

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. The members of the sub-committee are:

- a. Chairman: Mr. Patrick Boyer
(Etobicoke-Lakeshore)
- b. Vice-Chairman: Mr. Maurice Tremblay
(Lotbinière)
- c. Vice Chairman: Mrs. Pauline Browes
(Scarborough Center)
- d. Mr. Roger Clinch (Gloucester)
- e. Mrs. Mary Collins (Capilano)
- f. Mrs. Sheila Finestone (Mount Royal)
- g. Mr. Svend Robinson (Burnaby)

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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.

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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.

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.

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POLICIES

8. The policies under which the Canadian Forces have operated up to now in respect of the five issues identified at para three are at variance with the explicit provisions and intent of the Charter. These issues are embodied in the Discussion Paper published by the Department of Justice (pages 18, 29, 38, 61 and 63).

9. The Committee will be provided with detailed position papers which underlie the subject policies of the Forces and it is of interest that from the Discussion Paper, a number of issues, including those affecting DND, have attracted critical comment already both in the House of Commons and in the committee. The basis of the subject CF policies is set out in the individual annexes attached.

SUMMARY

10. In conclusion, the dilemma facing the country and its Armed Forces in this important process is the embodiment, in all federal statutes, of the fullest expression possible of the rights and freedoms identified in the Charter of Rights, and in accordance with its spirit, while at the same time making adequate provision for those specific exceptions that may be required to ensure fully viable and effective military forces in the service of the larger interests of the national community at large. There is a danger that, without the interest and participation of informed Canadians in the community respecting the needs of Armed Forces in a free and democratic country, the public consultations could be seriously unbalanced under the impact of certain highly vocal and strongly determined advocacy groups if both sides of these issues are not heard at each public opportunity.