



National Defence

Défense nationale

National Defence Headquarters  
Ottawa, Canada  
K1A 0K2

Quartier général de la Défense nationale  
Ottawa, Canada  
K1A 0K2

1457-2- [REDACTED] (D Law/HRI)  
1457-2- [REDACTED]  
1457-2- [REDACTED]  
1457-2- [REDACTED]

Office of the Judge  
Advocate General  
305 Rideau Street  
Constitution Building  
Ottawa, Ontario  
K1A 0K2

30 October 1992

**BY FAX**

Mrs. Barb McIsaac  
Legal Counsel  
Civil Litigation Section  
Department of Justice  
Room 536, Justice Building  
Kent and Wellington Streets  
Ottawa, Ontario  
K1A 0H8

Dear Mrs. McIsaac:

**Re: Resolution of Homosexual Federal Court Actions**

As you are aware, with the judgment and settlement in Douglas now behind us there are four remaining court actions, of which three have been handled by your office and the fourth by Mr. Piché in the Department of Justice office in Montreal. As discussed yesterday, I believe that it is appropriate that counsel for the plaintiffs be contacted with offers of settlement, and that these negotiations do not require the further involvement of the independent counsel in Toronto.

First, as for the [REDACTED] action in Montreal, I am advised that the Minister of National Defence has very recently given his consent to a settlement proposed by Mr. Piché ([REDACTED] if income tax is not applied or [REDACTED] otherwise). When I receive written confirmation of the Minister's action, I will immediately advise Mr. Piché to attempt to conclude a settlement on this basis. I have discussed the requirement for obtaining ministerial approval for any change to this offer and for like offers to other

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plaintiffs. Inasmuch as the policy has now been revoked, the concurrence of the Minister will not again be sought. Settlements will be approved by DGPP and JAG staff.

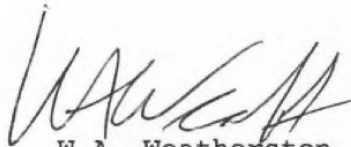
Concerning the other three actions, Corporal Dwyer will be advised by military staff that career restrictions have been lifted and that a career review is underway, i.e., possible recommendations for priority loading on career courses, backdated promotion, etc. I have requested that career staff pass copies to me of all correspondence sent to Corporal Dwyer in this respect, and that any necessary action be taken as a result of the review. I do not believe that any such service action should be tied at this point to the settlement of his Federal Court action. It is my opinion that counsel for Corporal Dwyer should also be contacted by your office and advised that a career review by military authorities will be completed given the lifting of the restrictions and that any settlement discussions should await the completion of this review.

The other cases of [redacted] and [redacted] both involve released members. The former has been seeking reinstatement, which of course cannot in law be given. Re-enrolment with previous rank and seniority would be a possible remedy, provided she meets enrolment standards. From a review of my file, it does not appear that any discussion of damages has occurred in this case. Accordingly, it is requested that you provide me with your opinion on a suitable initial offer to this plaintiff, including a conditional offer of re-enrolment. In the case of [redacted] as you are well aware, a settlement on very favourable terms was recently derailed by the grievance disclosure. Again, it is requested that you advise me what you would consider to be a fair offer in this case in light of Douglas.

Finally, as I advised yesterday, authorities in the Department concerned with various aspects of settling the homosexual court cases, grievances and human rights complaints met yesterday. An initial review has disclosed 61 releases under the policy since approximately April 1985 and 15 members who were serving under the interim policy that was revoked on October 27, 1992, for a total of 76 potential cases since section 15 came into force. Current complaints include four human rights complaints, approximately ten grievances and the four court actions, with some overlap in forum, e.g., each of the four plaintiffs also has a grievance.

While some of the serving members could initiate grievances, the human rights route and federal court actions

are the only procedures available for those ex-members who were released under the homosexual policy. I would anticipate a number of additional cases in these areas. It was the consensus of Departmental authorities that settlement of the court cases, with any necessary payment of damages, be first attempted (with the necessary release of all grievance rights) before the internal resolution of the grievances in other cases with possible financial payments. Further, while I am not aware that any of the four plaintiffs have human rights complaints, later court plaintiffs with such complaints will of course necessitate obtaining the concurrence of the Commission to any settlement.



W.A. Weatherston  
Lieutenant-Colonel  
Director Law/Human Rights and Information

CC: DPP 2 (Mr. Logan)