Government of Canada / Gouvernement du Canada

ACTION REQUEST / FICHE DE SERVICE

To - A: Joe [redacted]

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From - De: DK

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The tone and spirit of this piece leave me uneasy. It seems more "progressive" than I understand Deptl position to be. The Conclusion, that we

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GC 12 (91.01) 7540-21-868-3907

ought to prepare to offer concessions when sought doesn't really follow from the earlier discussion.

That said, I'm not sure there's anything to be gained by sending a response to BML. Perhaps we should simply ignore the memo and await the further test cases that are sure to come our way.

A0050768_2-001495

SHIRLEY.
BML/Squires/992-6980

External Affairs and International Trade Canada | Affaires extérieures et Commerce extérieur Canada

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REFERENCE / RÉFÉRENCE •

SUBJECT / SUJET • **POLICY FOR HOMOSEXUAL EMPLOYEES**

Security / Sécurité	CONFIDENTIAL
Accession / Référence	
File / Dossier	HOMO.DFT
Date	October 29 1992
Number / Numéro	BML-0687

ENCLOSURES / ANNEXES

X

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Over the course of the past year, issues and concerns related to the status of homosexual employees at EAITC have increased in profile due to mainstream press coverage of such issues as well as recent ministerial correspondences and articles published in Bout de Papier. Coupled with this are recent court challenges which serve to heighten the Canadian public's awareness of homosexual concerns and demands. Such events have prompted the department to undertake a review of existing internal policies and their applicability to homosexual employees within the department.

2. To this end, attached for your information and comment is a background paper on past and current departmental practices with respect to its homosexual employees. The paper provides a broad overview of current practices but in no way represents an exhaustive account of such practices. From a communications perspective, this document can hopefully serve to facilitate departmental responses to any future ministerial correspondences on the subject. Should you feel that the document in any way misrepresents current departmental practices or requires further elaboration, please feel free to contact me.

M.J. Starr

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A/Director
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EXT 407 (90/1)

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AGC-5690

HOMOSEXUAL PAPER

Introduction

The following background paper provides an overview of past, current, and future issues and practices related to the Department's treatment and classification of homosexual employees and their partners. While departmental policies on homosexual employees are in compliance with government guidelines, the issue of homosexual rights is assuming increasingly greater importance and prominence in Canadian society. For this reason, it is imperative that the Department remain abreast of current legal developments, as well as the public environment, which will potentially have a significant impact on future personnel policies within the Department. More specifically, given the lack of provisions for gay spouses in the Department's Foreign Service Directives (FSDs) the possibility for future court challenges from foreign service employees is very real. To this end, the Department must be prepared to deal with such a challenge in a timely and informed manner. This is a sensitive issue which merits further consideration particularly in light of recent federal and provincial court challenges.

the point is definitions dependants PS-wide.

Historical Precis

(BMLH files) In decades past, homosexual practices fell under the rubric of "character weaknesses". This categorization made homosexual public servants susceptible to the blandishments of hostile foreign intelligence agents for two reasons: firstly, homosexuality was illegal in Canada and many other countries; secondly, suspected homosexuals, even if they were not prosecuted, suffered social ostracization. Consequently, persons considered susceptible to blackmail for reasons of said character weakness were denied security clearance.

The effects of these decisions were very hard on suspected personnel in the Department of External Affairs, since it was impossible to pursue a successful career without dealing with sensitive information. Moreover, (CP Spring 92 - "Mounties defend gay purge") according to documents released under the Access to Information Act, the RCMP purge on homosexual employees in the federal public service was focused on the Department of External Affairs because its employees were posted in Soviet Bloc countries.

By 1962, the Privy Council's Security Panel concluded that homosexuality was no longer a matter of choice and it was subsequently removed from the category of character weakness. The new approach made it possible to be less arbitrary towards employees suspected of homosexuality and to deal with each case individually. However, homosexual employees working for the Department of External Affairs continued to be considered susceptible to subversion overseas. Posting restrictions meant reduced promotion possibilities and a continued vulnerability to blackmail.

considered to be

More recently, these concerns for potential security risks have evolved into considerations for the personal safety and effectiveness of foreign service personnel assigned abroad. The discourse on homosexuality in the Canadian Foreign Service now revolves around such human rights issues as equitable employment practices.

Current Departmental Practices

Today, being homosexual is not an obstacle to obtaining employment, a security clearance or enjoying a successful career in the foreign service. No employee of the Department is excluded from being considered for any assignment on the basis of gender, race, religion or ethnic origin. Assignment decisions are made on a case-by-case basis and are based on objective criteria such as experience, performance, abilities and potential effectiveness. what about societal limitations?

External Affairs and International Trade Canada (EAITC) does not currently have a formal policy that addresses the needs/concerns of its homosexual personnel. EAITC personnel procedures are based on current Canadian law and are not developed in isolation from such over-arching guidelines as those set out in Treasury Board directives.

(ABMA memo #ABM-0035 dated April 9/92) To this end, the Department abides by the definition of spouse used by the Canadian government which requires parties to be of the opposite sex. An employee of the Department forming part of a homosexual relationship is not considered by the Department to be involved in a spousal relationship (as defined by Circular Document Admin. No. 20/88 ADA of May 20, 1988 on Marriage and Spousal Relationships). Employees who have entered into a homosexual relationship must nevertheless submit a completed form EXT-332 ("Notice of Intent to Marry") and the corresponding security check. — could use less archaic caption?

As homosexual companions are not legally recognized as spouses, they are not entitled to certain benefits including those under the Foreign Service Directives (FSDs). All collective agreements are required to conform with these standard usage definitions. There have been changes in the past few years including "sexual orientation" in the no discrimination clause of the most recent collective agreement; however, there have been no changes made to the definition of spouse.

Pursuant to the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and the Vienna Convention, the Department maintains the employer's right to determine bona fide occupational requirements for positions, including those in our missions around the world. The Department's concern is whether there are laws or practices which would place the employee's safety and welfare in jeopardy or which would detrimentally affect the performance of the employee's duties.

(Circ. doc. admin #24/91 ADA) The departmental policy entitled "Assignment of Personnel: Societal Limitations," is a public document which has been circulated to all EAITC employees and departmental managers work together in the assignment process to ensure that any decision made regarding a particular posting is objectively based. To this end, the Department has established an inventory of the legal and/or attitudinal status of homosexuality by country to ensure the effective placement of departmental staff abroad. In addition, homosexuality was one of the factors taken into consideration when ADA developed its questionnaire or test to determine whether social constraints occasioned by societal limitations in a host country constitute a bona fide occupational requirement in the assignment of personnel.

The Department's policy is reviewed regularly and the Department will consult with PAFSO in developing any changes that may be required. In addition, the Department is closely following the progress of several important current court cases which may have an impact on departmental policies. These cases (in essence) revolve around attempts to have homosexual companions considered for legal purposes as spouses or equivalents. As these cases are dealt with by the courts and as other developments in the law occur, the Department will review its policies and procedures.

of other bargaining units?

Current Political Climate

a) internal to EAITC

There have been a number of recent events within the Department which point to the growing awareness of and dissatisfaction with internal and government-wide policies for homosexual employees.

The winter 1992 edition of Bout de Papier carried an anonymous article entitled "The Ghosts Among Us", arguing that homosexual companions should be covered under the FSDs on the same basis as spouses/common-law companions in a heterosexual relationship. The recent letter to the Editor of Bout de Papier is an indication that employees will become more vocal about this kind of discrimination than they might have been in the past.

In fact, a specific request from a homosexual FSO in March 92 for spousal travel and medical coverage was made. The memo points out that it is unfair that the officer would be expected to pay rent share for his companion but would not benefit from allowances for him. Finally, a letter in June 92 from PAFSO President Donald Mackay states that the membership does not want a list of "unsuitable" postings to be kept as has been the practice; moreover, the involvement of the Security Division in notifying HOMs of an incumbent's sexual orientation should be discontinued.

no one asked him to pay shelter there

b) external to EAITC

The external environment on this issue is ever-changing and dynamic. Discrimination based on sexual orientation continues to be the subject of critical review by the judiciary and legislators alike. Pending legislation from the Department of Justice to change the federal Human Rights Act preventing discrimination against homosexuals has been stalled by resistance from Conservative MPs in the House; as well, current unity negotiations and pending referenda have temporarily pre-empted further progress. However, even these proposals would not extend spousal benefits to same-sex couples.

There are currently a number of court challenges for homosexual rights before all levels of the justice system. For example, in Ottawa, two gay activists have initiated judicial action to win the right to be legally married (under s.15 of the Charter of Rights and Freedoms). Moreover, the Ontario government must pay survivor pensions to partners of gay and lesbian public servants under a "leading edge" human rights decision Tuesday September 1, 1992 that could trigger similar changes across Canada. Subject to the court ruling, the words "of the opposite sex" when defining marital status have been removed from the Ontario Human Rights Code.

Reaction to the anonymous article in Bout de Papier came swiftly. In April 92, MP Svend Robinson wrote a letter of inquiry to the Minister requesting that Mrs. McDougall review the policies of the Department and take immediate action to correct these injustices. Moreover, responding to Mr. Robinson's call for an independent inquiry into the "witch hunt" against gays in the civil service, the Prime Minister (28 April, 1992 Globe and Mail article "PM Denounces 1960s Purge on Homosexual Civil Servants") ordered the Clerk of the Privy Council to investigate the RCMP's massive hunt for homosexuals in the federal bureaucracy in the 1950s and 1960s. Moreover, Mr. Robinson's recent letter to the Editor of Bout de Papier further underscores the political attention this issue is attracting.

Conclusion

While current provisions for homosexual employees at EAITC are in compliance with standard government practice, it is clear that the Department must look at its procedures in light of changing societal and legal environments. It is imperative that the Department monitor future developments in this area as they unfold. Moreover, the Department should be prepared to negotiate expanded provisions within the FSDs for homosexual employees in future bargaining rounds with PAFSO - in the event that such a request is tabled. The Department must not overlook the fact that the FSDs are negotiable contracts which will not remain static over time on this issue; furthermore, a mutually satisfactory resolution to current demands requires the active cooperation on the part of both the government and the relevant staff associations.

what?