



National Defence

Défense nationale

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Distribution List

EQUALITY RIGHTS ISSUES OF CONCERN TO THE CANADIAN FORCES

1. The equality guarantees of the Canadian Charter of Rights and Freedoms came into effect on 17 April 1985, three years after the basic effective date of the Charter. This interval was included specifically to permit the equality disparities between the terms of the Charter and other existing law to be examined and, if necessary, resolved by either change or exemption. Although this process has not yet, unfortunately, been completed, it is well underway. The Department of Justice has published a booklet - "Equality Issues in Federal Law" - which highlights the principal issues which require resolution, and the Parliamentary Sub-Committee on Judicial and Legal Affairs will schedule a series of hearings in Ottawa and across the country in the near future, to give all concerned an opportunity to be heard on these issues prior to decisions being made. The intention is that all federal government bodies abide fully by the provisions of the Charter and that if exceptions are warranted, these be identified and provided for.

2. In the Canadian Forces, we have operated under a number of policies which now find themselves at odds with the specific equality rights set out in the Charter. These potential conflicts were identified in the Department of Justice discussion papers mentioned above and they are as follows:

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- a. mandatory retirement;
- b. sex (Employment of Women);
- c. disability;
- d. marital status; and
- e. sexual orientation.

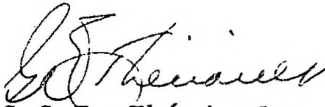
Section 1 of the Charter qualifies the equality rights set out at section 15 as "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". The question before us, consequently - and which will be examined in detail by the Parliamentary Sub-Committee - is whether existing CF policies on these matters can be justified and sustained, under the law, or whether they require modification.

3. Considerable work has been carried out in NDHQ on these issues, principally by the Director General, Conditions of Service. Position papers discussing the Canadian Forces' policy in each of these areas have been prepared, and it is intended, at a suitable time, to make these available to the Parliamentary Sub-Committee. The official Canadian Forces' presentation to the Sub-Committee will be made by the Minister in Ottawa, with support from appropriate NDHQ staff, and will be based on the position papers. It is not yet clear whether this presentation will come before or after the cross country tour by the Sub-Committee, however we will opt for the latter if at all possible.

4. Notwithstanding the formal presentation of the Canadian Forces' position to the Sub-Committee, there is every likelihood that Commanders and Subordinate Commanders across the country will be approached in various ways by the press, groups or private citizens, to provide comment and opinion. The intention of course is that the CF position be put forth in Ottawa and for obvious reasons we cannot have military personnel speaking for themselves, or presuming to speak for the CF, promoting divergent positions or views. It is not intended, therefore, that there be any CF involvement in regional hearings. It is extremely important, however, that subordinate Commanders, at all levels, be well informed of the CF position on these matters, in order that they may explain it if called upon to do so.

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5. To assist you in disseminating necessary direction and information, I have included a package of documents which you may wish to reproduce as you deem necessary for further distribution. The proposed introductory remarks for the Minister's use at the Sub-Committee hearing should give a good insight into the concerns the Canadian Forces has in these matters, while the summaries on each issue clearly indicate our policy. A copy of the Department of Justice booklet is also included for reference.


G.C.E. Thériault
General

Attachments:

- Annex A - Aide Memoire Equality Issues in Federal Law
- Annex B - CF Policy on Mandatory Retirement Ages
- Annex C - CF Policy on The Employment of Women
- Annex D - CF Policy on Physical and Mental Disability
- ANNEX E - CF Policy on Marital Status
- ANNEX F - CF Policy on Sexual Orientation
- ANNEX G - Proposed Introductory Remarks for MND

Enclosure: 1

Dept of Justice Discussion Paper - Equality Issues
in Federal Law

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