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National Defence

Défense nationale

Chief of the Defence Staff
Commandant en Chef
Canadian Forces

Chief de l'état-major de la Défense
Chef d'état-major
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National Defence Headquarters
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Quartier général de la Défense nationale
Ottawa, Canada
K1A 0A2

1745-42-9 (CDS)

13 November 1986

The Minister

FINAL REPORT-CHARTER TASK FORCE
ON EQUALITY RIGHTS

1. As I mentioned in my memorandum of 5 Nov 86, my most senior officers and I have conducted a thorough study of the Charter Task Forces's final report, a copy of which is attached (in two volumes). The purpose of this memorandum is to inform you of my conclusions, based on the advice of the Armed Forces Council, and to seek your concurrence to a specific course of action.

2. There are five main equality rights issues that affect the Canadian Forces (CF): the employment of women, the employment of homosexuals, mandatory retirement ages, physical and medical standards, and the recognition of common-law relationships. I agree with the Task Force that the last three are not pressing matters (Part 5 of Volume 1 of the report). I will therefore address only the first two.

3. The first major issue is the employment of women. You will recall that my predecessor and I have already implemented a series of changes which were recommended by the Task Force in the course of their deliberations. These resulted in a major expansion of employment opportunities for women. Because of what has already been done, it is understandable that the final report recommends only one further change at this stage: to employ women in Transport Helicopter Squadrons. I intend to implement that recommendation.

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4. The few remaining roles not open to women are those that have "hard" combat functions. There is little evidence of the likely effects of including women in these functions, but the consequences of decreased performance would be more dangerous than for other roles. The Task Force therefore recommended that more evidence be sought through trials and experience, both within the CF and from other armed forces, and that the remaining limitations then be reexamined. This approach would ensure continued pursuit of the Government's equality rights objectives, while ensuring the caution warranted by the potentially grave consequences of error. I consider the Task Force's recommendations to be rational, reasonable and defensible, and indicative of a genuine effort to enhance individual rights and freedoms without undue adverse impact on the operational effectiveness of the CF. Those few limitations which remain are considered to be fully justifiable under section 1 of the Charter. I therefore intend to approve and implement the recommendations in Part 3 of the final report, subject to your concurrence.

5. The second major issue involves the policy on sexual orientation. As you will see in the report, the Task Force found it the most difficult to address. The team's attempt to examine all aspects of the problem has resulted, I think, in the final report assigning more importance to some of the factors than might be warranted. In my view, there are two major concerns about employing homosexuals in armed forces: the impact on operational effectiveness, and on the equality rights of all serving members of the Forces.

6. In Part 2 of the final report, the Task Force quite properly stressed the vital importance of cohesion and morale to operational effectiveness. Part 4 documented very strong antipathy among present members towards the presence of homosexuals in the CF. I believe that this acute reaction does not stem from attitudes towards homosexuality in general. Rather, it arises from the uniquely unfavourable effects that the presence of homosexuals would have on armed forces' members personally, and about which they are fully aware. This strong reaction would likely persist if homosexuals were to be freely employed in the CF, to the detriment of cohesion and morale, and thus to operational

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effectiveness. As the final report points out, the consequences of diminished effectiveness in war could be catastrophic.

7. There are related problems concerning the rights and freedoms of serving members. The equality principles that led to the examination of this issue also demand that we consider the effect on the rights of other members of employing homosexuals in the CF. This raises the moral, if not legal, question of whether we could require heterosexuals to share the intimacy of common accommodation and hygiene facilities with homosexuals any more than we could force such conditions on men and women. The importance of this consideration was emphasized by the extremely strong views on their rights to privacy from homosexuals which were expressed by present members in a survey. Yet there is no workable means of providing privacy in a military setting so as to avoid this problem. The two sexes are readily identifiable from physical differences, so that separation for privacy is straight-forward. Because there is no such physical difference between heterosexuals and homosexuals, any practical measures to provide privacy would have to depend on self-identification. Quite apart from the human rights implications, there is an apparent reluctance to do so that would defeat attempts to provide privacy. As well, privacy could not be assured under the exigencies of war. Thus, while privacy would probably be a human rights requirement if homosexuals were employed in the CF, we could not provide it.

8. There are serious implications for operational effectiveness that complicate the search for the delicate balance between the individual rights of homosexuals and the collective right of society to adequate national security. This process raises complex new issues of constitutional law. Similarly, the right to privacy between homosexuals and heterosexuals, which could become a human rights issue affecting a policy decision, is itself a highly arguable and complex legal question. Because of the opposing factors that depend on judicial interpretations of legislation, it may well be that this issue can be addressed adequately only in a court of law under the Constitution of Canada.

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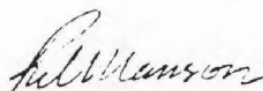
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9. My conclusion, which is unanimously supported by the members of the Armed Forces Council, is that a policy of employing homosexuals would carry a very high risk of serious damage to the operational effectiveness of the Canadian Forces. I firmly believe that such a view is also held by the majority of men and women in the Canadian Forces. As well, such a policy would create yet another human rights issue concerning privacy. Therefore, while I am considering amendments to clarify and ensure consistency in its application, it is not my intention to initiate changes to the current basic policy on homosexuality contained in CFAO 19-20.

10. I appreciate that the Government is committed to making sexual orientation a prohibited ground of discrimination. However, both the Charter and the Canadian Human Rights Act provide that it is not discriminatory to impose restrictions when there is a reasonable limitation or a bona fide occupational requirement. The present policy would be continued on that basis, and therefore would not contravene Government policy.

11. Because of the extreme sensitivity of these issues, I will of course await your response before taking further action.

12. In response to an Access To Information request by the Ottawa Citizen, I have authorized the release of the Charter Task Force report (both volumes) with the exception of certain recommendations which have been severed because they deal with prospective plans and my subsequent advice to you.



P.D. Manson
General

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