

Security Class

SEXUAL ORIENTATION

1. (PB) Current National Defence policy renders persons who engage in sexual acts with others of the same gender ineligible for service in the Canadian Forces. Since mid-1986, implementation of this policy, as it relates to members already serving who object to honourable release as being not advantageously employable, has been suspended, pending a political decision that it is to continue.

2. (PB) The existing Canadian Forces Administrative Order, referred to as a CFAO, which reflects policy in this area is CFAO 19-20, attached as Annex A. This Order in its present form has been in effect for thirteen years, but has been recently changed in its application and is currently under review. Like other CFAOs, it is issued under the authority of the Chief of the Defence Staff pursuant to section 18 of the National Defence Act. The members of the Canadian Forces to whom this CFAO applies are those who are determined with reasonable certainty, after full investigation, to have a sexual propensity for persons of the same gender. Normally, such members are deemed not advantageously employable, and are honourably released under Item 5(d) of the Table to article 15.01 of the Queen's Regulations and Orders for the Canadian Forces, which is a regulation made by the Governor in Council. Similarly, persons who are not already serving and are seeking enrolment are deemed ineligible for service when it is determined with reasonable certainty, through their own acknowledgement or otherwise, that they fall in the same category.

3.9. (PB) <sup>on 30 August 1989, a</sup> further meeting of Ministers, including <sup>Mr. Lewis,</sup> the <sup>Mr. Hazanowski, the Deputy Prime Minister,</sup> Minister of Justice, and senior officials, including Mr. Hartt, the Prime Minister's Chief of Staff, was held at Meech Lake on 30 August 1989, with the Assistant Deputy Minister (Personnel) and the Director Personnel Legal Services in

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attendance. Ministers collectively expressed support for the Canadian Forces policy of exclusion from service of active homosexuals, and issued instructions that the Director Personnel Legal Services prepare a revised version of the CFAO <sup>in</sup> ~~at Annex B~~, which <sup>certain editorial concerns with respect to</sup> would address the definition <sup>of</sup> ~~of~~ "inappropriate sexual conduct" contained in the Order <sup>would be addressed.</sup>

410. (PB) After a meeting on the morning of 31 August 1989 with Mr. Tait, Deputy Minister of Justice, Mr. Protti, Deputy Secretary to the Cabinet (Operations) in the Privy Council Office, and other senior officials, and further consultation that afternoon with Mr. Low, Senior General Counsel in the Human Rights Law Section of the Department of Justice, <sup>a</sup> ~~the~~ ~~documents at Annexes F~~ (revised version of CFAO 19-36 <sup>was</sup> prepared by the Director Personnel Legal Services, ~~on 30 August 1989~~ pursuant to Ministerial direction), <sup>A</sup> ~~G~~ list of questions and answers prepared by the Director Personnel Legal Services at the request of Mr. Protti, for use in responding to anticipated media inquiries following approval and promulgation of the new CFAO <sup>In addition, an</sup> ~~and H~~ information in chart form as to the policy of other western nations vis-à-vis homosexuals in their armed forces, <sup>was</sup> prepared by the Director Personnel Legal Services <sup>and</sup> ~~in accordance with direction received on 30 August 1989~~ were forwarded to Mr. Protti via Brigadier-General Gentles in the Privy Council Office on 31 August 1989. It <sup>was</sup> ~~is~~ understood that Mr. Protti intended to use these documents as the basis for a submission to the Prime Minister's Office.

*It was subsequently learned that the matter was to be placed before the Government Operations Committee "early Fall" <sup>1989</sup> ~~1987~~ ~~1988~~, although on the docket, it has not yet been considered by this Committee.*

5. (PB) <sup>the collective</sup> In light of a agreement by the Ministers, at

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Speech take, on 30 August 1989, to the Canadian Forces policy of exclusion from service of active homosexuals, it is considered implicit within that agreement that any amendment to the Canadian Human Rights Act, which would stipulate sexual orientation as a prohibited ground of discrimination, would, of necessity, have to include within the legislation a specific exemption with respect to the application of ~~that~~ such a prohibition to the Canadian Forces. <sup>The</sup> Memorandum to Cabinet, at Annex —, neither provides for such an exemption or makes any reference to the 30 August 1989, Speech take, Ministerial agreement.

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