



National Defence

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26 January 1987

The Minister

EQUALITY RIGHTS POLICY FOR
THE CANADIAN FORCES

1. As you know, the Charter Task Force recently completed its review of Canadian Forces' policy on equality rights in the light of the Government response to the Boyer Commission's report entitled "Equality for All."

2. Upon receiving the Task Force Report at the end of September, I discussed its contents with the members of the Armed Forces Council and sought their advice on the important matters that were the subject of the report. You will recall that, in the interim, I gave you a preliminary assessment of the Task Force's work, an indication of my intention to present formal recommendations to you as quickly as possible, and my own tentative thoughts on each of the five major areas of CF interest regarding equality rights. Having now received the formal advice of the Armed Forces Council, I am in a position to recommend to you how we should proceed in this important area of policy. In doing so, I am acutely aware that there is a difficult political dimension to contend with and I have not lost sight of this reality in my own search for a logical and defensible position, particularly in the two areas that are most susceptible to controversy, namely the employment of women and the acceptance of homosexuals in the Canadian Forces. The recommendations which I make below fully reflect the military reality which I have a compelling duty to represent, yet I am convinced that they are also compatible with the spirit of the Charter, which we must of course uphold. Whatever gap remains can be bridged with a lucid public presentation of the facts and rationale underlying my recommendations to you. The Charter Task Force Final Report could be particularly useful in this regard.

3. I believe the Task Force has done a commendable job of analyzing the impact of the Charter on the operations of the Canadian Forces. In your reading of the final

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report you will have been struck, I am sure, by the depth and quality of its analysis and the balanced approach to the difficult issues in question. The Task Force accomplished what it was instructed to do: to study very carefully the five major equality rights issues affecting the Canadian Forces, and to recommend practical policies that are consistent with the operational requirements of the armed forces and the law of the land. You will find that the recommendations I now present to you are generally the same as those of the final report, although some differences in emphasis may be seen as a result of my own deliberations with the Armed Forces Council.

4. Of the five major areas, three are deemed to present no particular policy difficulties. In brief:

- a. Mandatory Retirement Age. The military requirement for a young, physically fit and dynamic force is so compelling as to support our existing policy on mandatory retirement as a "reasonable limitation" within the meaning of Section 1 of the Charter. This position is upheld by legal opinion within DND and the Department of Justice.
- b. Marital Status. Because of serious difficulty within the Government in achieving a workable definition of common-law status, no change in policy could reasonably be introduced at this time. We continue to work with the Justice Department to resolve this question. It may also be that, even if a common definition is arrived at, our present policies and practices could be retained and justified as "reasonable limits" within the meaning of Section 1 of the Charter.
- c. Physical and Medical Employment Standards. The CF requirement for physical and medical employment standards is commonly accepted as being consistent with the Charter and the Canadian Human Rights Act. While there may be a requirement for minor adjustments to individual standards and the way in which they are applied in particular cases, our existing policy does not require major changes. This point was confirmed in the Government's formal response to "Equality for All."

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5. The remaining two areas are more contentious; these involve the employment of women in the Canadian Forces, and sexual orientation. The remainder of this letter is therefore primarily devoted to a consideration of these two aspects.

6. First, let me summarize the situation regarding employment opportunities for women.

7. The Charter Task Force made the point quite clearly that the Canadian Forces have made great progress in recent years in this area, to the extent that we are at or near the forefront amongst the armed forces of the world, and indeed in Canadian society. As a measure of our desire to move ahead to the greatest extent possible, consistent with the operational effectiveness criterion established by the Government last March, we are opening up a whole new range of employment fields to women as a direct result of the Task Force's work.

8. I am fully convinced that, with these measures, we have demonstrated that the Canadian Forces accept the principle that women should not have restricted employment opportunities based solely upon their sex. However, it is my view that we lack sufficient empirical evidence of the impact on operational effectiveness to warrant immediate opening up of the remaining units and military occupations to women. Indeed, I am a bit apprehensive that we may already have gone too far, and my senior commanders share this concern.

9. The Task Force has recommended, and I certainly agree, that we hold the door open to further advances in the employment of women as more experience is gained. The Task Force envisaged a re-evaluation of our policies in about two years' time to be followed by trials if sufficient conclusive evidence is not then available with respect to further expansion of employment opportunities. This delay in instituting trials was recommended to ensure that the results of trials by other NATO nations would be available. If directed, we could certainly conduct formal trials sooner, although this would present some practical difficulties of no small dimensions. In any event, I would recommend a re-evaluation of the whole subject in approximately two years, at which time we should, I firmly believe, have the courage to backtrack, if necessary, should our experience be that some element of the policies has not worked out. I am particularly troubled, as you

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will know from our conversation on 14 Jan 87, about the adverse effect that removal of restrictions will have on the number of women who are employable in the Forces. This anomaly stems from differences in physical strength and endurance, on the average, between men and women; relatively few women will be able to meet the greater physical demands of combat-associated occupations. It seems certain that the number of women in the Canadian Forces will decline with more liberal employment policies, and this has serious implications for the future of the forces, at a time when we need more, not fewer women. There is also the related question of vested rights for those women already in the service. Should they be given a choice of not serving in combat units, when men do not have such a choice? These practical problems, although peripheral to the main objective of expanded employment opportunities for women, will have to be studied very carefully to ensure the best possible outcome, given the circumstances of your policy decision.

10. The essence of the situation in regard to equality rights for women in the forces, then, is that we have come a long way and continue to demonstrate good faith and acceptance of the letter and spirit of the Charter. The only reason we have not come further at this point is that there is a dearth of evidence upon which to base an assessment of whether the operational risks could be reasonably accepted. This is a position that most Canadians should understand, given the overriding importance of national security. The validity and acceptability of our position would be reinforced by emphasizing that we will continue to work towards increased employment opportunities for women, based on the acquisition of better knowledge of the impact on operational effectiveness.

11. Looking now at the other major issue, the Charter Task Force has confirmed, in a rational and scientific way, what is common knowledge among the world's armed forces: that the presence of known homosexuals in a military milieu, especially in the stress of battle, creates a profoundly disruptive and disturbing situation. This professional military judgment emanates not just from the most senior levels of command; it is most firmly evoked by leaders in the field, such as senior non-commissioned officers and junior officers. It furthermore is not in any way a moral judgment. The existing policy is the product of experience and the hard reality of combat.

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12. Whether the acceptance of homosexuals in the armed forces can be limited, and if so, the extent to which it can be limited, involves a consideration of what can be established to be a bona fide occupational requirement under the Canadian Human Rights Act or a reasonable limit within the meaning of the Charter. I believe that what is reasonable in this sense must be considered in the light of the *raison d'être* of those forces, which is combat in time of war. Even if a policy of unlimited acceptance of homosexuals could be made to work in peacetime - and I believe it could not - I am convinced that in a wartime setting the situation would become intolerable because it is in combat that such abstract but vitally important attributes as unit cohesion, morale and trust become dominant, and where the factors that make the presence of homosexuals so disruptive (lack of privacy, effect on the system of rank and command, etc.) are so critical.

13. I firmly believe - and this belief is shared by senior officers and leaders throughout the Canadian Forces - that allowing known homosexuals to serve in the forces would have an extremely serious effect on morale and on our ability to carry out our operational responsibilities. I appreciate, however, that to refuse to allow a known homosexual to serve at all might be considered as going beyond reasonable limits and would be inconsistent with the interim policy publicly agreed to by Mr. Andre and General Thériault. Accordingly, I propose that the existing administrative order should be changed so as to continue the restriction on the enrolment and retention of persons who engage in homosexual activity. Such a policy would relate to conduct or behaviour rather than mere homosexual orientation.

14. I intend, therefore, to change the existing administrative order on homosexuality to refer only to homosexual activity, conduct or behaviour. It should also be changed to give it a more humane aspect by eliminating the existing obligation of members of the CF to report on the known or suspected homosexual conduct or behaviour of a CF member, unless there are reasonable grounds to believe that an offence under the Code of Service Discipline has been committed. Investigative procedures would also be amended to ensure fair treatment for persons under investigation, and the release of known homosexuals would be conducted in such a way to preclude any element of punishment: release would continue to be purely administrative and honourable, without any disciplinary

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action taken (unless, of course, the circumstances involved the commission of an offence, in which case both disciplinary action and a less favourable release Item might be considered).

15. A draft administrative order along the above lines is being written. I also intend to produce similar orders relating to sexual abnormality and sexual harassment so as to ensure common policies and procedures for the handling of inappropriate sexual conduct and behaviour in its various forms.

16. In summary, I recommend that:

- a. there be no change in CF policy regarding mandatory retirement age, other than the minor adjustments currently underway;
- b. DND continue to work with the Department of Justice in seeking a solution to the problem of defining common-law status;
- c. no fundamental change be made to CF policy on physical and medical employment standards;
- d. measures to be taken as rapidly as possible to build up a base of empirical data, drawn from our own experience and that of other nations, to permit additional adjustments to CF policy on the employment of women;
- e. all CF policies relating to mixed-gender employment be re-evaluated in two years to determine whether there has been any impact on operational efficiency; and
- f. the existing administrative order on homosexuality be changed so as to relate to homosexual activity, conduct or behaviour rather than homosexual orientation and to change the obligation to report "suspected" homosexual conduct or behaviour.

17. There can be no doubt that affirmation by the Government of these policies, especially the last three, would generate an adverse reaction amongst some elements of Canadian society. No amount of explanation will satisfy the hard-line rights activists; it is my perception that this vocal minority will be satisfied with nothing less than the total removal of all limitations,

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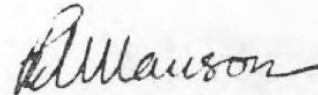
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regardless of the practical implications for the defence of the nation. I am much more concerned with the larger group of moderate Canadians who generally support the notion of expanded rights for women and homosexuals in the armed forces, but only by default: the other side of the story has never been properly presented to them. The Boyer Committee Report, for example, does not address both sides of the issue. I am convinced that the majority of Canadians, properly presented with the facts as established so convincingly by the Charter Task Force, would understand and support the retention of reasonable limitations in Canadian Forces' equality rights policies, particularly since these have such an important bearing on national security. I therefore recommend that a good information programme, based on the Charter Task Force Report, be established to elicit wide public support for CF policies on equality rights.

18. Finally, I make these recommendations in the firm belief that they are fully consistent with the Charter of Rights and Freedoms, whose authors had the wisdom to acknowledge and provide for reasonable limitations as articulated in Section 1. Without such limitations, the Canadian Forces could not strike a judicious balance between the aspirations of individuals and the imperatives of an organization whose very purpose is to preserve the security of the nation and the sanctity of individual rights.

19. Should we be deemed wrong in our judgment of what limitations must be applied to allow us to do our job, then our policies could always be challenged in the courts. Given the almost total absence of jurisprudence on these Charter issues, I believe that the best approach for the Canadian Forces at this juncture is to adopt the policies recommended above, rather than to subject the forces to arbitrary policy changes which would be extremely difficult to reverse should they eventually prove to be unreasonable, and which - especially in the case of homosexuality policy - would be debilitating and profoundly demoralizing.



P.D. Manson
General

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