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*John*

MEMORANDUM TO MR. RAY PROTTI

From: [REDACTED]  
Dan E. Goodlear, Assistant Secretary to the Cabinet  
(Social Development)

Update on Sexual Orientation

As you know, on August 30, 1989, Ministers Collins, Mazankowski, Lewis, and McKnight agreed to support a proposed Canadian Forces Administrative Order (CFAO) on inappropriate sexual conduct. The proposed CFAO had as its focus a prohibition against practising homosexuals in the Canadian Forces.

[REDACTED]

In the interim, Mr. Lewis sent a letter to the Prime Minister on September 27, 1989 (copy attached as Annex B) proposing that the CFAO be considered by Cabinet at the same time that amendments to the Canadian Human Rights Act (CHRA) are addressed. Among other things, Mr. Lewis will be advocating that sexual orientation be added to the CHRA as a prohibited ground of discrimination but that the Canadian Forces be exempted from its application.

[REDACTED]

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[REDACTED]

If Ministers are inclined to support Mr. McKnight's desire to move ahead quickly, it might nevertheless be advisable to consider a broad government policy on sexual orientation [REDACTED]

Taking a broader approach to sexual orientation could also provide the government with an opportunity to articulate a policy on when family benefits accrue. The corollary of prohibiting discrimination on the basis of sexual orientation is not necessarily extending the definition of 'family' to homosexual couples for benefit purposes.

At least three cases are presently before the courts on the question of benefits for homosexual couples: A.G. v. Mossop where the plaintiff is contending that a homosexual relationship which meets the definition of a common law relationship in a collective agreement constitutes a 'family' within the meaning of the CHRA; Egan and Nesbit v. The Queen where restricting the definition of spouse under the Old Age Security Act to people of the 'opposite sex' is being challenged under the Charter; and, the Vesey case where an inmate at a federal penitentiary is challenging a Correctional Service's decision to exclude his same-sex partner as an 'eligible family member' for the Family Visitation Programme. Scope exists for the government to come to terms with its benefit program in this area before a judicial ruling forces the issue.

#### Options for Proceeding

In my view, the next step should be to bring this issue to the attention of Operations Ministers. Depending on the preferences of Operations Committee Ministers, the options for proceeding include the following:

##### Option 1

On the basis of the August 30 agreement between Ministers, DND's proposed policy could be approved by Mr. McKnight in advance of Cabinet reaching a broader policy on sexual orientation.

Option 2

DND's proposed policy could be referred to a policy committee of Cabinet and approved in advance of Cabinet reaching a broader policy on sexual orientation, but the issues would at least have been discussed in the context of an MC.

Option 3

DND's proposed policy could be addressed when Cabinet considers the broader issue of sexual orientation, including the CHRA amendments. While this option would delay the proposed CFAO, it would provide a policy framework for all government issues involving sexual orientation, including restricting or extending benefits to homosexuals. The policy framework could establish the general principle of prohibiting discrimination on the basis of sexual orientation (CHRA amendment) while recognizing that sexual activity whether heterosexual or homosexual could be restricted in the interests of security, discipline, etc. (DND, CSC) and clarifying what constitutes a 'family' for benefit purposes. This balanced policy framework might be more acceptable to Caucus than proceeding with the CHRA amendments alone.

Conclusions

A recommendation on how to proceed with DND's CFAO is difficult given that four key Ministers have agreed to proceed with it [REDACTED]

Developing a broader policy framework on sexual orientation may be a preferable alternative for Ministers since they will eventually have to address the issues anyway and it might avoid the need of having to endorse a specific administrative order.

Our recommendation to Operations Ministers, in a note from Mr. Tellier to Mr. Mazankowski, would be in favour of Option 3. Mr. McKnight will be pushing very hard for Option 1. The compromise position may be Option 2.

Latimer/Westland