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THE CANADIAN FORCES POLICIES

ON

THE EMPLOYMENT OF WOMEN

AND

SEXUAL ORIENTATION

(HOMOSEXUALITY)

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## EXECUTIVE SUMMARY

### ISSUE

1. The Equality Rights Sub-Committee is scheduled to table its report in the House on 25 October 1985. It is expected that the report will recommend that the present policy which excludes women from combat, and which excludes homosexuals from the Canadian Forces, be changed to permit the unrestricted employment of women, and the enrolment and retention of homosexuals, in the Canadian Forces.

2. The government will be required to respond to the Sub-Committee report within 120 days. To assist in formulating that response, the two policies at issue have been reassessed so as to provide the current Canadian Forces position on the employment of women, and the exclusion of homosexuals, in the Canadian Forces.

### CURRENT POLICY

3. The current policy on the employment of women in the Canadian Forces provides them with unrestricted employment except that:

- a. women are not employed in certain units, occupations, or positions, for the purpose of ensuring that women are not employed in combat;
- b. the ratio of women to men in certain occupations is limited to the extent necessary to ensure the continued effective staffing of those positions restricted to men as a result of the policy in sub-para a. above; and
- c. women may be temporarily employed in restricted occupations, units or positions, in peace-time only, for the purpose of trials or educational training.

4. The current policy on homosexuality is that homosexuals are neither enrolled nor retained in the Canadian Forces.

### LEGAL CONSIDERATIONS

5. The current policies that limit the employment of women and exclude homosexuals are discriminatory and are facially inconsistent with Section 15 of the Canadian Charter of Rights and Freedoms (the Charter). The only viable means of continuing these policies is to argue that they are reasonable limits, prescribed by law, that are demonstrably justifiable in a free and democratic society, and that they are therefore consistent with the Charter within the meaning of Section 1.

6. Regardless of any decision to retain present policies, if so challenged a court may at any time rule that they are inconsistent with the Charter and therefore are of no force or effect.

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RATIONALE

7. Particular National Defence Considerations. Rights and freedoms can be ensured only if a nation has the will and ability to protect its security. The Canadian Government discharges its responsibility for security through the Canadian Forces, whose other rôles are subsidiary to the prime objective of being able to defend Canada in war. It would be illogical to negate the extensive resources expended on defence by an unreasonable application of Section 15 of the Charter.

8. Because the Canadian Forces must always be on a war footing, the interpretation of the reasonableness of the two policies should be that which would apply in wartime. Strength, stamina, discipline and morale are the key attributes of an effective military force. Cohesion and morale are enhanced by close living conditions with minimal privacy on and off duty; this is significantly different from civilian occupations which permit total privacy away from work. Members of combat units face high risk; they must be given the best chances of success and survival; otherwise the increased risk of death or capture would be the most extreme infringements on their rights and freedoms. Physical strength and stamina can be measured. Cohesion and morale cannot; therefore professional military judgement is the main evidence in considering these vital factors.

EMPLOYMENT OF WOMEN

9. Canada stands with the top few countries in the world in the proportion of women in the armed forces; the rate of increase could put Canada ahead of any other nation in the next few years.

10. Physical strength and stamina are as vital for combat effectiveness as ever. Tests and data in Canada and other armed forces indicate that about 90% of male applicants meet the highest combat requirements, but only about 2% of women applicants would. Only 15-45% of women would meet the common standard for 75% of the trades if everyone had to be capable of serving with combat units. If limitations on the employment of women were removed, strength and stamina tests would be essential. If women, who now do not require the strength because they are not eligible for employment in combat units, had to meet the standard for such employment, the total number of women in the Canadian Forces would decrease.

11. Academic studies and the results of trials raise serious concerns about the ability to integrate women into combat units without degradation of cohesion and morale. This process would be inhibited by the expected scarcity and high rejection rate of applicants.

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12. Only three nations in the world are known to profess unlimited employment of women in their armed forces, and actual numbers so employed are negligible. The exclusion of women from combat is a limitation that is accepted as reasonable and justifiable by all other free and democratic societies in the world. The deterrent value, and the perception of the alliance contribution of the Canadian Forces could be diminished by the adoption of unproven, mixed-gender units.

13. The performance of mixed-gender units in combat is unknown. Unlike other risks in social change that are revocable, risk of change in combat units could result in death, which is irrevocable. Therefore clear evidence that mixed gender units would perform as well as proven male units is an essential prerequisite to any change in the composition of combat units.

14. The unanimous judgement of senior commanders is that the inclusion of women in combat would seriously degrade the effectiveness of combat units, and increase the risk to members of death or capture in battle. Therefore the continued exclusion of women from combat is a reasonable limitation that is demonstrably justifiable in a free and democratic society.

#### HOMOSEXUALITY

15. To achieve sound discipline, which is vital for an effective military force, powers of authority in armed forces are, by civilian standards, extraordinary; unhesitating and unquestioning obedience is demanded. Effective leadership requires the respect of subordinates and proper use of authority. Experience has shown that many people cannot respect homosexuals, to the detriment of their ability to command. There is also fear of misuse of authority to coerce or entice acceptance of homosexual advances, which has occurred. Affairs between homosexual superiors and subordinates could lead to real or perceived favouritism, thus denigrating fair and impartial leadership. In the strict, hierarchical military structure, the presence of homosexuals would adversely affect the discipline needed for an effective armed force.

16. Known homosexuals are ostracized and isolated by other members, to the detriment of unit cohesion and morale. The disruption to esprit de corps resulting from the presence of homosexuals has been experienced in the Canadian Forces and other armed forces. The absence of sound cohesion and morale can result in avoidable extra casualties in battle.

17. Given the intimate living conditions inherent in military service, the presence of homosexuals, whose potential sexual interest is not discernible by physical gender differences, would be an intrusion on the privacy of heterosexuals. Military members should be entitled to the standards Canadians accord to gender privacy, which allows or requires separation for sleeping and personal hygiene, in  
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respect of homosexuals. However, separation of homosexuals from other members is neither feasible nor desirable in order to achieve valid military objectives.

18. With prevailing attitudes in Canadian society, an armed forces career could lose appeal if homosexuals were openly admitted, resulting in the possibility of decreased defence capability due to inability to maintain the strength of the armed forces with volunteers.

19. The attitudes of present and future members cannot be wished away. Therefore the introduction of homosexuals would decrease the effectiveness of the Canadian Forces. There are no viable alternatives to their exclusion. The effects of denying entry to homosexuals must be weighed against the consequences to national security, and to the rights of other members, of admitting them.

20. The unanimous judgement of the senior commanders is that removal of the exclusion of homosexuals would seriously degrade the effectiveness of the Canadian Forces.

21. Therefore the current policy is a reasonable limitation that is demonstrably justifiable in a free and democratic society.

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INTRODUCTION

GENERAL

1. In recent years western society has placed an increasing emphasis on individual Human Rights. This social change has led to Canada becoming a signatory to several international human rights agreements, including the Convention on the Elimination of All Forms of Discrimination Against Women. Nationally, it has led to a wide variety of legislation, such as the Bill of Rights, the Canadian Human Rights Act, the Privacy Act, the Access to Information Act and the Canadian Charter of Rights and Freedoms (the Charter).

2. The Constitution of Canada, which includes the Charter, is the supreme law of Canada, and any other law that is inconsistent with its provisions is, to the extent of that inconsistency, of no force and effect. As a result, the coming into force of the Charter on 17 Apr 82, and particularly the coming into force of section 15 of the Charter on 17 Apr 85, has necessitated a review of all laws - including regulations, orders and policies - to ensure that they meet the standards set by the Constitution, and in particular the provisions respecting Equality Rights that are contained in section 15 of the Charter.

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3. As part of that review, existing Canadian Forces policies on the employment of women and on homosexuals were amongst the equality rights issues discussed in the Department of Justice Discussion Paper on Equality Issues in Federal Law. The Equality Rights Sub-Committee of the Standing Committee on Justice and Legal Affairs have held public hearings over the past several months on those matters, and the Sub-Committee's report is to be made to Parliament through the Standing Committee by 15 Oct 85. The Government must then respond within 120 days.

4. The written briefs and oral presentations that were made to the Sub-Committee were, almost without exception, opposed to the current CF policies on the employment of women and on sexual orientation. Accordingly, it is expected that the Sub-Committee Report will recommend that these policies be changed, to the extent that women be eligible for unrestricted employment in the CF, and that homosexuals be eligible for enrolment in, and retention by, the CF. It has been government policy to change federal laws and regulations that are inconsistent with the Charter so as to avoid the need for citizens who are adversely affected by them to resort to expensive and time consuming litigation to obtain relief through court decisions.

5. In the spirit of this policy, the Department of National Defence has reassessed the rationale for the two controversial exclusions practised by the Canadian Forces, namely the proscription of women from combat occupations, and the exclusion of homosexuals from all military service.

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AIM

6. The aim of this paper is to examine the legal issues arising out of the Charter in respect to current policies on the employment of women and sexual orientation (homosexuality) in the Canadian Forces, and to state the rationale for those policies.

DISCUSSION

LEGAL ISSUES

THE CHARTER OF RIGHTS AND FREEDOMS

7. The provisions of the Charter that are of major concern in the context of this paper are sections 1, 15, 28 and 33.

Section 1 reads: "The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

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Section 15 reads: "15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

Section 28 reads: "28. Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."

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Section 33 reads: "33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

(2) An Act or a provision of an Act in respect of which a declaration made under this section is in effect shall have such operation as it would have but for the provision of this Charter referred to in the declaration.

(3) A declaration made under subsection (1) shall cease to have effect five years after it comes into force or on such earlier date as may be specified in the declaration.

(4) Parliament or a legislature of a province may re-enact a declaration made under subsection (1).

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(5) Subsection (3) applies in respect of a re-enactment made under subsection (4)."

ARE THE POLICIES DISCRIMINATORY?

8. The first step is to consider whether the provisions being assessed are discriminatory within the meaning of subsection 15(1) and, if so, whether the discrimination is based upon one of the grounds listed therein. There seems to be no doubt that both the policies respecting the employment of women and those concerning homosexuals are discriminatory. Those policies are clearly based upon group characteristics (ie, sex and sexual orientation respectively) rather than upon the ability of the individual, and they have adverse consequences (exclusion from employment) for those affected by them. The policies respecting the employment of women are based upon one of the grounds enumerated in subsection 15(1), whereas the policies on homosexuals are based upon a ground not specifically included therein.

9. It is probably not significant that "sex" is a ground of discrimination specifically listed in subsection 15(1) whereas "sexual orientation" is not. While there are not yet any authoritative court decisions upon which to rely, it could be claimed that section 15 prohibits discrimination in general and not merely discrimination on

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the grounds listed. A person challenging the CF policies on homosexuals could be required to prove that "sexual orientation" is a basis for discrimination against which he should be protected. It is possible that this would not be a difficult burden to meet because it is already a proscribed ground of discrimination under some provincial human rights statutes and international covenants to which Canada is a party.

CAN THE POLICIES BE JUSTIFIED?

10. Provisions of the law that appear to be discriminatory contrary to section 15 must then be examined in the light of section 1 of the Charter to see if they can be justified, and therefore retained, on the basis that they represent reasonable limits (on the right to equality) that are prescribed by law and that can be demonstrably justified in a free and democratic society.

11. There are a number of considerations that are applicable to this process of examining apparently discriminatory provisions to determine if they can be justified on the basis of section 1, including:

(a) The burden is on the Crown (in our case, on the Canadian Forces) to prove that the provisions

(1) are reasonable limits;

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(2) are prescribed by law; and

(3) can be demonstrably justified in a free and democratic society.

(b) While the courts have not established a firm rule that burden can only be discharged by producing empirical evidence, they have given clear indications that "scientific evidence" in the form of statistical and medical evidence based upon observation and research is, if not in all cases absolutely necessary, certainly more persuasive than the testimony of persons, albeit with great experience, as to the presumed but unproven effect of changing the provisions so that they do not discriminate.

(c) It is at least arguable that what is a "reasonable" limit will vary from time to time depending on the circumstances. In other words, a provision that might not be a "reasonable limit" in peacetime may be considered by the courts to have become "reasonable" in an emergency or time of war. In this context it must be recognized that the ultimate purpose of the Canadian Forces is to be able to operate effectively in time of war.

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- (d) In general terms, it seems safe to say that provisions that are contained in regulations (such as the Queen's Regulations and Orders for the Canadian Forces) or in Canadian Forces Administrative Orders, are "prescribed by law" for the purposes of Section 1. However, such regulations and orders must not be unduly vague.

12. The effect of these considerations upon the policies of the Canadian Forces in question would appear to be as follows:

- (a) While there is some basis to argue that the policies are "reasonable limits", in the event of a subsequent court challenge the key question will be whether the evidence is strong enough to discharge the burden on the Canadian Forces. Much of the rationale for the present policies appears to be based upon expert opinion rather than empirical data capable of being scientifically proved. If the existing policies are to be retained, the rationale for these policies will have to be carefully examined by appropriate legal experts in the Office of the Judge Advocate General to determine the manner in which, and the extent to which, the arguments can be supported by evidence that will be admissible in court under the applicable laws of evidence. In addition, efforts should continue to further develop the rationale and to seek out relevant scientific data.

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- (b) The burden of proof can be eased if the courts can be persuaded to judge the reasonableness of the policies by reference to the wartime requirements of military service. Efforts should continue to further develop this theme and to consider what evidence is available to substantiate it, such as identifying the experts who could be called as witnesses to support the need for peacetime policies that would be effective in wartime, and to search for relevant learned studies.
- (c) At the present time, it does not appear that either the policies on the employment of women or those on homosexuals are adequately "prescribed by law." The policies on the employment of women appear to be contained only in the Minutes of a Defence Council Decision in 1971 and in certain work instruments. The policy on homosexuals is contained in a Canadian Forces Administrative Order, but is considered to be too vague since the activities it seeks to proscribe are not enunciated with adequate precision but are, rather, based on a vague reference to behaviour that could scandalize other members and bring discredit on the Canadian Forces. The CFAO is currently being amended to make it more precise. For the moment, no action is

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being taken to ensure that the policies on employment of women are prescribed in regulation or orders. This is because officials in the Department of Justice have advised that the making of a new regulation or order on this subject while it is one of the issues upon which the Sub-Committee is currently seeking public comment would be perceived to be highly cynical. The current policies, however, cannot be retained without prescribing in law the limitations which they embody, in keeping with the provisions of section 1 of the Charter.

THE IMPACT OF SECTIONS 33 AND 28

13. Ultimate resort to section 33 of the Charter is at least a theoretical possibility to preserve the current policies if they are determined to be discriminatory and not to be justifiable under section 1. However, it is difficult to conceive of the Government resorting to that section in any circumstances short of an emergency. In any event, even if Parliament did pass an Act in accordance with that section, it would only remain valid for a maximum of 5 years unless re-enacted. Another difficulty would be whether an Act passed in accordance with section 33 could effectively provide for the continuation of our present policies on the employment of women. This is because of section 28, which provides that the rights and freedoms

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referred to in the Charter are guaranteed equally to male and female persons notwithstanding anything in the Charter. Section 33 does not permit Parliament to declare in an Act that it is to operate notwithstanding section 28. There is not unanimity as to the legal effect of section 28 and there are no court decisions to provide guidance, but there is a strong body of legal opinion to the effect that section 28 protects sexual equality from the application of section 33, and that even if that latter section were resorted to, provisions based on sexual inequality would still be inconsistent with section 28. Cabinet would have to take section 28 into consideration before deciding to proceed under section 33.

SUMMARY OF LEGAL CONSIDERATIONS

14. The following considerations are applicable:

- (a) The Charter is the supreme law of Canada, and Canadian Forces policies that are inconsistent with it should be changed in accordance with Government policy and must be changed if the courts rule them to be inconsistent.
- (b) The Equality Rights Sub-committee is likely to recommend strongly that existing policies on the employment of women and on homosexuals be changed.

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- (c) The limitation on the employment of women is discriminatory and inconsistent with section 15 of the Charter.
- (d) The limitation barring the employment of homosexuals is discriminatory and probably inconsistent with section 15 of the Charter.
- (e) The rationale that has been established for the existing policies contains the basis for an argument that the policies amount to "reasonable limits" within the meaning of section 1 and that they are therefore not inconsistent with the Charter as a whole.
- (f) The burden of proving that the policies are reasonable limits is on the Canadian Forces.
- (g) Much of the rationale is based upon opinion evidence rather than empirical or scientific evidence and this makes it difficult for the Canadian Forces to discharge the burden of proof.
- (h) There is some hope that it can be successfully argued that whether military provisions are reasonable limits on equality rights must be determined on the basis of

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whether those provisions would be reasonable in wartime because of the ultimate role of the Canadian Forces and the lack of any predictable transitional period between peace and war.

- (j) The present policies on the employment of women and on homosexuals are not "prescribed by law" within the meaning of section 1 and, until they are so prescribed, the Canadian Forces could not argue in court that they represent "reasonable limits" within the meaning of that section.
- (k) Resort to section 33 of the Charter does not appear to be a viable solution, particularly with respect to the policies on the employment of women, because of the added provision respecting sexual equality that is contained in section 28.
- (m) Regardless of any decision not to voluntarily change existing Canadian Forces policies, the courts may ultimately force such a change if they rule those policies to be inconsistent with the Charter.

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THE PARTICULAR CIRCUMSTANCES IN NATIONAL DEFENCE

PURPOSE

15. History has repeatedly shown that when a nation has been unwilling or unable to defend itself, its survival as a sovereign state has been jeopardized. The past forty years have been characterized by many civil and international wars, as a result of which many countries have lost varying degrees of freedom and democracy. Thus the security of a nation is essential to the protection of the rights and freedoms enjoyed by its citizens, and one of the fundamental responsibilities of government is to ensure that security.

16. The Canadian Forces are the main instrument used by the Government of Canada to discharge its responsibility for the security of the country. The Canadian Forces meet many national objectives in times of peace, such as contributing to deterrence, international peace-keeping, and acting as the last resort for internal security. However, their over-riding purpose is to be capable of defending Canada in war.

17. The importance of security in the eyes of the people and Government of Canada is evident in the share of the federal budget that is allocated to defence. It would be logically inconsistent to introduce any measure which would negate in any significant way the

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intent of security policy and the effectiveness of the resources and effort which are currently dedicated to that end. As the Canadian Forces could be so affected by the application of Section 15 of the Charter, the removal of any limitation must be given most careful consideration in the context of Section 1.

CONDITIONS

18. As has often happened in the past, the transition from peace to war could be too rapid to make more than minor adjustments within military forces first committed to battle. Therefore, the Canadian Forces must be structured, trained, and equipped as though under conditions of war even in times of peace.

19. The requirement to be continuously prepared for war creates a difficult problem in determining reasonableness. Canadian society normally resists any infringement on individual liberty, and it may be expected to relinquish voluntarily any rights and freedoms only when it is necessary to do so to ensure national survival. While more stringent limitations could be expected to be deemed reasonable under Section 1 of the Charter in times of war, such limitations may also be essential in peace-time to ensure the war preparedness of the Canadian Forces. Therefore, Canadian society faces a special challenge in determining now what might be reasonable in times of war, when

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considering limitations vital to the effectiveness of the Canadian Forces.

20. The effectiveness of military forces in war depends on conditions which have been proven repeatedly in history, most recently in the Falklands. Adequate training and equipment are fundamental requirements. Fitness, strength, and stamina are as important today as in the past. Above all, however, discipline and morale are the vital characteristics which determine the effectiveness of armed forces. The quality of these factors was decisive in enabling British troops to defeat the Argentinian forces that were numerically superior, well equipped and supplied, and were entrenched in defensive positions. Therefore, military commanders must accord paramount importance to the maintenance of discipline and morale.

21. The importance of discipline, and the special military requirements to achieve it, have been recognized by the Code of Service Discipline in the National Defence Act. The need for these unique provisions to ensure discipline in the Canadian Forces was upheld by the Supreme Court of Canada in 1980. Members of the Canadian Forces are thereby subject to a different code of laws and systems of trial, because those which apply to society as a whole do not meet the particular needs of military discipline. The essential requirements of military effectiveness may similarly require an interpretation different from those which apply to Canadians in general, insofar as reasonableness in the context of Section 1 of the Charter is concerned.

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22. The difficulty faced by democratic societies in arriving at the different standards needed for effective military forces was emphasized by former Chief Justice Warren of the U.S. Supreme Court:

"It is indisputable that the tradition of our country, from the time of the Revolution until now, has supported the military establishment's broad power to deal with its own personnel. The most obvious reason is that courts are ill equipped to determine the impact upon discipline that any particular intrusion upon military authority may have. Many of the problems of the military society are, in a sense, alien to the problems with which the judiciary is trained to deal."

23. Morale and battle effectiveness are dependent on a strong sense of cohesion and team spirit within combat units. To foster these attitudes, military members are deliberately put into close contact both on and off duty. Barracks-style life is therefore not a question of the availability of resources. Similarly, other demands for space on a warship result in crowded living conditions that cannot provide the privacy of individual rooms, shower stalls, or toilets. Unlike other vocations, military service does not involve association with fellow employees only at the work-place, with complete privacy at

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other times. Rather, in combat units in particular, members work, sleep, and eat in close proximity to one another, with little privacy for extended periods, as a necessary condition to be able to meet the objectives set them. Therefore the differences between the work place conditions in society at large, and those in armed forces, must be taken into account in considering the reasonableness of any limitations related thereto.

24. Members of combat units are liable to exposure to high risk on a scale and for periods unparalleled in any other occupation. In the absence of optimum conditions for effectiveness in battle, the risk is increased. The consequence could be defeat for the nation; for the members, it could be loss of life or loss of liberty as prisoners of war, the most extreme infringements of their individual rights and freedoms. Therefore the consequences of maintaining limits on the employment of specific groups in the Canadian Forces must be weighed against the possible impact on the rights of other members to be afforded the best possible conditions for success and survival should they be committed to battle.

25. The importance of physical capability and morale in combat cannot be over-stated. Within limits these factors can compensate for deficiencies in numbers, equipment, and training. While physical capability can be defined and measured scientifically, morale cannot.

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It is a state of mind that is achieved by a complex combination of measures and circumstances that are not scientifically quantifiable. The probable effect on morale of changing current Canadian Forces policies on homosexuals and the employment of women is not measurable with material evidence. Again, the problem this situation poses for society was commented on in a judgement rendered by the United States Supreme Court:

"It is difficult to conceive of an area of governmental activity in which the courts have less competence. The complex, subtle, and professional decisions as to the composition, training, equipping, and control of a military force are essentially professional military judgements..."

26. The professional judgement of experts who have spent careers carrying the responsibility for the preparedness for war is therefore of particular importance in deciding whether or not changes should be made to the current limitations on the employment of women, and the exclusion of homosexuals, in the Canadian Forces.

EMPLOYMENT OF WOMEN

GENERAL

27. Women have served in the Armed Forces of Canada since 1885. Their numbers increased in times of war, but reduced to very small

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numbers in peace-time. However they have played an increasingly important role in the Canadian Forces over the past 15 years. In that time the number of women in the Regular Force has increased from approximately 1500 to some 7240. Approximately 29,000 positions in the total force of 82,000 are open to women. In 1985 more than 8.7% of the regular members of the Canadian Forces are composed of women. Within NATO only the United States, with 9.5%, has a higher percentage of women in their military forces. Fewer than five countries in the world are known or believed to have a higher percentage of women in their armed forces.

28. The current trend in the Canadian Forces will likely continue. The proportion of women now undergoing training at the private level is 12.8%, and at the officer cadet level it is 13%. Should future recruiting follow this pattern, and attrition of servicewomen remain stable, the percentage of women in the Canadian Forces may surpass that of every other nation in NATO, and possibly the world, in the next few years.

29. Unlike industry, the Canadian Forces cannot normally hire qualified members for all levels of responsibility from the general population. The Canadian Forces must enroll people at a very junior level and assist them to progress up the rank ladder as they develop skills and gain experience. Because the role of women in the Canadian

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Forces has expanded more than four-fold in the last 15 years, the number of women serving in senior positions is low but it is steadily increasing. At the present time the average length of service of women in the Canadian Forces is 5.8 years, whereas the average for men is 11.4 years; even so, women are progressing in rank at a faster rate than men.

CURRENT POLICY

30. Based on a Defence Council decision of 5 July 1971, the current policy on the employment of women in the Canadian Forces provides them with unrestricted employment except that:

- a. women are not employed in certain units, occupations, or positions, for the purpose of ensuring that women are not employed in combat;
- b. the ratio of women to men in certain occupations is limited to the extent necessary to ensure the continued effective staffing of those positions restricted to men as a result of the policy in sub-para a. above; and
- c. women may be temporarily employed in restricted occupations, units or positions, in peacetime only, for the purpose of trials or educational training.

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31. In 1979 a series of trials called SWINTER (Service Women in Non-Traditional Environments and Roles) was initiated to determine if employment opportunities for women could be expanded beyond the limits prescribed in current policy. The interim trial reports submitted to date indicate that suitably selected and trained servicewomen can perform their technical duties effectively within the trial units in a peacetime, non-crisis setting. These trials, of which the air trial is yet to be completed, have already resulted in an expansion of the role of women in the Canadian Forces. However, they were of necessity conducted under peacetime conditions and participation was limited to volunteers. During the trial period, the units could not be subjected to the intensity of employment that would be encountered under wartime conditions nor, of course, were they subjected to the real stress of war. An analysis of the trial results continues, and can be expected to influence future policy.

32. Any restrictions on the employment of women within the Canadian Forces must be carefully balanced against their right to equality, as guaranteed by the Charter. This balancing must occur in all aspects of the current policy. Whenever possible, employment practice in the forces must be blind with respect to gender, and this applies to the whole mix of skills necessary to maintain an effective and credible force. Although military forces perform numerous peacetime national tasks that are not significantly different in terms of personal risk

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and effort from those performed by comparable civil organizations, military policies must be designed, even in peacetime, to contribute to both individual and collective effectiveness and survival in combat. Unlike civil organizations, the military must deploy its people in such a manner as to ensure that they are ready for instant use if a contingency arises, because military crises are often unpredictable in both scale and timing. Here again, the military case is unique. The peacetime situation, even in regard to human rights, must frequently be based upon a wartime setting.

33. All of the resources available to the Canadian Forces must contribute to the security of the nation. The most important of these resources is people, and Canadian Forces personnel policies must be designed to foster those attributes that are essential to the maintenance of an effective operational force, especially in wartime. Paramount amongst these are:

- a. physical fitness and endurance; and
- b. cohesion and morale.

PHYSICAL FITNESS AND ENDURANCE

34. It is currently popular to contend that this is an age of "pushbutton warfare" in which such traits as physical strength and endurance are no longer relevant. It is true that since the Second

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World War technological innovation has resulted in a more economical use of manpower, but the predominant effect of these innovations has been to increase the destructive capability, range, and mobility of modern weapons systems. The net result has been an intensification of the battle and an increase in its tempo, to the point where the physical demands made on the individual combatant have, if anything, increased. In fact the many wars that have been fought in the last decade have been characterized by heavy demands on the strength, stamina and determination of the combatants involved. It is anticipated that, probably even more than in the past, opposing forces in battle will continue to fight to the point of physical exhaustion, and a decisive factor in modern battle will continue to be the robustness of individual combatants. The ability of military personnel to sustain the intensity of continuous and lengthy military operations is of major concern in all modern military forces. For this reason, the Canadian Forces must ensure that the young Canadians who are recruited for potential combat service meet the physical standards required to succeed on land, at sea and in the air.

35. A major development affecting the need for high physical standards is the potential use of chemical and biological warfare agents. In most future war settings which might involve Canadians, combatants would have to be able to carry out their duties on ship, in the air or on the battlefield while wearing heavy and cumbersome

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chemical warfare clothing and respirators for prolonged periods of time. This equipment, of necessity, does not allow adequate ventilation; thus heat accumulation would further degrade stamina.

36. Following the Falklands Campaign of 1982 the Secretary of State for Defence, in his presentation to the UK Parliament concerning lessons learned, stated:

"The most important factor in the success of the task force was the skill, stamina and resolution displayed by individual servicemen. The value of professional, volunteer, highly trained and carefully selected Armed Forces was amply demonstrated. The specialised training of a substantial proportion of the landing force - such as the Commandos - was a particularly significant asset. The quality of British Servicemen was exemplified by the defence of the landing at San Carlos; by the determined assault on heavily defended enemy positions at Goose Green; by the remarkable series of night attacks before the fall of Port Stanley; and by the outstanding performance of the Harrier and helicopter pilots."

He also stated,

"The most decisive factors in the land war were the high state of individual training and fitness of the land forces, together with the leadership and initiative displayed especially by junior officers and NCOs."

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37. The importance of physical fitness and endurance of the soldiers, sailors and airmen throughout the Falklands campaign was profoundly evident. There were many cases where the ability to endure prolonged physical stress placed victory within grasp.

38. The available medical literature indicates that there are significant differences between the genders in physical endurance characteristics. Men tend to have a greater potential for endurance, and even at sub-maximal workload levels, women generally have to work much harder to accomplish the same amount of work.

39. The male heart is larger and thus produces a higher stroke volume (the amount of blood forced from the heart for each beat). The male lung is also larger, thus allowing a greater vital capacity (maximum volume of air that can be expelled from the lungs following a maximum inspiration). The heart rate of men is approximately five to eight beats per minute slower than that of women, both at rest and at all levels of exercise.

40. Men have a higher percentage of red blood cells than women and, in addition, have a 30% greater amount of total haemoglobin (the oxygen-carrying component in the body); thus they have a higher quantity of oxygen in the arterial blood at any given time. During heavy exercise women have to increase cardiac output in order to

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compensate for this lower arterial oxygen haemoglobin. Since they are limited by heart size and total blood volume, the only way to increase their cardiac output is to increase their heart rate. Women therefore operate at a level closer to their maximum than men and will reach exhaustion sooner. For this reason females cannot generally achieve as high a  $VO_2$  max (a measure considered the best single criterion of cardiovascular endurance) as do men. Males can, on the average, achieve a  $VO_2$  max level 15 to 20 percent greater than that of females.

41. The overall effect of these cardiorespiratory factors is that the female endurance is approximately 67% of that of the male. When females participate with males in a training program they can achieve considerable aerobic improvement; qualitatively and quantitatively the response to training is usually similar, but the absolute values remain substantially higher for males.

42. In 1982 the Netherlands Army adopted a three-level gender-free physical endurance standard based on its assessment of operational requirements. It is of interest to note the effect that the imposition of such a standard would have on a representative sample of Canadian military-age youth. The projected rejection rates given in the Figure below are based on a Canadian Public Health Association survey.

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ENDURANCE LEVELS OF CANADIANS (17-19 YEARS)

Netherlands Army Level	Netherlands Army Standard Maximal Oxygen Consumption (ml/kg/min)	Projected Canadian Male Rejection Rate (percent)	Projected Canadian Female Rejection Rate (percent)
I: Infantry, Armour Engineers	45.0	9	99
II: Artillery, Signals	40.0	3	70
III: Other	35.0	0	27

43. Assuming that the Netherlands Army standards reasonably reflect endurance requirements under field conditions, it is evident that a high percentage of women would experience difficulty in coping with the more rigorous aspects of life in a combat environment, whereas the majority of military-age males would not. When one takes into consideration a similar disparity in upper body strength levels, the only reasonable conclusion is that the entry of servicewomen into non-traditional roles and environments must be conditional upon meeting valid physical standards; otherwise, the overall physical capability (hence effectiveness) of the unit would be degraded. At the same time it should be noted that the imposition of such standards would limit the entry of females much more than males; it has been estimated that 75 percent or more of currently serving women in the Canadian Forces would not meet the standards for combat trades or employment with combat units.

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44. The Defence and Civil Institute of Environmental Medicine has completed the first phase of a five-year gender-free physical standards study for the Canadian Forces. This study has determined the upper body strength requirement for all occupations of non-commissioned members. It has also measured the ability of representative groups of men and women in the Canadian Forces to meet these requirements. (The study has yet to address officer occupations because it was concluded that the results for non-commissioned members could be applied to most officer occupations.) The Canadian Forces is currently examining the possible application of gender-free physical standards resulting from this study.

PHYSICAL STANDARDS AND CONSEQUENCES

45. Apart from rudimentary height and weight limits, the Canadian Forces has not used strength or stamina standards for enrolment because they were not necessary for men. Recent tests and information from other military forces have confirmed the reason: the average strength and stamina of young Canadian males is such that about 90% of these applicants would meet the most demanding requirements. The small proportion unable to meet the highest standards after training is within the ability of units to manage with appropriate task assignment.

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46. The same is not true of women. Because of the factors previously cited, only about 2% of women applicants would meet the most stringent requirements, and only 15-45% would qualify for the common standard that would be required for 75% of the trades in the Canadian Forces if everyone had to be capable of serving with combat units. With the present policy for the employment of women, this problem does not arise, and strength and stamina tests are not used. The minimum male ratios ensure that sufficient men are available in non-combat trades to fill their trade positions within combat units, for which a high standard of strength and stamina is needed for the more rigorous common duties that every member in a combat unit must be capable of performing. As women in these trades are not employable in such positions, their average strength and stamina are assumed to be sufficient to meet the lesser, purely trade-related needs.

47. A consequence of current policy is that men in many non-combat trades are frequently exposed to more arduous, less static, and in battle more dangerous, employment with combat units. This limit on the equitability of employment of men is a concomitant of, and no less reasonable than, the present limitation on the employment of women.

48. If the current limitations on the employment of women were removed, strength and stamina tests for female applicants for combat trades would be essential, and only a very small percentage would qualify. Also, it is assumed that the rationale underlying such a

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decision would require equitability in the assignment of non-combat trade members to positions serving with combat units. To ensure that female members in such trades were physically capable of service with combat units, strength and stamina tests would be required for most of the trades in which women now serve. Again, only 15-45% of the female applicants would qualify. It is also possible that expansion of the scope of employment to include service with combat units could diminish the attractiveness of a service career for some potential women applicants. Thus the net effect of removing the present limitations on their employment would likely be a significant reduction in the number of women employed in the Canadian Forces. These factors may be the reason why the three western nations that have declared a policy of unrestricted employment actually have less than one quarter the proportion of women serving in their armed forces than does the Canadian Forces.

COHESION AND MORALE

49. The flexibility required in battle requires that any unit which may potentially be deployed in a combat zone should be treated as a combat zone unit. Although each deployed unit, sub-unit and individual has a normal role to fulfill, the uncertainty of battle is such that the normal limits of that role may be exceeded. In the land battle in particular, every soldier deployed in the combat zone is an integral part of the fighting team; he must provide for his self-protection and may be given general military employment or fighting

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tasks that are not normally included in his regular military occupation. Every soldier deployed in the combat zone is therefore liable to an unpredictable degree of contact with the enemy, a varying degree of tasks ranging through a broad spectrum of military employment and, as an integral part of the fighting team, a contribution to the collective operational effectiveness of the force.

50. The mechanisms by which men in combat are induced to face death and fight, when the natural tendency is to run away, have long been matters of vital interest and concern to the military profession. The profession has long recognized the key role played by high morale, which rests in large part on the degree of cohesiveness which groups of combatants can manage to achieve. The basic mechanism has been well described by the prominent British military medical authority and scholar, Major-General F.M. Richardson, who wrote: "It is that their (the soldiers') natural instincts of self-preservation, which would counsel them when in real danger to run away, are balanced by acquired herd instincts compelling them to face up to and overcome danger and fear for the sake of the group".

51. In their landmark study of combat motivation among German soldiers in the Second World War, Shils and Janowitz established that a decisive determinant of the individual soldier's performance was membership in, and acceptance by, a squad or section which maintained its structural identity. Cohesion within the primary group was enhanced by a number of factors including gratification of certain

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personality needs such as the display of manly toughness, a quality to which Richardson also alludes. In addition, Shils and Janowitz noted that deserters tended to be those who had difficulty assimilating into groups. These observations on the importance of primary group cohesiveness are shared by a number of scholars including Marshall (Second World War and Korea), Stouffer (Second World War), Little and Clark (Korea) and Chaputo (Vietnam). The applicability of primary group theory within the Canadian context has been confirmed by Kellett.

52. With regard to the prospect of successful integration of women into cohesive mixed-gender combat teams, an important matter of professional concern is the problem of peer acceptance. The SWINTER Trial results to date indicate that there has been a degree of social acceptance of servicewomen by their male peers in the trial units within the context of a peacetime, non-crisis setting, but at the same time two anomalies in the peer acceptance data have been observed which create legitimate doubts as to whether adequate levels of peer acceptance (and hence unit cohesiveness) could be sustained in a combat situation.

53. Measures of the levels of peer acceptance can be taken from the responses to questionnaires administered to male trial participants prior to the arrival of servicewomen at their units, and subsequently

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at various stages while the trial was actually in progress. The specific question put to the participants was whether or not qualified women should be given the opportunity to serve in various types of units in combat formations. In 1980, prior to the arrival of service-women for the land trial, 75 percent of the male participants indicated that they would accept women serving in combat support units, 60 percent were in favour of women serving in signals, artillery and engineer units, and 46 percent were in favour of women serving in infantry and armoured units. However, by the third year of the trial, peer acceptance had declined from 75 percent to 67 percent in the acceptance of women in support units, from 60 percent to 39 percent for women serving in signals, artillery and engineer units, and from 46 percent to 35 percent for women serving in infantry and armoured units. A similar trend was also observed in the sea trial report. In 1980, support among males for women serving in support ships was 80 percent, 45 percent for service in destroyers and 34 percent for service in submarines. By 1984, however, these levels of support had dropped from 80 percent to 33 percent in the case of support ships, from 45 percent to 14 percent in the case of destroyers, and from 34 percent to 14 percent in the case of submarines. While the sampling for these surveys was small, the evidence of decreased peer acceptance was significant and disturbing.

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54. Of perhaps even more crucial importance is the question of what happens to peer acceptance levels during high-stress situations. The land trial results are of little help in this respect, since stress levels during the land trial remained relatively stable. During the sea trial, however, the situation was quite different. In 1982 and again in 1984, the trial ship was at sea, during which time the stress level was relatively high. In 1983, on the other hand, the ship was docked for refit and the crew lived ashore in a relatively stress-free environment. During the first tour at sea in 1982, peer acceptance dropped from the pre-trial level of 80 percent to 68 percent with respect to women serving in support ships. However, during the relatively stress-free refit period in 1983, peer acceptance climbed dramatically to 94 percent (an all-time high), only to drop again precipitously to 33 percent (an all-time low) in 1984 when the crew returned to the higher stress environment of life at sea. This appears to indicate that women are accorded relatively high levels of peer acceptance during stress-free periods, but in high-stress situations, such as would be the case in combat, peer acceptance (and hence unit cohesion) could drop significantly at precisely the time when high cohesiveness and morale are needed most. It cannot be over-emphasized that combat conditions, characterized by long periods without sleep, by physical exhaustion, terror, deafening noise and the constant possibility of death, are far more stressful than a period of sea duty in peace-time; thus the group reaction observed under conditions of limited stress could well be magnified in circumstances of extreme stress.

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55. Another concern is the effect on cohesion and morale of small groups of women in combat units. As previously stated, there is no indication that there are large numbers of young women who are interested in a career in combat occupations. For example, if there were such a demand, it might have been expected that such individuals would have appeared before the Equality Rights Subcommittee to seek satisfaction of their personal aspirations. Such was not the case; the many witnesses who appeared argued only the principle of opportunity and showed no personal interest in a career in the combat elements of the Canadian Forces.

56. The anticipated low interest, coupled with the low physical qualification rate, would probably result in women constituting only a small proportion of combat units for the foreseeable future. This would exacerbate the problem of peer acceptance. R.M. Kantner, who studied the social dynamics of varying ratios of women in female/male groups, emphasized the problems that result from such a situation. She found that with proportions of women in the order of only 15%, dispersal and personal reactions prevented the formation of a cohesive group. Thus maintenance of cohesion in combat units, necessary for military effectiveness, would be jeopardized by the inclusion of women, particularly in the small numbers expected.

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OTHER NATIONS' POLICIES

57. As previously mentioned, Canada is in the forefront in producing actual results in expanding the employment of women in military forces. Of all the countries in the world it is estimated that fewer than 10 employ women in combat; only three have actually been identified. Although Belgium, Holland and Norway have declared the removal of all limitations on the employment of women, they still apply compulsory military service to men only. No countries are known to conscript women for combat units.

58. Canada, then, is consistent with most other nations, including the major powers, in not extending the role of women into combat units. The following is a detailed review of the policies, and actual achievements, in the employment of women in other nations.

59. United Kingdom. Women do not serve in combat arms nor in combat support units. They do not normally serve aboard HM ships, nor are they employed as aircrew except as loadmasters on C-130 aircraft in a freight-carrying role.

60. United States. Like Canada, the United States has a combat exclusion policy. Women are excluded from combat in the Navy and Air Force by statute. In the Army women are excluded from combat as a matter of policy based on probability of hostile engagement. By U.S. Army standards, women would be excluded from all Canadian army field units.

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61. Warsaw Pact Nations. As far as can be determined women are excluded from combat in all Warsaw Pact forces despite the Soviet Union's experience with the use of women in combat during the Second World War. Women today serve in small numbers in purely traditional roles such as medicine and communications.

62. Belgium, Netherlands and Norway. These three NATO nations do not exclude women from combat duty, and do in fact employ women in a variety of combat and combat-related roles, but it is in such small numbers that in practice women are nearly absent from combat employment.

63. Denmark. Denmark's employment policies are very similar to Canada's in that women are not employed in units whose primary role is combat. Denmark is, however, conducting experiments with limited numbers of women to determine the feasibility of their employment in combat.

64. France. Limited numbers of women are admitted to certain forms of "operational employment" involving "more or less direct participation in combat", although most units whose primary role is combat are closed to them.

65. Other NATO Nations. The following NATO nations either employ small numbers of women in traditional roles or exclude them from the military entirely:

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- a. Greece;
- b. Italy;
- c. Luxemburg;
- d. Spain;
- e. Turkey; and
- f. West Germany.

66. Israel. Since 1949 Israeli policy has been to exclude women from combat. Despite the popular impression that women still fight in the Israeli forces, the existing policy is quite clearly the contrary.

67. Asiatic Powers. The three main asiatic powers, India, Japan and the People's Republic of China, exclude women from combat.

68. Within the three NATO countries that do not exclude women from combat duty, there were in June 1985 a total of only nine women serving in combat occupations. A further 77 were serving with combat units in non-combat occupations.

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69. An overview of the total number of women employed in the armed forces of other nations is as follows:

Policy	Nation	Total Regular Strength	Number of Servicewomen	Percent
Women Excluded from combat (13 Nations)	Canada	82,832	7,240	8.7
	Denmark	29,736	708	2.4
	France	562,116	13,500	2.4
	Greece	170,500	1,618	1.0
	Israel*	172,000*	17,200*	10.0*
	Italy	375,000	Nil	Nil
	Luxemburg	700	Nil	Nil
	Spain	347,000	8,600	2.5
	Soviet Union*	5,050,000*	10,000*	0.2*
	Turkey	569,000	27	0.00
	United Kingdom	326,849	16,576	5.1
	United States	2,124,012	201,210	9.5
	West Germany	495,000	106	0.02
Unrestricted Employment of Women (3 Nations)	Belgium	90,101	3,457	3.8
	Netherlands	103,022	1,409	1.4
	Norway	38,098	461	1.2

\* No official figures available. Data are taken from authoritative unofficial sources.

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70. In summary, all but three of the democratic nations in the world have limitations on the employment of women in combat units. Although these policies are of long standing, they have been subjected to frequent review. The U.S. policies have been upheld by the Supreme Court against constitutional challenge, and the government of Australia gave the matter thorough consideration before enacting legislation in 1983 to limit the employment of women from service in combat units. Therefore, the exclusion of women from combat is a limitation that has been accepted as reasonable and justifiable in most of the free and democratic societies in the world.

MILITARY DETERRENCE

71. The Canadian Forces, by definition, must be effective internationally. In order to contribute to deterrence, the corner-stone of NATO strategy, the Canadian Forces must not only be effective, they must also be perceived to be so by other nations. Such an external perception similarly contributes to success in peacekeeping.

72. The armed forces of other nations in the world are, with insignificant exception, composed of exclusively male combat units. To the extent that the Canadian Forces must be prepared to combat the forces of such nations, it is not unreasonable to expect that our credibility - and therefore our ability to deter aggression - might be adversely affected if we were perceived to have forces of a

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significantly different character. Even if it were impossible to determine whether mixed-gender combat units would be less credible and effective, if they were perceived to be so by other nations, their deterrent value would decrease. Similarly, the perception of Canada's contribution to NATO might be affected adversely if the Canadian Forces adopted unproven, mixed-gender combat units.

SUMMARY

73. The Canadian Forces policy on the employment of women has been thoroughly re-examined. The need to seek broader employment opportunities for women has been re-confirmed, not only as a matter of principle, but also because of the requirement to expand the recruiting base as the number of young men entering the job market decreases in the next decade. Therefore the Canadian Forces must continue to pursue the maximum employability of women in order to fulfill the responsibility to provide an effective military force.

74. While there is empirical evidence that can assist in the confident expansion of women's roles in the support area, the same is not true of combat units. The only three countries that have used women in combat in modern times, the USSR, Yugoslavia, and Israel, have produced no scientific or scholarly data on the subject. In all three cases, there may have been no alternative. Enemy forces were in

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the homeland, and the supply of men may have been exhausted. Therefore, perhaps the only way they could put more people into battle was to extend the employment of women to combat units. In all three cases, the employment of women in combat units was discontinued soon after fighting ended, when there was obviously an alternative. Again, there is no official, reliable explanation of why these countries ceased to employ women in combat units.

75. There is considerable historical experience of the behaviour of all-male fighting forces under a wide variety of conditions. With this knowledge, commanders in the field can judge the morale and capability of their men, and estimate with some confidence what is attainable and what is not in battle. There is no such empirical evidence upon which to base similar estimates for mixed-gender units. The resulting uncertainty would complicate decision making, with possible life and death consequences.

76. Although there is little useful data about the performance of women in combat, there is sufficient evidence to give clear indications of serious effects on the cohesion of combat units should women be introduced to them. The implications of such a result must be understood in terms of the reality of combat. If errors in judgement are made in the introduction of change in other segments of society, they are usually manageable and correctable. However, should similar errors be made in changing the composition of combat units, the result could be additional loss of life, which is irrevocable.

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Therefore, clear evidence that mixed-gender combat units could function as effectively as proven all-male units is considered to be an essential prerequisite to any change in the composition of combat units.

CONCLUSION

77. The senior commanders of the Canadian Forces have two major responsibilities. The first, to the Government of Canada, is to maintain the combat readiness of the Canadian Forces. The second, to the people they command, is to do their utmost to ensure that those who face death in battle are given the best possible chance of success and survival.

78. Based on the factors presented, it is the unanimous professional military judgement of the senior commanders in the Canadian Forces that removal of the limitation on the employment of women in combat would:

- a. seriously degrade the effectiveness of combat units in battle; and
- b. increase the risk to members of combat units of death or capture in battle.

79. Therefore, the continued exclusion of women from combat is a reasonable limitation that is demonstrably justifiable in a free and democratic society.

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SEXUAL ORIENTATION (HOMOSEXUALITY)

GENERAL

80. Each year a number of cases of homosexuality or suspected homosexuality are submitted to National Defence Headquarters. Every case is very carefully examined. If it is confirmed that the individual is a homosexual, he or she is released. In cases where there is insufficient information to clearly establish homosexuality, no career action is taken. A review of documentation for the years 1981 to 1984 reveal that a total of 212 suspected cases were reported; of this number, 84 males and 80 females were released from the Service for homosexuality.

81. Changing attitudes in society, as well as the developments in human rights legislation, have led to a review of the Canadian Forces' policy on homosexuality. The significance of evolving attitudes in society is recognized, but they have to be assessed in the light of the fundamental precept that policies for the Canadian Forces must be consistent with the essential nature and purpose of the Forces. It is in this context that the review was conducted.

CURRENT POLICY

82. The Canadian Forces enrol and retain only such persons as are capable of performing all military tasks that may be assigned to them

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and whose behaviour and values are compatible with the military environment. It is the experience of the Canadian Forces that homosexuals cannot fit socially and functionally in the organization; once their presence is known, they affect the organization adversely. Accordingly, it is a matter of policy that personnel who commit sexually abnormal or homosexual acts will neither be enrolled nor retained in the Service.

83. This policy is universal in its application because of the need for diversity and flexibility in the employment of military personnel. A partial proscription would not be workable because of the loss of employment flexibility that would result.

EXERCISE AND ABUSE OF AUTHORITY

84. Sound discipline is absolutely essential for an effective military force. Armed forces cannot be deliberative bodies; they must be an executive arm in which the prime law is obedience. Subordinates must obey the orders of their superiors without hesitation, even when those orders may severely compromise the subordinate's personal safety or comfort. Such unswerving obedience in extreme circumstances arises not from rational conviction and discussion, but from discipline.

85. To achieve that discipline, exceptional authority is vested in superiors in the chain of command. The power accorded an officer is, by civilian standards, extraordinary. The effective use of this

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authority to maintain good discipline requires that leaders have the respect and confidence of those who they command, and that the authority be used only for its intended purpose.

86. There is still within Canadian society a deeply-rooted antipathy towards homosexuality. For members to whom homosexuality is repugnant, the introduction of homosexuals into a system of powerful authority and unquestioning obedience has damaging effects. The reaction of such a subordinate to a homosexual superior is diminished respect and confidence, to the detriment of the superior's exercise of authority. This effect is well recognized in other military forces. Based on experience in the United States Air Force, the following evidence was submitted to a court which upheld the release of a homosexual from that service:

"... 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."

87. A second reaction is apprehension that the superior's authority will be used in sexual advances. This concern has been validated by actual experience; there have been cases in the Canadian Forces in

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which subordinates stated that they unwillingly submitted to homosexual advances from their superiors because of fear that the latter would otherwise misuse their authority against them. Another reaction is to resist the authority of a homosexual superior, as a defence against the possibility of that authority being misused in sexual advances.

88. Misuse of authority can take another form. Cases have occurred wherein a superior sought to gain acceptance of homosexual advances by promising a subordinate to use the superior's influence to assist in securing a preferred posting, or to enhance promotion prospects. A related concern is that an affair between a homosexual superior and subordinate could create a bond much more likely to cloud judgement than ordinary male friendship, resulting in real or perceived preferential treatment of the subordinate. This would diminish the fair and impartial exercise of authority necessary for good discipline.

89. Effective discipline has two basic requirements: a superior who commands well, and a subordinate who obeys without hesitation. As is evident from experience, the presence of homosexuals detracts from both of these requirements, and therefore affects adversely the discipline needed for an effective armed force.

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COHESION AND MORALE

90. As previously discussed, cohesion and morale are essential for an effective military unit. The importance of cohesion was vividly described by an experienced senior U.S. army field commander:

"The single most important factor in winning or losing in battle is unit cohesion ... When (soldiers) are actually getting shot at, the thing that causes a soldier to deliberately risk his life in pursuit of the mission really consists of about three things: Number one, his pride in his organization; number two his pride in his leader, ... but more important than anything else is the bond that exists between he and his fellow soldiers. Without that cohesion (in a unit, you will get a lot of people killed that shouldn't be killed."

91. The presence of homosexuals in a unit is prejudicial to that cohesion. A common reaction is the total isolation of a homosexual from the other members of the unit. The fear of being identified as a homosexual prevents the heterosexual from befriending or associating with a homosexual, and as a result the homosexual is ostracized from barrack and unit life. At worst, the reaction can vary from open hostility to physical assault.

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92. The damage to team spirit can be exacerbated by the presence of larger numbers of homosexuals. In one instance activities of a clique of homosexuals at a small unit gave rise to jealousies which resulted in open hostility, arguments, and abusive language among them. In another, a sport intended to foster cohesion was shunned by other members because it was dominated by homosexuals.

93. The antipathy toward homosexuals in armed forces is the result not of moral judgement, but of the practical effects of their presence in the conditions of military life. For example, heterosexual members can accept the close physical proximity and physical contact that are unavoidable in barrack life, aboard ship, and in combat situations. However, they recoil from any members who receive sexual stimulation from bodily contacts with persons of the same sex. As the conditions cannot be changed, the reaction is to shun or expel the homosexual.

94. The deeply-rooted attitudes of many people to homosexuality also results in them seeing the presence of homosexuals as inimical to the image of a military unit. Thus their pride in the unit, and hence their morale, is diminished.

95. The adverse effects of homosexuals on the cohesion and morale of military units have also been experienced by U.S. forces, as affirmed in the following statement by a court which upheld the release of a homosexual member:

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"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."

RIGHTS OF HETEROSEXUAL MEMBERS

96. 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 described. Also, for practical reasons, freedom of association is severely limited in the armed forces. Members have little choice, not only regarding the intimacy of their associations, but also regarding with whom they must associate, both on and off the job.

97. To force heterosexual servicemembers 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

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potential for sexual interest during close association is not made obvious by physical gender differences. It would therefore not be consistent with society's standards for male/female privacy to require heterosexual members to live with and expose themselves to homosexuals. The alternative of providing homosexuals with separate sleeping and washroom facilities is neither desirable nor viable. Any further compartmentalization of unit members would be prejudicial to cohesion and esprit de corps, and reduce flexibility of assignment. Also, the provision of separate facilities would be physically impossible in many circumstances, such as on warships, and could not be ensured on deployed operations.

98. The conditions imposed on service members that limit their rights and freedoms are unavoidable and necessary to the effectiveness of the Canadian Forces. The further infringement on those rights that would result from the acceptance of homosexuals must be given as much consideration as that accorded to the rights of homosexuals.

RECRUITING POTENTIAL

99. As already 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

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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.

100. One of the features of military service is that it affords the opportunity for the young and unformed to mature in a controlled environment that is in concert with the standards considered desirable by many of those who influence them, such as their parents, teachers, and friends. This perception of the suitability of the armed forces for young people would be changed for many if homosexuals were included. As one member observed, "the presence of homosexuals in the forces would certainly harm recruiting. I would not allow my daughter or son to become part of a military organization that openly allowed homosexuals. Would you?"

101. Any decrease in the recruiting base resulting from the admission of homosexuals would exacerbate the enrolment difficulties already expected from the decline in the numbers of young Canadians entering the job market in the next decade. The net result could be a decrease in overall military capability because the strength of the armed forces could not be maintained at authorized levels with volunteers.

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COMPARABILITY WITH EXCLUSION OF OTHER GROUPS

102. Public debate on this issue has postulated 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.

103. 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. Therefore 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 with less difficulty than other segments of American society.

104. The adverse reactions to homosexuals are not similarly rooted in a passive characteristic but rather arise from the active character

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of their sexual proclivity, which is at best unwelcome to heterosexuals. 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 proclivity would be intrusive and would render the relaxed intimacy of barracks life sexually ambiguous and strained. Thus the continued close association of heterosexuals and homosexuals would not soften but would aggravate tensions, resulting in progressive deterioration of cohesion and morale.

105. The fallacy of the analogy argument is borne out by actual circumstances, which recognize the different characteristics of differentiation on the basis of race as opposed to homosexuality, and which are based on their practical effects on a military force. The Canadian Forces does not exclude groups on the basis of race because the passive nature of their difference permits integration without prejudice to the maintenance of an effective military capability; homosexuals are excluded because their active characteristic would prevent such assimilation, and their presence would therefore degrade military effectiveness.

OTHER NATIONS

106. The policies of three major western nations on homosexuality are as follows:

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- a. United Kingdom: The Army Act, the Naval Discipline Act and the Air Force Act all proscribe homosexual conduct on the part of servicemen and servicewomen 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;
- b. United States: The United States policy on homosexuality, which has been upheld in their Supreme Court is as follows:

Homosexuality is incompatible with military service. The presence in the military environment of persons who engage in homosexual conduct or who, by their statements, demonstrate a propensity to engage in homosexual conduct, seriously impairs the accomplishment of the military mission. The presence of such members adversely affects the ability of the armed forces to maintain discipline, good order, and morale; to foster mutual trust and confidence among servicemembers; to ensure the integrity of the system of rank and

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command; to facilitate assignment and worldwide deployment of servicemembers who frequently must live and work under close conditions affording minimal privacy; to recruit and retain members of the armed forces; to maintain the public acceptability of military service; and to prevent breaches of security.

- c. Federal Republic of Germany: German authorities consider that it is impossible for homosexuals to function in an unrestricted manner in their armed forces. Although homosexuals may be enrolled (the denial of their enrolment would provide an easy excuse to avoid conscription), they are not permitted to hold positions of command or control.

SUMMARY

107. The men and women who make up the armed forces today, and those who will be recruited in the next few years, are not immune from deeply held values and attitudes of Canadian society. Their strong aversion to homosexuality cannot be wished away; it is a fact that must be taken into account in assessing the consequences of putting homosexuals among them.

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108. A paradox in this issue is that the secret homosexual who remains completely unidentified can provide (and has) effective military service. The damaging effects of their presence begin when they are identified, because it is then that the injurious reactions of other members set in. Conversely, it is the covert homosexual who is most likely to be a target for coercion attempts to breach security.

109. Alternatives to exclusion, in order to prevent the adverse impact of homosexuals on the Canadian Forces, have been considered. The possibility of providing separate sleeping and bathroom facilities is neither desirable nor feasible. Any attempt to change the attitudes of heterosexual members would be a major undertaking that would detract from the maintenance of an effective force in the process and, intuitively, is considered to have low probabilities of success.

110. It must be reiterated that neither the leadership nor the members of the Canadian Forces are attempting to pass moral judgements on homosexuality or its place in society at large. The concern of command is the practical consequences that would result from a change in policy. The concern of the members is the personal, practical effects on them, and on their rights, of having to accept homosexuals among them. These consequences to national security, and to the rights of other members, must be weighed against the effects on the rights of homosexuals of continuing to exclude them from the Canadian Forces.

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CONCLUSION

111. Based on the factors presented, it is the unanimous professional military judgement of the senior commanders in the Canadian Forces that removal of the exclusion of homosexuals would seriously degrade the effectiveness of the Canadian Forces.

112. Therefore, the continued exclusion of homosexuals from the Canadian Forces is a reasonable limitation that is demonstrably justifiable in a free and democratic society.

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