

CF POLICY ON SEXUAL ORIENTATION
ADM(PER) SPEAKING NOTES
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Introduction

On the 27th of October 1992 the Federal Court of Canada declared that the CF policy on sexual orientation violated the equality rights guarantees contained in the Canadian Charter of Rights and Freedoms (part of the Canadian Constitution). The CF consented to this judgement, there was no appeal, and later that day the CDS issued a general message to the CF revoking the policy. Consequently, no longer are there any limitations or restrictions on the service of homosexuals in the CF. As you would expect, there is a story behind all of this and it might be useful to cover how we got to where we are today. Because of differences in our situation, not all of what I have to say is relevant to the process that you are involved in right now.

The Policy and the Charter

Until last October, the CF had a long-standing prohibition against the enrolment or retention of homosexuals. That policy began to come under attack following the coming into force, in 1985, of certain equality rights guarantees as part of the Canadian Charter of Rights and Freedoms. What this meant was that we had a change in our legal situation and if we wanted to continue to discriminate against homosexuals we would have to demonstrate, in the words of the Charter, that our policy represented "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".

Review of the Policy

The advent of these equality rights guarantees in April 1985 launched the CF on a series of policy examinations and reexaminations. In 1986 we had a task force look at this and other equality rights issues. The task force concluded that the policy was necessary. But the issue did not go away and a number of little adjustments crept in. The basic policy shifted from concern about a homosexual propensity to a concern about homosexual behaviour. Recruiters were directed not to ask the question. Approval levels for directed releases escalated (at one point it was the CDS personally approving) and, for a period of time, releases were suspended pending further reviews. By January 1988 we had a so-called interim policy in place that permitted known homosexuals to remain in the CF subject to a number of conditions - no postings, no promotions, no career courses, no reengagement, etc. Perhaps some of this sounds familiar.

Defence of the Policy

Just as we were completing this general review and policy adjustment activity, we were confronted with a number of legal challenges to our policy. There were a lot of delays in coming to trial and that was just as well because we needed time to prepare ourselves. It is one thing to assert that the presence of homosexuals was or would be detrimental; it is quite another to build a persuasive case to take to court.

Our approach to the defence of the policy was to take each one of the arguments that had been used to justify it at one time or another - discipline, security,

health, privacy, cohesion and morale, and so on - and attempt to find both evidence to support our arguments and independent, qualified individuals who would be accepted by the courts as expert witnesses to present it. We did not have much success.

I will not go through everything we did but we approached literally dozens of experts in a variety of fields all over North America to see if there were any independent, objective studies that would support one or more of the themes of our defence. Among others, we spoke to sociologists, and sexologists, psychologists and psychiatrists, cultural anthropologists and historians. We did not turn up very much. We commissioned some research but not all of that was helpful. And we found that many of our arguments did not stand up to close examination. Let me give you a couple of examples.

Some research done within the CF in 1986 tended to suggest that homosexuals were more likely to be engaged in sexual offences than heterosexuals. We tried to replicate the study and found that it was fatally flawed. What we did find out was that we could not draw any conclusions about the relative incidence of such offences but that, any way you look at it, we have a far greater problem - quantitative and qualitative - with heterosexual misconduct than we do with homosexual misconduct.

One argument we were fond of using was that our heterosexual members would not tolerate the presence of known homosexuals in their ranks. Effectively, we would be in the position of arguing that we could not control the behaviour of our heterosexual members. That would not say much about the ability of our leaders to control

behaviour or about discipline generally in the CF. The more we thought about it and how it would play in court, the poorer the argument seemed to be. We decided to abandon it.

Another argument concerned health. As we looked at each element - incidence of sexually transmitted diseases (STDs); safety of health care workers; integrity of the blood supply - we found that we did not have support for our arguments or, if we were really concerned about some of those things, there were preventive or risk-reducing measures we could take. For example, we do not have any mandatory AIDS screening in the CF. If we were really concerned about AIDS, and the doctors tell us that we do not have a problem at this point, screening is available to us.

Eventually, as we looked at the issue in the context of a court case where there are very specific legal tests to be met and where opinion per se does not count for much, our legal counsel came to the conclusion that we did not have a case to make. We realized that we could not win and by September 1991 we knew that we had to change the policy.

Changing the Policy

Once we had decided that defending the policy was a non-starter, we thought changing it would be easy. In fact, all the arrangements were made to cancel the policy effective 9 October 1991. However, just as the policy was about to be cancelled, there was a political intervention and it was decided to let the courts decide the issue. As a result, the issue dragged on for another year and the ultimate resolution involved the court

making a declaration without hearing any evidence and without us presenting a defence - in effect, what is called a consent judgement. The judgement was made at 1000 in the morning and less than an hour later a general message went out cancelling the policy.

Implementing the Change

One of the things we had to consider was how to portray the change. Very early on we decided that we would not try to change deeply held beliefs and values about homosexuality which we knew would be hard to do and which would also raise some ethical problems (should a national institution like the CF directly attack beliefs and values that may have a strong religious or family origin?). Instead, we have worked toward two objectives: ensuring compliance and promoting acceptance. Compliance is pretty straightforward but promoting acceptance is more difficult. We have approached this as leadership challenge. Three broad principles have guided our communications on the subject:

- internal audience more important than the external audience;
- low-key external communications; and
- appeal to sense of duty and sense of fairness of CF members.

Although it is still early in the game, our approach seems to be working. Our biggest difficulty has been fending off the external media. In early January they were in a feeding frenzy looking for anything they could link to what was or was not going to happen in your armed

forces. We did not want to comment or appear to be commenting on your situation so we generally refused interviews. As well, we believe that continual debate in the external media makes this kind of issue more difficult to deal with internally.

Consequences

As far as we know there have been no incidents as a direct result of the policy change and, as far as we know, no one has quit because of it. In fact, everything goes on much as before. The longer we can go without any incident, the better. As we get more of a track record without problems, some of the hostility and dismay (which we are sure exists) about the policy change should dissipate. On the other hand, if we have problems, we believe it is important that we deal with them quickly and effectively.

Conclusion

This has been a very quick summary of the circumstances surrounding a major personnel policy change within the CF. As I indicated earlier, direct relevance of some of our experience to your situation may be limited. Our constitutional framework is somewhat different and homosexual acts have been decriminalized in Canada for more than 25 years. As well, the review process dragged on for such a long time that some of our members thought the policy was already cancelled. However, notwithstanding those differences, if and when your policy changes, I believe that you too will have to make it a leadership issue and senior officers will have to endorse the policy change. This will not necessarily solve all the problems but we believe it is important

that the organization unequivocally supports the change.
We cannot expect our service members to accept the change
if they have any doubts about acceptance by their senior
leaders.