

## BRIEFING NOTE FOR DIRECTOR OF PERSONNEL POLICY

**SUBJECT:** Effects of cancellation of Canadian Forces policy restricting service of homosexuals.

### BACKGROUND

1. On 27 October 1992, in response to a court challenge under the *Charter of Rights and Freedoms* by a former military member, the Federal Court of Canada Trial Division ruled that the Canadian Forces policy restricting the service of homosexuals was contrary to Section 15 of the *Charter* and ordered the revocation of the policy and the removal of all restrictions on the service of homosexuals. Section 15 of the *Charter* (which deals with equality rights) affords a constitutional guarantee of equality "before and under the law and . . . the right to the equal protection and equal benefit of the law without discrimination . . ." While these rights are not absolute, a limitation or exclusion is permissible only if it can be justified as a "reasonable limit" under Section 1 of the *Charter*. Ultimately, the Canadian Forces could not satisfy the burden of proof necessary under the *Charter* to justify its policy on homosexuality as a reasonable limit and hence did not contest the case.

2. Cancellation of the policy was announced immediately following the Federal Court of Canada ruling. In a message to all formations and units in the Canadian Forces, the Chief of the Defence Staff acknowledged that some members might have difficulty accepting this change but indicated that he was satisfied that the former policy no longer served the best interests of the Canadian Forces and that the policy change had his full support. Appealing to members' devotion to duty and their sense of fairness, he called on all members to accept a change which simply brought military policy into line with the *Charter of Rights and Freedoms*. A new regulatory policy concerning sexual misconduct, by either heterosexuals or homosexuals, was promulgated shortly thereafter. Together with revised versions of general policy orders on personal relationships and harassment, this order was intended to provide clear policy and guidance on what constituted inappropriate sexual behaviour and conduct by military members.

### CURRENT STATUS

3. Self-report information from anonymous large-sample surveys of Canadian Forces members conducted in 1986 and 1991 provides estimates of the combined homosexual and bisexual representation in the military at about 3.5%. To date, there has been no formal evaluation of the effects of cancelling the Canadian Forces policy on homosexuality.

4. Available information on member attitudes toward the policy change is limited. During the summer of 1993, as part of a Forces-wide sample survey of member attitudes toward a variety of conditions related to military life (e.g., pay and allowances, benefits, support services, promotion, training, etc.), survey participants were asked a number of questions about human

rights issues and policies. One item asked members how satisfied/dissatisfied they were with the Canadian Forces policy on sexual orientation (but did not specify the policy or otherwise describe it). Of the 3,202 respondents, 3.8% had no opinion, 28.5% were either dissatisfied or very dissatisfied, 24.4% were neutral, and 43.3% were either satisfied or very satisfied with the policy. To put these findings in context, it should be noted that, in response to an item on member satisfaction with the policy on employing women in all units and occupations, 2.1% had no opinion, 32.9% indicated they were either dissatisfied or very dissatisfied, 21.0% were neutral, and 44.1% indicated they were either satisfied or very satisfied. In other words, general member acceptance/non-acceptance of the policy on sexual orientation seems to be quite similar to member acceptance/non-acceptance of the policy on women's unrestricted employment. Additional analyses of gender and rank-group differences indicated that female respondents were more accepting than males of the sexual orientation policy and senior officers were the most dissatisfied (37.5%) with the policy while junior NCMs were the least dissatisfied (25.7%).

5. Behavioural data are more readily available and somewhat more indicative of the possible effects of the policy change:

- a. Military police staff responsible for maintaining statistics on offences committed by military members generally believe that homosexuality has not been a contributing factor in matters of conduct and discipline. A computer search of their data base indicated that, of the 905 assault cases for the period from November 1992 to the present, none could be identified as involving "gay bashing" or could otherwise be attributed to the sexual orientation of one of the parties.
- b. Career-management staff responsible for the administrative disposition of sexual misconduct cases report that, of the 544 cases handled since December 1992 (just after the policy on sexual misconduct came into effect and when statistics were first collected), 22 involved same-sex misconduct, of which 10 involved adults only. The 12 other same-sex cases involved children, but the sexual orientation of the perpetrators is not known and could have been either heterosexual or homosexual.
- c. Staff responsible for the administration of human rights complaints filed by military members with the Canadian Human Rights Commission report that, from November 1992 to the present, only three of the 213 such complaints were based on sexual orientation, two of which pertained to differential treatment and releases which occurred *prior* to the policy change. The remaining complaint concerned the eligibility of a same-sex couple for financial benefits.

- d. Staff responsible for dealing with military grievances which come to the attention of National Defence Headquarters could not provide an accurate count of grievances which involved sexual orientation as a basis or feature of the complaint (grievances are not categorized in a way which would permit retrieval of this information). However, they were fairly confident in their opinion that, of the approximately 2,000 grievances handled in the past three years, no more than about a dozen have included sexual orientation as a significant element of the grievance.

#### CONCLUSION

6. Attitudinal reaction to the policy change on sexual orientation appears to be mixed, but not more so than to other social policy change. On the other hand, behavioural and conduct data compiled by several agencies in National Defence Headquarters yield little or no evidence to suggest that allowing homosexuals to serve in the Canadian Forces has been problematic, either in terms of their behaviour or their treatment by other members. This finding must be qualified, however, by the observation that it is not known to what extent homosexual members disclose their sexual orientation to other members. It is assumed that homosexual members generally refrain from making their sexual orientation known, in which case behavioural and conduct indicators might not be reliable and the effect of the policy change on such variables as unit cohesion and morale would be extremely difficult if not impossible to measure.

7. A formal and comprehensive evaluation of the effects of the policy change is not warranted at this time.

#### Self-generated

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