

BRIEFING NOTE FOR THE MINISTER

SUBJECT: Effects of the Provisions of the Charter of Rights and Freedoms on the Canadian Forces.

ISSUE: Canadian Forces' involvement with Bill C 27, and with the military issues raised in the Discussion Paper, Equality Issues in Federal Law.

BACKGROUND

1. Two actions of significance to the Canadian Forces (CF) were taken by the Department of Justice in preparation for the coming into force on 17 Apr 85 of the equality guarantees in Section 15 of the Charter of Rights and Freedoms (the Charter). An Omnibus Bill (C 27) was developed in consultation with affected departments to amend legislation so as to achieve consistency with the Charter. This Bill was tabled in the House of Commons on 31 Jan 85. Amendments to the National Defence Act (NDA) are included: those amendments are mainly concerned with legal rights (Sections 7 to 14 of the Charter). Secondly, a Discussion Paper was developed, also with the assistance of affected departments, to address complex policies which conflict with Section 15 and which possibly should be maintained. Section 1 of the Charter permits exceptions by providing for such "...reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

CURRENT STATUS

2. It is understood that Bill C 27 is scheduled for Second Reading on 13 Mar 85. It is intended to provide CF representation, as part of that of the Justice Department, when the NDA amendments are discussed by the Standing Committee on Justice and Legal Affairs.

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3. The main issues in the NDA amendments are: the right of an accused to representation at all service tribunals; the right of an accused to consideration for release from custody pending a service tribunal or appeal from Court Martial findings; and search and seizure. No problems are foreseen if the amendments are promulgated as is. Several amendments and additions to regulations and orders will be required to implement these changes to the NDA. These are in preparation.

4. A sub-committee of the Committee on Justice and Legal Affairs was constituted on 5 Mar 85 to address the Discussion Paper. The conduct of the sub-committee proceedings cannot be accurately predicted. Officials of the Department of Justice believe that Ministers of affected departments will be invited to address the sub-committee, probably at the beginning of the week of 18 Mar 85. The suggested format for such an address is: action already taken to enhance equality; current policy; factors leading to that policy; objective of the policy; alternatives considered; and intentions. A similar address, at least at the Deputy Minister level, is anticipated for each of the five specific issues affecting the CF. These addresses will be drafted by the Charter Working Group.

5. There are five CF policy issues in the Discussion Paper: Employment of Women in the CF (CF policy of excluding women from combat roles); Age Limitations (mandatory retirement ages); Physical and Mental Disabilities (maintenance of CF standards); Sexual Orientation (CF policy of not recruiting or retaining homosexuals); and Marital Status (CF policy of not recognizing cohabitation other than legal marriage). The Canadian Forces position on each of these issues is summarized in the attached annex.

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RECOMMENDED ACTION

6. It is recommended that the Canadian Forces' positions on the cited military issues be approved for presentation to the Sub-Committee of the House of Commons dealing with the Discussion Paper, Equality Issues in Federal Law.

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CANADIAN FORCES POSITIONONCHARTER ISSUESGENERAL

1. Statements of CF policies, and the underlying rationale, have been prepared for each of the five Charter issues raised in the Discussion Paper. Each policy statement is supported by an annex which provides additional information and detail. These are summarized below.

AGE LIMITATIONS

2. Current differing mandatory retirement points or ages must be maintained to ensure:
- a. fitness, particularly of junior members who are most liable for arduous combat duty;
 - b. retention of experience for senior leadership; and
 - c. a constant flow-through of people with reasonable career prospects, within a manageable structure.

EMPLOYMENT OF WOMEN

3. The current policy of excluding women from combat, and limiting their participation in some other roles, must be continued to ensure:
- a. the maintenance of a capable, credible fighting force;
 - b. avoidance of any possible conflict with national values and mores, resulting from deliberately subjecting women to combat; and
 - c. an adequate proportion of men in occupations which fill positions in all-male combat units.

PHYSICAL AND MENTAL DISABILITY

4. High physical and mental standards must be maintained for entry and retention in the forces to ensure:

- a. the ability to perform effectively the rigorous and varied tasks assigned the CF;
- b. the safe and competent operation and use of complex equipment, hazardous munitions and materiel to which members must have access; and
- c. the flexibility of deploying forces anywhere on short notice.

SEXUAL ORIENTATION

5. The policy of not enrolling or retaining homosexuals in the CF must be maintained to ensure:

- a. the discipline, cohesiveness, and mutual acceptance necessary for an effective armed force;
- b. the safety of homosexuals, and avoidance of the heightened risks of homosexuals breaking the law, in the unique military communal life such as at isolated posts, in ships, and field operations where personal privacy is all but non-existent;
- c. reduction of the security risk; and
- d. sound self and public image needed for pride, and recruitment to sustain the force.

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MARITAL STATUS (COHABITATION)

6. The Canadian Forces should continue to recognize only legal marriages to ensure:

- a. the stable family environment necessary to produce stability and dedication from members;
- b. conformity with the highest values and morality of the Canadian society which the CF serve;
- c. avoidance of tension in closed military communities, and of the reduction in posting flexibility resulting from requirements to meet status criteria, and from measures to prevent offence to foreign countries which do not recognize common-law status.