

## AIDE-MEMOIRE

### EQUALITY ISSUES IN FEDERAL LAW

#### BACKGROUND

1. The Canadian Charter of Rights and Freedoms is part of the Canadian Constitution which was proclaimed on 17 April, 1982. Section 15 of the Charter provides a guarantee of equality before and under the law and equal protection and equal benefit of the law without discrimination: Section 15 will come into force on 17 April 1985.

2. These equality rights are not absolute. However, Section 1 of the Charter provides that they are "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". To assist in the process of determining whether some limits, which now form part of government policy, should be maintained, the Department of Justice prepared a discussion paper "Equality Issues in Federal Law". A sub-committee of the Standing Committee on Justice and Legal Affairs of the House of Commons has been formed to receive departmental and public submissions on these issues. It is anticipated that the sub-committee will begin public hearings in major centres across Canada in early May, 1985. It has been tasked to report its findings and recommendations to the House by 9 September, 1985.

3. Five of the issues in the discussion paper are of particular importance to the Canadian Forces. The issues are the Canadian Forces' policies relating to the employment of women; mandatory retirement ages; mental and physical disability; sexual orientation (homosexuality); and marital status.

#### AIM

4. To outline the Canadian Forces' approach to the issues raised in the Department of Justice discussion paper "Equality Issues in Federal Law".

#### GENERAL APPROACH

5. Statements of current Canadian Forces' policy on the five issues of particular importance to the Canadian Forces have been prepared. These statements, together with the rationale for present policies, are being provided to the sub-committee as basic reference material.

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6. It is anticipated that the Minister of National Defence will be invited to address the sub-committee. His address will be general in nature and will highlight the special conditions which apply to military service and which may warrant the continuation of these policies. It is further anticipated that the Chief of the Defence Staff will address the sub-committee on each of the five issues under consideration. His presentations will reinforce the comments made by the Minister, outline alternatives to present policy and suggest what the consequences of adopting these alternatives might be.

7. A matter of concern is the probability that representatives of special interest groups will be able to make a number of presentations to the sub-committee as it travels across the country, while the Canadian Forces will likely only be able to make one presentation. It is important that other groups in Canadian society, which share the concerns of the Canadian Forces, make themselves heard so that the sub-committee receives a balanced view on these important issues.

#### POLICIES AND RATIONALE

7. General. Each of the policies is stated below together with a synopsis of the reasons for those policies. Although the rationale varies slightly from policy to policy, there is a common theme: the special conditions of military service and the special requirements of a military force.

8. Employment of Women. Women are not employed in combat roles. The ratio of women to men in certain occupations is limited to ensure sufficient men are available to perform combat and combat-related functions. Exceptions may be made in peace-time for the purpose of trials or educational training.

9. The policy is maintained to ensure the operational effectiveness of the Canadian Forces. Specific concerns include protectiveness on the part of males, and sexual attachments which could impair discipline; the potential impact on unit cohesion and morale due to the lack of confidence many males have about women's resolve and ability in combat situations; the national will to have women subjected to the demands of combat in the event of war; the small number of women who would be capable of meeting the physical demands of combat which would exacerbate the problem of acceptance; and the impact of women as combatants on allied and foreign perceptions of the Canadian Forces' effectiveness.

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10. Mandatory Retirement Ages. Under the Officer Career Development Plan and the Other Ranks Career Development Plan, members are compulsorily retired at one or the other of two career points. The first is the mid-career point at which a member completes 20 years of service or reaches 40 years of age, whichever comes later. The second is the compulsory release age of 55 for those members selected to serve beyond the mid-career point.

11. The policy is maintained to ensure physical fitness, particularly of junior members who are most liable for physically-demanding duty including combat; to provide for the retention of experience for senior leadership; and to provide a constant flow-through of members with reasonable career prospects within a manageable structure.

12. Mental and Physical Disability. The Canadian Forces has established standards of mental and physical fitness which must be met on enrolment. Members whose mental and/or physical fitness subsequently fall below the required standards are provided with continuing employment, if practical. Those for whom suitable employment cannot be found are released from the Canadian Forces.

13. The policy is maintained to ensure members have the physical strength to accomplish military tasks; have the mental ability to learn and exercise the use of hazardous munitions and material; and have the capability of performing assigned tasks under adverse environmental conditions, in remote areas, and with little or no medical support. Moreover, because of the size of the Canadian Forces, virtually all members must be eligible for unlimited employment in war, and for periodic rotation to the more arduous duties and remote locations in peace.

14. Sexual Orientation (Homosexuality). The Canadian Forces does not enrol or retain known homosexuals.

15. The policy is maintained to ensure the discipline, cohesiveness and mutual acceptance necessary for an effective armed force; to reduce the risk to security; and to maintain a sound self and public image needed for pride and recruitment to sustain the force. Moreover, the close communal living conditions and lack of privacy found in many areas of the Canadian Forces are such that the rights of heterosexuals would be in jeopardy if they were forced to share those conditions with homosexuals.

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16. Marital Status. For many purposes, the Canadian Forces only recognizes members as being legally married or single. Members engaged in so-called common-law relationships or cohabitation arrangements are not eligible to occupy service married quarters. Partners of members in such arrangements are not moved at public expense and have no entitlement to travel by service aircraft.

12. The policy is maintained because such arrangements have not received national recognition comparable to the traditional marriage and the values they represent are not congruent with the values embodied in the military ethos. Moreover, given the remote and isolated nature of many military communities, the Canadian Forces perceives an obligation to ensure a stable family environment necessary to produce dedication and commitment from members. The provision of full recognition to cohabitation arrangements could reduce posting flexibility within Canada and could give offence to foreign countries which do not recognize common-law status.