

SECRETNOTE FOR OPERATIONS COMMITTEE


December 10, 1991

Item: Canadian Forces Policy On Sexual OrientationISSUE

How to manage the change in policy that would remove sexual orientation as a barrier to joining and serving in the Canadian Forces.

BACKGROUND

There has been a lot of pressure to change the existing policy since the adoption of the Canadian Charter of Rights and Freedoms. In response to the Standing Committee report, Equality For All, the Government agreed in 1986 that the Charter would be interpreted to include sexual orientation as unenumerated grounds of discrimination. The Government has since conceded this issue in two court cases and thus no longer has the option of arguing that the Charter Sect 15 does not include sexual orientation. DND sought to continue with its policy, but a consensus among Ministers could not be reached, either on retaining or changing DND's policy.



Mr. Masse obtained agreement to change the policy at Operations on October 7, with a proviso that Caucus be informed first. This was confirmed at P&P October 8. In anticipation of an announcement by General de Chastelain following Caucus October 9, advance material on the change in policy was widely distributed.

There were strong objections in Caucus October 9 to the Government taking a proactive approach. The change was therefore stayed and it was discussed at Cabinet October 10, where it was agreed that the policy should not be changed until Mr. Masse addressed the concerns of Caucus. In the meantime, the advance material was leaked and it became public knowledge that General de Chastelaine had recommended a change in policy and Cabinet agreed, but it was being held up because of objections in Caucus.

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Mr. Masse and Ms. Collins have dealt with the matter in Caucus on two different occasions, October 30 and November 5. Opposition caucus were also briefed November 5. The matter was discussed at Caucus again on November 20 when it was apparent that the clear preference was to let the courts decide the issue and not to have the Government take a proactive approach. [REDACTED]

The first court case is scheduled to commence in January ([REDACTED] is represented by Clayton Ruby). A further discovery could be launched at any time. Justice needs as much lead time as possible to prepare if a decision is made to proceed to court. It is therefore preferable to have the issue dealt with before the Christmas break.

The Government's case is based on the negative impact to the operational effectiveness of the Forces resulting from the known presence of homosexuals. It is now public knowledge that General de Chastelain has recommended the policy be changed, thereby destroying the credibility of any member of the Forces as a witness for retaining the current policy. [REDACTED]

[REDACTED] A change in the existing policy is thus inevitable. The issue for Operations Ministers is therefore which option will have the least negative impact for the Government: changing the policy now and settling the outstanding cases; or letting the courts decide the outcome. The attached chart compares the two options. Utilizing this chart to discuss the matter with Caucus again in order to reach a consensus on one of the options may be helpful.

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