

PART 4 - SEXUAL ORIENTATION

GENERAL

INTRODUCTION

1. Current CF Policy. The present policy states that the Canadian Forces will enrol and retain only such persons as are capable of performing all military tasks that may be assigned to them and whose behaviour and values are compatible with the military environment. The Canadian Forces' position has been that homosexuals could not fit socially or functionally into the organization, because once their presence were known, they would affect the organization adversely. Thus it has been a matter of policy that people who commit sexually abnormal or homosexual acts are neither enrolled nor retained. In view of the need for diversity and flexibility in the employment of military members, this policy has been universal in its application. A partial proscription was not considered to be workable because of the loss of employment flexibility that would result. This policy is prescribed in CFAO 19-20.<sup>1</sup>

2. Examination of Policy. On 25 Oct 85, the Report of the Parliamentary Committee on Equality Rights, entitled Equality For All, was tabled in the House of Commons. Recommendation 10 of the report concerned adding sexual orientation to the Canadian Human Rights Act as a prohibited ground of discrimination. Recommendation 11 expressly concerned the employment of homosexuals in the Canadian Forces. The specific recommendations from Equality For All concerning sexual orientation were as follows:

- "10. We recommend that the Canadian Human Rights Act be amended to add sexual orientation as a prohibited ground of discrimination to the other grounds, which are race, national or ethnic origin, colour, religion, age, sex, marital status, family status, disability, and conviction for an offence for which a pardon has been granted.
11. We recommend that the Canadian Armed Forces and the RCMP bring their employment practices into conformity with the Canadian Human Rights Act as amended to prohibit discrimination on the basis of sexual orientation."

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3. On 4 Mar 86, the Government's response to these recommendations was presented to the House of Commons. This response, entitled Toward Equality, stated:

"The Government recognizes that the issue of sexual orientation addresses some of the most difficult moral and religious concerns of Canadians. There is no simple manner of reconciling deeply felt views.

Though fully cognizant of the social dilemmas that the issue raises, the Government is committed to the principle that all Canadians have an equal opportunity to participate as fully as they can in our society; no one should be denied opportunities for reasons that are arbitrary or irrelevant. In particular, persons should not be excluded from employment opportunities for reasons that are irrelevant to their capacity and ability to do the job.

The Government believes that one's sexual orientation is irrelevant to whether one can perform a job or use a service or facility. The Department of Justice is of the view that the courts will find that sexual orientation is encompassed by the guarantees in section 15 of the Charter. The Government will take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction."

4. As previously pointed out in Part 2, the Government also acknowledged in Toward Equality the need for the pursuit of equality objectives to be consistent with "the requirement of the Armed Forces to be operationally effective in the interests of national security." Thus there are two major Government objectives involved in the consideration of CF policy on the employment of homosexuals. There is legitimate concern that the pursuit of each of these objectives may not be possible without serious adverse effect on the other. This report will examine the probability of such an adverse effect. It will then, if appropriate, make recommendations based on the proportionality of the potential consequences to the two important national objectives involved.

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5. Definition of 'Sexual Orientation'. The term 'sexual orientation' is both broad and vague. There are serious concerns that without further definition it might be deemed to include paedophilia, voyeurism, buggery, and other such forms of sexual orientation. However, the Task Force was unable to ascertain how sexual orientation would be defined by the courts. Therefore, for the purposes of this study it has been assumed to mean only lesbianism and male homosexuality. In this report, the words 'homosexual' and 'homosexuality' also include lesbians and lesbianism.

#### METHODOLOGY

6. The use of history in this examination was not considered to be of value. Although homosexuality was an openly accepted feature of some military forces in ancient times, there has not been a consistent pattern, and such acceptance in armed forces has not been the norm in this century. The participation of homosexuals in pre-modern times was probably determined mainly by the attitude of the segments that dominated societies at the time. Also, although some of the most prominent leaders in military history have been known or suspected homosexuals, their tenure and success may have been possible only because of the harshly authoritarian nature of the societies they lived in or ruled. Because acceptance is largely a question of society's attitudes, it is considered that it can be addressed only in terms of contemporary circumstances.

7. There are many examples, both historical and modern, of homosexuals having completed successful military careers. Also, it is known that there is a small percentage of homosexuals serving in military forces, and that they are capable of performing the duties required of all members. However, a consistent aspect of such examples is that the members have not been known to be homosexuals. Conversely, the presence of known homosexuals has consistently resulted in problems in armed forces, and there are no known cases of identified homosexuals having continued and completed a successful military career in modern times. Therefore this issue was not examined from the point of view of whether or not homosexuals could perform the tasks required of members of armed forces. Rather, it was considered in terms of the potential impact of the presence of known homosexuals on the operational effectiveness of the CF, particularly in war.

8. There is no recent empirical evidence of the effect that the presence of known homosexuals might have on armed forces' performance in battle. Therefore the only approach open was to

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examine the factors that might influence the performance of armed forces as a result of a change in policy, and to review recent experience with the presence of known homosexuals in the CF. As most of these factors are basically attitudinal, surveys were conducted of both the public's and currently-serving members' positions on many aspects of the issue. Also, to determine what is considered to be demonstrably justifiable in other free and democratic societies, the policies of other nations regarding the employment of homosexuals were reviewed.

#### DISCUSSION

##### SOCIAL ENVIRONMENT

9. Social theorists have suggested that armed forces should be a reflection of the society they serve. In the main they are, because it is from society at large that their members are recruited. In the process, they bring with them attitudes that are prevalent in society. If these stem from extreme emotional reactions, or deeply-rooted convictions, there is a limit to the extent to which these attitudes can be expected to be altered by armed forces. While the few candidates with radical views inimical to service in armed forces can be screened out, those with attitudes that pervade society, and that are not antithetical to military service, cannot. Therefore note must be taken of attitudes that unavoidably carry over from society at large into the CF, and which may not be alterable, if they have the potential to affect the issue under consideration.

10. In recent years there has been greater acceptance of homosexuality as a facet of society. Nevertheless, there is considerable evidence that there is a wide-spread and deeply-held aversion to homosexuality in Canada. This has manifested itself consistently in polls, and in the continuing reluctance of homosexuals to have their sexual proclivity made known.

11. Although some 70% of Canadians consider that homosexual acts between consenting adults should not be a criminal offence<sup>2</sup>, there is not a similar degree of acceptance in other respects. The continuing antipathy may result from the perception of 47% of Canadians that homosexuality is more an illness than a preference.<sup>3</sup> Evidence from the United States may not be wholly applicable to Canada, but might be expected to give some correlative indication. A recent survey commissioned by a United States Criminal Justice Subcommittee<sup>4</sup>, which polled some 2,100 homosexual men and women in eight cities, found that 90% of the respondents had

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been physically threatened because of their sexual orientation. This is indicative of strong negative attitudes that still exist in the United States. Although the incidence may be considerably different in Canada, it is likely that the general result of such a survey would be similar.

12. The reservations in Canadians' attitudes about homosexuality were confirmed by the results of a public poll conducted in 1986,<sup>5</sup> which also showed that the public is uneasy about the question of homosexuals being employed in the CF. Men were evenly divided on the issue while 27% of the women were against and 59% of the women were for the employment of homosexuals in the CF. Furthermore, 41% of the male and 35% of the female respondents considered that the employment of homosexuals would decrease the effectiveness of the CF; only 6% of all respondents were of the opinion that such a policy would increase effectiveness. This poll also showed that only 2% of the respondents would be more likely to recommend the CF as a career if homosexuals were employed in the Forces, while 34% of the men and 22% of the women would be less likely to do so. Regional differences were apparent from the fact that 40% of all respondents from the Atlantic provinces would be less likely to recommend a career in the CF if homosexuals were employed therein.

13. There is additional evidence that the acceptance of homosexuality in Canadian society is influenced by the conditions and requirements of the employment concerned. For example, a public poll showed that Canadians who were generally positive about the acceptance of homosexuals in society had strong reservations about their employment as elementary school teachers.<sup>3</sup>

14. The degree of acceptance of homosexuality in society may be indicated by the concern of homosexuals about their sexual orientation becoming known. As recently as August 1986<sup>6</sup>, some members of the Canadian team at the Second Gay Games asked the media not to identify them because they did not want colleagues at work or relatives to know that they were homosexuals. The Los Angeles Police Department declared a policy of employing members without regard to sexual orientation in 1975<sup>7</sup>; as of July 1, 1986, not one declared homosexual had joined the force, although it is reasonable to assume that some new members were homosexual.<sup>8</sup>

15. Perhaps the most significant indication of acceptance is given by the experience in Canadian public life. Considering that estimates of the incidence of homosexuality run as high as 10 percent of the population<sup>9</sup>, it is inconceivable that

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homosexuals would not have run for public office. Yet self-professed homosexual candidates have been a rarity or totally non-existent in the municipal, provincial, and federal political spheres up to the present day. This may indicate a lack of confidence in the degree of acceptance of homosexuality in Canada so significant that candidates consider that the outcome of the election would be affected. Should that be the case, the attitudes towards homosexuality within Canadian society must likewise be a major concern in the evaluation of CF employment policies.

16. In summary, there is evidence that substantial reservations in the acceptance of homosexuality exist in Canadian society from which members of the CF are drawn. This phenomenon is not peculiar to Canada; it is generally consistent with attitudes in other nations in the western world. There are also indications that negative attitudes may be deeply-rooted, manifesting themselves in threats of physical violence towards homosexuals. Consequently, there is little optimism about the changeability of such attitudes, and they may therefore be expected to be found within the CF. The existence of such attitudes have to be taken into account in assessing the possible consequences on operational effectiveness of changing the CF policy on the employment of homosexuals.

#### COHESION AND MORALE

17. The paramount importance of cohesion and morale was stressed in Part 2. Because the attitudes and conditions that influence these qualities would be particularly sensitive to changes in the composition of military units, the potential effects on cohesion and morale of employing homosexuals in the CF must be carefully examined.

18. Cohesion requires that individual norms be congruent with small group norms, which in turn are in accordance with organizational objectives and goals. Sound cohesion requires that members be unified as part of a team in which the group is put ahead of the individual. Morale is similar to cohesion but has the additional connotation of a feeling of well-being stemming from confidence in the ability of the group, the leaders, and the organization to provide security and achieve goals.

19. Mutual Acceptance and Respect. Experience has shown that when armed forces members have been identified as homosexuals, mutual acceptance has usually broken down, to the detriment of cohesion. A common reaction has been the

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isolation of a homosexual by the other members of the unit. The aversion to homosexuality itself, or to being suspected of it, has prevented other members from associating with a homosexual; as a result, the homosexual has been excluded from barracks or unit life. At worst, the reaction can vary from open hostility to physical assault.

20. The aversion to association with homosexuals was confirmed in a CF-wide survey of some 6,500 members in mid-1986.<sup>10</sup> One part of the survey sought men's reaction to the prospect of supervising, being supervised by, or working with a known male homosexual. The response options were "willingly accept, accept, don't know, protest, and refuse"; most indicated "protest". The most negative reaction came from members who live and work in conditions with the greatest stress and the least privacy: those serving in army and navy operational units. The analysis indicated that the major underlying causes of this unwillingness to work with homosexuals were anxiety or discomfort associated with situations of direct or indirect personal contact with homosexuals, influence of the media, and previous association with homosexuals. These results indicate that there would be serious problems in integrating known homosexuals into CF units, resulting in an adverse effect on cohesion.

21. Confidence in Leadership. For members to whom homosexuality is repugnant, the introduction of homosexuals into a system of powerful authority and unquestioning obedience has had damaging effects. The reaction of such a subordinate to a homosexual superior has been diminished respect and confidence, to the detriment of the superior's exercise of authority. This effect has been experienced in other military forces. The following evidence was submitted to a U.S. federal court that upheld the release of a homosexual from the United States Air Force:

"...known homosexuals in positions of leadership do not command the respect of their subordinates, creating an irreparable breakdown in the system of rank and command that is essential to the success of the military mission."<sup>11</sup>

The results of the recent CF survey support this contention: 45% of the male and 20% of the female heterosexual respondents indicated that they would "refuse" to be supervised by a homosexual of the same sex.<sup>10</sup> Thus, if homosexuals were placed in leadership positions, they would not have the willing support and confidence of a significant proportion of the heterosexual members.

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22. Confidence in the CF. The employment of homosexuals in the CF could be expected to reduce other members' confidence in the effectiveness of the Forces. This was confirmed by the survey: 80% of the male, and 47% of the female heterosexual respondents felt that the presence of homosexuals would decrease the effectiveness of the CF. Less than 2% of the surveyed members considered that the CF's effectiveness would increase as a result of employing homosexuals.<sup>10</sup> Therefore morale would be affected adversely by the members' loss of confidence in the effectiveness of the organization.

23. The available evidence indicates that the bonding and team spirit that are essential to cohesion would be significantly impaired by the presence of known homosexuals, particularly in operational units where the consequences would be most serious. This conclusion has also been arrived at in other nations, as exemplified by the following statement by a U.S. court which upheld the release of a homosexual member from their armed forces:

"To ask the question is to answer it. The effects of homosexual conduct within a naval or military unit are almost certain to be harmful to morale and discipline. The Navy is not required to produce social science data or the results of controlled experiments to prove what common sense and common experience demonstrate."<sup>12</sup>

This is further supported by two prominent military sociologists who said "cohesion requires compliance with the mores of the group; by definition, gays do not conform to the dominant orientation that characterizes military organization."<sup>13</sup> As well, confidence in the leadership and in the effectiveness of the Forces would be diminished by the presence of homosexuals, particularly if they held positions of authority. For these reasons, a policy of employing homosexuals would carry a high risk of significant damage to the cohesion and morale of the CF.

#### DISCIPLINE

24. As emphasized in Part 2, sound discipline is vital to an effective military force. Orders from superiors must be obeyed without hesitation, even at the expense of the subordinates' safety or comfort. This requires that leaders have the respect, trust and confidence of their subordinates. Sound military discipline assures leaders that subordinates will reliably follow lawful commands and behave within an acceptable

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code of conduct. For members who hold homosexuality at least in disfavour, the presence of homosexuals in an institution demanding absolute obedience would at best be unsettling. There would be apprehension that the superior's authority would be used for sexual advances. The overall reaction of a subordinate to a homosexual superior would be negative and detrimental to the superior's exercise of authority. Such a negative reaction was apparent in the results of the CF survey.<sup>10</sup> There was general agreement among respondents that known homosexuals would be verbally and physically harassed by heterosexual members. The strongest response came from the army and navy operational groups; 71% of the army operations group surveyed, and 61% of the naval participants, "strongly agreed" that there would be physical violence between known male homosexuals and heterosexual members. In 237 cases the respondents appended hostile remarks to the survey sheet threatening harassment, including physical violence, to known homosexuals should they be employed in the CF. This result correlates with those for the U.S. civilian population, as cited in the study in paragraph 11.

25. In the CF during the period 1981 to 1984 inclusive<sup>14</sup>, there were 197 cases of heterosexual sexual assault involving women and children compared to 41 cases of homosexual sexual assault. From the results of the CF survey, it is estimated that the CF homosexual population may be up to 5%. It is particularly significant that the number of homosexual cases of sexual assault is therefore proportionately four times higher than that for heterosexual cases of sexual assault.

26. In a review of homosexual incidents leading to investigations for the period 1966 to 1986<sup>14</sup> some of the cases involved the following: abuse of rank and positions of authority in order to coerce homosexual responses from subordinates; preferential treatment given to homosexual partners; instructors making homosexual advances to young cadets; attempts by homosexuals to impose their practices on heterosexuals by force, threats, bribery, favours, and persuasion; homosexual advances resulting in physical assault of the homosexuals; heterosexuals failing to report homosexual advances due to embarrassment and the risk of being publicly implicated by association; and sports teams shunned by heterosexuals because they were dominated by homosexuals, thus negating the intent of the sport to enhance team spirit and physical fitness.

27. The results of surveys and actual experience indicate that the employment of known homosexuals would result in a high risk of serious damage to the standard of discipline in the CF.

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PRIVACY AND EQUALITY

28. There are conditions peculiar to armed forces that unavoidably impinge on the freedom of life-style of their members. The close-contact working and living conditions have already been mentioned in Part 2. These conditions raise questions concerning the right to privacy, and thus must be examined further.

29. Members of the Forces frequently are subjected to living conditions which are totally different from those found in other professions. Isolated posts, barrack life, mess decks in ships, and field operations place members in close contact, often with little or no privacy. Similarly, living quarters are frequently shared, having common ablution and shower facilities. It is often impossible for members to lead a private social life. This close physical contact could stimulate homosexual advances and, conversely, these same conditions could raise the sensitivity of other members to the presence of homosexuals.

30. To force heterosexual members to sleep and shower next to homosexuals under the conditions described would obviously be a further intrusion on their life-style. Canadian society has consistently recognized a right to privacy between men and women, which not only allows but usually requires separation of the sexes as they sleep and perform personal hygiene. In the case of homosexuals, the potential for sexual interest during close association is not made obvious by physical sex differences. While heterosexual members appear to have no trouble accepting the close physical proximity and physical contact that are unavoidable in military life, they appear to recoil from any members who receive sexual stimulation from bodily contacts with people of the same sex. As the conditions cannot be changed, the reaction appears to be to shun or expel the homosexual.

31. The need to take privacy considerations into account was underscored by the results of the CF survey. The response showed that 62% of the male, and 41% of the female heterosexual members would "refuse" to share shower facilities or sleeping accommodation with homosexuals of the same sex.<sup>10</sup>

32. The principle of equality would appear to demand that heterosexuals and homosexuals be accorded privacy comparable to that provided for men and women; to do otherwise might be construed as discrimination on the basis of sex. Also the CF has an obligation to provide a milieu that does not force members into offensive situations. For these reasons, four

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separate sets of accommodation and hygiene facilities would appear to be a prerequisite for the employment of homosexuals in the CF. In addition, because of the small numbers of homosexuals, separate accommodation would invariably mean better accommodation for homosexuals which would be resented by heterosexual members and thus could adversely affect morale. Because of the conditions peculiar to military operations, however, it may not be possible to provide separate accommodations in many areas. Therefore, what might be workable elsewhere in society, where there is privacy and a greater freedom of choice of association, may not be practicable in the CF for operational reasons.

#### RECRUITING AND RETENTION

33. It is fundamental to the operational effectiveness of the CF to be able to attract and retain competent members. Therefore, careful consideration must be given to the potential effect on recruiting and retention of a policy of employing homosexuals in the CF.

34. Recruiting could be affected in three ways: by a change in the selection pool; by the overall effect on the attractiveness of the CF to heterosexual candidates; and by the recommendations of CF members, friends and relatives to young people considering joining the CF.

35. Selection Pool. If 10 percent of the Canadian population is homosexual, as indicated by some estimates<sup>9</sup>, a policy of employing homosexuals in the CF could add significantly to the recruiting selection base. With some forecasts suggesting that the CF will face increasing difficulty in maintaining its strength<sup>15</sup>, a policy that would broaden the pool of prospective candidates would be advantageous.

36. Decision to Join the CF. As previously mentioned, there is a large segment of Canadian society that is, at best, uneasy about homosexuality. Given the intimate association and unquestioning obedience that are necessary characteristics of military life, there is concern that the presence of homosexuals in such conditions would decrease the overall appeal of a service career. Prospective applicants to whom homosexuality is abhorrent could be expected to decline placing themselves voluntarily in a position where they could be under the command of a homosexual. Likewise, applicants who are aware of the close quarters of military life could be expected to refrain from surrendering so much of their privacy in the presence of homosexuals.

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37. This supposition was supported in a recent survey. Over 1,200 recently-enrolled recruits and officer candidates were polled in 1986 to determine the effect that a change in the employment policy regarding homosexuals might have on recruiting.<sup>10</sup> Compared to other reasons for joining the Forces (such as learning a skill and service to country), 38% of the male, and 26% of the female recruits and officer candidates indicated that a policy permitting the enrolment of homosexuals would have been an important consideration when joining the CF. Of this same sample, 11% of the males and 6% of the females stated it was "very unlikely", and 17% of the males and 10% of the females "somewhat unlikely", that they would have joined the CF if such a policy had existed at the time of their enrolment. The study indicated that the change in decision would have been based on a concern for privacy from homosexuals, unwillingness to work with or for homosexuals, a belief that homosexuals were dangerous, and previous contact with homosexuals.

38. Although the relationship between the verbal response to a hypothetical situation and the action taken under actual conditions is not exact, these results suggest that a significant reduction in heterosexual enrolments could result from a policy of employing homosexuals in the CF.

39. Recommendation to Join the CF. An important determinant of the attitudes and subsequent behaviour of young people is the influence of family, relatives and friends. The decision to join the Forces is no exception. A survey of over 7,100 potential CF applicants indicated that their first sources of information about the Forces were relatives, friends and contact with serving members.<sup>16</sup> Furthermore, the same study showed that the most important sources of information that caused applicants to actually go to a CF recruiting centre were: current and ex-members of the Forces, recruiters, and service in the Militia and the Reserves. In addition, two recent studies confirmed that individuals with neither relatives nor friends in the CF are significantly less likely to join the Forces<sup>17</sup>, or to volunteer for service in the CF during mobilization<sup>18</sup>. Taken together, these studies show the importance of the influence of others, and particularly of CF members, in the recruiting process.

40. The CF takes responsibility for the young and unformed (e.g., cadets and reserves), and attempts to assist them to mature in a controlled environment that is in concert with the standards considered desirable by many of those who influence them, such as parents, teachers, and friends. According to two public opinion polls<sup>3,19</sup> Canadians are uneasy with the idea

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of homosexuals holding jobs involving children. If there were a similar reaction to a policy of employing homosexuals in the CF, the perception of the suitability of the CF environment for young people could change, resulting in fewer recommendations of the CF as a career.

41. As previously mentioned, polls<sup>5,10</sup> have indicated that a significant proportion of both civilians and serving members would not recommend the CF as a career if there were a policy of employing homosexuals. Similarly, a large percentage of both civilians and serving members considered that such a change in policy would result in the CF being less effective. Also, evidence indicates that there would be a high risk of serious adverse effect on cohesion and morale. Thus, a policy of employing homosexuals in the CF could be expected to reduce the perceived effectiveness of the CF in the eyes of many serving members and members of the general public, to compromise internal morale and public confidence in the CF, and to consequently make the Forces a less attractive employment alternative.

42. There is another factor that raises concerns about recruiting. All the western countries that employ homosexuals to some degree maintain the strength of their armed forces through conscription. None of the surveyed nations that do not have conscription, and thus must maintain the strength of their armed forces with volunteers, employs homosexuals. Thus there is no empirical evidence available of the effect on recruiting of employing homosexuals in an all-volunteer armed force.

43. In summary, all the evidence available indicates that any gain in the selection base resulting from a policy of employing homosexuals in the CF would be more than offset by the adverse effect on recruiting heterosexuals. Indeed, the indications are that there would be a net significant decline in recruiting, which could result in a serious adverse impact on operational effectiveness.

#### POLICY OF OTHER NATIONS

44. Because they would be indicative of the extent to which employment limitations are considered to be justifiable in other free and democratic societies, the policies of several western nations concerning the employment of homosexuals in their armed forces were obtained:

- a. United Kingdom. The Naval Discipline Act, the Army Act and the Air Force Act all proscribe homosexual

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conduct on the part of servicemembers and render such conduct offences under the respective Acts. Homosexuals are not recruited, and if it is determined that a member is a homosexual, that member is released. A recent House of Commons Select Committee stated that "(one must) take full account of the special circumstances of service life, which is characteristically conducted in closed, largely if not exclusively male communities, and often in cramped physical conditions. The existence of sexual relationships between servicemen in such a context would be intrinsically liable to generate social and emotional tension of a kind which could only be harmful to morale and military efficiency."<sup>20</sup>

- b. United States. The Navy, Army, Air Force and the Marines all share a common policy of discharging known homosexual servicemembers and preventing entry of homosexuals into their respective services. Homosexuality is considered incompatible with military service and has been upheld by US appellate courts as recently as 1984.<sup>12</sup>
- c. Federal Republic of Germany. German authorities consider that it is impossible for homosexuals to function in an unrestricted manner in the Armed Forces. Although homosexuals may be enrolled (the denial of their enrolment would provide an easy means of avoiding conscription), they are not permitted to hold positions of direct command and control. Under certain circumstances homosexuals are subject to release.
- d. France. There are no provisions restricting the employment of homosexuals in any statutory documents or general discipline regulations of the French Armed Forces. However, homosexuals are not assigned to "sensitive" positions such as officer and recruit training centers because it is considered that they display an attitude or practice behaviour that is incompatible with that required in such positions.
- e. Australia. The Australian Defence Forces (ADF) do not allow homosexuals to enrol or remain on the grounds that it is prejudicial to effective command relationships and morale. The health risks are also considered unacceptable. The ADF philosophy

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is to place themselves in the role of 'loco parentis', since parents permit their children who are minors to join the Forces. This responsibility requires that the minors be protected from aberrant behaviour.

- f. New Zealand. The NZ Forces do not allow homosexuals to enrol or remain, as their presence is considered to be incompatible with the Services. A bill is currently before the NZ House of Representatives to decriminalize homosexual activities. However, the Armed Forces will be exempted from the provisions of the bill, and homosexual activities will continue to be an offence against military law.
- g. Norway and the Netherlands do not have limitations on the employment of homosexuals in their armed forces.
- h. Spain. Homosexuality is not illegal. However, homosexual activities between superiors and subordinates involving abuse of rank or position or acts committed on ships, bases, quarters or other military premises, are illegal.

45. The majority of the western nations, which responded to the request for information, have policies that limit the employment of homosexuals in their armed forces. Those that may be culturally most similar to Canada, the United States and the United Kingdom, have policies of total exclusion that have recently been reviewed and confirmed.

#### MEDICAL IMPLICATIONS<sup>21</sup>

46. The available evidence indicates that adverse medical implications could be expected from a policy of employing homosexuals in the CF. While perhaps not of overriding importance, they cannot be ignored.

47. Sexually Transmitted Diseases (STD). Overall, the CF would experience an increase in STDs. The risk probabilities of acquiring many STDs are highest for male homosexuals, followed by heterosexuals, then female homosexuals. There are some 30 viral, bacterial, parasitic and other infections/problems that homosexuals are more prone than heterosexuals to acquire and transmit.

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48. General Preventive Considerations. STD control would be difficult in the CF, just as it is in the civilian community. A screening program for STDs among male homosexuals would have to be seriously considered, at an estimated cost of \$46 per screened person. Ideally, the identification of sexual orientation on enrolment would assist in the application of any preventive strategies. However, such identification appears unlikely even for valid medical reasons because of human rights considerations. Even with self-deferral of homosexual males from donating blood, blood testing may become obligatory, even in the field in battle.

49. Disease-Specific Considerations. There are two diseases that would be of particular concern:

- a. Hepatitis B (HB). Male homosexuals are at very high risk of acquiring HB. The ratio is 35-80% vs 3-5% for heterosexuals. Infectious persons pose a significant risk to health care providers exposed to their blood. An effective vaccine against hepatitis B infection (\$130 per vaccine) has been available since 1982 and a vaccination program would be required.
- b. Acquired Immune Deficiency Syndrome (AIDS). Male homosexuals are the largest and highest risk group for AIDS. Prevention relies solely on avoiding high risk behaviour as no vaccine or treatment is available to counter it. Blood tests are available to detect antibodies produced in response to HTLV-III (the causative viral agent) infection. Medical care costs for a single AIDS case is estimated at \$40K. To date, there has been one case of AIDS in the CF. A further five members have been identified as infected with HTLV-III but are not AIDS cases. Only half of the six infected members stated that they had had homosexual contact.

50. Conclusions. Medical opinion indicates that:

- a. employing homosexuals in the CF could be followed by an increase in sexually-transmitted diseases (STD) which would generate additional medical costs for screening programs, HB vaccine, and patient treatment;

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- b. in battle conditions, where the use of members as a walking blood donor pool is necessary to meet transfusion requirements, testing for syphilis, HB and HTLV-III would become obligatory at considerable cost;
- c. a recruit and serving member screening program for HTLV-III would have to be seriously considered. A recruit screening program would cost an estimated \$50-60K to establish and \$35K per year for lab costs;
- d. the medical care costs associated with a single case of AIDS is conservatively estimated at \$40K; and
- e. there is no compelling medical reason why an open policy toward homosexual recruitment could not be effected, although some increase in resources would likely be required.

#### OPTIONS

51. Means other than those now in effect were considered in order to determine the possibility of pursuing the major objectives involved in this study. Two avenues appeared to have some promise: the provision of separate accommodation, and employment only within those areas where adverse effects might be less critical.

52. Separate Accommodation. As discussed earlier, a factor of serious concern is the right to privacy between heterosexuals and homosexuals, and the obligation of the CF to provide for it. Some of the factors that bear on this option are: the engineering feasibility, the practicability of personnel management, the extent to which privacy could be assured, and cost.

53. The provision of four sets of accommodation and hygiene facilities at static bases is feasible from an engineering point of view. Although it would be a very large undertaking, it would probably be within the capability of the CF to complete without the need for major program status and costs.<sup>22</sup> Larger warships could be modified to provide a minimum standard of privacy for four groups. It would not be technically feasible to do so in submarines. The modification of warships would be a major and costly program. The estimated total costs associated with the renovations required to quarter homosexual crew members of both sexes for the 23 operational surface ships

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vary from 7.901M to 14.767M dollars depending on the ratio of total female crewmembers.<sup>23</sup> Privacy in field operations would be difficult to achieve and could not be assured because of the unpredictable mobility of operations on the one hand, and restrictions in location due to enemy action on the other.

54. A common aspect is that privacy could not be assured during deployed operations supported by foreign forces that do not provide for such privacy because of employment policies that do not require it.

55. The most difficult problem in providing for privacy would be in determining the proportion of the total facilities to allocate to each of the four categories. This problem would be most serious in the case of warships which, once modified, could not be altered without further major effort or cost. As previously mentioned, there is evidence that regardless of official policy, homosexuals would probably not make known their sexual orientation. Thus it would be extremely difficult to predict the number of declared homosexuals for whom separate facilities would have to be provided. Also, current experience indicates that the close living conditions in the CF would result in additional members becoming known to be homosexuals each year, for whom separate accommodation would also have to be provided. Because the number of homosexuals who would join the CF, and the proportion of those who would reveal their sexual orientation, defy prediction, it would be extremely difficult to give practical effect to such a measure.

56. The concept of providing for privacy would raise serious problems for personnel management. The problem would be particularly acute in the case of warships, in which there is rarely spare bunk space. The replacement of unit members would require not only the right match of rank, occupation and qualifications, but also of sexual orientation. It is highly likely that such an added complication would result in chronically under-strength units.

57. In summary, although technically feasible in most cases, the provision of separate accommodation and hygiene facilities for homosexuals would raise unsolvable problems in determining the requirement, and would introduce complexity of impracticable dimension into the management of the CF.

58. Partial Employment. As another possible alternative, consideration was given to the employment of homosexuals only in areas of the CF where the conditions that give rise to adverse effects are less pervasive. Quite apart from the undesirable loss of flexibility in assignment that would

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result, the practical feasibility was quickly called into question. Again, the problem of members whose sexual orientation was not known would defeat the intent and practicability of such a policy.

#### EQUALITY CONSIDERATIONS

59. There is a particular aspect of the limitation represented by current CF policy that has a bearing on the important consideration of proportionality. Thus it is important to examine the nature of the limitation before addressing the question of proportionality.

60. Nature of Limitation. Public debate on this issue has claimed a parallel with the exclusion of a group on the basis of some other distinction such as race. The argument is that the exclusion of homosexuals, because of the reaction to them of other members, is the same as would be the exclusion of a group because of a racial prejudice held by other members, which unquestionably would be unacceptable. This analogy does not stand up, particularly in the military setting. Racial prejudice is based upon a passive characteristic, such as skin colour. It is reasonable to expect that in armed forces such superficial characteristics would lose their significance more rapidly than in other environments because of the intimate circumstances in which the members live and work. The close association could be expected to demonstrate more rapidly the irrelevance of skin colour to observed, competent performance. Thus the existence of any such prejudice would diminish so as not to interfere seriously with the development of the esprit de corps and camaraderie that are so important to the effectiveness of a military unit. This was certainly the case in U.S. forces, which achieved successful racial integration sooner and with less difficulty than other segments of American society.

61. The adverse reactions to homosexuals are not similarly rooted in a passive characteristic but rather arise from the active character of their sexual proclivity, which is the cause of heterosexuals' aversion. The active character of homosexuality would not, like skin colour, become less intrusive with military members living together in intimate circumstances. On the contrary, the active aspect of a homosexual's distinguishing characteristic would be intrusive and would render the relaxed intimacy of barracks life sexually ambiguous and strained. As stated previously, CF data on sexual assault indicates that there are valid grounds for the concerns of other members that the active nature of homosexuality may affect them directly. Thus the continued

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close association of heterosexuals and homosexuals would not ameliorate but would aggravate tensions, resulting in the progressive deterioration of inter-personal relationships, cohesion and morale, and ultimately unit effectiveness.

62. The policies of the CF recognize the essential difference between differentiation on the basis of race as opposed to homosexuality. Also, the policies are based solely on the practical and observed effects of the different characteristics on a military force. The Canadian Forces has been in the forefront of society in not excluding groups on the basis of race because the passive nature of their distinguishing characteristic does not compromise the maintenance of an effective military capability. Homosexuals are excluded because their active characteristic precludes acceptance, to the detriment of cohesion and morale, as a result of which their presence is prejudicial to military effectiveness.

63. Proportionality. The pursuit of the two important objectives, the enhancement of individual rights on the one hand and operational effectiveness on the other, may not be possible without one having adverse effects on the other. The relative gravity of what might have to be foregone in the pursuit of one objective, as opposed to what might be gained in the furtherance of the other, must be considered.

64. The limitation on the employment of homosexuals in the CF is not based on the ability of individuals to perform the essential duties of the occupation. It is based on the reactions of other members to the active distinguishing characteristic of homosexuals, and it is therefore discriminatory. The consequence to homosexuals is the loss of an employment option, and the stigma of not having an unlimited role in society.

65. The CF has excluded homosexuals because the reaction to them by other members has had extremely adverse consequences which seriously jeopardize the maintenance of operational effectiveness. A means of employing homosexuals without incurring this impact on the capability of the CF has not been apparent. Therefore the consequences to Canada of changing the present policy would be a diminished capability to provide for national security. For all members of the CF, the reduction in operational capability would increase the risks to them of being killed, wounded, or captured should they be committed to battle.

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CONCLUDING MATERIAL

CONCLUSIONS

66. It is concluded that:
- a. there is a wide-spread negative attitude towards homosexuality in Canadian society;
  - b. a like negative attitude exists in the CF and it may not be changeable;
  - c. there is a general aversion among homosexuals to their sexual orientation becoming known;
  - d. the two nations which are generally considered to be culturally most similar to Canada, the United States and the United Kingdom, have policies of total exclusion. In addition, no nation with an all-volunteer force accepts or retains homosexuals;
  - e. the presence of homosexuals in the CF would be detrimental to cohesion and morale, discipline, leadership, recruiting, medical fitness, and the rights to privacy of other members;
  - f. the overall effect of the presence of homosexuals would be a serious decrease in the operational effectiveness of the CF;
  - g. there are no viable alternatives to current policy as a means of ensuring achievement of the legitimate objective of maintaining the operational effectiveness of the CF in the interests of national security; and
  - h. the proportionality of the consequences of continuing or changing present policy supports its continuation.

RECOMMENDATION

67. It is recommended that the current policy of not employing homosexuals in the Canadian Forces be continued as a reasonable limitation within the meaning of section 1 of the Canadian Charter of Rights and Freedoms.

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