

Briefing Note for the Minister

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S PRIVY COUNCIL  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH DG EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"CONFIDENTIELS" D'UN CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DG SEC EXEC DATÉE DU  
1er SEPTEMBRE 1983

Meeting: Cabinet Committee on Social Development

Time: 1515 hours Wednesday, 19 December 1984

Place: Room 323S House of Commons

Subject: DISCUSSION PAPER ON EQUALITY RIGHTS

ISSUE: Consideration by Cabinet of a Public Discussion Paper on equality rights issues in federal legislation.

BACKGROUND:

1. Shortly after the Canadian Charter of Rights and Freedoms (Charter) came into force on 17 Apr 82, the Department of Justice was directed to review, in cooperation with all other federal government departments, all federal legislation to ensure conformity with the Charter. As a result of that review Cabinet has approved in principle the release of a Discussion Paper to present for public discussion and consultation equality issues that involve complex and controversial social, economic and political questions.
2. The Discussion Paper is essentially restricted in its scope to consideration of provisions in federal statutes that may not comply with the equality guarantees of section 15 of the Charter. The paper raises several issues that are of direct concern to the Canadian Forces (CF), the presentation of which in the Discussion Paper is based upon CF position papers that were approved by the appropriate Group Principals and made available to officials in the Department of Justice. Early drafts of the position paper were reviewed by members of the CF

.../2

**SECRET**

A0050850\_1-003359

**SECRET**

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S COUNCIL  
OF CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH DG EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"PRIVILÉGIÉS" DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA, LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DG SEC EXEC DATÉE DU  
1er SEPTEMBRE 1983

Charter Working Group, and a number of changes recommended as a result of that review have been incorporated in the proposed Discussion Paper.

3. In its general concept, the Discussion Paper raises a number of broad equality issues and, in respect of most issues makes reference to specific problems encountered under several federal statutes and under regulations, orders and policies applicable to the CF.

4. The Annexes hereto give a broad outline of the issues that are of concern to the CF as they are presented in the proposed Discussion Paper:-

- Annex A - Mandatory Retirement Ages
- Annex B - Superannuation and Pensions
- Annex C - Employment of Women in the CF
- Annex D - Physical and Mental Disabilities
- Annex E - Marital Status- Cohabitation Arrangements; and
- Annex F - Sexual Orientation.

#### CURRENT STATUS

5. If the Minister of Justice agrees with the proposed Discussion Paper (a copy of which is attached as Annex G), the paper will be presented to the Cabinet Committee on Social Development on Wednesday, 19 Dec. 84. At that meeting it will be recommended that:

- a. Cabinet approve the release of the public Discussion Paper;
- b. that the Discussion Paper be tabled in Parliament immediately following the Christmas period (it is

**SECRET**

A0050850\_2-003360

**SECRET**

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S PRIVY COUNCIL  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH DG EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"PRIVILÉGIÉS" DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA, LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DG SEC EXEC DATÉE DU  
1er SEPTEMBRE 1983

expected that the Bill will be tabled in the House  
on 21 Jan 85);

- c. release of the Discussion Paper be coordinated with  
the introduction of a Bill containing  
Charter-related amendments to several federal  
statutes, including the National Defence Act;
- d. the Discussion Paper be referred to an appropriate  
Parliamentary Committee; and
- e. that Ministers responsible for the administration of  
legislation discussed in the Discussion Paper  
provide the requisite support and assistance to the  
Minister of Justice in Parliamentary Committee.

6. The Memorandum to Cabinet will point out that the  
Discussion Paper essentially relates to provisions in federal  
statutes, and suggests that Ministers may wish to consider the  
desirability of raising those non-statutory issues that are now  
in the paper, such as, for example, the questions relating to  
combat roles for women and sexual orientation, which are  
governed by regulations and orders made under the authority of  
the National Defence Act.

7. As the issues relating to mandatory retirement ages,  
physical and mental disability and marital status as they  
pertain to the CF also arise from regulations and orders rather  
than directly from the National Defence Act, there is a  
possibility that all of the issues of concern to the CF, other  
than those relating to Superannuation and Pensions, will be  
removed from the Discussion Paper by Cabinet.

8. All of the issues that are of concern to the CF involve  
complex and controversial social, economic and political  
questions in respect of which it is desirable to have public  
input so that they can be considered in the light of current

**SECRET**

A0050850\_3-003361

SECRET

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S PRIVY COUNCIL  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH DG EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"PRIVILÉGIÉS" DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA, LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DG SEC EXEC DATÉE DU  
19 SEPTEMBRE 1983

national, social and cultural concerns. Those issues, are not raised in the proposed public Discussion Paper on equality rights issues, could, as an alternative, be presented to the public in some other format such as a Defence Green Paper should such a paper be contemplated. However, as the equality rights provisions of the Charter will come in force on 17 Apr 85, it is desirable that they be included in the Justice Department paper so as to permit early consideration of any changes to existing CF regulations, orders and policies that may be required.

9. The CF is currently contemplating proposing that a Memorandum to Cabinet be prepared to seek direction as to whether current restrictions on the employment of women in combat should be retained. Cabinet would be in a better position to deal with that issue if public views are available to it in response to the Discussion Paper.

RECOMMENDED ACTION

10. It is recommended that you urge your Cabinet colleagues at the meeting of the Cabinet Committee on Social Development on Wednesday, 19 December 1984 to retain in the public Discussion Paper those issues that are now in the paper and that relate to the CF even though they may arise from regulations and orders and not from legislation, i.e., the National Defence Act.

Responsible Group Principal: Vice-Admiral D.N. Mainquy  
VCDS, 2-3433

Prepared by: Colonel G.L. Waterfield  
DJAG/L, 2-3637

Officer Available to Respond to Questions: Commodore H.M.D. MacNeil  
DGPCOR,  
Chairman Charter Working Group 2-6273

Dated: 14 December 1984

SECRET

A0050850\_4-003362

WARNING  
THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENTIAL  
INFORMATION OF  
THE QUEEN'S PRIVACY OFFICE  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH DG EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

AVERTISSEMENT  
CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"PRIVÉS" DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DG SEC EXEC DATÉE DU  
1er SEPTEMBRE 1983

MANDATORY RETIREMENT AGES

1. Mandatory retirement age provisions are dealt with as age distinctions that must be re-examined to determine if they are justifiable in today's society. The subject is first treated as a general, government-wide issue and the following arguments are advanced in favour of maintenance of such provisions:

- a. procedures for terminating employment are automatic and uniform, avoiding the arbitrariness of individual evaluations and allowing older workers having difficulty in coping to leave the job market with dignity intact;
- b. anticipated retirement forces financial planning for old age;
- c. old age security and pension benefits are tied to retirement provisions;
- d. promotes job opportunities for the young;
- e. the alternative would likely be optional retirement age, which would impact on pension, group insurance and disability and health insurance plans; and
- f. the elderly as a group tend to experience decline of physical and mental capacities and difficulty in adapting to change.

2. The general arguments in favour of abolition of mandatory retirement ages include:

- a. they are arbitrary measures not based on specific criteria such as ability to work but on stereotypes;
- b. performance demands vary from job to job and the aging process varies from one individual to another whereas mandatory retirement is based on scientifically unprovable equation of ability with age;
- c. forced retirement may be detrimental to health of "workaholics" and a threat to standard of living;

SECRET

A0050850\_5-003363

- d. no substantial number of jobs results from retirement of older employees;
- e. forced retirement of capable people is a waste of human resources and not in society's best interest; and
- f. existing periodic evaluations are better measurements of the capability of older workers.

3. The paper points out that even if mandatory retirement is unacceptable as a general principle, there may be justification for retention of the concept in specific occupations, where it amounts essentially to a bona fide occupational qualification. Such justification would be based on the uncertainty of the aging process on individuals and the unpredictability of individual human failure beyond a certain age. It must be established that the age limitation is objectively related to the performance of the job and is reasonably necessary to ensure efficient and economic performance without endangering the employee, his fellow employees and the general public. Evidence will be required of the detailed nature of the duties and the relationship between aging and efficient performance. It must be established that the work requires a special skill that may diminish with age and that danger to employees or the public will be compounded with age.

4. If it can be established that there are medical tests that can measure present capability and future performance, individual assessments based on those tests might be a viable alternative to mandatory retirement ages.

<p><b>WARNING</b></p> <p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH CG EYFC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p><b>AVERTISSEMENT</b></p> <p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU CG SEC EYFC DATÉE DU 1er SEPTEMBRE 1983</p>
---	--

5. The CF is one occupation that is given as an example where there may be a reasonable justification for mandatory retirement. The CF case is presented in terms of the Officers Career Development Program (OCDP) and indicates that retirement at age 55 may be justified as being related to considerations of fitness and the physical nature of military duties. It is said to be more difficult to justify earlier retirements such as at the end of an Intermediate Engagement (20/40 point) or a Short Engagement (9 years). The points made toward justifying earlier retirements are:

- a. the very nature of the armed forces is hierarchical in orientation and membership must be built through recruitment at low rank levels;
- b. a constant "flow-through" of members is required to maintain a dynamic, operationally oriented military force to meet government directed roles, to maintain the personal ceiling and to avoid stagnation in junior rank levels;
- c. the 20/40 level seems to be inspired by the need for economy in that it would be unacceptable to pay unreduced annuities to people under age 40;
- d. some medical evidence indicates that age-related problems show a measurable increase at about age 40; and
- e. studies done with the assistance of Canada Employment and Immigration indicate that the latest effective age for entering a second career is around 40.

<b>WARNING</b> THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83	<b>AVERTISSEMENT</b> CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVÉ" ÉGÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. ILS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983
---	---

SECRET

A0050850\_7-003365

6. The paper poses the following questions:

- a. Can the age limit be correlated with the demands of the job?
- b. Is the military unique in this regard?
- c. Does the requirement of combat readiness necessitate a higher standard of fitness than would be needed for the same job in peacetime?

<b>WARNING</b>	<b>AVERTISSEMENT</b>
THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83	CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983

PENSION AND SUPERANNUATION ISSUES

1. These issues are treated as general, government-wide issues that arise out of federal pension and superannuation legislation including the Canadian Forces Superannuation Act (CFSA). No issues peculiar to the CF or to the CFSA have been singled out.

2. The issues that have been dealt with arise from distinctions based on age, sex, race, citizenship, marital or family status and sexual orientation. The paper emphasizes that mandatory retirement age issues will impact directly on pension and superannuation legislation. Some of the issues, such as the prohibition against persons under age 18 from becoming contributors and the systemic discrimination that is inherent in the prohibition against part-time workers contributing in respect of their service, do not apply to the CF although this point is not made in the paper.

3. It is expected that any proposals to amend pension or superannuation legislation to ensure conformity with the Charter will be dealt with on an interdepartmental basis, and involve particularly the Public Service Superannuation Act, the CFSA and the RCMP Superannuation Act.

<p><b>WARNING</b></p> <p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p><b>AVERTISSEMENT</b></p> <p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983</p>
---	---

EMPLOYMENT OF WOMEN IN THE ARMED FORCES

1. The discussion of the employment of women in the armed forces is set in a section entitled "Sex Based Distinctions". The introduction to the section notes that the rights referred to in the Charter are guaranteed equally to men and women and states that "This makes it very clear that any distinctions made on the basis of sex must be examined carefully to determine if they result in adverse consequences which cannot be justified."
2. The discussion begins with a brief historical review of the employment of women in the armed forces of Canada and identifies present policy as being to bar women from the performance of primary combat duties and from service with a unit whose primary mission is combat. The effect is said to be to exclude women from employment in many classifications and trades, including naval sea operations and land combat arms.
3. Two issues are raised: whether military effectiveness justifies present policy and whether there are compelling national, social or cultural reasons that would justify such limitations on the employment of women.
4. The military effectiveness arguments raised by the CF are set forth as follows:
  - a. unrestricted employment of women may jeopardize national security because a potential enemy may view a mixed force as less capable;
  - b. the effect of a mixed force on the relationship of Canada and its allies is uncertain;
  - c. lack of Canadian experience and limited international experience prevents assessment of women's reaction to combat situations;

**WARNING**  
 THIS FOLDER/DOCUMENT  
 CONTAINS CONFIDENCES OF  
 THE QUEEN'S PRIVY COUNCIL  
 OR CANADA WHICH ARE TO BE  
 PROTECTED IN ACCORDANCE  
 WITH DG EYED SEC  
 INSTRUCTION 1183  
 DATED 1 SEP 83

**AVERTISSEMENT**  
 CE DOSSIER/DOCUMENT  
 CONTIENT DES  
 RENSEIGNEMENTS  
 "PRIVILÉGIÉS" DU CONSEIL  
 PRIVÉ DE LA REINE POUR LE  
 CANADA. LESQUELS DOIVENT  
 ÊTRE PROTÉGÉS  
 CONFORMÉMENT AUX  
 DISPOSITIONS DE L'INSTRUCTION  
 1183 DU DG SEC E 1183 DATÉE DU  
 1er SEPTEMBRE 1983

SECRET

A0050850\_10-003368

- d. the potential for adverse social and sexual relationships in mixed units operating under conditions of great stress makes it hard to assess what difficulties would be created for commanders in the field or at sea and whether the aggressiveness of servicemen on the battlefield would be affected by the presence of women;
- e. concerns exist about the advantage that female prisoners would present to an enemy and the impact on national and military morale;
- f. concerns as to what problems will be created for commanders by uneven performance resulting from male/female differences as to strength, cardio-respiratory capacity, endurance in climatic extremes, quickness of reaction, speed and ability to throw and jump; and
- g. increased employment of women would increase costs and there is some concern about the effect on the defence budget.

5. In respect of these arguments, reference is made to the policies and experiences of other countries such as Belgium, the Netherlands and Norway, which have opened all positions in the armed forces to women. The small percentage of women in those forces is said to result, in part, because compulsory military service applies only to males and the need for women to meet physical requirement (now under review by Belgium and the Netherlands) that exclude most of them.

<p><b>WARNING</b></p> <p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p><b>AVERTISSEMENT</b></p> <p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983</p>
---	---

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S PRIVY COUNCIL  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"PRIVÉS" DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU 1<sup>er</sup> SEPTEMBRE 1983

SECRET

C3 -

6. The following questions are posed respecting the military effectiveness arguments:

- a. should Canada follow Belgium, the Netherlands and Norway or the example of other countries such as the UK and the FRG, which are even more restrictive than Canada;
- b. if women's roles are to be expanded, should the decision be based on the evidence now available or should there be a series of trials to get more evidence;
- c. is evidence gathered in peace valid in war; and
- d. can the reaction of men and women in combat be assessed or predicted if women do not have access to combat roles in peacetime.

7. The social and cultural considerations are set forth as follows:

- a. There has been a general acceptance in Western democracies that actual combat is man's work and that those men have a special obligation to ensure the security of non-combatants, primarily women and children. Is this still society's view?
- b. Is Canadian society prepared to say that equality requires that women be able to participate fully in the CF? Equal protection guarantees in the US have not been interpreted as permitting women's participation in combat roles. However, do society's concerns merely reflect a stereotypic image of women's roles?
- c. Access to senior ranks is achieved through employment and training that, in most cases, is only available through participation in combat or

SECRET

A0050850\_12-003370

combat-related functions. Must all roles be open to women to provide equal opportunity for such advancement or can some alternative be found to give such opportunity?

- d. Is it possible or practical to develop standards for all trades and classifications that are absolutely necessary to ensure military effectiveness but permit maximum eligibility for all Canadians irrespective of sex?
- e. Should women who meet the qualifications and who volunteer to take the risks associated with combat be denied an opportunity to participate? Should equal access in peacetime mean equal liability for compulsory combat duty in war?

WARNING	AVERTISSEMENT
THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83	CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983

SECRET

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S PRIVY COUNCIL  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH DG EXEC SEC  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
"PRIVILÉGIÉS" DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA, LEQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DG SEC EXEC DATÉE DU  
1er SEPTEMBRE 1983

PHYSICAL AND MENTAL DISABILITY

1. The general discussion indicates that constitutional protections for the disabled are not likely absolute and that reasonable limits will be applicable where there is:

- a. risk of a safety hazard to others;
- b. undue hardship, often including economic concerns;
- c. a need to comply with specific statutes or regulations;
- d. an inability or unwillingness on the part of a disabled person to comply with uniform and reasonably necessary terms of service that are customarily applied; and
- e. an inability to make a reasonable accommodation for the particular needs of the disabled.

2. The CF is cited as one example where medical standards relating to stringent physical or mental abilities may be justifiable as a bona fied qualification. The issue is said to be whether there is a satisfactory correlation between the medical requirements and the operational requirements. Reference is made to both enrolment standards and the system of specific classification or trade standards.

3. The rationale for these standards is presented as centering on the unique requirements of a military force. One such requirement is that a military force may be called upon to risk danger or death in many of their roles ranging from surveillance over and defence of Canada, assistance to civil authorities and the NATO and International peacekeeping roles. The paper then acknowledges our argument that every individual must be capable of fulfilling operational commitments even if his current role is non-operational. The hierarchical structure is emphasized and the fact that the skills required for work in

**SECRET**

A0050850\_14-003372

the forces are not found in civilian employment, thus necessitating that applicants be chosen for their potential to progress through the ranks and receive appropriate training for positions of leadership. Reference is made to the findings of the Senate Subcommittee on National Defence in 1982 that military viability - the capacity to execute competently the military tasks which are demanded of them - remains the essential criterion for judging the operations of the Armed Forces.

4. The paper acknowledges that the CF has detailed the specific requirements and duties of an operational force, but poses questions as to whether there are assumptions in our medical categories about disabilities that may not be accurate.

<b>WARNING</b> THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH D3 EYES SEC INSTRUCTION 4183 DATED 1 SEP 83	<b>AVERTISSEMENT</b> CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTR. 4183 DU 1 SEP 83
---	---

WARNING

AVERTISSEMENT

SECRET

THIS FOLDER/DOCUMENT  
CONTAINS CONFIDENCES OF  
THE QUEEN'S PRIVY COUNCIL  
FOR CANADA WHICH ARE TO BE  
PROTECTED IN ACCORDANCE  
WITH THE PRIVACY ACT /  
LA LOI SUR LA PROTECTION  
DES RENSEIGNEMENTS  
PERSONNELS  
INSTRUCTION 4/83  
DATED 1 SEP 83

CE DOSSIER/DOCUMENT  
CONTIENT DES  
RENSEIGNEMENTS  
PERSONNELS DU CONSEIL  
PRIVÉ DE LA REINE POUR LE  
CANADA LESQUELS DOIVENT  
ÊTRE PROTÉGÉS  
CONFORMÉMENT AUX  
DISPOSITIONS DE L'INSTRUCTION  
4/83 DU DOCUMENT D'ARRÊTÉ DU  
1<sup>er</sup> SEPTEMBRE 1983

ANNEX E

MARITAL STATUS - COHABITATION ARRANGEMENTS

1. Primarily, the discussion paper focuses on distinctions between married spouses and "common law" spouses and between married persons and single persons generally. It acknowledges that the definition of "common law" spouse differs from province to province where it is recognized, but points out that federal laws and policies have increasingly recognized common law claims.

2. It is acknowledged that the state takes an interest in protecting and fostering respect for the family but questions why that concern should only be for the traditional forms of family structures. It also questions why common law relationships are recognized for some purposes (e.g., CPP and Old Age Assistance) but not others (e.g., Income Tax). Other questions raised include whether recognition of the relationship should depend on the length of time the couple have cohabited, and whether, if so, that length of time should be the same for all purposes.

3. The issue is then related specifically to several statutes, including the Income Tax Act, the Old Age Security Act, pension and superannuation Acts and the Immigration Act, and finally to the CF. Generally, CF policies, regulations and orders are said not to acknowledge the existence of common law relationships or cohabitation arrangements. Again the reasons given are presented in terms of the unique nature of a military force. It is emphasized that to fulfill its tasks, the CF must foster the military ethos whose values are congruent with the national institution of marriage and the traditional family which would be weakened by recognition of alternative cohabitation arrangements.

SECRET

A0050850\_16-003374

4. The detailed arrangement outlines that the military requires stability and dedication from its members which requires also a stable family environment. Reference is made to the CF belief that traditional marriages can better withstand the stress associated with military life. It acknowledges that military members live in close knit communities where it is expected that members will conform to the values and widely accepted morality of Canadian society and that alternative life-styles could disrupt the harmony of these communities.

5. The paper also acknowledges as a rationale the fact that recognition of alternative cohabitation arrangements would create difficulties when moving personnel to foreign countries because status of forces agreements do not generally extend special status to the partner of members in cohabitation arrangements.

6. In respect of the military policy, the paper poses the following questions:

- a. Are our assumptions as to the values and morality of Canadian society consistent with Canadian societal values of today?
- b. Is there something particularly unique about military life which justifies such distinctions between legally married and common law spouses?
- c. Is the lack of special status for dependants under negotiated status of forces agreements a legitimate rationale for the policy or are alternatives available that would not result in such distinctions?

<p><b>WARNING</b></p> <p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EYFC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p><b>AVERTISSEMENT</b></p> <p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVÉ ÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU 1 SEPTEMBRE 1983</p>
---	--

- d. Can the failure of agreements to extend special status be accepted in view of Canada's international obligations contained in conventions which list marital status as a prohibited ground?
- e. Does the possibility or even the likelihood of foreign postings justify excluding common law spouses from benefits otherwise available to spouses in other circumstances within Canada?

<p><b>WARNING</b></p> <p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p><b>AVERTISSEMENT</b></p> <p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983</p>
---	--

SEXUAL ORIENTATION

1. The paper points out that sexual orientation is not an enumerated ground of discrimination under section 15 of the Charter and that present Canadian jurisprudence seems to support the proposition that a prohibition against sexual discrimination does not encompass discrimination on the basis of sexual preference. In addition, none of the Human Rights Acts in Canada except Quebec's include sexual orientation as a prohibited ground of discrimination at the present time. It should be noted, however, that section 15 of the Charter, in essence, prohibits any discrimination, not merely discrimination on the specific grounds enumerated.

2. The paper deals with CF policies with respect to homosexuals and lesbians as an illustration of some federal policies that do discriminate on the basis of sexual orientation.

3. The policy is expressed to be that homosexuals or lesbians will not be enrolled by the CF and, if they are discovered after enrolment they are honourably released. The paper acknowledges that this policy is consistent with that of the armed forces in the UK, USA and FRG. The reasons given by the CF for non-employability of homosexuals and lesbians are set forth as follows:

WARNING	AVERTISSEMENT
<p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXEC DATÉE DU 1er SEPTEMBRE 1983</p>

SECRET

A0050850\_19-003377

- a. Canadian military personnel serve outside the country with the UN or NATO and, in a great many cases homosexuals and lesbians would be ineligible for such service because of the laws or the social mores of the host country;
  - b. Employment of homosexuals and lesbians would be disruptive to the efficiency of the CF because their presence in isolated postings, in communal life in barracks, on board ship, in the field and other situations where personal privacy is most difficult or impossible, often results in physical attacks on them;
  - c. Homosexuals and lesbians are at greater risk of being subverted by authorities of foreign countries whose interests are inimical to those of Canada and its allies;
  - d. Experience has demonstrated a degree of vulnerability to either direct or indirect blackmail so that unless or until social attitudes change considerably, homosexuals and lesbians cannot be placed in security sensitive positions; and
  - e. Other reasons given by the CF are said to include the significance of a cohesive force, adherence to majoritarian values and public image.
4. The CF policy is said to raise the question of whether refusal to employ a man or woman because of his or her sexual preference is consistent with the equality guarantees in section 15 of the Charter since the policy appears to be a recognition of majoritarian values to the detriment of a minority.

WARNING	AVERTISSEMENT
<p>THIS FOLDER/DOCUMENT CONTAINS CONFIDENCES OF THE QUEEN'S PRIVY COUNCIL FOR CANADA WHICH ARE TO BE PROTECTED IN ACCORDANCE WITH DG EXEC SEC INSTRUCTION 4/83 DATED 1 SEP 83</p>	<p>CE DOSSIER/DOCUMENT CONTIENT DES RENSEIGNEMENTS "PRIVILÉGIÉS" DU CONSEIL PRIVÉ DE LA REINE POUR LE CANADA. LESQUELS DOIVENT ÊTRE PROTÉGÉS CONFORMÉMENT AUX DISPOSITIONS DE L'INSTRUCTION 4/83 DU DG SEC EXÉC DATÉE DU 1er SEPTEMBRE 1983</p>

SECRET

A0050850\_20-003378