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CLERK OF THE PRIVY COUNCIL AND SECRETARY TO THE CABINET

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MEMORANDUM FOR THE PRIME MINISTER

Canadian Forces Policy on Sexual Orientation - Court Cases

Since the Canadian Forces policy on sexual orientation was considered last fall, several new factors have arisen which would make it advisable to reconsider the matter in the near future.

As a result of the leak of material related to the proposed policy change, and subsequent public statements by the Minister of National Defence, it is now public knowledge that the Minister of Justice has advised the Minister of National Defence that the DND policy is contrary to the Charter and that the Cabinet agreed to the change, but the Conservative Caucus did not agree and accordingly, the change did not proceed.

The recent Ontario Court of Appeal decision in the Haig case that the failure to include sexual orientation in the Canadian Human Rights Act violated Charter guaranteed equality rights has confirmed the legal opinions received by the Government that sexual orientation is a prohibited ground for discrimination under s. 15 of the Charter.

The first of several court cases [redacted] challenging the current Canadian Forces policy on sexual orientation is set for trial in October 1992. Justice has retained Kenneth Cancellera of Cassells, Brock and Blackwell to represent the Government in this action. [redacted]

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Further documents must be produced to the plaintiff within the next week. These documents are related to the proposed policy change last fall and include documents from the office of the Minister of National Defence as well as Justice, Privy Council Office and National Defence documents.

In addition to the court cases there is the concern about the effect on morale in the Canadian Forces of the continuing uncertainty. There is widespread acceptance among senior military personnel that the policy is not legally defensible. Senior officials believe that members will accept the change in policy provided there is strong leadership. However, in the absence of a policy decision, there can be no leadership on the issue. The longer the issue remains unresolved, the more disruptive it will be and the more it will undermine the ability of senior military leaders to effect the change, as they inevitably must do.

The present uncertainty is also delaying implementation of new guidelines governing sexual conduct generally, including sexual assault. New guidelines have been developed but cannot be implemented without revoking the existing regulations which contain the provision related to homosexuality.

In view of all these factors we strongly recommend that the proposed change in the Canadian Forces policy on homosexuals be implemented in the very near future.

If you are in agreement we would propose to schedule this issue for discussion and decision at a P&P meeting in the near future. Then, in view of the history of this issue, we would suggest that the matter be raised with the caucus so that they can be made aware of the recent factors related to the issue.

Original signed by
G. SHORTLIFFE
a signé l'original

Glen Shortliffe

Bloodworth/cs