

s.19(1)

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May 28 210 1986

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May 21, 1986

REF: [redacted]
CONF: [redacted] 1355/86

Judge Advocate General
National Defence Headquarters
Ottawa, Ontario
K1A 0K2

Dear Sirs:

Re: [redacted]

I have been retained as legal counsel by [redacted] who was [redacted] stationed at [redacted] until he was dismissed from the Canadian Armed Forces on grounds of homosexuality. This dismissal was pursuant to section 1, article 15.0(5)(d) of the Queen's Regulations and Orders for the Canadian Armed Forces.

It is [redacted]'s contention that his dismissal contravenes several sections of the Canadian Charter of Rights and Freedoms, in particular his right to liberty as a person pursuant to section 7, the right to freedom of conscience pursuant to section 2, and the right to equal protection and benefit under the law without discrimination pursuant to section 15.

With regard to section 15, the Parliamentary Committee on Equality Rights in its Report of October 1985 recommended that the Canadian Armed Forces bring their employment practices into conformity with the Canadian Human Rights Act as amended to include sexual orientation as a prohibited ground of discrimination (Recommendations 10 and 11). John Crosby, Minister of Justice, in his response to the Report of the Parliamentary Committee on Equality Rights stated that:

The government believes that one's sexual orientation is irrelevant to whether one can perform a job or use a service or a facility. The Department of Justice is of the view that the courts will find that sexual orientation is encompassed by the guarantees in section 15 of the Charter. The government will take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction.

In view of the fact that subsequent to the Canadian Armed Forces' order for [redacted]'s dismissal the government has publicly committed itself to eliminating discrimination against homosexuals in all areas of federal employment, I am asking that you rescind the order dismissing [redacted] from the Canadian Armed Forces and reinstate him. [redacted] is also entitled to damages resulting from his dismissal.

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I have already written to Captain D.A. Brown, Base Personnel Administration Officer, for the Base Commander at [REDACTED], and he advised me that it was beyond the power of the base to rescind [REDACTED]'s release and that all further queries that I had in this matter should be addressed to your office.

Should I not hear from you by June 12, 1986, [REDACTED] may take legal action in the courts without further notice to you.

I look forward to hearing from you.

Yours truly,

SMITH & HUGHES



Robert J. Hughes
Barrister & Solicitor

RJH:jw

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