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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 unique nature of their role and responsibilities, armed forces in western democracies have

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tended to be more cautious about social change than the societies which they serve. Nonetheless, 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 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 taken place which have enhanced conformity with the intent of constitutional equality.

It must be realized, however, there are critical areas where the unrestricted application of equality

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provisions carries a risk of 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 not only because they have no easy solution but also because they require public understanding and support. 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.

I am going to digress here to touch on the dilemma we face over these issues. First of all, being at odds with the equality provisions of our constitution is 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, not to mention stereotypes which public discussion of these issues too often resorts to. In fact, we do have very real and very genuine concerns that to implement without restriction, full equality provisions could very likely damage the overall fighting capability and

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effectiveness of the forces. We are therefore taking the most 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 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. In these issues we have only judgement to guide us. We are concerned here with human reactions to conditions to be encountered in the Canadian Forces, which differ markedly from those that could be experienced by Canadian society as a whole. I believe, therefore, that past experience and the judgement of those in the military profession must be important elements in our consideration of these issues. To understand why these issues are of such critical importance, we must look at the conditions which make military service very different from civilian occupations. I would like to describe these conditions to your now.

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To begin with, living conditions can often be spartan and crowded. Recruits doing their initial training live in large barrack rooms that house thirty persons each. In peak periods, this number is doubled by replacing single cots with double-deck bunks. 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 then go to Battle School in Wainwright, Alberta. There they will be billeted in Quonset huts, up to 80 to a room in double-deck bunks. 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, members might be billeted two to a room, with less congestion. 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 is also basic and confining. For example, a stokers' mess deck in HMCS ANNAPOLIS accommodates 55 crew members in a space 30 feet by 40 feet.

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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 would be eight inches. You will find as little as a foot and a half between some tiers of bunks. Washrooms are communal, and fixtures are scaled down for compactness. (That is navy talk for small.) Beside mess decks, the only other 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 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. In the case of combat ships, space is always at a premium; and mess decks may vary in degree, but not in their basic nature. 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

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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 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. Hence compatibility and cohesion are imperative.

Another peculiarity 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. Thus the close-knit, interdependent character of the armed forces also extends to the members' families, which also may have limited privacy and little choice of associates or neighbours.

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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 specialties. 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.

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In peacetime, 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 these 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 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 thus require not only physical fitness, but also intelligence, stability, and responsibility. They also require a degree of discipline and self-abnegation that are seldom required in civilian life.

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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. Twenty years are required at minimum to produce a general officer, thus recruiting must cater to 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. Controls are also required 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

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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.

Although it serves and is part of Canadian society, the military profession obviously differs in several

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significant ways. It is these differences that are the basis of current policies which are at variance with some provisions of the Charter of Rights and Freedoms. These differences will remain after the 17th of April. The question, then, is this: can these special needs of the Canadian Forces be met given full compliance with Section 15 of 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,

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occupations, or positions. As a consequence, 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 ensure 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.

There are two main reasons why the current policy exists. The first is a moral or sociological 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 your enquiries will help clarify this important question.

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 seriously undermine the combat 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

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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 is not judged practical. 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.

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 considerable experience which supports the intent of the policy. These are documented cases of disruption to discipline and group cohesiveness resulting from homosexual activity. I am sure you can

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appreciate how military conditions militate against accommodating homosexuals in the forces in the same way as they are accommodated in the rest of society.

I must point out, too, that equality for homosexuals is not be the sole concern here. Given the need for unavoidable close association, lack of privacy, disciplined obedience, and cohesion, we must ask ourselves if the rights of heterosexuals would 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, even violent intolerance of homosexuals.

To my knowledge, the Federal Republic of Germany is the only country in the western world which enrolls homosexuals. This is a recent policy which was prompted in part by the need to head off stratagems for avoiding compulsory military service. Homosexuals in the German Forces are not allowed to hold any position of authority or command. Such restrictions are not considered workable in the small, professional Canadian Forces. Obviously, the restriction on appointment eligibility would be as much of an equality issue as is the current policy.

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We are left, then, with a judgement question. In the judgment of the senior leadership of the Canadian Forces, the presence of homosexuals would impair the effectiveness of the forces. There are also serious concerns about the rights of other members if homosexuals were present under the particular conditions of the military way of life. The principle 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

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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 official sanction were given to cohabitation. Such approval would be implicit in extending to cohabiting members eligibility for provisions

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which in the past applied only to legal marriages. This would have damaging consequences for good order and discipline. 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 in the Canadian Forces may render inappropriate some practices which are accepted elsewhere in society.

The second factor entails 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. 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 peacetime. 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

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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 repeated the significant differences between the Canadian Forces and our society as a whole, it is because those differences are inherent in their respective natures and vitally related to our having an effective defence force. They must therefore be central to consideration of these issues.

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