

ANNEX A
TO 1457-5- [REDACTED] (DLaw/HRI)
DATED: 26 FEB 92

SUGGESTED DRAFT REPLY FOR THE CHIEF OF THE DEFENCE STAFF

[REDACTED]

[REDACTED] :

As a result of the recent Supreme Court of Canada decision, **R. v. Thomson**, which ruled that recommendations of the Security Intelligence Review Committee are not binding on the deputy head of a government department or organization concerning decisions on the status of security clearances, I have instructed the Department of Justice to discontinue the section 28 **Federal Court Act** review application in this matter. I am now in a position to make a final determination concerning your appeal of the revocation of your security clearance.

The revocation of your Top Secret security clearance occurred on 17 April, 1989, while you were a member of the Canadian Forces. As you are aware, the Security Intelligence Review Committee issued a report dated 14 August, 1990 which made a number of findings and recommendations including:

1. the Complainant be granted a Top Secret security clearance retroactively to 17 April, 1989;

2. the Complainant be reinstated as an employee of the respondent with all seniority and other benefits, privileges, promotions, and financial compensation.

I note that the Security Intelligence Review Committee made findings concerning the constitutionality of the Canadian Forces' policy on homosexuality. However, the Security Intelligence Review Committee itself indicated it did not have the mandate, or authority, to make such a decision. Therefore, I do not intend to address this issue.

I have carefully considered both the report and the recommendations. However, I do not agree that the decision taken at the time to revoke your security clearance should be reversed. The Security Intelligence Review Committee takes the approach that your acknowledged unauthorized access to classified material, while reproachable, was explainable because of the strain you were under as a result of the application to you of the Canadian Forces' policy on homosexuality. I cannot agree with that approach. The stresses you were under, for whatever reason, may provide reasons for your actions, but they do not provide a justification for the decision you made not only to access a file about which you had no official need to know, but also to relate the status of the information in that file to the file's subject. Your own actions in breaching fundamental security orders and procedures provide a clear indication that

you placed your loyalty to your friends above your loyalty to the Canadian Forces and your duty. Therefore, the decision to revoke your security clearance was justified.

As you are no longer a member of the Canadian Forces, I do not have the authority to make any determination concerning your present status to hold a security clearance.

With respect to your reinstatement in the Canadian Forces as recommended by the Security Intelligence Review Committee, in my opinion, your release was not a matter that rested upon the denial of the security clearance. Therefore, in light of this view and my decision with respect to your security clearance, I do not accept the recommendation of the Committee in this matter. As to the propriety of your release and any consequences that might flow from that action, the matter is currently before the Federal Court as a result of your action under the Canadian Charter of Rights and Freedoms and I do not believe it would be appropriate for me to comment at this time on that issue.