

SECRET

December 11, 1987

DND's Policy on Sexual Orientation

Issue

- ° The Canadian Forces would like to issue a new policy on sexual orientation which the Minister of Justice believes would be considered by the courts to be inconsistent with the Charter because it discriminates against homosexuals.
- ° A redress of grievance related to the Forces' interim policy on sexual orientation was referred to the Chief of Defence Staff (CDS) in April 1987. He believes he cannot consider the redress in the absence of a policy, and he has therefore asked the Minister for policy direction.

Background

- ° The attached paper entitled "Background Information on Sexual Orientation in the Canadian Forces" provides information on the government's policy on sexual orientation, DND's proposed sexual orientation policy and its Charter implications, the specific case requiring a decision by the CDS, and options to deal with this issue. It was prepared by PCO in consultation with officials from the Departments of Justice and National Defence who agree with the facts as presented in the paper. This package has been distributed to all Operations Committee Ministers as well as Ministers Hnatyshyn and Beatty who have been invited to attend the Operations Meeting for the item.
- ° In discussing the proposed Armed Forces' policy, Ministers should be aware that the RCMP has no policy on homosexual conduct, and nothing in their regulations precludes the hiring or the retention of homosexuals. We understand that the new Commissioner is taking measures to ensure that no discrimination occurs.

PCO Comments

- ° The Background Paper outlines four options for dealing with this issue:
 - ° direct DND to comply with the Government's policy on sexual orientation and integrate homosexuals;

- ° issue a Canadian Forces Administrative Order (CFAO) based on Mr. Beatty's public statement in February 1987 which would exclude members on the basis of homosexual conduct and not just propensity;
 - ° do nothing for the moment and either tell the CDS to delay ruling on the redress or leave the decision to the CDS;
 - ° issue a CFAO that applies in the same manner to homosexual and heterosexual conduct because it would deal with sexual conduct in general.
- ° DND's preferred option is to issue a CFAO based on Mr. Beatty's policy (Option 2). The difficulty with this option is that it is inconsistent with the government's policy as stated in Toward Equality and [REDACTED]
- ° Another option is to tell Mr. Beatty that DND must comply with the government policy which would have the effect of integrating homosexuals in the Forces (Option 1). This option is inconsistent with the the DND Task Force's recommendation to exclude homosexuals from the Forces and with Mr. Beatty's statement.
- ° A third option is to ask the CDS to issue a CFAO that applies in the same manner to homosexual and heterosexual conduct (Option 4). It would be consistent [REDACTED] and with the government's policy on sexual orientation. It could also be consistent with Mr. Beatty's statement that exclusion would be based on conduct, if Mr. Beatty extended that statement to apply to any sexual conduct, whether heterosexual or homosexual, which is determined to be harmful to the operational effectiveness of the Forces. Under this approach, DND could exclude homosexuals, but only if they behave in a manner that is detrimental to the Forces, and the same rules would have to apply to heterosexuals in similar circumstances. However, this option does not address DND's argument that the presence of homosexuals in the Forces has a demoralizing effect on the Forces.
- ° A final option is to delay any action at this time. This would mean that Mr. Beatty would advise the CDS that the government would not provide policy direction to him and either direct him to continue to delay responding to the redress, or leave the

decision to the CDS. Under the first approach, the member involved would likely go to the media because of the delay in dealing with the redress, and the issue would again have to be addressed by the government. Under the second approach, the CDS would likely reject the redress, which would be appealed to the Associate Minister of Defence and subsequently to the Governor in Council. Thus, this option simply buys time since under either scenario, the government would have to deal with this issue again in a few months.

Conclusions

- ° From the above analysis, it is evident that Option 4 has clear advantages:
 - [REDACTED]
 - it is consistent with the government's stated policy on sexual orientation;
 - it is not inconsistent with Mr. Beatty's statement if conduct is defined as any sexual conduct considered harmful to the effectiveness of the Forces.
- ° We are not aware that DND has ever seriously considered this option. You may wish to strongly encourage Mr. Beatty to explore this approach.

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