

NTF

26 Jan 90

PROPOSED AMENDMENTS TO CHRA
CONCEPT OF SEXUAL ORIENTATION

1. A Justice meeting was called for 1300 hrs on Thursday 25 Jan 90 in Conference Room 3C, Justice Building. In attendance for this Department were the undersigned and LCol M.F. Macdonald. In total there were 12-14 persons present including Martin Low as Chairman and two other lawyers working for him. The various interest groups represented around the table included Treasury Board, Status of Women, Health and Welfare, Secretary of State (I think), Finance, and Yves Côté. Unfortunately, I arrived after the meeting started and am therefore not able to give full details of the first portion. (In discussions with LCol McDonald after the meeting, I understand that the MC and aide memoire - especially the latter - were not discussed in any detail prior to my arrival). I sat beside Yves Côté who had also arrived late.

2. The various discussion included the assessing of the potential financial cost if sexual orientation was included as a prohibited ground of discrimination. Yves Côté advised me that the aide memoire would contain three portions, with the first being the CF concerns, the second being the concerns of a financial nature (and definitional nature) that would be raised by the other interested departments, and the third being the option portions.

3. Mr. Low stated that he required responses from all interested groups of the potential financial consequences on an urgent basis - either Friday or Monday at the latest. A great deal of philosophical discussion ensued as to what "sexual orientation" actually encompassed. The Treasury Board representative and Health and Welfare representative both were concerned about the payment of benefits and the groups that would now be included, including the inability to make significant "guesstimates".

4. It was determined, as a starting point, that approximately 10% of the population would be either homosexual or bisexual in propensity and that this could be used as a rough basis for determining what financial impact there might be. Because the DND/CF position has been the total exclusion of those with homosexual tendencies, proclivities, and behaviour patterns in the past, I am not aware of whether any study of financial implications has ever even been contemplated by us. In fact, to provide such an estimate, especially if the cost turned out to be low, might be counter-productive. While neither LCol Macdonald

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nor I expressed any opinion in the matter at the meeting, I would assume that Mr. Low is not expecting a comment on financial implications from us in this regard.

5. At the end of the meeting, which occurred at 1415 hrs, I discussed the status of the aide memoire with Mr. Côté. At that time, I suggested to him that really there were only three options namely:

- a. including "sexual orientation" in the CHRA with no exemption for the forces;
- b. not adding "sexual orientation" as a prescribed ground of discrimination without accommodation for any specific interests group;
- c. adding "sexual orientation" as a prescribed ground of discrimination but make reference to specific interests of certain interest groups (including CF).

6. Yves Côté agreed that in fact this was the situation and said that in the normal course of events only those three options would be presented. However, he said that option C above (namely including "sexual orientation", but making exceptions for the CF, and possibly others) could be done in such a variety of ways that if the Parliamentary Committee elected option C, the Department of Justice would not have a clear direction as to just how this exception or interest group should be placed in the Bill. He therefore felt that by giving four options (which are the maximum number of options permitted in MC's or aides memoire) and by breaking down the option C idea of adding "sexual orientation" but protecting CF interests into two options rather than keeping them in one, a better balance would be maintained. This is a tactical as opposed to legal matter but I still feel that if the Operations Committee, are looking at the third option, gave a direction to Justice to implement it i.e. a direction to include "sexual orientation" but make a specific exclusion for the CF - amongst others, if necessary - Justice would have their "marching orders". On the other hand, if there are to be four options, by giving two concrete options wherein the CF's interests would be maintained (as well as the first option whereby "sexual orientation" would not be included in the Act at all) it may be tactically better for us in the Operations Committee's deliberations.

7. As there appear to be no requirement for DND/CF to respond to Mr. Low's request for financial comments by Monday noon, we can continue to work on our portion of the aide memoire without reference to the financial implications. However, the options as now stated in the aide memoire make very little reference to

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financial costs and there is the possibility that including this considerations as "pros" or "cons" for the different options may change the strength of some of our agumentation.



S.H. Forster
Col
DJAG/L
992-3637

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