

MEMORANDUM

NOTE

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Distribution List

IMPLEMENTATION OF CANADIAN CHARTER
OF RIGHTS AND FREEDOMS

1460-45-3 TD 4129 (VCDS)

30 May 84

② D PERS C (Thru DG PERS C)
Please action
GTM FINDLEY
LCOL
EA/ADM (PER)
6-1627

1. Following proclamation of the Constitution Act, 1982, Cabinet decided upon a process for implementing the Canadian Charter of Rights and Freedoms. Phase I of that process comprised a review of statutes, regulations and administrative practices to ensure compatibility with the Charter. Phase II entails a similar review of legislation, regulations and practices to ensure conformity with the equality rights guaranteed by section 15 of the Charter which will come into force on 17 Apr 85. Section 15 reads as follows:

"Equality Rights

15.(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

2. Cabinet has directed the Minister of Justice, with the co-operation of other departments, to conduct these reviews so that the Government can meet its commitment to proceed with any amendments that are required to remove conflicts with the Charter before section 15 comes into force next April.

3. Phase I of the process has been conducted by a Working Group chaired by DGC Svc, and has resulted in extensive amendments to QR&O Vol II, together with several proposals for amendments to the National Defence Act, that should soon be tabled in Parliament. In addition, the Working Group has begun the Phase II review, and has reported a summary of its findings with respect to statutes administered by this Department to the Department of Justice for further consideration.

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4. The Working Group must now begin the rest of the Phase II review, which will involve an examination of the regulations, orders, directives and administrative practices applicable within the CF. Because of the scope of this review, the resources of the Working Group will be inadequate to cope with the workload without the full co-operation and assistance of your staffs. The purpose of this memo is to outline the steps that must be taken to conduct this review and report findings to the VCDS Working Group for consolidation and forwarding to the Department of Justice.

5. The aim of the review is to determine which of our many regulations, orders, directives, practices and policies may be vulnerable to challenge on the ground that they are discriminatory. Accordingly, it must encompass all of QR&O, CFAOs, CFMOs, CFDOs, most Publications, Directives, Instructions, SOPs, Practices and Policies. The process should identify all potential areas of conflict together with any reasons that can be identified as justifying the "discrimination" in the sense of establishing a rational basis for the existing provision. Provisions that cannot be adequately justified will have to be modified, before next April, after consultation by the Working Group with JAG, appropriate Justice officials and the CF OPI. Failure to identify potential areas of conflict will result in a lack of preparedness to resist challenges that may be made in the courts after Apr 85. If the courts strike down any significant regulations, orders or practices as being discriminatory, we will be hardput to replace them quickly so as to avoid near chaos in what may be vital areas.

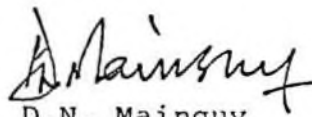
6. Attached as Annex A is a form entitled "Summary of Findings". It is requested that each member of your staff who is OPI for any article in QR&O, or any CFAO, CFMO, CFDO, CFP, Directive, Instruction, SOP, Practice or Policy, complete such a form for each apparently discriminatory article, order or other document, and that they be consolidated by your Group on a periodic basis and submitted to the VCDS Working Group. An initial report to the Working Group (DGC Svc) is requested by 15 Jun 84, which report should contain:

- a. a list of QR&O articles, CFAOs, etc, for which members of your staff are OPIs, so that the Working Group may ensure that all are being reviewed by someone;
- b. initial reports, if completed, in the form at Annex A; and
- c. proposed milestones to ensure that the review is completed and all reports made to the Working Group by 15 Oct 84.

It is requested that reports in the form at Annex A be submitted to the Working Group at monthly intervals (i.e., 15 Jul, 15 Aug,

15 Sep and 15 Oct) as they are completed. Completed forms should normally bear the security classification of the document being reviewed. If no report in the form at Annex A is received in respect of any regulation, order or other document, it will be assumed that the OPI has reviewed the document, but has not identified any apparently discriminatory provisions.

7. Annex B contains guidance and instructions to assist in the completion of the form at Annex A. Appendix 1 to Annex B is an illustration of a properly completed Summary of Findings form.



D.N. Mainguy
VAdm
VCDS
2-3433

Attachments

DISTRIBUTION LIST

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SUMMARY OF FINDINGS

Document being Reviewed _____

OPI: _____

Potentially Discriminatory Provision	Ground of Discrimination	Reason for Provision ie, justification

Annex B

Guidance for Completion of Annex "A"

"Potentially Discriminatory Provisions."

1. Not all measures which draw distinctions or differences between classes of individuals are necessarily discriminatory. However, the initial indicator of discrimination lies in a distinction that is based on some given characteristic and that has some adverse effect on, or creates some particular benefit for, the persons with that characteristic. Discrimination may be apparent or it may arise from apparently neutral provisions eg, a recent court case involved a requirement that workers wear protective headgear. While there was no apparent discriminatory intent, it was challenged as discriminatory against Sikhs on the grounds of religion, because their religious beliefs preclude the wearing of such headgear.

"Ground of Discrimination."

2. The Cabinet direction with respect to this review requires that the primary focus be on the prohibited grounds of discrimination that are contained in section 15 of the Charter, but also requires a consideration of other grounds of discrimination that are specified in the Canadian Human Rights Act, provincial human rights legislation and the International Covenant on Civil and Political Rights. Thus the specific prohibited grounds are:

(a) Charter

- (i) race,
- (ii) national or ethnic origin,
- (iii) colour,
- (iv) religion,
- (v) sex,
- (vi) age, and
- (vii) mental or physical disability;

(b) Canadian Human Rights Act, which adds;

- (i) marital or family status,
- (ii) conviction of offences for which a pardon has been granted,
- (iii) pregnancy or childbirth, and
- (iv) drug or alcohol dependence;

(c) provincial legislation, which adds:

- (i) ancestry,
- (ii) citizenship,
- (iii) place of origin,
- (iv) creed,
- (v) any record of criminal conviction,

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- (vi) mental or physical handicap,
- (vii) place of residence,
- (viii) political belief,
- (ix) assignment, attachment or seizure of pay,
- (x) source of income,
- (xi) social condition,
- (xii) language,
- (xiii) social origin,
- (xiv) harassment,
- (xv) sexual orientation, and
- (xvi) without reasonable cause; and

(d) International Covenant on Civil and Political Rights, which adds:

- (i) language,
- (ii) political or other opinion,
- (iii) social origin,
- (iv) property, and
- (v) birth or other status.

Finally, in addition to the grounds specified in section 15 of the Charter, it must be borne in mind that the right in that section to equality without discrimination is a general right and is not limited to the particular grounds that are specified. You should, therefore be conscious of other, unspecified heads of discrimination that can only be tested against the general premise of whether they have an adverse effect on or create some particular benefit for, the persons having a given characteristic.

"Reasons for Provision - Justification."

3. This will involve an outline of the policy objectives which are sought by the provisions in order to permit an assessment of the justification as the rational basis for the distinction. The essence of whether there is a "rational basis" is whether the different treatment relates rationally and objectively to a legitimate government interest. Factors to be considered include:

- (a) Is the distinction necessary to achieve the purpose for which it is made? Is it broader than is necessary in the sense that the objective might be achieved with less detriment to a smaller number of people?
- (b) Is there an objectively rational relationship between the distinction and the ends that it purports to advance? Administrative economy or convenience is probably not enough.
- (c) Is the basis of the distinction capricious or arbitrary?

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A further issue might be whether or not the distinction is a reasonable limit on the right to equality without discrimination that can be sustained under section 1 of the Charter, which reads as follows:

"Guarantee of Rights and Freedoms

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

SUMMARY OF FINDINGS

Document being Reviewed QR&O article 15.17

OPI: DPCAO

Potentially Discriminatory Provision	Ground of Discrimination	Reason for Provision ie, justification
The retirement age of an officer is the age for his rank set out in the table that applies to him, or the age at which he completes, as a colonel or above, 30 years, or as a lieutenant-colonel or below, 28 years of full-time paid service.	Age	See CF age study. Query if this study justifies varying ages prescribed in some tables, the 28 or 30 year periods of service or commn treatment for all officer classifications (e.g., infantry vs P Sel).

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