Attorney-General). You will see from the attached list of cases that **there is no law** that you are breaking because there are only interpretations of what the law is, and these interpretations are in conflict.

We have four cases which do not decide the question of whether homosexuals have rights under s. 15 of the *Charter* (*Andrews* (from the Supreme Court of Canada), *Veysey*, *Bordeleau* and *Egan*), two cases from the same court which are in favour (*Brown* and *Knodel*), one case on appeal (*Haig and Birch*), and one case which says there are no such rights (*Andrews* (Ontario High Court of Justice)).

The Federal Court of Appeal in *Veysey* addressed their minds to the s. 15 claim and specifically refused to base its decision on that ground, even though they had the opportunity. Therefore, it should not be considered as a case that supports the interpretation that homosexuals have rights under s. 15.

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Further, the decision of *Andrews v. Ontario (Minister of Health)*, which says there are no such rights, still stands because (a) *Andrews v. Law Society of British Columbia* did not overrule it, and (b) *Andrews v. Law Society of British Columbia* has no bearing on the point that *Andrews v. Ontario (Minister of Health)* specifically makes that, even if homosexual rights could be found in s. 15, it is perfectly proper to override them under s. 1 as a reasonable limit **demonstrably justified** in a free and democratic society.

Therefore, there are a total of three cases out of eight that point in that direction but one is under appeal and two are from the same court. There is one case out of eight that goes in exactly the opposite direction and says that sexual orientation is not a part of s. 15. The other four cases are not applicable because they did not decide this issue. Therefore there is no reason to assume that sexual orientation is included in s. 15.

I understand that you recently polled members of the Canadian Forces (although it technically may not have been as scientific as you would have wished). The results were that the majority are against the admission of homosexuals into the Armed Forces. This supports the 1985 poll which was scientific and which came to the same conclusion.

General, I have heard that you have a reputation for imposing the same standard on yourself that you impose on the troops under your command, and I applaud your example. However, is the proposed direction for our Armed Forces in the best interests of a cohesive and task-oriented group of individuals with unique training, demands and assignments? Is the direction the best policy given that from time to time the very lives of ones comrades-in-arms are at risk and one does not want any extraneous features to the training, task and unity towards the objective to deflect anyone from the primary task?

General de Chastelain, in all sincerity and honesty, I believe we are making a serious mistake for the weakest of reasons without the best interests of the personnel and nation in mind.

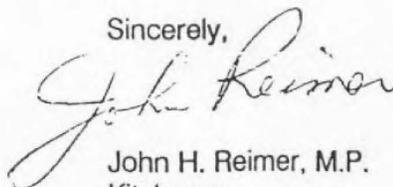
Therefore given:

- (a) the feelings of the members of the Armed Forces,
- (b) the ramifications to the members of the Armed Forces,
- (c) the fact that the *Haig and Birch* decision is now being appealed and will eventually rule whether the present position of the Armed Forces is constitutionally sound, and
- (d) the present uncertainty and different interpretations surrounding this issue,

I respectfully ask that you to refrain from changing the CFAOs.

Thank you for your consideration of this matter.

Sincerely,



John H. Reimer, M.P.  
Kitchener.

JHR/jn

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## CASES

*Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143 (Supreme Court of Canada)

- was a case about citizenship and s. 15 of the *Charter*
- did not mention sexual orientation

*Veysey v. Canada*, 39 Admin.L.R. 161 (Federal Court, Trial Division)

- sexual orientation is included in s. 15
- went to Appeal, see below

*Veysey v. Canada*, 43 Admin.L.R. 316 (Federal Court of Appeal)

- case was affirmed on **other** grounds, ie. he won because of other reasons and the judge explicitly refused to comment on what the judge below said on s. 15
- ie. the judge did not affirm that sexual orientation was in s. 15

*Bordeleau v. Canada*, 19 A.C.W.S. (3d) 594 (Federal Court, Trial Division)

- statement of claim advancing claim of discrimination on the basis of sexual orientation could not be struck out as disclosing no reasonable cause of action
- did not decide the question of s. 15 and sexual orientation

*Brown v. Minister of Health*, 66 D.L.R. (4th) 444 (British Columbia Supreme Court)

- sexual orientation is included in s. 15

*Andrews v. Ontario (Minister of Health)* (1988), 49 D.L.R. (4th) 584, 64 O.R. (2d) 258 (Ontario High Court of Justice ie. Supreme Court)

- sexual orientation is not included in s. 15
- even if it were, it would be justified to discriminate based on s. 1 of the *Charter*

*Egan and Nesbit v. A.G. of Canada* (Federal Court, Trial Division)

- case on sexual orientation and old age security
- just heard recently by Fed. Ct. - no decision yet

\* \* \*

From the newspapers:

*Knodel v. B.C. Medical Services Commission*, reasons delivered Aug. 30, 1991 (B.C.S.C.)

- sexual orientation is included in s. 15

*Haig and Birch v. The Queen*, reasons delivered Sept. 23, 1991 (Ont. Court of Justice, Gen. Div.)

- s. 3(1) of the *Canadian Human Rights Act* does not include sexual orientation, therefore it violates s. 15 of the *Charter*
- has been appealed

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