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BRIEFING NOTE FOR THE MINISTERS

SUBJECT: CANADIAN FORCES POLICY ON SEXUAL ORIENTATION

ISSUE:

1. The Canadian Forces policy on sexual orientation is being challenged in the Federal Court of Canada.

BACKGROUND:

2. Current National Defence policy renders persons who engage in sexual acts with those of the same gender ineligible for service in the Canadian Forces. On an interim basis, pending the approval of a new Canadian Forces Administrative Order on the subject, individuals who object to their release on grounds solely of sexual orientation are being retained with career and employment limitations.

3. Three lawsuits which challenge the constitutional validity of the Canadian Forces interim policy are currently before the Federal Court of Canada. Notice of a fourth pending claim has been received. Two of these lawsuits have been 'joined' and will be heard together. The first involves former-Lieutenant Michelle Douglas who was released from the Canadian Forces because of her admitted homosexual activities and the other involves Corporal Derrick Dwyer who objected to his release for homosexual activities and who is being retained in the

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Canadian Forces in accordance with the interim policy. These two cases will undoubtedly be the first cases to come to trial.

CURRENT STATUS:

4. Joint discoveries for the Douglas and Dwyer cases were held in Toronto at the end of October 1990. Trial dates have not yet been set but counsel from the Department of Justice anticipate that the cases will be heard in May or June 1991.

5. Preparations for the defence of the Canadian Forces policy continue. The major outstanding activity is the conduct of two surveys: a survey of the general public (an external survey) to determine the likely impact of a policy change on recruiting, and a separate survey of Canadian Forces members (an internal survey) to determine the likely behavioural consequences of a policy change. Both surveys are important to the defence and in the case of the internal survey our legal counsel have stated that if the survey " --- is not completed, we will be left without an evidentiary foundation for our case." Ministerial approval to proceed with these surveys was requested on 22 November 1990.

6. A meeting between the Assistant Deputy Minister (Personnel) and Mr Eric Bowie, Assitant Deputy Attorney General, Department of Justice to discuss the status of these cases and future action is scheduled for 10 December 1990.

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CONCLUSION

7. Beyond providing approval to proceed with the survey, further Ministerial action does not appear necessary at this time pending the outcome of staff discussions scheduled for 10 December 1990.

RESPONSIBLE GROUP  
PRINCIPAL:

LGen J.A. Fox,  
ADM(Per), 992-7582

PREPARED BY:

G.L. Logan,  
DPP 2, 995-0014

OFFICER AVAILABLE TO  
RESPOND TO QUESTIONS:

D.E. Munro  
DGPPTF, 995-0018

DATE PREPARED:

30 Nov 90

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