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BRIEFING NOTE FOR ADM(PER)

SUBJECT SAME-SEX PARTNERS AND BENEFITS

BACKGROUND

1. As of October 1992, there is no restriction on homosexuals serving in the Canadian Forces. There have been recent cases of military members requesting recognition and benefits for same-sex partners whom they regard as spouses, the most recent being an application by a male member for his same-sex common-law partner to accompany him on posting to Germany.

ISSUE

2. Canadian Forces regulations dealing with marital and family status follow federal government legislation and Treasury Board regulations, which define spouse as a person of the opposite sex. CF policies on marital and family status could therefore be seen to have the effect of discriminating against homosexual members on the basis of their sexual orientation.

DISCUSSION

3. QR&O 1.074 and 1.075 clearly indicate that spouses (through legal marriage or common-law relationship) are persons of the opposite sex. In most legislation in Canada, the term "spouse" specifically means a person of the opposite sex. However, the law is not yet settled on this issue and the Ontario government recently introduced legislation to provide for spousal benefits to same-sex partners. Since Treasury Board controls regulations pertaining to spousal benefits, no changes to CF regulations are possible unless federal

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government legislation and Treasury Board regulations are amended.

4. The whole question of marital and family status, including benefits for same-sex partners, is under active review by the federal government. An interdepartmental committee on marital and family status initiatives, chaired by the Department of Justice, is developing options for a strategic approach to litigation and policy issues relating to same-sex partners and benefits. DND members of that committee are DPPCS and DLaw/LSF. DCBA and D SISIP are also participating in the process.

SUMMARY

5. Canadian Forces regulations dealing with marital and family status follow federal government legislation and legal definitions, which exclude same-sex couples from the definition of spouse. Canadian Forces policies do not place any restriction on homosexuals serving in the CF. Accordingly, CF policies on marital and family status could be perceived to discriminate against homosexual members.

6. Treasury Board regulates benefits related to marital and family status and therefore no changes to CF regulations can be made unless federal government legislation and Treasury Board regulations are amended. Until such time as changes may be made, claims by CF members for spousal benefits for same-sex partners should continue to be dealt with in accordance with current government and CF policy and regulations.

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