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BRIEFING NOTE FOR THE MINISTER OF NATIONAL DEFENCE

SUBJECT National Defence Policy on Sexual Orientation

PURPOSE To update the Briefing Note of 15 September 1989

INTERVENING EVENTS

1. (PB) Subsequent to the interdepartmental meetings of 30 and 31 August 1989, and the submission to Mr. Protti, Deputy Secretary to the Cabinet, of various questions, answers and additional information sought by him (referred to in paragraph 10 of the previous Briefing Note), this matter was referred to the Office of the Prime Minister but was returned therefrom with a request that the Department of Justice provide a risk assessment with respect to a possible defence of a court challenge of our policy. The Department of Justice opinion in that regard was received on 17 October 1989 and is attached herewith at Flag "A".

2. (PB) On 18 October 1989, at a meeting attended by representatives from the Canadian Forces, the Department of Justice and the Privy Council Office, Mr. Rem Westland, of the Privy Council Office, advised that it was his intention to prepare correspondence for the signature of the Clerk of the Privy Council and Secretary to the Cabinet, Mr. P.M. Tellier, addressed to Mr. Stanley Hartt in the Prime Minister's Office, in which three options for future action would be proposed:

- a. the matter be put to the Prime Minister as decided by the Ministers present at Meech Lake on 30 August 1989; implicit in this option is the recommendation that CFAO 19-36 be approved forthwith;
- b. the matter be referred through the Cabinet Operations Group Committee to the Cabinet Committee on Social Development for consideration; or

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c. the matter be deferred until such time as the Government considers proposed amendments to the Canadian Human Rights Act which would prohibit discrimination on the basis of sexual orientation; it is suggested that an exception from the application of the proposed legislation to the Canadian Forces could be sought at that time.

3. (PB) Although not completely clear, Mr. Westland appeared to be favouring the second option on a priority basis. In that event, he advised that the next meeting of the Cabinet Committee on Social Development is scheduled for 8 November 1989. If the third option is selected, Mr. Martin Low from the Department of Justice has advised in paragraph 12 of Flag "A" that it is not anticipated that the Memorandum to Cabinet dealing with possible amendments to the Canadian Human Rights Act would be submitted before February 1990.

PENDING COURT ACTIONS

4. (PB) In mid-September 1989, counsel acting for the Crown in the case of Corporal Dwyer (referred to in paragraph 6 of the previous Briefing Note), advised Corporal Dwyer's lawyer that the Crown would be making a motion to strike down Corporal Dwyer's Statement of Claim. In response, Corporal Dwyer's lawyer informed Crown counsel that it was not necessary to file a Defence to the matter or initiate the proposed action at that time, and that we would be advised in the near future of Corporal Dwyer's position in this regard. To date nothing has been heard from Corporal Dwyer or his lawyer.

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5. (PB) On 30 June 1989, counsel acting for the Crown in the case of Mr. Sylvain Bordeleau (referred to in paragraph 7 of the previous Briefing Note) filed an appeal of the judgment rendered by Mr. Justice Dubé of the Federal Court Trial Division on 23 June 1989. It is not anticipated that this matter will be set down for hearing of the appeal before 1990.

RECOMMENDATION

6. The recommendation remains that Ministerial approval be given to CFAO 19-36 as a matter of urgent priority.

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