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#1026-2

Court File No. T-160-90

FEDERAL COURT OF ONTARIO

TRIAL DIVISION

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B E T W E E N:

MICHELLE DOUGLAS,

Plaintiff,

- and -

HER MAJESTY THE QUEEN,

Defendant.

Court File No. T-1474-89

FEDERAL COURT OF CANADA

TRIAL DIVISION

B E T W E E N:

DERRICK COLIN DWYER,

Plaintiff,

- and -

HER MAJESTY THE QUEEN
and THE MINISTER OF DEFENCE,

Defendants.

This is the continued Examination for Discovery of
BRIGADIER GENERAL DANIEL EDWARD MUNRO, on behalf of the
Defendants herein, taken at the Department of Justice,
Suite 3300, 2 First Canadian Place, Toronto, Ontario, on
the 26th day of October, 1990, commencing at 10:40 a.m.

C O U N S E L:

MS. H. SACHS,

-- For M. Douglas,

R. J. HUGHES, ESQ.,

-- For D. C. Dwyer,

MS. D. McALLISTER,)

MS. B. A. McISAAC, Q.C.,)

-- For the Defendants.

ALSO PRESENT: LIEUTENANT COLONEL R. A. McDONALD,
Office of the Judge Advocate General

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Brig. Gen. D.E. Munro - 215

1 BRIGADIER GENERAL DANIEL EDWARD MUNRO, Previously Sworn

2

3 BY MS. SACHS:

4 836. Q. General Munro, I'd like to
5 refer you to the second volume of the Charter Task
6 Force Report. We've established, General Munro,
7 Annex b which was the CROP Poll results was prepared
8 by an independent polling company.

9 A. That's correct.

10 837. Q. We've also established Annex c
11 which was the internal survey, as well as the
12 summary of the CROP Poll results was prepared by
13 Major Zuliani.

14 A. The analysis was done by Major
15 Zuliani.

16 838. Q. The analysis of the CROP Poll
17 was also done by Major Zuliani.

18 A. Yes.

19 839. Q. And the survey and analysis --
20 the internal survey and analysis of that survey was
21 also done by Major Zuliani; is that correct?

22 A. That's correct. With
23 assistance from P.A.R.U., the Personnel Applied
24 Research Unit.

25 840. Q. And the qualifications of Major

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Brig. Gen. D.E. Munro - 216

1 Zuliani, do you have those?

2 A. I do not have them.

3 841. Q. Would you undertake to produce
4 them to me?

5 MS. McALLISTER: Yes.

6 842. MS. SACHS: Specifically as they
7 relate to this enterprise that he undertook.

8 THE DEPONENT: Mm-hmm.

9
10 BY MS. SACHS:

11 843. Q. In effect, whatever his CV is.

12 A. Mm-hmm.

13 844. Q. Annex d to the Charter Task
14 Force Report is a case history study. Will you be
15 relying on this case history study for the purposes
16 of your Section 1 justification in this litigation?

17 MS. McALLISTER: Could you bear with
18 us for a moment?

19 845. MS. SACHS: It's difficult to locate
20 because Zuliani's report also has annexes which
21 relate to D. The first page is headed "Memorandum".

22 THE DEPONENT: Right there.

23 (Indicating)

24 MS. McALLISTER: Yes, we will be
25 relying upon that.

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Brig. Gen. D.E. Munro - 217

1 846. MS. SACHS: And if you are relying
2 upon it, what -- with respect to what aspect of your
3 justification do you see it as being relevant, and
4 could you be specific in terms of the actual annex?

5 MS. McALLISTER: It goes to cohesion
6 and morale in part.

7 847. MS. SACHS: And could you tell me
8 how?

9 MS. McALLISTER: This study goes in
10 part to the relationship between known homosexuals
11 and their superiors, as well as their peers. It
12 also goes to the issue of ostracism or isolation
13 that we were speaking of yesterday, and it speaks to
14 some extent, to the issue of cohesion between
15 homosexuals and other members of the Forces.

16 848. MS. SACHS: This study was prepared
17 by Chief Warrant Officer Simpson.

18
19 BY MS. SACHS:

20 849. Q. Is that correct, General Munro?

21 A. That's correct.

22 850. MS. SACHS: I would like to have the
23 same undertaking with respect to Chief Warrant
24 Officer Simpson's qualifications as you gave me with
25 respect to Major Zuliani's qualifications.

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1 MS. McALLISTER: Yes, we'll provide
2 that.

3
4 BY MS. SACHS:

5 851. Q. Now, on the first page of this
6 study there are -- there is a line indicating that
7 there were two memos. Memo 5077-3-3, and the
8 indication is that memo was attached. I have been
9 unable to locate it in my copy.

10 A. It doesn't appear to be
11 attached.

12 852. Q. I'd ask that you make your best
13 efforts to produce to me a copy of that memo.

14 MS. McALLISTER: Yes, we'll certainly
15 do that.

16
17 BY MS. SACHS:

18 853. Q. The same with the second memo
19 which I also cannot find.

20 MS. McALLISTER: Yes, you can have
21 our undertaking on that as well. And that, of
22 course, is subject to any proper claim for
23 privilege.

24 854. MS. SACHS: That claim would be based
25 on what?

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1 MS. McALLISTER: I cannot tell you
2 not having seen the memorandum.

3 855. MS. SACHS: If you're going to be
4 making a claim for privilege I'd like to know the
5 basis for that claim for privilege.

6 MS. McALLISTER: I certainly shall,
7 once I have the opportunity to review the
8 documentation.

9 856. MS. SACHS: And any documentation
10 that will support that claim for privilege.

11 MS. McALLISTER: Of course.

12
13 BY MS. SACHS:

14 857. Q. This case study indicates that
15 there was a review of 344 Military Police case
16 history files dealing with investigations conducted
17 into sexual deviancy and homosexuality from 1966 to
18 1986.

19 First of all, the 344 represent
20 the full number of those case history files between
21 the years 1966 to 1986, General Munro?

22 A. I don't know.

23 858. Q. Would you undertake to advise
24 me?

25 MS. McALLISTER: We'll use our best

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1 efforts, yes.

2 MS. McISAAC: You'd better clarify
3 that. Advise as to what?

4 859. MS. SACHS: Whether or not the number
5 of Military Police case history files dealing with
6 investigations conducted into sexual deviancy and
7 homosexuality from 1966 to 1986 equal 344.

8 MS. McISAAC: All right.

9 860. MS. SACHS: If it did not, I would
10 like to know what the number actually was during
11 that period of time, and I would also like to know
12 the basis for the selection of the 344.

13
14 BY MS. SACHS:

15 861. Q. Is there a distinction being
16 made, General Munro, between sexual deviancy and
17 homosexuality in this case history study?

18 A. Considering that sexual
19 deviancy could have included, for example, acts that
20 were covered under the Criminal Code which would be
21 outside of the normal investigations for internal
22 administrative investigations, because now we're
23 into Criminal Code items, it could well be that this
24 sexual deviancy, for example, included those items
25 that might have been covered under the Criminal

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Brig. Gen. D.E. Munro - 221

1 Code.

2 862. Q. Items which would involve
3 heterosexual rather than homosexual conduct?

4 A. No. I believe that in this
5 case ---

6 863. Q. If you don't know, General
7 Munro, that's okay.

8 A. I do not know.

9 864. Q. I'm not asking you to guess

10 ---

11 A. I do not know.

12 865. Q. --- if you do not know. I'd
13 ask you to undertake to find out whether there is a
14 distinction being made here between sexual deviancy
15 and homosexuality, and if there is a distinction I
16 would like to know the number of files from the 344
17 that actually related to homosexuality. Yes?

18 A. Yes.

19 MS. McALLISTER: Yes.

20

21 BY MS. SACHS:

22 866. Q. And I'd also like to know the
23 number of files relating to homosexuality that
24 existed between the years 1966 to 1986.

25 MS. McALLISTER: Yes.

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Brig. Gen. D.E. Munro - 222

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BY MS. SACHS:

867. Q. And how it was that the ones which were selected for the purposes of this study as it relates to homosexuality, were selected.

MS. McALLISTER: I think we already covered that, but if we haven't I will give you that undertaking.

868. MS. SACHS: Thank you.

BY MS. SACHS:

869. Q. Have there been any further case studies of this sort conducted by the Defendant?

A. Not that I know.

870. Q. Have there been any other case studies of this sort conducted by the Defendant?

A. Not that I'm aware of.

871. Q. Well, if you become aware of any such studies, would you undertake to advise me, and to produce same to me?

MS. McALLISTER: Again, we will, subject to any claim for privilege.

872. MS. SACHS: If there's a claim for privilege being made, I'd like to know the basis of

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1 the claim and any supporting documentation in
2 support of that claim.

3 MS. McALLISTER: Yes, of course.

4
5 BY MS. SACHS:

6 873. Q. One further undertaking I'd
7 like to receive, and this is in relation to the
8 definition of sexual deviancy. I'd like to know how
9 that has been defined for the purposes of this
10 study, and if it has been defined as including both
11 homosexual conduct and heterosexual conduct, I'd
12 like to have the breakdown between the incidents
13 where the sexual deviancy involved homosexual
14 conduct and the incidents where it involved
15 heterosexual conduct.

16 MS. McALLISTER: Yes, we will provide
17 that.

18 874. MS. SACHS: Thank you.

19
20 BY MS. SACHS:

21 875. Q. Paragraph 5 of this case study,
22 which would be Page 2, the second page over, just to
23 clarify something that arose yesterday, and I'm into
24 the third sentence of that paragraph:

25 "Case histories of male and

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female homosexuals attest that they do, in fact, try to force their practices onto heterosexuals. The situations and locations under which these incidents take place result in varying effects of physical abuse to the aggressor, ranging from a punch in the face to the extent of requiring hospitalization, regardless of the rank of the aggressor to the individuals not reporting the incident, because of the personal embarrassment they feel that it would cause them."

I asked you yesterday whether part of your Section 1 justification related to a fear of assaults by homosexuals against heterosexuals. You indicated to me that it did not. Do I then take it that you will not be concerned, or relying upon this aspect of the case history study, the aspect discussed in paragraph 5?

MS. McALLISTER: The statement that you made is correct, we are not relying upon this

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1 aspect of the report.

2 876. MS. SACHS: Thank you.

3
4 BY MS. SACHS:

5 877. Q. For the purposes of
6 understanding these statistics, it appears as though
7 of the files reviewed there were files where the
8 conclusion was reached that people were trying to
9 obtain release on the grounds of homosexuality,
10 where they could not obtain it by other normal
11 means.

12 I need to know the numbers of
13 how many of those files were composed in the 344
14 Military Police case history files actually looked
15 at for the purpose of this study.

16 I'm looking at paragraph 9 on
17 Page 3. I'm trying to take those -- isolate the
18 incidents of those files by the numbers. Do you
19 understand what I'm saying? I may not be making
20 myself clear. Do you want to go off the record?

21
22 --- DISCUSSION OFF THE RECORD

23
24 MS. McALLISTER: While we were off
25 the record, Counsel, we discussed your last

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1 question, and we agreed we will use our best efforts
2 to obtain the information that you are seeking.

3 878. MS. SACHS: I think I was a bit
4 unclear in terms of defining that information, so
5 maybe I could take another stab.

6 I'd like to know the number of
7 false claims to homosexuality that are contained in
8 the 344 Military Police case history files, reviewed
9 for the purposes of this study, and also the number
10 of false claims to homosexuality contained in the
11 Military Police case history files dealing with
12 homosexuality during the period from 1966 to 1986.

13 MS. McALLISTER: I've agreed that
14 we'll make best efforts to obtain that information
15 for you.

16 879. MS. SACHS: Thank you.

17
18 BY MS. SACHS:

19 880. Q. You will note that attached to
20 this study is a sampling from the study. Do you
21 know, General Munro, on what basis the cases were
22 chosen for samplings in this Annex a to the study?

23 A. I do not.

24 881. Q. Could you undertake to find out
25 for me?

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Brig. Gen. D.E. Munro - 227

1 MS. McALLISTER: We'll use our best
2 efforts to find out.

3
4 BY MS. SACHS:

5 882. Q. Are they meant to be
6 representative of something, or are these the worse
7 cases? I need to know the answer to that question.

8 A. I don't.

9 MS. McALLISTER: And we will use our
10 best efforts to find out.

11
12 BY MS. SACHS:

13 883. Q. Is Chief Warrant Officer
14 Simpson still in the military?

15 A. I don't know.

16 884. Q. Could you advise me if he is,
17 or is not?

18 MS. McALLISTER: Yes.

19 885. MS. SACHS: Thank you.

20
21 BY MS. SACHS:

22 886. Q. Annex e to Part 4 of the
23 Charter Task Force Report ---

24 A. Yes?

25 887. Q. --- deals with the medical

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1 implications of liberalizing the CF homosexual
2 policy. Will you be relying upon this part of the
3 Charter Task Force Report with its study ---

4 MS. McALLISTER: No, we will not ---

5 888. MS. SACHS: Can I finish my question?

6
7 BY MS. SACHS:

8 889. Q. --- for the purposes of your
9 Section 1 justification in this case?

10 MS. McALLISTER: No, we will not be
11 relying on it.

12 890. MS. SACHS: Thank you.

13
14 BY MS. SACHS:

15 891. Q. Annex f to Part 4 of the
16 Charter Task Force Report is a memorandum prepared
17 by Barsauskas.

18 A. We refer to him as "Major B".

19 892. Q. Do you?

20 A. Yes.

21 893. Q. It deals with the cost of ship
22 renovations, homosexual accommodations. It was
23 prepared the 18th of August, 1986. Will you be
24 relying on this aspect -- on this memorandum for the
25 purposes of your Section 1 justification in this

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1 case?

2 MS. McALLISTER: We'll be relying
3 upon it to the extent that it deals with changes
4 that might be necessary because of the effect on
5 cohesion and morale of having known homosexuals in
6 the Forces.

7
8 BY MS. SACHS:

9 894. Q. And what changes is it you
10 would see being necessary, if there were to be
11 homosexuals in the Forces, of this nature?

12 MS. McALLISTER: Could we go off the
13 record for just a second?

14
15 --- DISCUSSION OFF THE RECORD

16
17 BY MS. SACHS:

18 895. Q. Before we get to ships, this
19 memorandum deals with ship renovation costs, and I
20 take it that it is your position that one of the
21 things that the military would have to look into if
22 there were to be homosexuals in the Canadian Forces,
23 is whether or not there would be a necessity to
24 renovate the ships; is that correct?

25 MS. McALLISTER: That's correct.

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1 THE DEPONENT: That's correct.

2

3 BY MS. SACHS:

4 896. Q. If there were such a necessity,
5 I'm not asking for a design, but what are we talking
6 about? Separate sleeping quarters for homosexual
7 men and homosexual women?

8 A. That's correct.

9 897. Q. So, each ship would have to
10 have four sets of sleeping quarters?

11 A. That's correct.

12 898. Q. Are we talking separate
13 bathroom facilities for homosexual men and
14 homosexual women?

15 A. That would be part of the
16 consideration. Possibly.

17 899. Q. Do you know the basis on which
18 these costings were done? In other words -- I
19 appreciate these figures would be out of date
20 because they were done in 1986 and we are now in
21 1990.

22 I appreciate that you may, in
23 fact, be looking at doing a new set of costings. If
24 you do, I'd like to see them, and I take it you will
25 undertake to produce them?

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1 MS. McALLISTER: Yes.

2

3 BY MS. SACHS:

4 900. Q. I would like to know: These
5 figures were prepared with some criteria in mind as
6 to what kinds of renovations would be necessary.
7 The criteria do not appear, as far as I can see.

8 A. And I do not know what that
9 criteria was.

10 901. Q. I would ask, if you could, make
11 your best efforts, and advise me as to what the
12 criteria used were.

13 MS. McALLISTER: We'll use our best
14 efforts to do that.

15

16 BY MS. SACHS:

17 902. Q. Is it the position of the
18 Defendant if homosexuals were to be members of the
19 Armed Forces, that there would have to be
20 renovations done to barracks?

21 A. That would have to be a
22 consideration.

23 903. Q. And what would you see as being
24 the nature, or what would the Defendant see as being
25 the nature of those renovations?

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1 904. MS. SACHS: Counsel, I see you're
2 pointing your witness to a part of the Charter Task
3 Force Report. I'm just trying to get the position
4 of the Defendant. If it's stated in the report,
5 that would be useful.

6 THE DEPONENT: It is stated in the
7 report.

8 MS. McALLISTER: It is stated in the
9 report. We are at Page 17 of the Part 4
10 Introduction.

11 905. MS. SACHS: Okay. Is it Page 17?

12 MS. McALLISTER: Page 17.

13 MS. McISAAC: Item 52.

14 906. MS. SACHS: Okay. Item 52.

15
16 BY MS. SACHS:

17 907. Q. If I could refer you to Item 53
18 of that -- first of all, let me establish. Page 17
19 of the Introduction to Part 4 of the Charter Task
20 Force Report begins -- item 52 is headed "Separate
21 Accommodation", and Items 52 through to 57 seem to
22 deal with the accommodation problem that the
23 Defendant or the military anticipate would arise by
24 having homosexuals in the Forces.

25 I would ask that you review

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1 these items, and tell me whether or not this still
2 represents the position of the Defendant when it
3 comes to accommodation, and how it would be
4 effected, if homosexuals were to become members of
5 the Armed Forces.

6 MS. McALLISTER: If I may assist?
7 The position that is outlined at Pages 17 and 18
8 continues to be the position of the military.

9 THE DEPONENT: Yes.

10 908. MS. SACHS: Thank you.

11
12 BY MS. SACHS:

13 909. Q. Item 53 refers to the provision
14 of four sets of accommodation. Does that mean that
15 the military contemplates having to provide
16 accommodation for males, females, homosexual males,
17 and homosexual females?

18 A. That's correct.

19 910. Q. And hygiene facilities, does
20 that mean the military anticipates providing four
21 sets of washrooms in a similar manner? Is that what
22 you mean by "hygiene facilities"?

23 A. Yes.

24 911. Q. And I assume -- there is a
25 distinction, from what I gather from the evidence

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1 that we've heard before, between accommodation for
2 non-commissioned members and officers; is that
3 correct?

4 A. That's correct. In fact, there
5 are other separations as well. There are different
6 types of quarters for various ranks of non-
7 commissioned members, there are different -- as you
8 increase in rank normally, whether it's NCM or
9 officer, the level of accommodation changes.

10 912. Q. So, in each one of these
11 situations where you have different levels of
12 accommodation, it's the Defendant's view if
13 homosexuals were employed by the Canadian Forces
14 there would be a necessity of providing four sets of
15 accommodations and four sets of health facilities?

16 A. That's correct.

17 913. Q. What about in places like the
18 National Defence Headquarters where people do not
19 live, but people from the military work, would the
20 military take the position that it would be
21 necessary in those places to provide four sets of
22 washrooms?

23 A. No.

24 914. Q. It's only in those places where
25 people would actually be living?

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- 1 A. Correct.
- 2 915. Q. Are there any other
3 renovations? We've talked about ships, we've talked
4 about accommodations on bases. Are there other
5 living facilities that would have to be renovated?
- 6 A. Not that I'm aware of.
- 7 916. Q. Just a point of clarification:
8 Your counsel assisted me with respect to amendments
9 and drafts of CFAO 19-20 and the necessity they go
10 to Cabinet for consideration. Is that the same when
11 it comes to things like these memorandums and
12 messages coming directly from the Chief of Defence
13 Staff? Do they have to go to Cabinet for
14 consideration before the changes are made? You may
15 not know the answer to that, General Munro.
- 16 A. I think it depends entirely on
17 the nature of the CANFORGEN, for example.
- 18 917. Q. Okay.
- 19 MS. McALLISTER: Could we go off the
20 record for just a moment?
- 21 918. MS. SACHS: Sure.
- 22
- 23 --- DISCUSSION OFF THE RECORD
- 24
- 25 919. MS. SACHS: Counsel, I am going to be

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Brig. Gen. D.E. Munro - 236

1 asking that you find out whether or not the
2 decisions announced in the following documents went
3 to Cabinet for consideration, and I appreciate you
4 do not have the answer today and I'm going to be
5 asking for your undertaking to obtain it.

6 First, Document 50 of Exhibit
7 No. 1, which is Document No. 5 in Exhibit No. 2.
8 It's particularly the decision announced in
9 paragraph 4 of that document.

10 Document 52 of Exhibit No. 1,
11 Document 10 of Exhibit No. 2, and particularly
12 paragraph 2(b) of that document.

13 And Document 60 of Exhibit No.
14 1, which is Document No. 16 in Exhibit No. 2, and
15 Document No. 61 of Exhibit 1, which is Document No.
16 19 in Exhibit No. 2. 60 and 61 are both memorandums
17 which deal with policies, and particularly I'm
18 looking at the change made in paragraph 3 of
19 Document No. 60 -- it's also paragraph 2. 2 and 3
20 of 60; paragraph 2 of 61.

21 MS. McALLISTER: Subject to any claim
22 for Cabinet privilege, we will give you that
23 undertaking.

24 920. MS. SACHS: Thank you. And if you
25 make a claim for privilege, you're going to give me

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1 the basis for that claim?

2 MS. McALLISTER: Yes, of course.

3 921. MS. SACHS: Could we go off the
4 record for a second?

5
6 --- DISCUSSION OFF THE RECORD

7
8 BY MS. SACHS:

9 922. Q. General Munro, I'd like you to
10 turn to Page 19 of the Charter Task Force Report,
11 which is Tab 13 in Exhibit No. 2. Page 19 -- it's
12 Volume 1.

13 A. What is the paragraph number?

14 I may be on it already.

15 923. Q. Paragraph 61.

16 A. Yes.

17 924. Q. I'd like you to review
18 paragraphs 61 and 62, and tell me what is being said
19 here. If you feel it necessary to go back to
20 paragraph 60 as well, that's fine.

21 A. Well, as stated in the document
22 an attempt is being made, or historically there has
23 been a suggestion that the exclusion of a group, for
24 example, based on race, which has been overcome in
25 our Forces and others, is not any different than the

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1 exclusion of homosexuals.

2 I believe the intention here
3 was to state that the racial prejudice, for example,
4 and they were specifically mentioning skin colour,
5 is a totally passive characteristic. Where the
6 inclusion of homosexuals who are conducting
7 homosexual activity is not passive, but is an active
8 characteristic. So, therefore, the writer was
9 suggesting that these are different characteristics
10 and can't really be compared.

11 925. Q. It is true, is it not, that the
12 military has successfully overcome racial prejudice;
13 is that correct?

14 A. Yes.

15 926. Q. And it also has overcome any
16 prejudice that may have existed against the
17 enrollment of women; is that correct?

18 A. Correct.

19 927. Q. So, the question, then, as
20 asked, why homosexuality would not -- the prejudice
21 against homosexuality could not also be overcome,
22 and do I take it, then, this is the Defendant's
23 answer to that question?

24 A. Which? The statement here?

25 928. Q. Do I have the Defendant's

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1 answer to that question, and is it in these
2 paragraphs 60, 61 and 62?

3 MS. McALLISTER: As you will recall
4 this portion is an overview of the more in-depth
5 study that was done by Zuliani. You'll find the
6 position that is summarized here more fully explored
7 in the report itself.

8 929. MS. SACHS: Counsel, maybe you could
9 assist me, because I would like to know the
10 Defendant's answer to that question.

11 MS. McALLISTER: All right. Would
12 you permit us to go off the record for a moment?

13 930. MS. SACHS: Sure. And what the
14 Defendant is relying on in giving me that answer.

15
16 --- DISCUSSION OFF THE RECORD

17
18 MS. McALLISTER: Counsel, my
19 statement earlier was not -- perhaps not entirely
20 clear. I had indicated that the conclusions that
21 are stated in the introductory portion at Page 19 of
22 the Charter Task Force Report were a summary of
23 conclusions that were reached in the Zuliani study.

24 There is not a specific section
25 in the Zuliani study that addresses these

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1 conclusions. That is, you will not find in the
2 Zuliani study a specific portion that speaks to this
3 question of passive versus active character.

4 At this point, General Munro
5 will be able to address how these conclusions were
6 arrived at.

7 931. MS. SACHS: First of all, before we
8 move on to how the conclusions were arrived at, is
9 this the position of the Defendant, i.e., the
10 distinction that is made in paragraph 61 between
11 passive characteristic and active characteristic, is
12 that the position that the Defendant will be relying
13 on as part of its Section 1 justification?

14 MS. McALLISTER: Yes, it is.

15 932. MS. SACHS: And that is the position?
16 There is no other aspect to this position? I have
17 the argument of the Defendant with respect to this
18 matter?

19 MS. McALLISTER: Yes, you do.

20 933. MS. SACHS: Thank you.

21
22 BY MS. SACHS:

23 934. Q. Perhaps we could move on to
24 what evidence, or the basis for arriving at this
25 position, and General Munro, your counsel had

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1 indicated you were going to speak to that.

2 A. The concerns that are in this,
3 is that in general there are concerns of privacy,
4 which was one of the bases for our argument in the
5 defence of this policy, and that the subjects like
6 racial prejudice and skin colour have no effect on
7 privacy, but there is a genuine concern for privacy
8 -- individuals' privacy from homosexuals, which has
9 nothing to do with race. So, the argument is then
10 ---

11 935. Q. Why is there a concern for
12 privacy from homosexuals, other than what you've
13 told me? I understand that members of Canadian
14 Forces don't want to associate with homosexuals,
15 don't want to be housed with homosexuals. Why is
16 that any different from the way they may have felt
17 about blacks?

18 A. Because the characteristics are
19 different. There is no threat to one's privacy by
20 being housed with a black, there's no threat, or
21 supposed threat, perceived threat of the kinds of
22 behaviour that we have talked about before from a
23 black.

24 936. Q. When you talk about "perceived
25 threat" -- I'm just trying to understand what you're

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1 saying. What do you mean by "perceived threat"?

2 A. Well, we talked earlier about
3 the requirement for privacy between heterosexuals
4 and homosexuals, and here we have a case where race
5 doesn't enter into that equation at all.

6 937. Q. Well, in explaining that
7 requirement for privacy to me you used the phrase
8 there's a "perceived threat" from homosexuals which
9 there is not from blacks, for example. Is this a
10 threat from potentially being the subject of a
11 homosexual advance? Is that what you're referring
12 to?

13 A. Yes.

14 938. Q. Sorry, if you could go on.
15 You've explained to me there is this concern about
16 privacy which is rooted in this perceived threat,
17 and that takes us where?

18 A. That takes us to that notion of
19 privacy has nothing to do with skin colour.

20 939. Q. I see.

21 940. MS. SACHS: Counsel, you have
22 indicated to me the Defendant will not be relying as
23 part of the Section 1 justification on homosexual
24 assaults, but will you be relying as part of your
25 Section 1 justification on homosexual advances?

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1 MS. McALLISTER: No. Not on
2 homosexual advances per se. What we are relying
3 upon is the conclusion that was reached in the
4 Zuliani study that individuals who are involved in
5 the Canadian Forces perceive a threat to their
6 privacy. Their personal privacy.

7 941. MS. SACHS: You're not alleging that
8 such threats will actually be realized?

9 MS. McALLISTER: That's correct.
10 We're not alleging there will be such threats. What
11 we are relying upon is the separate privacy concern
12 of the individual and their perception.

13 942. MS. SACHS: Which you are not trying
14 to maintain are founded fears?

15 MS. McALLISTER: We are not
16 maintaining that the individuals are actually going
17 to be attacked, or will actually have advances made
18 to them.

19 943. MS. SACHS: But you are maintaining
20 that members of Canadian Forces are afraid of being
21 attacked, and afraid of having advances made to
22 them?

23 MS. McALLISTER: Excuse me. It's a
24 more subtle concern that being attacked or being
25 assaulted ---

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1 944. MS. SACHS: Or having a sexual
2 advance made?

3 MS. McALLISTER: Or having a sexual
4 advance made. It's more subtle than that. It is
5 the privacy concern of the individual who may be
6 reluctant to have a shower in a common shower
7 facility with a person that is known as a homosexual
8 because they may feel that person is looking at them
9 in a sexual context.

10 That individual may not feel
11 they are going to be advanced upon, or suffer an
12 assault, or an attack or anything of that nature.
13 It is more their own perception of their personal
14 privacy.

15 945. MS. SACHS: Would this perception
16 apply in a situation other than in a shower?

17 MS. McALLISTER: It would apply in
18 general living conditions. That is all in the
19 Zuliani study.

20 946. MS. SACHS: General living conditions
21 when people are undressed as opposed to dressed.
22 Are you making any distinction there?

23 MS. McALLISTER: No, I'm not. I'm
24 saying general living conditions. Again, it's in
25 the Zuliani study. I hesitate to go into greater

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1 detail at the risk of contradicting our own experts
2 who have prepared a study that was fully researched.

3 947. MS. SACHS: Just to clarify one more
4 thing: It will not be the position of the Defendant
5 at trial that heterosexual men are at risk, or
6 heterosexual members of the Canadian Forces are at
7 risk of receiving sexual advances from homosexual
8 members of the Canadian Forces; will it?

9 MS. McALLISTER: That can happen.
10 That's not the crux of our argument.

11 948. MS. SACHS: But it's not part of your
12 Section 1 justification?

13 MS. McALLISTER: It's not the Section
14 1 justification that we're advancing, it's the
15 privacy concern of the individual members that we're
16 dealing with, and we're dealing with the living
17 conditions.

18 I think it's been made clear in
19 the last three days of testimony that conditions are
20 somewhat different from a normal 9:00 to 5:00 job.
21 People live in barracks, they share sleeping
22 quarters, they share washrooms, they share shower
23 facilities. When I speak of general living
24 conditions, I'm speaking of that.

25 In addition, there are field

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1 exercises that we've heard about, there are ships.
2 All of these things that we have discussed impose
3 different living conditions and different privacy
4 concerns that we must be cognizant of.

5 949. MS. SACHS: And it is these privacy
6 concerns, and it is the position of the Defendant,
7 as I understand it, that these privacy concerns are
8 different when it comes to homosexuals than when it
9 comes to women, or to blacks?

10 MS. McALLISTER: Well, they are
11 somewhat similar to the concerns of women who
12 require separate accommodation from men. But the
13 similar type of concern.

14 950. MS. SACHS: So that in terms of
15 answering the question that I had previously posed
16 with respect to the basis for the position in 63, 64
17 -- I'm sorry, in paragraphs 60, 61, and 62 of the
18 first part of the Charter Task Force Report, you
19 would indicate to me, General Munro, I take it your
20 answer is that it rests in the results of the
21 Zuliani survey?

22 THE DEPONENT: That's correct.

23
24 BY MS. SACHS:

25 951. Q. Anything else?

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A. No.

952. Q. Thank you. That concludes my questioning of General Munro on the Section 1 aspect of the Douglas case, and I believe we have agreed Mr. Hughes will now ask his questions concerning this aspect of the Dwyer case.

BY MR. HUGHES:

953. Q. General Munro, just to continue in the same line of questioning that my learned friend was following on with regard to the Defendant's position on Section 1.

Would it be fair to summarize the Defendant's position on Section 1 Charter arguments as being the concern is not so much with homosexuality per se, but rather the effect that homosexuality would have on the operational effectiveness of the Canadian Forces?

A. (Nodding head)

MS. McALLISTER: We need a verbal answer.

THE DEPONENT: Yes.

BY MR. HUGHES:

954. Q. And specifically as it applies

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1 to the five categories that you outlined yesterday.

2 You listed ---

3 A. Four.

4 955. Q. There were morale -- leadership

5 ---

6 A. Leadership and discipline were
7 combined, cohesion and morale, recruiting and
8 retention, and privacy.

9 956. Q. And those were the only four

10 ---

11 A. Yes.

12 957. Q. --- categories that we're
13 dealing with. And the concern regarding this whole
14 issue of accommodation is one of privacy?

15 A. Yes.

16 958. Q. I'm just trying to visualize
17 how this would work in practice. I assume the
18 underlying assumption that you are taking in saying
19 that separate accommodation would be required is
20 that there would be a finding by the courts that
21 sexual orientation is an analogous grounds under
22 Section 15, and that the courts would order that --
23 counsel wishes to respond.

24 MS. McALLISTER: It's our position
25 separate accommodation is not realistic.

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1 959. MR. HUGHES: So, that is your
2 position, that it would not work in practice?

3 MS. McISAAC: Can I state our
4 position as being this: The position is there is a
5 need to protect the privacy of individuals. That
6 can be done in the context of men and women while
7 providing separate accommodation in most
8 circumstances so that men and women are not required
9 to live together. It cannot be done within the
10 group. There is no privacy within the group.

11 All the women on a ship, for
12 instance, are living in very close quarters with
13 practically no privacy at all whatsoever, and
14 General Munro can describe accommodation on a ship
15 more fully if you want.

16 That is not feasible within the
17 group to provide privacy as between individuals who
18 may be homosexuals, so that an individual may be
19 required to share very close personal living space
20 with an individual who is a homosexual.

21 And it's the position of the
22 Canadian Forces it is not appropriate to require
23 those individuals to live together under those
24 circumstances, because of the incursion on the
25 privacy of both individuals, but particularly the

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1 individual who is not a homosexual, but is required
2 to live with someone who may view, or they may feel
3 views them as an object -- a sexual object in a way
4 that would not happen to heterosexual individuals of
5 the same sex. But that conversely, it is not
6 feasible to structure arrangements in most cases to
7 provide adequate privacy.

8 960. MR. HUGHES: Now, the Canadian Forces
9 had some recent experience with regard to the
10 integration of women into the Canadian Forces?

11 THE DEPONENT: Correct.

12
13 BY MR. HUGHES:

14 961. Q. And there have been policies
15 formulated to deal with some of the issues that came
16 up with that?

17 A. Correct.

18 962. Q. Now, I understand it is the
19 Defendant's position the situation of women is
20 analogous to those of gays and lesbians in the Armed
21 Forces in terms of accommodation; is that correct?

22 MS. McISAAC: No. In terms of the
23 concern and respect for bodily privacy. The
24 situation is analogous to male and female as opposed
25 to a racial analogy which we were discussing

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1 earlier.

2 963. MR. HUGHES: This only extends from
3 my understanding, to the situation regarding living
4 quarters; is that correct? And you're not raising
5 this in terms of actual working conditions; is that
6 correct?

7 MS. McISAAC: Well, working
8 conditions and living conditions in the field or on
9 a ship are very hard to separate. If one has a job
10 such as your client, Corporal Dwyer, who comes to
11 work each morning at seven o'clock or seven-thirty,
12 and does his work and goes home, that's one thing.
13 Not comparable to an individual in the Middle East,
14 for example, living for six months on a ship in
15 ship's accommodations, working, sleeping, and
16 someone who is in the field under similar conditions
17 where work and housing are barely separated.

18 964. MR. HUGHES: Am I correct, then, in
19 assuming that you are expecting that women and -- or
20 the accommodations for gay and lesbians in the Armed
21 Forces to be separate in those situations, and that
22 there would be some difference between the way gays
23 and lesbians would have to be treated within those
24 situations, as opposed to heterosexuals in the
25 Canadian Forces? I don't know if I've made myself

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1 clear on that.

2 MS. McISAAC: You haven't, I'm sorry.

3 965. MR. HUGHES: I'm sorry. I'll try
4 again. If you could explain to me just what
5 differences, you know, to follow this policy of
6 accommodation ---

7 MS. McISAAC: I think the answer is
8 it's not feasible to build four mess decks on a
9 ship, one for heterosexual women, one for
10 heterosexual men, one for lesbian women and one for
11 homosexual men. And to characterize people in that
12 manner is not a feasible solution.

13 966. MR. HUGHES: So, when you are talking
14 about basic living quarters, then, it extends to
15 more than just sleeping arrangements, you're talking
16 about people eating together, you're talking about
17 people doing anything communally; is that it?

18 MS. McISAAC: That's correct. But
19 primarily it's those elements that require privacy,
20 bodily privacy.

21 967. MR. HUGHES: I don't understand how
22 it would relate to eating arrangements on a mess
23 deck.

24 MS. McISAAC: Mess deck is where
25 people sleep. I believe I've used the right term,

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1 have I not?

2 THE DEPONENT: Mess deck is where
3 they eat.

4 MS. McISAAC: Where they sleep is
5 what I intended to say. Men and women eat together
6 on ships. I didn't mean to imply that they don't
7 eat together. I used the wrong term.

8
9 BY MR. HUGHES:

10 968. Q. Now, am I right in assuming the
11 assumption all along with regard to how homosexuals
12 or persons who are gay and lesbian in the Canadian
13 Forces would be treated in terms of accommodation,
14 if separate accommodation was then made, would only
15 apply to persons who were known homosexuals?

16 A. Obviously.

17 969. Q. And is it envisioned that
18 decision -- or that there would be a process whereby
19 once they were known by the authorities in the
20 Canadian Forces, that they would have that
21 designation, and wherever they are stationed they
22 would be subject to having separate accommodations?

23 MS. McISAAC: I think, Mr. Hughes, I
24 made the point earlier the Canadian Forces does not
25 really see that as being a viable option. It seems

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1 the only logical way to protect privacy, but on the
2 other hand doesn't strike anyone as being a viable
3 option with respect to protecting that privacy.

4 970. MR. HUGHES: Is that on the basis of
5 cost?

6 MS. McISAAC: It's on the basis of
7 ---

8 THE DEPONENT: That conclusion is
9 drawn and that statement is made at para 57. It
10 says:

11 "In summary, although
12 technically feasible in most
13 cases the provision of separate
14 accommodation and hygiene
15 facilities for homosexuals
16 would raise unsolvable problems
17 in determining their
18 requirement and would introduce
19 complexity of impractical
20 dimension into the management
21 of the Canadian Forces."

22
23 BY MR. HUGHES:

24 971. Q. Now, everything that has been
25 stated around this, is based on the conclusions of

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1 the Zuliani report; is that correct?

2 MS. McALLISTER: Yes.

3 THE DEPONENT: Yes.

4
5 BY MR. HUGHES:

6 972. Q. My understanding, then, of the
7 Zuliani report is that it is basically stating what
8 present attitudes are in the Canadian Forces and the
9 general public towards gays and lesbians serving in
10 the Canadian Forces; is that correct?

11 A. The two surveys cover those
12 aspects, yes.

13 973. Q. The internal and the external?

14 A. Right.

15 974. Q. Is there anything in the report
16 that I have missed, or any other reports that you
17 are aware of that deal with how individuals -- how
18 respondents to those reports arrived at their
19 decisions -- the positions that they had on service
20 of gays and lesbians in the Canadian Forces?

21 MS. McISAAC: I'm going to answer
22 that question. First of all, only you know if
23 you've missed anything in the report. We're not
24 going to answer that question.

25 The second part of your

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1 question that everything upon which the report is
2 based, subject to some additional material which
3 we've already undertaken to Ms. Sachs to provide, is
4 in the report.

5
6 BY MR. HUGHES:

7 975. Q. Can you point -- are there any
8 studies that the Canadian Forces have done with
9 regard to attitudinal changes on homosexuality?

10 MS. McISAAC: The only studies that
11 have been done are in the report.

12
13 BY MR. HUGHES:

14 976. Q. So, there is no data that
15 you've looked at -- you have not examined the
16 question as to what might cause someone to have
17 change from a negative attitude towards homosexuals
18 serving, or gays and lesbians serving in the
19 Canadian Forces, to having a positive attitude?

20 A. Not that I'm aware of.

21 MS. McISAAC: On the other hand,
22 there is indications in the Zuliani work that
23 individuals who have had contact with homosexuals
24 have a higher degree of concern about homosexuals
25 than those who have not. There is a correlation.

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BY MR. HUGHES:

977. Q. Were there any studies done in a similar nature of the Zuliani report, on attitudes on gays and lesbians in the Canadian Forces ---

MS. McISAAC: No.

BY MR. HUGHES:

978. Q. --- with regard to women in the Canadian ---

MS. McISAAC: They were in the Task Force Report as well.

BY MR. HUGHES:

979. Q. And were there any studies done with regard to attitudinal changes of having women serve in the Canadian Forces?

MS. McISAAC: We'll be happy to provide you with the complete Charter Task Force Report which includes any studies done on the issue of women. They are all here as well, and we'll provide you with a complete copy of the report.

980. MR. HUGHES: I'll be happy with that.

BY MR. HUGHES:

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1 981. Q. General Munro, is it correct,
2 or do you know if there have been any studies done
3 with regard to attitudinal -- or has that question
4 or consideration of attitudinal changes come up
5 since you were involved in the Charter Task Force?

6 MS. McISAAC: With respect to women?

7 982. MR. HUGHES: No, with respect to gays
8 and lesbians.

9 MS. McISAAC: We've told you several
10 times no studies have been done other than what is
11 here.

12 983. MR. HUGHES: Was there any
13 consideration, I'm asking, given to that issue?

14 THE DEPONENT: No.

15 MS. McISAAC: That's a matter of
16 solicitor and client privilege.

17
18 BY MR. HUGHES:

19 984. Q. And are you aware of, prior to
20 commencement of this litigation, any consideration
21 of that issue?

22 A. No.

23 985. Q. A number of times, and starting
24 originally with the Canadian Forces Administrative
25 Order 19-20 and going through all its different

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1 incarnations and modifications, there are references
2 to "homosexual" as a noun, and you have given a
3 definition of homosexuality and homosexual acts.
4 I'm wondering, is there an official definition that
5 the Canadian Forces use on "homosexual"?

6 A. None that I'm aware of that
7 isn't contained in this documentation.

8 986. Q. Okay. If you could look at
9 each of these individually. Now, within Document 1
10 in Exhibit 2, which is the original CFAO 19-20, and
11 that's Document 46 in Exhibit 1, there is a
12 definition offered of "homosexual" there. Could you
13 read that just for the record, please?

14 A. "For the purposes of this
15 order, 'homosexual' is one who
16 has sexual propensity for
17 persons of one's own sex, and
18 ..."

19 987. Q. That's sufficient. When there
20 were modifications made to CFAO 19-20, did that
21 definition still apply?

22 MS. McISAAC: I thought we covered
23 this yesterday.

24 988. MR. HUGHES: Okay. Wherever the word
25 "homosexual" is used in future documents, is it

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1 referring back to this definition?

2 MS. McISAAC: Well, no. Where it
3 does appear in future documents, it talks in terms
4 of homosexual acts. We spent some considerable time
5 reviewing the change which resulted in the
6 propensity no longer being sufficient.

7 989. MR. HUGHES: Okay. For instance, on
8 the interim reply on homosexuality, which is
9 Document 16 in Exhibit 2, and is Document 60 in
10 Exhibit 1, and paragraph 2(a) -- perhaps the entire
11 paragraph up to the end of 2(a) could be read.

12
13 BY MR. HUGHES:

14 990. Q. Could you read that, please,
15 for the record, General Munro?

16 A. Starting at "While we await
17 ..."?

18 991. Q. Yes.

19 A. "While we await approval of our
20 draft CFAO concerning
21 homosexuality, we have been
22 authorized by direction from
23 Associate MND to take
24 administrative release action
25 under specifically detailed

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1 conditions where a member
2 acknowledges he or she is a
3 homosexual and DND considers
4 such members to be homosexual."

5 992. Q. Thank you. Now, what would be
6 the definition that the Department of National
7 Defence would use for "homosexual", in this context?

8 A. As stated yesterday, one who is
9 involved in inappropriate homosexual behaviour.

10 993. Q. So, this use of the word
11 "homosexual" does not apply to someone who does not,
12 or has not practised a homosexual act?

13 A. We established that yesterday.

14 994. Q. So, when a member acknowledges
15 that he or she is homosexual, but has not acted on
16 those feelings, or has not recently acted on those
17 feelings, then that person would not be subject to
18 this policy?

19 A. As a general principle, yes.

20 995. Q. Was there at any time any
21 guidelines drawn up as to what constituted a
22 homosexual, before the policy came into effect,
23 modifying CFAO 19-20, that focussed on homosexual
24 acts?

25 A. I'm not sure I understand your

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1 question.

2 996. Q. Okay. I understand that the
3 present policy now is that only if someone
4 acknowledges, or is found to have been committing
5 homosexual acts, would they be subject to the
6 Canadian Forces policy; is that correct?

7 A. Yes.

8 997. Q. Prior to that policy coming
9 into effect, were there any guidelines defining what
10 a homosexual was?

11 A. Not other than the definition
12 given at the beginning of CFAO 19-20 where it
13 included propensity.

14 998. Q. And propensity would then
15 include anyone, whether or not they had acted on
16 homosexual feelings, had any homosexual feelings at
17 all; is that ---

18 A. Yes.

19 999. Q. With regard to the concern
20 about discipline in the Canadian Forces, that there
21 would be a possibility of a development of
22 homosexual relationships between a superior and a
23 subordinate, it would be detrimental to the image of
24 the leader. Is there any regulations or policy
25 dealing with development of heterosexual

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1 relationships?

2 A. Yes, there is. There is a CFAO
3 that deals with -- it's entitled "Mixed Agenda
4 Relationships", and it's CFAO 19-38. You recall
5 yesterday, for example, you asked the question about
6 what one could do, you went to the question of
7 kissing, and I said that was covered as well as
8 being inappropriate for heterosexuals, for example,
9 in public, in uniform, and that's covered in that
10 particular CFAO.

11 1000. Q. Could you undertake to provide
12 a copy of that for me?

13 MS. McISAAC: Indeed. We will.

14
15 BY MR. HUGHES:

16 1001. Q. General Munro, have you had an
17 opportunity to look at either of the two reports
18 contained in this book ---

19 A. No, I have not. Other than
20 yesterday looking at the flyleaf, I have not read
21 that report. I understand it's just recently
22 published.

23 1002. Q. That's correct.

24 A. September, '90, I believe I
25 noticed.

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1 1003. Q. September, '90 was the date of
2 publication. The report itself, the first report,
3 "Non-Conforming Sexual Orientations and Military
4 Suitability", which was prepared by the Defence
5 Personnel Security Research and Education Centre for
6 the Department of Defence in the United States.
7 It's dated December, 1988.

8 A. I've never seen it.

9 1004. Q. And you've also not -- was
10 anyone in the Charter Task Force aware of this
11 report?

12 A. No. The dates would indicate
13 that. The Charter Task Force was in the summer of
14 '86.

15 1005. Q. And do you know whether anyone
16 in your office have been aware of these reports at
17 the present time?

18 A. I had no knowledge of those
19 reports until I saw the book yesterday.

20 1006. Q. Okay. And for the record the
21 second report is entitled "Pre-Service Adjustment of
22 Homosexual and Heterosexual Military Accessions:
23 Implications for Security Clearance Suitability".
24 Also published by the Defence Personnel Security
25 Research and Education Centre, and it's dated

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1 January, 1989.

2 MS. McALLISTER: I don't think we
3 have the name of the book on the record.

4 1007. MR. HUGHES: Both of these documents
5 are contained in a book entitled "Gays in Uniform:
6 The Pentagon Secret Report. Kate Dyer, Editor". I
7 believe that is dated September, 1990. For the
8 purpose of this discovery ---

9 MS. McISAAC: We've established in
10 our examination that General Munro was not aware of
11 the publication, that it post-dated the Charter Task
12 Force, and no one in the Canadian Forces, as far as
13 we know, was aware of it. So, why do you want to
14 mark it as an exhibit?

15 1008. MR. HUGHES: We can leave that. I
16 have no further questions to ask about the document.
17 There's no necessity for marking it.

18
19 BY MR. HUGHES:

20 1009. Q. Are there any circumstances
21 where some form of parental consent is needed for
22 persons to enlist in the Canadian Forces?

23 A. I can't answer that. I can
24 undertake to find out, but I don't know the answer
25 to that.

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1 MS. McISAAC: With your permission we
2 can have Lieutenant Colonel McDonald answer the
3 question.

4 MS. SACHS: Maybe he could advise
5 General Munro and we'll put it on the record.

6 MS. McISAAC: Go off the record for a
7 moment.

8
9 --- DISCUSSION OFF THE RECORD

10
11 MS. McISAAC: In answer to your
12 question, Subsection 3 of Section 20 of the National
13 Defence Act provides that:

14 "A person under the age of 18
15 years shall not be enrolled
16 without the consent of one of
17 the parents or the guardian of
18 that person."

19 1010. MR. HUGHES: What is the youngest a
20 person can be enrolled?

21
22 BY MR. HUGHES:

23 1011. Q. For the record, General Munro?

24 A. Normally 17, but in certain
25 circumstances 16.

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Brig. Gen. D.E. Munro - 267

1 1012. Q. General Munro, counsel has
2 given a response just earlier, and several responses
3 to other questions that I have made. Do I take it
4 that you adopt counsel's responses as your own?

5 A. I do.

6 1013. Q. Thank you. Now, the concerns
7 that have been expressed by the Defendant have
8 seemed to have been focussed on someone who is known
9 to be gay or lesbian; is that correct?

10 A. That's correct.

11 1014. Q. Is it fair to say that the
12 Canadian Forces is not concerned about finding out
13 about the sexual orientation of persons, and has no
14 desire to know what their sexual orientations are?

15 A. That question is not asked
16 anywhere.

17 1015. Q. Is there any concern that the
18 Canadian Forces has to determine what the sexual
19 orientation of an individual in the Canadian Forces
20 is?

21 MS. McISAAC: I think the answer to
22 that would be found in the Marin report where Judge
23 Marin points out that sexual orientation, in certain
24 circumstances, may be a consideration with respect
25 to security, as can other personal circumstances.

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BY MR. HUGHES:

1016. Q. Is it the Defendant's position that those positions of security are a concern for the Section 1 argument?

MS. McISAAC: No.

1017. MR. HUGHES: So, for the purposes of Section 1 argument, the Defendant would take the position that the Canadian Forces has no need to know the sexual orientation of individuals in the Canadian Forces?

MS. McISAAC: Well, the Canadian Forces like any other organization, needs to know if there are characteristics or features in an individual's lifestyle or background which might make that person susceptible to being a security risk, and to that extent a secret homosexuality, which one is keen to keep from relatives, friends and such, poses a security risk, as do other elements of one's lifestyle.

It cannot be discounted, and in that context it may be important to know that one has a potential to be blackmailed, as a result of one's secret homosexuality.

1018. MR. HUGHES: Again for the purposes

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1 of Section 1, is the Defendant taking the position
2 that this is a concern?

3 MS. McISAAC: Not as part of the
4 Section 1 argument, but someone who is a homosexual
5 and is hiding that fact from friends and relatives,
6 is clearly someone who has to be assessed as a
7 potential security risk.

8 But it's not an exclusive --
9 something that is exclusive to homosexuals. In that
10 sense, secret homosexuality, unknown homosexuality
11 is perhaps more of a risk to security -- clearly
12 more of a risk to security than a known homosexual.

13 1019. MR. HUGHES: All right.

14
15 BY MR. HUGHES:

16 1020. Q. Now, in Annex d to Document 13
17 of the Charter Task Force Final Report, which is in
18 Volume 2 -- no, it's a separate exhibit.

19 MS. SACHS: That's right.

20
21 BY MR. HUGHES:

22 1021. Q. On Page 2 of Annex d, paragraph

23 ---

24 A. What is the title?

25 1022. Q. Sorry, it's "Memorandum, Case

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Brig. Gen. D.E. Munro - 270

- 1 History Study, Homosexuals in the Canadian Forces",
2 dated September, '86.
- 3 A. Okay. And you're at paragraph
4 ...?
- 5 1023. Q. Paragraph 4.
- 6 A. Yes.
- 7 1024. Q. I'll just give you a moment to
8 review that.
- 9 A. Yes?
- 10 1025. Q. Are you aware if there was any
11 criminal convictions as a result of the
12 investigations referred to in that paragraph?
- 13 A. I am not aware.
- 14 1026. Q. Could you undertake to provide
15 counsel with that information?
- 16 MS. McISAAC: What's the relevance?
- 17 1027. MR. HUGHES: First of all, is the
18 Defendant relying on the information in this
19 paragraph in their Section 1 arguments?
- 20 MS. McISAAC: That information simply
21 provides a factual fact that these cases were found.
- 22 1028. MR. HUGHES: If they're not being
23 relied upon ---
- 24 MS. McISAAC: I suppose if the
25 information is available we will use our best

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Brig. Gen. D.E. Munro - 271

1 efforts to find out and provide it if it is.
2 1029. MR. HUGHES: If it's not being relied
3 on I have no need for it, but if it is, I would like
4 that to be provided.

5
6 BY MR. HUGHES:

7 1030. Q. Just turning to Document No. 12
8 in Exhibit 2, which is Document No. 57 in Exhibit 1,
9 and on the page which is marked "5:15" in the upper
10 right-hand corner. Now, there is a question by Mr.
11 Robinson there, starting in the third line.

12 A. Yes.

13 1031. Q. And I wonder if you could read
14 that, and down to -- starting with:

15 "I would also like to ask a
16 question ..."

17 and reading to the response of General Theriault
18 where he says:

19 "But I would not exclude it
20 necessarily for that."

21 A. You wish me to read that?

22 1032. Q. Maybe I could just read what I
23 want into the record. Mr. Robinson asks:

24 "I would also like to ask a
25 question with respect to those

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1 individuals who happen to be
2 gay or lesbian who did lose
3 their jobs within the Armed
4 Forces solely on the basis of
5 their homosexuality under CFAO
6 19-20. No improper conduct
7 fulfilling the mandate of the
8 Armed Forces in every other
9 respect. Will these
10 individuals be given an
11 opportunity to apply to the
12 Canadian Armed Forces under the
13 new policy?"

14 And General Theriault responds:

15 "That hadn't been considered."

16 And says:

17 "It had not been set out as a
18 question to be reviewed by the
19 Task Force, but I would not
20 exclude it necessarily for
21 that."

22 Was that ever a question that was put to the Charter
23 Task Force?

24 A. No.

25 1033.

Q. Now, further down the page Mr.

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Brig. Gen. D.E. Munro - 273

1 Robinson asks if General Theriault could indicate if
2 there was a list of questions that were being
3 reviewed by the Task Force.

4 Now, General Theriault gives us
5 a response that we could review, and it seems that
6 there was not anything formally written that he
7 referred to at that time.

8 A. I think that's a correct
9 statement. There were no specific instructions as
10 to what the Charter Task Force was to examine on
11 this issue.

12 1034. Q. Are there any specific ---

13 MS. McISAAC: Excuse me, there's the
14 action directive at Document 54 which sets out the
15 terms of reference of the Charter Task Force. That
16 is Document 54 of Exhibit 1, and Document 7 of
17 Exhibit 2.

18
19 BY MR. HUGHES:

20 1035. Q. And have there been any other
21 written documents that have expanded on what has
22 been set out here, or given additional
23 considerations for the Charter Task Force to
24 consider in its mandate?

25 A. No.

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Brig. Gen. D.E. Munro - 274

1 1036. Q. I'm not sure if this question
2 has been already covered, but were there guidelines
3 which were issued to Major Zuliani in drawing up his
4 report?

5 A. There were no written
6 guidelines. He was a member of the Charter Task
7 Force, and it was agreed internally in the Charter
8 Task Force that there was a requirement for such a
9 study to be done.

10 1037. Q. Were there any minutes that
11 were taken, what the terms of reference for the
12 study were?

13 A. I can undertake to find out. I
14 don't know.

15 MS. McISAAC: We'll undertake to
16 look, and if there's any claims for privilege, we'll
17 provide them to you.

18
19 BY MR. HUGHES:

20 1038. Q. Again, I think this may have
21 been covered, but was there a written contract with
22 CROP setting out what the terms of reference were
23 for their research?

24 MS. McISAAC: Again, we'll have to
25 give you an undertaking. Again, subject to any

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1 claim for privilege, upon review of the document, we
2 shall undertake to provide a copy.

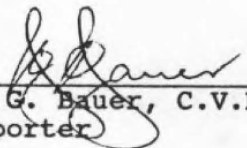
3 1039. MR. HUGHES: Thank you.

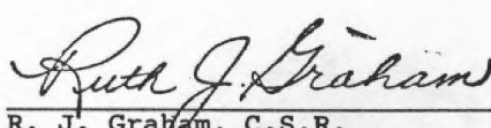
4
5 BY MR. HUGHES:

6 1040. Q. Thank you, General Munro, I
7 have no further questions.

8
9
10
11
12 CERTIFIED CORRECT TO
13 THE BEST OF MY SKILL
14 AND ABILITY:

I hereby certify the foregoing
to be the continued Examination
for Discovery of BRIGADIER
GENERAL DANIEL EDWARD MUNRO, on
behalf of the Defendants herein,
taken the 26th day of October,
1990.

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19 B. G. Bauer, C.V.R.
Reporter


R. J. Graham, C.S.R.
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