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WFB

Public Service
Commission

Commission de la
Fonction publique

Anti-Discrimination
Branch

Direction
Anti-discrimination

SECRET

24 June 1977.

Mr. D.W. Hall,
Assistant Secretary to
the Cabinet,
(Security, Intelligence
and Emergency Planning),
Privy Council Office,
Ottawa, Ontario.

Dear Don:

Thank you very much for the opportunity to review your re-draft "Memorandum for deputy ministers and heads of agencies" on the subject of homosexuality in relation to employment where security clearance is required.

I have discussed the re-draft with Commissioner Szlazak and the following comments are offered for your consideration.

Page 1 - Para. 1

It is not clear if the reference to the public service in the third line includes all the public service. There are no restrictions on employment of homosexuals under the P.S.E.A. and its Regulations but if "public service" as quoted includes the Armed Forces, there are restrictions and this may be true in other parts of the public service as well.

Page 1 - Para. 2

The last sentence of this paragraph would read better if the words "to be intended" were deleted.

Page 1 - Para. 3

The words "and the nature of the duties to be performed" should be inserted after the word "services" in the second last line of the paragraph.

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Page 2 - Judgment - Item 1

At the last meeting of the ICSI, I believe Commissioner Szlazak stated the position of this Commission with respect to instances where homosexuals are considered for positions where there is some reason to believe that security clearance might eventually be required. While the situation is strengthened in the re-draft by the words "reasonable certainty" it still makes for a questionable and difficult judgment. If a candidate, who happens to be a homosexual is the best qualified for such a position, the merit principle would seem to require that he be declared successful, otherwise he could claim discrimination. If the need arose subsequently for security clearance, the case would have to be reconsidered and he might have to be moved elsewhere after being told the reasons for his being moved as outlined in another section of your draft or alternatively he might be told of the possibility at the time he is declared the successful candidate in the first instance. The latter is, I believe, the preferable course.

Page 2 - Item 2

The reference to the homosexual and his partner should be clarified and this can perhaps be done by dealing with them separately. The partner - if there is a recognizable partner - is not usually dealt with in the security report.

Page 3 - Item 2

The second question should be amended by deleting the word "attention" and inserting the word "services".

The bracketed footnote to this group should state the full name of the Royal Commission.

Page 3 - Item 3

Could the word "generally", in the first line, be moved next to the word "homosexuals"?

Page 3 - Item 4

The same remarks apply here as to the earlier section - page 2, item 1. The proposal here would mean in practice that any homosexual, no matter how well behaved, would be denied access to any position requiring "confidential" clearance if it is likely that, at a later date, through promotion or for some other reason, he might require access to higher levels of classified information. Surely the case should be handled in the same way as those described in item 5 - page 4.

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Page 4 - Item 6

Would you consider moving the word "generally" to follow the word "homosexuals" in the first line? Also replace the word "often" with the word "usually" in the second line.

Page 4 - Item 7

In connection with this paragraph, the exchange of correspondence between Messrs. LeClair and Robertson and the suggestion of Andy Stewart of the P.S.A.C. should be considered. In general, this Commission supports the suggestion made by Mr. Stewart because it is the right of the individual to know the charges against him and to have an opportunity for independent review if any administrative action, including dismissal, is contemplated.

Page 5 - Item 10

As suggested by Commissioner Szlazak at the last meeting of the ICSI, the Privy Council Office should monitor closely the implementation of the guidelines at least for the first year or two and should always be consulted when dismissal is being considered.

Page 6 - Par. 1

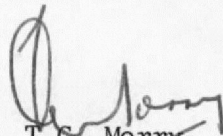
It is suggested that the words "being considered" be deleted and replaced by the word "involved".

Page 6 - Item 11

The paragraph seems to require clarification. If the homosexual is not known as such and his conduct is above reproach, would he be precluded from serving abroad in any situation? Perhaps this paragraph should be reworded or the category "services abroad" set out separately because it does not appear to be of the same genre as the others.

If you wish to discuss any of these comments, I shall be available at your call.

Yours sincerely,



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