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FOR CABINET COMMITTEE ON SOCIAL DEVELOPMENT - JANUARY 15, 1986

GOVERNMENT RESPONSE TO THE BOYER COMMITTEE  
REPORT: EQUALITY FOR ALL - RECOMMENDATIONS  
10 AND 11, SEXUAL ORIENTATION

- ° Recommendation 10 of the Boyer Committee proposed that sexual orientation be added to the list of prohibited grounds of discrimination in the Canadian Human Rights Act.
- ° The Boyer Committee addressed the application of such an amendment on DND and the RCMP.
- ° In Recommendation 11 the Committee states that their policies and practices should be brought into line with such an amendment to the Canadian Human Rights Act.
- ° The proposed Government response does not adequately address the conclusions drawn by the Boyer Committee in the body of their report.
- ° The Boyer Committee stated that the usual arguments do not justify the current policies and practices of the RCMP and DND.
- ° The usual arguments are:
  - members frequently serve in isolated posts in close proximity
  - may be subject to blackmail
  - public confidence and morale will be undermined
  - in some countries where members may be posted, homosexual relations are illegal
- ° The Committee stated that the arguments:

"are based on the stereotypical view of homosexuals that assumes them to be dangerous people imposing their sexual preference on others...This committee has not heard evidence justifying such an exemption from the Act".
- ° Any position taken on this issue will be open to criticism.



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- Our decision must be based on the consideration of the following options which are available to us:
  1. **The Government can choose to add sexual orientation as a prohibited ground of discrimination to the Canadian Human Rights Act (implement recommendation 10) and:**
    - a) **amend the policies and practices of the RCMP and/or DND\* to conform with the amended Act**
      - . The Armed Forces have expressed the view that the current policy should stand.
      - . The Commissioner of the RCMP would not agree with this option.
      - . It would satisfy the Boyer Committee and human rights advocates.
    - b) **exempt the RCMP and/or DND\* from the application of the amended Act**
      - . Would satisfy the positions of the Armed Forces and of the RCMP.
      - . Would be seen as an admission that the current policies are not based on bona fide occupational requirements.
      - . Could not be supported without providing further arguments to justify the option, i.e. arguments additional to those dealt with by the Boyer Committee.
    - c) **state that the RCMP and/or DND\* have bona fide occupational requirements for the existing policies and practices**
      - . Would demonstrate the Government's conviction that any exclusion from the protection from discrimination afforded by the Canadian Human Rights Act must be consistent with the Act's provisions (section 14, attached, provides for exceptions based on bona fide occupational requirements).
- \* Note: There can be some advantages to treating the RCMP and DND separately (i.e. if DND does not wish to alter its position, other options could still apply to the RCMP) however, they have shared the same arguments for exemption and it may prove difficult to separate the arguments at this time.



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- . Would ultimately lead to the consideration of the policies and practices of the Department of National Defence and of the RCMP by a Human Rights Tribunal.
- . Could result in different decisions for RCMP practices than for DND policies.
- . If the policies and practices are found not to be justifiable, the RCMP and/or DND would have to modify policies and practices which they feel are necessary to the security, efficiency, discipline and morale of the Canadian Forces and the Police.
- . Bill C-65, scheduled for third reading, provides for the establishment through regulation of a code of conduct for the RCMP. Such a code has been drafted and one section provides that:

"A member shall at all times conduct himself in a manner that is not: (a) disgraceful; (b) disorderly; (c) unbecoming a member of the Force; (d) prejudicial to the impartial performance of his duties; or (e) discreditable to himself or the Force."

- . This code of conduct:
  - could be applicable to homosexual as well as heterosexual behaviour
  - would apply to conduct unbecoming a member or which brought discredit upon the force.
- . The RCMP:
  - would still have the discretion and the responsibility to identify the most suitable and best qualified candidates
  - would recruit these individuals most suited to a career in the RCMP and capable of meeting performance requirements of policing
  - would rely on personnel policies to solve conduct and job performance problems.



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- . This option would:
  - acknowledge institutional needs by framing them in an administrative context
  - be compatible with the protection of individual rights as guaranteed by section 15 of the Charter
  - be sufficient to ensure that the operational efficiency, public image and morale of the RCMP are not jeopardized.
- 2. **The Government can choose not to add sexual orientation as a prohibited ground of discrimination to the Canadian Human Rights Act (not implement recommendation 10)**
  - . Would appeal to a significant constituency, probably including causers.
  - . Would prevent a localized focus for public reaction on DND and the RCMP (therefore a better option for this Ministry than an exemption of DND and the RCMP).
  - . Would be seen as indefensible on the basis of the Boyer Committee report.
  - . Would become the focus of criticism for a vocal and articulate minority.

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EXCERPT FROM THE CANADIAN HUMAN RIGHTS ACT

14. It is not a discriminatory practice if

(a) any refusal, exclusion, expulsion, suspension, limitation, specification or preference in relation to any employment is established by an employer to be based on a bona fide occupational requirement.

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