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SOLICITOR GENERAL

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<u>7196-22; P5189-A</u>
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DATE
SEP 25 1985

FROM
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DEPUTY SOLICITOR GENERAL

SUBJECT
OBJET

PROPOSED COMMISSIONER'S STANDING ORDER ON DISCHARGE FROM THE RCMP FOR HOMOSEXUALITY

At a meeting of February 12, 1985 with the Commissioner of the Royal Canadian Mounted Police, your predecessor requested that the Secretariat provide its comments on a proposed Commissioner's Standing Order concerning the employment of homosexuals to the RCMP. The Secretariat conveyed to the Force its suggested modifications last April (Tab A).

In essence, Secretariat changes were derived from the following principles:

- a) changing the emphasis from the very general state or label of "homosexuality" to specific acts of "homosexual behaviour";
- b) introducing some basic procedural safeguards in keeping with the proposed amendments to the RCMP Act and the general trend in administrative law; and
- c) emphasizing the private and sensitive nature of sexuality with a corresponding de-emphasis on the "illegal" nature of homosexual behaviour.

SECRETARIAT/RCMP CONSULTATIONS

On July 5, 1985, PSB officials met with the Officer in Charge of the RCMP Internal Affairs Branch to discuss the Secretariat's comments. The Oi/c indicated that the Force disagreed with the "behavioural" approach suggested by the Secretariat. Implicit in the Secretariat view was the expectation that some forms of homosexuality might be tolerated, particularly where the individual was an effective member of the Force. The Oi/c's position was

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that, once discovered, a homosexual member must be discharged regardless of the extent and significance of the related behaviour. Homosexual orientation per se was deemed unacceptable. The OIC indicated that administratively it was easier to establish homosexuality per se rather than to develop criteria of the types of homosexual behaviour which could lead to discharge. The CSO makes no attempt to provide any operative definition as to what constitutes homosexuality.

A subsequent meeting on July 18, 1985, between the Senior Assistant Deputy Solicitor General and Deputy Commissioner Moffatt brought out the fact that there was a divergence of opinion on this issue in the Force. The Commissioner is not unfavourably disposed to dealing with homosexual members on a case-by-case basis. This approach, like the Secretariat's, also carries with it the possibility that some homosexuals will be retained in the Force. However, others in the Force take a harder line and want all homosexuals discharged.

CURRENT STATUS

On July 19, 1985 Deputy Commissioner Moffatt provided the Secretariat with a revised draft CSO. A copy of this draft with Secretariat comments is attached at Tab B. From our point of view, there remain four outstanding issues:

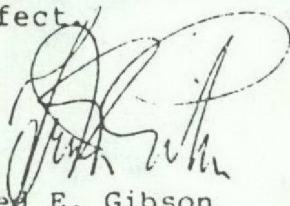
- 1) the CSO continues to sanction an individual for homosexual propensity rather than behaviour;
- 2) there is a pronounced implication, in referring the member for psychiatric examination, that homosexuality is a pathological state;
- 3) the requirement that the behaviour of the member be weighed against whether his continued service is in the best interests of the Force has been removed; and
- 4) the basic principle of natural justice of seeking and considering further representations, oral or written, from the member has been omitted.

The Secretariat position has been made known to the Force. It is also understood that, although the CSO is by definition the Commissioner's, he would like to be in the position of issuing the CSO with the full support of the Secretariat.

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It remains to be seen whether the Force intends to retain its draft wording of the CSO. The CSO was to be submitted to the Commissioner for approval on his return on July 22, 1985. It is not known whether it will be promulgated immediately or after the report of the Justice and Legal Affairs Sub-committee on Equality Issues is made public.

It is understood that the Commissioner will be providing you with a copy of the CSO. However, to ensure that you have an opportunity to be informed of the content of the CSO prior to its promulgation, I recommend that you ask to see the CSO in advance of its distribution. Attached for your consideration is a letter to the Commissioner to this effect.



Fred E. Gibson

Attachments

- Tab A - Mr. Shoemaker's letter of April 30, 1985 to
D/Commissioner Moffatt
- Tab B - July 19, 1985 RCMP draft of proposed CSO
Proposed letter to Commissioner Simmonds