

15 Apr 85

STATEMENT BY MND TO  
SUB-COMMITTEE OF THE STANDING COMMITTEE  
ON JUSTICE AND LEGAL AFFAIRS  
EQUALITY ISSUES IN FEDERAL LAW

Mr. Chairman, ladies and gentlemen. I know you have a difficult task, and one that involves many complex issues. Five of those issues are important to my responsibilities, and so I welcome the opportunity to work together with you, to try to find workable answers for some very complicated questions.

The five equality issues which have the greatest effect on my department are those that impact on the Canadian Forces. As you know, the Forces are a separate legal entity, the uniformed component of national defence. It is the application of constitutional equality to the Canadian Forces that I will talk about.

Because of the nature of their business, armed forces in western democracies have tended to be more cautious about social change than the societies which they serve. However, the Canadian Forces have made many adjustments, particularly in recent years, to reflect developments in Canadian society. Fifteen years ago, for example, there was a ceiling of 1,500 on the number of women in the Canadian Forces. Married women were not enrolled, and

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servicewomen who became pregnant were released. Today, Canada stands with Israel and the United States, well ahead of other countries, with about 7,000 women in the Canadian Forces. They are serving in many more occupations now than they were in 1970. Married women are eligible for enrolment, and servicewomen are entitled to maternity leave if they choose to remain in the forces when they become pregnant. In another area, the Code of Service Discipline has been amended to bring it more into line with changes in civilian laws and practices. The most recent proposals to change the National Defence Act are contained in Bill C-27, which is currently before the House. Many other less visible changes have been made which have enhanced conformity with the intent of constitutional equality.

However, there are some critical areas where the further pursuit of equality might have a seriously adverse effect on another important national objective, namely an adequate defence. Those are the areas that were put before you in the Discussion Paper. They have been submitted to the wisdom of this Committee and the Canadian public because they have no easy solution. On the one hand, the effectiveness of the Canadian Forces could be jeopardized, but on the other we have limitations to the rights and freedoms set out in the Charter.

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I am going to digress here to touch on the dilemma faced by our senior military officers over these issues. First of all, being at odds with the equality provisions of our constitution was not an eagerly sought position to be in. Obviously, it would have been easy to recommend that any limitations ought simply to be abolished. That response would have spared the considerable effort required to answer successive challenges under the Canadian Human Rights Act, and those which could arise from the Charter. However, they have very real and very genuine concerns that if they were implemented without restriction, full equality provisions could very likely damage the overall fighting capability and effectiveness of the forces. They are therefore taking the more difficult and yet the most responsible position of strongly supporting inclusion of these issues in the Discussion Paper.

Let us turn now to the reasons for our concern. They are not easy to deal with because they are complicated, and they involve attitudes and emotions. Secondly, much of the concern stems from trying to predict human behaviour in conditions of extreme stress such as in war, conditions which cannot be adequately simulated in times of peace. On some issues there are few useful statistics, comparative data, or concrete facts to help us toward a solution. In these cases we have only judgement to guide us. We are concerned here with human reactions to

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conditions in the Canadian Forces, which differ markedly from those experienced by Canadian society as a whole. I believe, therefore, that professional military judgement will be an important element in our consideration. To understand why these issues are of such critical concern, we must look at the conditions which make military service very different from civilian occupations. I will describe some of these conditions.

One of the distinguishing features of military life is mobility. For unavoidable reasons, members of the forces move to a different community about every three and a half years. This makes it difficult to become an accepted part of civilian life, and thus there is a tendency to look to each other for social and recreational activities. This trend is heightened in those cases where members must live in military married quarters in rural or isolated locations. This inwardness fosters a close-knit, interdependent character within the armed forces that also extends to the members' families. It also results in members and their families having limited privacy and little choice of associates or neighbours.

Closely related to mobility is the flexibility demanded of the armed forces. They must be prepared to go anywhere in the world, on short notice, for extended or indeterminate periods, and perform a variety of tasks. This requires them to be fit, and have their personal affairs in order. Those who are married must try to

foster a stable family life which allows their dependents to function on their own for long periods, with minimal assistance from the Canadian Forces.

The military profession must also be flexible in another sense. Although members have specialties, there are no work rules that would confine them to a narrow scope of employment. On the contrary, they must all be able to perform general military tasks in addition to their primary occupations. The clerks and supply technicians aboard ship also have to be fire-fighters and members of damage control teams. Everyone aboard must be able to contribute to the combat effectiveness and survival of a warship. We were given a grim reminder of this fact only three years ago in the Falklands. In a like vein, aircraft technicians must be able to take up arms to defend their airfield; and army rear-area support elements have to be prepared to fight in the event of an enemy break-through.

In peace-time, mechanics and finance clerks have worked along-side the infantry piling sand-bags during floods, and fighting forest fires. Radar technicians and air traffic controllers have taken up arms during riots at penitentiaries, as members of the standing teams which are called upon by civil authority when they may be needed. In the armed forces one is military first, and one's trade is secondary. Therefore everyone must have a good minimum level of fitness, and must be adaptable to a degree rarely found in other endeavours.

Military service involves the use of expensive, complex equipment, and the handling of weapons which have levels of destructive power well beyond those found anywhere else in Canadian society. For example, aircraft that cost \$30 million each must be operated effectively so that we get maximum defence value, and they must be operated safely so that they do not endanger the public and so that we do not lose a costly asset. Weapons and munitions must be protected from accidental or deliberate misuse, because of their potential for enormous damage. These imperatives require physically fit, intelligent, stable, and responsible personnel. They also require a degree of discipline that is much more demanding than is required in civilian life.

Within the armed forces, living conditions can often be spartan and crowded. Recruits doing their initial training live in large barrack rooms that house thirty persons each. The only washroom facilities are communal, lacking even individual shower cubicles. These barracks are where recruits spend their time when they are not training or in the mess or the canteen.

Following graduation, infantry recruits might go to Battle School in Wainwright, Alberta. There they are billeted in Quonset huts, 40 to a room. Again the washrooms are communal, without individual shower cubicles. There is little in the way of outside diversions, and life revolves around the barracks, the mess, or the canteen. Once they have completed initial training, A0141536\_6-003417

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members might be billeted two to a room. However, land combat units can expect to spend about four months a year on training exercises under conditions at least as austere as those in the Quonset huts.

A mess deck in a destroyer can also be basic and confining. For example, a stokers' mess deck in HMCS ANNAPOLIS accommodates 55 crew members in a space about 30 feet by 40 feet. Bunks are not double-deck: they are triple tiered. If you lie on your back in one of the bunks, the space between your face and the bottom of the mattress above you is about eight inches. There is as little as a foot and a half between some tiers of bunks. Washrooms are communal, and fixtures are scaled down in size to save space. Beside mess decks, the only space where sailors can spend their time when they are not on watch or asleep is the cafeteria. Single sailors live in the mess decks for an average of two years at a time, in and out of port. Married crew are allowed to spend most off-duty time at their own homes when in home port. That is about six months a year on average. The remainder of the time is spent at sea or in foreign ports.

There are two very significant aspects to what I have described. The first is the unusual lack of privacy; the second is the inability of members to choose who their close companions will be, 24 hours a day, for perhaps months at a time. When ships are at sea, the crews must be able to accept and get along with each

other, because there is nowhere else to go. The conditions at land combat training camps are deliberately spartan, to prepare troops for the harsher life in the field. In training, as they would in combat, soldiers spend days or even weeks on or in the ground, with only a tent or a waterproof poncho for protection, and in all weather conditions. Often they too have no choice of comrades, either because there is nowhere else nearby for them to go, or because training requires them to remain on the base. Even where it would be possible, it would not be desirable to change some aspects of present conditions. The forced closeness of members is an essential way of turning a group of individuals into an effective unit, functioning as a team.

Because the military profession is taught and practised only within the armed forces, it must rely for its leaders on the progressive development of the people who enter at the bottom. For example, the commander of a battalion of infantry cannot be hired from outside the forces. The skills and knowledge needed for that job can be obtained only through a structured program of training and experience, requiring a minimum of some fifteen years from entry. At least twenty years are required to produce a general officer. Recruiting must therefore cater to

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requirements well beyond those needed of members for their first job in the forces. This also requires a structure through which people can move in a manageable way. The conflicting requirement for youth - to provide strength and vigour in battle - and age - to provide experience and wisdom in leadership - must be accommodated within that structure. Thus there must be controls that ensure youth on entry, and which provide predictable exits for different career lengths.

One key feature of the military profession that sets it apart from all others is its unlimited liability. I have already mentioned some aspects of the open-ended obligations members assume on joining the forces: being prepared to go anywhere on short notice with no choice in the matter, and the mandatory performance of whatever diverse jobs are given them. The ultimate liability is, of course, that of putting their lives at stake in battle. Also, unlike any other situation in Canadian society today, members of the Canadian Forces still face the death penalty for refusing their duty while on active service.

It is against human nature to risk life and limb for one's country, but the job of the armed forces - anywhere - is to inspire people to do just that. Strict discipline is one of the proven ways of achieving this end, combined with good training. But the most effective performance in battle comes from a commitment to team effort. That commitment requires members to have faith in the

competence, fairness and impartiality of leaders. And their survival often depends on their unshakeable trust in each other's combat ability and reliability. They require strong pride in their team and its reputation, and they must be able to cope with the pressures resulting from being confined to each other's company for long periods of time, in very difficult conditions.

The military profession is not like the others. Although it serves and is part of Canadian society, it differs in several significant ways; and these differences are the basis of current policies which are at variance with some provisions of the Charter of Rights and Freedoms. These differences still remain after the 17th of April. The question, then, is this: can these special needs of the Canadian Forces be met by other policies which would satisfy the Charter? Or are limitations, as provided for in Section 1, necessary in order to ensure the continued effectiveness of the Canadian Forces?

All of what I have been saying is by way of preamble - the better to help you address the five issues that concern us. I understand that you will be considering each of the issues before you in detail at another time. Therefore I will outline the Canadian Forces' current policies associated with those issues, with little elaboration. Seen in the context of the conditions peculiar to armed forces, the concerns about those policies will be apparent.

WOMEN

In the Canadian Forces the employment of women is unrestricted, except for limitations excluding them from combat. Thus, women are not employed in certain units, occupations, or positions. Also, there are female-to-male ratio limitations in some of those occupations that serve in both combat and non-combat units. The purpose of this limitation is to make sure that enough men will be available to fill positions in combat units. It is also necessary to provide a reserve to permit relief from field duty, career development employment, and training. Women may serve in occupations or units for which they are not normally eligible, under certain circumstances. They may do so only in peace-time, and only for the purpose of trials or developmental training.

There are two main reasons why the current policy exists. The first is a moral or social question. Put simply, is the unrestricted involvement of women in combat consistent with the culture, values and norms of Canadian society? I think it will not be easy to get a reliable, informed consensus on this question; but perhaps you will find the answer in the course of your work.

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The second reason is more difficult to explain, and it has potentially much more serious consequences. There is very real concern that the inclusion of women in combat units would decrease the fighting effectiveness of these units. This is one of those cases I mentioned earlier, where there are few facts and figures to go on. The central questions are how women would react, and what impact their presence would have on men, under the stresses of combat. I believe that some of the factors that would affect those human responses can be seen from the conditions in the forces that I have already described. Our collective judgement is that the effectiveness of combat units would be diminished sufficiently to be of serious concern.

Some of the adverse practical consequences could be eliminated or reduced by forming all-female combat units. But I think you will agree that this would be no less limiting than current policy. Therefore this option was not pursued. Indeed, we have not yet found a practical alternative that would safeguard the effectiveness of the armed forces, and at the same time not require resort to Section 1 of the Charter.

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HOMOSEXUALS

The next issue concerns the policy of not enrolling or retaining homosexuals in the Canadian Armed Forces. This too is an issue which is influenced by human reactions. However, on this issue, we have some experience which supports the intent of the policy. There are documented cases of disruption to discipline and group cohesiveness resulting from homosexual activity. I am sure you can appreciate how military conditions militate against acceptance of homosexuals in the forces in the same way as they are accepted in the rest of society.

I must point out, too, that equality for homosexuals may not be the sole concern here. Given the need for unavoidable close association, lack of privacy, and disciplinary obedience in the forces, we must ask ourselves if the rights of heterosexuals might not be affected if homosexuals were enrolled and retained in the Canadian Forces. Experience has shown that the close, communal life peculiar to military service leads to strong aversion to homosexuals.

To my knowledge, the Federal Republic of Germany is the only country in the western world which enrolls homosexuals. It may be that this policy is related to the need to head off stratagems for avoiding compulsory military service. Also, by law, homosexuals in the German Forces are not allowed to hold any position

of authority or command. This precedent was not considered to be an acceptable model for the Canadian Forces. Obviously, the restriction on appointment eligibility would be as much of an equality issue as is the current policy.

We are left, then, with a judgement question; and the judgement of the senior leadership of the Canadian Forces is that the presence of homosexuals would impair the effectiveness of the forces. There are also serious concerns about the infringement on the rights of other members if they were forced to live with homosexuals under the particular conditions of the military way of life. The objective of equality for homosexuals must be balanced against these other considerations.

AGE

The next issue, age equality, is one that affects all of our society. I have already touched on the fact that two military requirements appear to be somewhat contradictory: the need for youth, and the requirement for experience in leadership. These objectives have led to the current policy of two career periods of differing lengths. Because the people needed to fill jobs at all levels must come almost exclusively from within the forces, there is very little flexibility to adjust to an unpredictable flow through the structure.

Also, there must be enough people with enough time ahead of them to acquire the experience and training needed to provide an adequate selection base for senior positions. These essential requirements must be provided for in any system which might replace the present use of retirement ages. Because of the very nature of the Canadian Forces' needs, a viable alternative which does not relate to age has thus far been elusive.

MARITAL STATUS

The Canadian Armed Forces currently recognizes only single or legally married status. The importance of this policy lies in the entitlement to married quarters, and to movement costs and the like. At present, members who have formed an association other than legal marriage are not entitled to the reimbursement for moving costs of the partner, and they are not eligible for married quarters.

There are two factors to consider here. The first is the potential human response to a change in policy. The affiliation and motivation of military personnel and units has traditionally been nurtured on the preservation of traditional values, including the institutions of marriage and the family. This code and the essential cohesion of the military family would be weakened if

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official sanction were given to cohabitation. Such approval would be implicit in extending to cohabiting members eligibility for provisions which in the past applied only to legal marriages. Also, other members might feel that their rights were diminished by such a change in policy. Consider, for example, the possible reaction from a couple who have assumed all the responsibilities of legal marriage, if they were unable to get a married quarter because it was occupied by a cohabiting member. Again, the close-knit nature of life and the conditions in the Canadian Forces may render inappropriate some practices which are accepted elsewhere in society.

The second factor is the practical problems which arise in any attempt to recognize cohabitation. There are variations from province to province in the criteria used to define when cohabitation is recognized. While this may be workable for a relatively static society, it poses real problems for any group that moves frequently, not only between provinces, but internationally as well. The acceptance of cohabitation would carry with it the responsibility to cater to any time requirements for recognition. Thus the forces' flexibility of moving people wherever and whenever they are required could be reduced.

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DISABILITY

The final issue is that of physical and mental disability. The question is whether or not the Canadian Forces are in harmony with the Charter by applying its present standards for entry and retention. I have already mentioned the high degree of job flexibility demanded of members of the forces, which calls for a high level of general alertness and fitness, even in peace-time. In war, of course, there is a higher probability of being called upon to perform more strenuous duties than those required by a specialty alone. As I mentioned previously, there are imperatives for physical and mental standards arising from the objectives of effective operation of expensive and complex equipment, and of ensuring the safety not only of forces' members, but of the Canadian public as a whole.

Suppose, for example, the structure of the forces were changed to permit some jobs to be permanently filled by people with physical or mental disabilities, people who would not be liable for duty in other jobs or locations. The problem in a small force with a fixed ceiling would be the burden added to the remainder. For them, the ratio of tours of duty in field jobs, isolated posts, and overseas duty such as the United Nations Force in Cyprus, would increase. Furthermore, most of the jobs which can be filled permanently are staffed by the 37,500 civilian public servants in the Department. It might be more appropriate

to seek increases in opportunities for the physically and mentally disabled elsewhere than in the Canadian Forces, bearing in mind the unusual nature of the forces' responsibility to our society, and the reasons for having armed forces.

In addressing these five issues today, I have touched on only a few of the many factors that bear on each one of them. There is still a lot of ground to be covered when you consider each issue in detail. If I have done nothing more than emphasize the complexity of the issues that affect the Canadian Armed Forces, I will be satisfied. If I have stressed the significant differences between the Canadian Forces and our society as a whole, it is because those differences are inherent in their nature and vitally related to our having an effective defence force. Therefore they must be central to consideration of these issues.

I think it would be appropriate before closing to talk about the people in the forces today. Canadian service personnel are all volunteers who give up rights which are taken for granted by other citizens of Canada. Present members could be excused if they found it paradoxical that they have relinquished the right to make submissions to this Committee which, in addressing

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the rights of others, may profoundly affect the future of those now in the forces. Because of this factor, and the unlimited liability we ask of them, we have an obligation to be conscious of the effect on present members of any change in policy, and on their effectiveness in the jobs in which they serve.

There is a risk that changes made for purposes other than improving the effectiveness of the armed forces could impair that effectiveness and their ability to defend this nation. It is vital to the discharge of my responsibilities that we have the best operational readiness we can with the resources allocated, not only in the longer term, but today and tomorrow as well. Therefore, I wish you well in your efforts to reconcile satisfactorily the competing demands of two very important national objectives.

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