Item 7b

SECRET

BACKGROUND INFORMATION
ON SEXUAL ORIENTATION IN THE CANADIAN FORCES

SECRET

ISSUE

- WHETHER THE CHIEF OF DEFENCE STAFF SHOULD ISSUE A REVISED CANADIAN FORCES ADMINISTRATIVE ORDER (CFAO) ON INAPPROPRIATE SEXUAL CONDUCT.

CURRENT FORCES POLICY ON SEXUAL ORIENTATION

- THE CANADIAN FORCES ADMINISTRATIVE ORDER (CFAO) 19-20 ISSUED UNDER THE AUTHORITY OF THE CHIEF OF DEFENCE STAFF STATES THE SEXUAL ORIENTATION POLICY OF THE FORCES.

- CFAO 19-20 PROVIDES FOR THE COMPULSORY "HONOURABLE" RELEASE OF MEMBERS HAVING A PROPENSITY FOR PERSONS OF THE SAME GENDER AND REQUIRES MEMBERS TO REPORT SUSPECTED HOMOSEXUALS TO THE AUTHORITIES.

- PERSONS SEEKING TO ENLIST ARE DEEMED INELIGIBLE FOR SERVICE WHEN IT IS DETERMINED THAT THEY HAVE A PROPENSITY FOR PERSONS OF THE SAME GENDER.

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GOVERNMENT POLICY ON SEXUAL ORIENTATION

- IN OCTOBER, 1985, THE PARLIAMENTARY COMMITTEE ON HUMAN RIGHTS RECOMMENDED THAT THE CANADIAN HUMAN RIGHTS ACT (CHRA) BE AMENDED TO PROHIBIT DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION, AND THAT THE CANADIAN FORCES AND THE RCMP BRING THEIR EMPLOYMENT PRACTICES INTO CONFORMITY WITH THE CHRA AS AMENDED.

- IN ITS RESPONSE ENTITLED TOWARD EQUALITY, TABLED IN MARCH 1986, THE GOVERNMENT TOOK THE POSITION THAT "ONE'S SEXUAL ORIENTATION IS IRRELEVANT TO WHETHER ONE CAN PERFORM A JOB OR USE A SERVICE OR FACILITY. THE GOVERNMENT WILL TAKE WHATEVER MEASURES ARE NECESSARY TO ENSURE THAT SEXUAL ORIENTATION IS A PROHIBITED GROUND OF DISCRIMINATION IN RELATION TO ALL AREAS OF FEDERAL JURISDICTION".

SECRET

DND'S PROPOSED POLICY ON SEXUAL ORIENTATION

- FOLLOWING THE GOVERNMENT'S RESPONSE TO THE PARLIAMENTARY COMMITTEE, AN INTERNAL DND TASK FORCE STUDYING CHARTER ISSUES RECOMMENDED THAT HOMOSEXUALS NOT BE PERMITTED TO ENLIST AND THAT IDENTIFIED HOMOSEXUALS BE HONOURABLY RELEASED.

- ON FEBRUARY 11, 1987, THE MINISTER OF NATIONAL DEFENCE ENDORSED THE RECOMMENDATIONS OF THE TASK FORCE AND ANNOUNCED THAT THE CONTINUING EXCLUSION OF HOMOSEXUALS WOULD BE BASED ON CONDUCT OR BEHAVIOUR, RATHER THAN ON ORIENTATION ALONE, AND THAT THE OBLIGATION FOR MEMBERS TO REPORT SUSPECTED HOMOSEXUALS WOULD BE REMOVED.

- DND PROPOSES TO ISSUE A NEW CFAO CONSISTENT WITH THE POLICY STATED BY MR. BEATTY.

DND'S INTERIM POLICY

- CFAO 19-20 IS NOT CURRENTLY BEING APPLIED SINCE IT IS INCONSISTENT WITH MR. BEATTY'S STATEMENT AND THE REVISED CFAO HAS NOT BEEN RELEASED PENDING CLARIFICATION OF THE GOVERNMENT'S POLICY.

- IN THE INTERIM:

  - THE FORCES CONTINUE TO INVESTIGATE CASES INVOLVING SUSPECTED HOMOSEXUALS.

  - IF MEMBERS ARE DETERMINED TO BE HOMOSEXUAL, THEY ARE INFORMED OF THE FORCES' INTENTION TO RELEASE THEM HONOURABLY.

  - HONOURABLE RELEASE, HOWEVER, IS IMPLEMENTED ONLY IF THE MEMBER WISHES TO BE RELEASED.

  - IF THE MEMBER DOES NOT WISH TO BE RELEASED, HE/SHE IS RETAINED ON "SPECIAL STATUS" AND THEIR CAREER IS PUT ON HOLD. THERE ARE 24 INDIVIDUALS CURRENTLY ON "SPECIAL STATUS".

SECRET

CASE REQUIRING PROMPT SOLUTION

- ONE OF THE 24 MEMBERS RETAINED UNDER "SPECIAL STATUS" FILED A REDRESS OF GRIEVANCE TO HER COMMANDING OFFICER ON DECEMBER 17, 1986. SHE IS ASKING FOR AN IMMEDIATE DECISION ON HER RELEASE, OR, IF NO DECISION IS MADE, THAT ALL RECOMMENDATIONS FOR RELEASE BE RETRACTED AND THAT SHE BE ALLOWED TO CARRY ON WITH NORMAL DUTIES.

- CFAO 19-32 STIPULATES THAT AN "AN APPLICATION FOR REDRESS OF GRIEVANCE SHALL BE DEALT WITH AS EXPEDITIOUSLY AS POSSIBLE..."

- THE REDRESS WAS DENIED AT A NUMBER OF LEVELS AND REACHED THE CHIEF OF DEFENCE STAFF (CDS) LEVEL IN APRIL 1987.

- UNDER NORMAL CIRCUMSTANCES, THE CDS WOULD HAVE RENDERED A DECISION LAST AUGUST. HOWEVER, IN THE ABSENCE OF A CLEAR POLICY ON SEXUAL ORIENTATION, HE HAS ASKED THE MINISTER FOR DIRECTION BEFORE MAKING A DECISION.

- BECAUSE OF THE DELAY IN RESPONDING TO HER REDRESS, THE MEMBER COULD GO PUBLIC AND THE MEDIA COULD RAISE QUESTIONS ABOUT THE GOVERNMENT'S POLICY.

- ONCE THE CHIEF OF DEFENCE STAFF HAS RENDERED A DECISION, IT COULD THEN BE APPEALED TO THE ASSOCIATE MINISTER OF NATIONAL DEFENCE AND, SUBSEQUENTLY, THE GOVERNOR IN COUNCIL.

IMPLICATIONS OF DND'S PROPOSED POLICY

- IT IS INCONSISTENT WITH THE GOVERNMENT'S STATED POLICY TO "TAKE WHATEVER MEASURES ARE NECESSARY TO ENSURE THAT SEXUAL ORIENTATION IS A PROHIBITED GROUND OF DISCRIMINATION IN RELATION TO ALL AREAS OF FEDERAL JURISDICTION".

- IT RAISES SERIOUS QUESTIONS AS TO ITS CONSISTENCY WITH THE CHARTER:

  - IT MAY BE INCONSISTENT WITH THE EQUALITY PROVISION OF THE CHARTER BECAUSE IT SINGLES OUT HOMOSEXUALS

  - THERE IS ALSO SOME DISAGREEMENT AS TO WHETHER IT CONSTITUTES A "REASONABLE LIMIT" UNDER SECTION 1 OF THE CHARTER

    * THE JUDGE ADVOCATE GENERAL OF THE CANADIAN FORCES BELIEVES IT COULD BE DEFENDED AS A "REASONABLE LIMIT" BECAUSE THE ADVERSE IMPACT ON MORALE OF HETEROSEXUALS WORKING WITH HOMOSEXUALS IN CLOSE CONFINEMENT UNDER ADVERSE CONDITIONS WOULD HAVE A DETRIMENTAL EFFECT ON THE FORCES' OPERATIONAL EFFECTIVENESS.

    * THE MINISTER OF JUSTICE IS OF THE VIEW THAT THERE IS A SERIOUS RISK THAT IT WOULD NOT BE FOUND TO BE A "REASONABLE LIMIT".

- DND IS CONFIDENT IT COULD DEFEND ITS PROPOSED POLICY IF IT WAS CHALLENGED IN THE COURTS.

LINKAGE WITH THE CHRA

- IN FEBRUARY, 1987, THE MINISTER OF JUSTICE BROUGHT TO CCSD A PROPOSAL FOR AMENDMENTS TO THE CANADIAN HUMAN RIGHTS ACT (CHRA) WHICH INCLUDED AN AMENDMENT ADDING SEXUAL ORIENTATION TO THE GROUNDS OF DISCRIMINATION PROHIBITED UNDER THE ACT.

- THE DISCUSSION OF THE CHRA AMENDMENTS WAS PUT ON HOLD.

- SINCE THE PROPOSED CFAO WOULD BE SEEN AS AN EXPRESSION OF THE GOVERNMENT POLICY ON SEXUAL ORIENTATION, MR. HNATYSHYN IS OF THE VIEW THAT A DECISION ON THE PROPOSED AMENDMENTS TO THE CHRA SHOULD BE TAKEN AT THE SAME TIME.

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OPTIONS

1. COMPLIANCE WITH THE GOVERNMENT POLICY AS ANNOUNCED IN "TOWARD EQUALITY"

2. ISSUE A CFAO BASED ON MR. BEATTY'S STATEMENT

3. DO NOTHING

4. ISSUE A CFAO THAT APPLIES IN THE SAME MANNER TO HOMOSEXUAL AND HETEROSEXUAL CONDUCT

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OPTION

1. COMPLIANCE WITH THE GOVERNMENT POLICY AS ANNOUNCED IN "TOWARD EQUALITY"

IMPLICATIONS

- THE 24 MEMBERS ON "SPECIAL STATUS" WOULD BE RETURNED TO THEIR NORMAL DUTIES.

- HOMOSEXUALS WOULD BE INTEGRATED INTO THE FORCES.

ADVANTAGES

- IT DEMONSTRATES THE GOVERNMENT'S COMMITMENT TO THE POLICY STATED IN TOWARD EQUALITY.

DISADVANTAGES

- IT IS INCONSISTENT WITH THE RECOMMENDATION OF DND'S INTERNAL TASK FORCE THAT HOMOSEXUALS NOT BE PERMITTED TO ENLIST NOR REMAIN IN THE FORCES ONCE IDENTIFIED.

- IT IS INCONSISTENT WITH MR. BEATTY'S FEBRUARY 1987 STATEMENT TO THE STANDING COMMITTEE ON HUMAN RIGHTS.

OPTION

2. ISSUE A CFAO BASED ON MR. BEATTY'S STATEMENT

IMPLICATIONS

- THE 24 MEMBERS RETAINED UNDER "SPECIAL STATUS" COULD BE "HONOURABLY" RELEASED.

- THE FORCES WOULD CONTINUE TO EXCLUDE HOMOSEXUALS.

ADVANTAGES

- IT IMPLEMENTS THE POLICY ANNOUNCED BY THE MINISTER RESPONSIBLE FOR THE FORCES.

DISADVANTAGES

- IT IS INCONSISTENT WITH THE GOVERNMENT'S STATEMENT IN "TOWARD EQUALITY".

- IT RAISES QUESTIONS AS TO ITS CONSISTENCY WITH THE CHARTER AND IS OPEN TO A COURT CHALLENGE.

OPTION

3. DO NOTHING

IMPLICATIONS

- A DECISION CANNOT BE MADE ON THE REDRESS OF GRIEVANCE WHICH IS PENDING AT THE CDS LEVEL.

- FURTHER DELAY IN DECIDING ON THE REDRESS MAY RESULT IN THE MEMBER GOING TO THE MEDIA AND THE MEDIA RAISING QUESTIONS ABOUT THE GOVERNMENT POLICY.

ADVANTAGES

- IT AVOIDS AN IMMEDIATE DECISION ON A CONTROVERSIAL ISSUE.

DISADVANTAGES

- IT IS INCONSISTENT WITH THE FORCES ORDER REQUIRING THAT A REDRESS OF GRIEVANCE BE DEALT WITH AS EXPEDITIOUSLY AS POSSIBLE.

- IT HAS A DEMORALIZING EFFECT ON THE FORCES AND CREATES UNCERTAINTY FOR THE MEMBERS INVOLVED.

OPTION

4. ISSUE A CFAO THAT APPLIES IN THE SAME MANNER TO HOMOSEXUAL AND HETEROSEXUAL CONDUCT

IMPLICATIONS

° HOMOSEXUALS AND HETEROSEXUALS WOULD BE RELEASED IF THEIR SEXUAL CONDUCT IS HARMFUL TO THE OPERATIONAL EFFECTIVENESS OF THE FORCES.

ADVANTAGES

° IT IS CONSISTENT WITH THE GOVERNMENT STATEMENT IN "TOWARD EQUALITY".

° IT IS CONSISTENT WITH THE CHARTER.

° IT COULD BE INTERPRETED AS CONSISTENT WITH MR. BEATTY'S STATEMENT THAT HOMOSEXUALS WILL BE RELEASED ON CONDUCT, IF CONDUCT IS QUALIFIED AS "CONDUCT HARMFUL TO THE OPERATIONAL EFFECTIVENESS OF THE FORCES" AND THE POLICY IS EXTENDED TO HETEROSEXUALS.

DISADVANTAGES

° IT WILL BE MORE DIFFICULT FOR THE FORCES TO PROVE THE DETRIMENTAL EFFECT OF A MEMBER'S SEXUAL CONDUCT THAN TO PROVE HOMOSEXUAL CONDUCT.

° IT DOES NOT ADDRESS DND'S CLAIM THAT THE PRESENCE OF HOMOSEXUALS IN THE FORCES HAS A DEMORALIZING EFFECT ON THE FORCES AS A WHOLE.