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July 18, 1977.

MEMORANDUM FOR DEPUTY MINISTERS AND
HEADS OF AGENCIESHomosexuality in relation to employment
where security clearance is required

There are no restrictions on employment of homosexuals in the Public Service Employment Act or the regulations made pursuant to it. However in the context of national security, homosexuality is a factor which could render a person unsuitable for employment in some positions, particularly where access to classified information is involved.

Policy governing the security clearance of persons requiring access to classified information is set out in Cabinet Directive No. . It provides criteria relating to loyalty and reliability of persons being considered for such access. In the criteria relating to reliability, sexual behaviour is cited, along with greed, indebtedness, alcohol or drug abuse, and mental instability, as an example of "features of character" which might raise doubt because they might cause indiscretion, or vulnerability to blackmail or coercion. Homosexuality has been considered to be a form of sexual behaviour in this context.

The policy concerning reliability does not provide for automatic and universal exclusion of any category of person from access to classified information. Instead, it places an onus on the deputy head to make a judgment: security clearance must not be granted to a person whose reliability is in doubt unless after careful consideration of the circumstances, including the value of the person's services, the risk involved seems justified in his/her opinion.

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It should be noted that this exercise of judgment applies in the directive only to the criteria relating to reliability, and not to those relating to loyalty.

With a view to assisting deputy ministers in carrying out their responsibility as it relates to homosexuality, the following guidelines are provided. Departments are reminded that these are intended only to supplement, and not to replace or vary, the policy set out in the Cabinet directive on personnel security clearance.

Guidelines

Judgment

1. Whenever a public servant, or an applicant for employment in the public service, is being considered for a position for which security clearance is required, or for a position where there is virtual certainty that security clearance will be required at a reasonably early date, and the person is a homosexual, judgment on reliability must be made in the light of relevant aspects of the homosexual relationship(s) involved, and the risk in granting security clearance must be weighed in relation to the degree of access to classified information and the vulnerability involved in the position.

Factors to be considered

2. The following are suggested as questions that should be addressed in arriving at a judgment:

- Is the person open or secretive about the relationship?
- Is the relationship stable?
- Is the person prone to change partners frequently?
- Is the quality of the relationship of a kind that might invite blackmail? (e.g. Is it with a person whose social status might cause the employee embarrassment if the relationship became known? Does the person frequent commercial establishments catering to homosexuals? Does the person purchase the services of homosexual partners?)

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- Is the person aggressive about proclaiming or promoting the preference?
- Is there a preference for young partners?
- Is there a history of arrest or conviction, or proneness to situations where arrest or conviction might occur?

(These questions are based on factors outlined in the 1969 report of the Royal Commission on Security, para. 100.)

Secret and Top Secret

3. Homosexuals generally should not be given security clearance for access to the higher levels of classified information (SECRET and TOP SECRET), whatever the nature of the homosexual relationship. While there may be exceptional circumstances, which may vary as attitudes change, in which such clearance may be granted, these are not likely often to affect the application of this guideline.

4. Where it seems virtually certain that a homosexual will, at an early stage in career development, require access to the higher levels of classified information (SECRET and TOP SECRET) security clearance should not generally be given to any level.

Clearance to Confidential

5. Where it seems reasonably certain that access to the higher levels will not be required, a homosexual may be given security clearance for access to information to and including the level CONFIDENTIAL, but the likelihood of denial of access to the higher levels and the related influence on career development should be made clear at the time.

Rotational Service Abroad

6. Homosexuals generally should not be employed in rotational service abroad, because such service usually involves access to classified information to the highest level, and because it involves the kind of vulnerability referred to in 9.

Frankness with employee when access denied

7. In the case of a homosexual already employed in the public service, where the decision is made to deny or limit security clearance, the person should be told the reason, to the fullest extent possible, and the considerations involved should be explained. (Frankness should present less difficulty than is the case where the adverse information relates to loyalty, as sources are more likely to be open.) Maximum possible frankness is especially important where dismissal is being considered. It should be noted that if dismissal is considered on security grounds, the employee has recourse to the procedures set out in the Public Service Security Inquiry Regulations made pursuant to subsection 7(7) of the Financial Administration Act.

Frankness with applicant

8. In the case of a homosexual who is an applicant and is refused employment in the public service because security clearance cannot be granted, the deputy head must make a judgment as to whether and to what extent explanation should be given. The deputy head might consider it advisable to make clear that, as head of the department or agency, he/she has responsibility as employer, and in the interest of national security, to try to ensure the personal suitability of employees for performance of their duties, and to make judgments to achieve this. Emphasis might be placed on the duty of the employer to consider all relevant factors, including homosexuality, when access to classified information is a requirement of a position.

Frankness with employee when access granted

9. In the case of a homosexual already employed in the public service, where the decision is made to grant security clearance, the situation should be discussed as

frankly as possible with the person. The risks involved, both to national security and to the reputation and career prospects of the person, should be stressed. The person should be required to report immediately any indication of blackmail or coercion. Emphasis should be placed on the legal provisions in Canada and abroad relating to homosexual practices. In Canada, while private homosexual acts between consenting adults have been removed as offences under the Criminal Code, other homosexual acts continue to constitute offences. Abroad, in some countries, e.g. communist bloc and South American, legal sanctions concerning homosexual acts are more severe than in Canada.

Consultation with P.C.O.

10. Departments should discuss problems relating to the granting or denial of security clearance to homosexuals with the Privy Council Office Security, Intelligence and Emergency Planning Secretariat, particularly in cases where access to the higher levels of classified information is involved and where dismissal is being considered.

Note concerning employment where access not involved

11. There are obviously many situations in the public service not involving national security and access to classified information, where employment of homosexuals would present serious difficulties for both employer and employee, and could reasonably be regarded as not in the best interests of either, or in the public interest. Examples are: service abroad in some cases; service in remote and isolated areas; in ships; in military and police environments; in prisons; in schools or other locations involving close contact with the young. While advice concerning employment of homosexuals in such situations is not the responsibility of the ICSI, two points can reasonably be made:

- (a) Whether employment in such situations is permitted or denied to homosexuals, the same degree of frankness with the employee or applicant (subject to protection of confidential sources of information) should be exercised as would be forthcoming in the relation to any other characteristic deemed likely to cause personal unsuitability.
- (b) If employment in such situations is denied to homosexuals, the action must not be related to the personnel security clearance directive, the personnel security clearance questionnaire, subsection 7(7) of the Financial Administration Act or the Public Service Security Inquiry Regulations. Policy and procedures set out in these documents relate exclusively to national security and access to classified information.