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BRIEFING NOTE FOR THE CHIEF OF THE DEFENCE STAFF

SUBJECT - EXTENSION OF SAME-SEX PARTNER BENEFITS

ISSUE A recent Canadian Human Rights Tribunal decision extended same-sex partner benefits beyond the Category 1 benefits already granted by Treasury Board.

BACKGROUND

1. On 13 June, 1996 a Human Rights Tribunal decision was rendered in the case of Moore and Akerstrom V. Treasury Board. Stanley Moore is a Foreign Service Officer whose complaint of discrimination on the basis of sexual orientation and family status was lodged against the Department of External Affairs and Treasury Board, for their failure to grant spousal benefits. Dale Akerstrom lodged a similar complaint against Citizenship and Immigration Canada and Treasury Board. At the time of closing arguments in this case, Treasury Board had not yet extended Category 1 benefits (leave for bereavement, family-related responsibilities, relocation of partner; and directives on foreign service, isolated posts and relocation) to same-sex partners of public service employees.

CURRENT STATUS

2. The Tribunal found in favour of the complainants, ordering that Stanley Moore be paid an amount equal to the spousal benefits he would have been entitled to for his partner under Foreign Service Directives on his posting to Jakarta in 1991, had he not been discriminated against. He was also awarded \$5,000 in respect of hurt feelings and self-respect pursuant to s.53(3)(b) of the *Canadian Human Rights Act (CHRA)*. Dale Akerstrom was awarded payment of all additional costs incurred to obtain alternate health care services for his partner after he was refused spousal coverage under the Public Service Health Care Plan. He was awarded \$500 for hurt feelings and self-respect. The Tribunal applied the Haig decision of 1992, which ordered that sexual orientation be "read in" to the *CHRA*, retrospectively, which permitted an order for financial remedies for discrimination which occurred prior to 1992.

3. The Tribunal ordered the respondents to immediately "cease and desist in the application of any definition of spouse or any other provisions of the Foreign Service Directives, the Collective Agreements, National Joint Council policies, the

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Public Service Health Care Plan or the Dental Care Plan which operate so as to continue the discriminatory practice and interpret any such definition or provision to be in compliance with the Act (and the Charter) so as to include same-sex common-law spouses." This part of the order does not apply to CF regulations, although when Treasury Board grants benefits to same-sex partners under the Public Service Health Care Plan and the Dental Plan, CF members will be eligible for the same benefits.

4. The Tribunal further ordered that an inventory be prepared "of all legislation, regulations, directives, etc. which either contain definitions of common-law spouse which discriminate against same-sex common-law couples or in some other way operate, when applied, to continue the discriminatory practice based upon sexual orientation in the provision of employment-related benefits...". The inventory, excluding legislation respecting pension benefits, is to be presented in writing to the Tribunal within 60 days, (ie, before 8 Aug), accompanied by a proposal for the elimination of the discriminatory provisions. The Tribunal's intent may have been to prevent further similar complaints by federal government employees by ensuring that all federal government regulations, etc, concerning spousal benefits were amended. Legally, however the order can only be applied to Treasury Board as employer, which has the effect of excluding the separate employers (Crown corporations, etc) and the non-represented groups (the CF, RCMP and PS executives). The problem of what to do about these groups is being discussed in meetings by Treasury Board and Justice lawyers. It is likely that the inventory provided to the Tribunal will be limited to legislation, regulations and directives applying to Treasury Board as employer only, and that a parallel inventory will be prepared for the separate employers and the non-represented groups, but not presented to the Tribunal.

5. At a meeting 18 Jun 96 of the Cabinet Committee on Social Development Policy, it was decided that judicial review would be sought of this decision, even though the grounds for review are very peripheral, namely that the Tribunal exceeded their jurisdiction in: (1) including the Income Tax Act in Part(d) of the order, and (2) making the money order retrospective to the Haig decision of 92. TB is still required to extend medical and dental insurance benefits as ordered and to present the inventory of regulations, directives etc, to the Tribunal within the 60-day period. The problem of the separate employers and the non-represented groups will be dealt with in the next Memorandum to Cabinet from the Interdepartmental Committee on the Personal

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Relationships Initiative, which the Minister of Justice has promised for September. Cabinet made it clear that they want same-sex partner benefits to be addressed in the broader context of all personal relationships and they want this quickly. September is the earliest this can happen and the issue of the non-represented groups will form part of the discussion/decision.

CONCLUSION

6. For Treasury Board, this ruling will only affect medical and dental insurance benefits, since all other spousal benefits (excluding pensions) were included under Category 1. If and when this order, or a subsequent Tribunal order (there is a complaint by a CF officer currently before the Commission) is applied to the CF, there may be some additional benefits implicated. Although the majority of spousal benefits fall into Category 1, there are likely some additional benefits which are exclusive to military members. The Director Compensation and Benefits Administration has been asked to identify these.

7. When Treasury Board extends coverage under the Public Service Health Care Plan and the Dental Plan it may be necessary to issue an interim administrative policy regarding registration of a same-sex partner relationship by CF members. This will create a situation where, for a period of time, the CF recognizes same-sex partners for the purpose of medical and dental insurance, but not for other benefits.

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