

CANADIAN FORCES POLICY ON
MARITAL STATUS

CURRENT POLICY

1. The Canadian Forces (CF) does not recognize cohabitational, or common-law relationships. The only exceptions affecting the CF are certain benefits to which members contribute and which are governed by other than Department of National Defence (DND) statutes. Two such exceptions are entitlement to a survivor's pension under the Canadian Forces Superannuation Act, and provincial medical care coverage under provincial legislation.

PRACTICAL IMPLICATIONS OF POLICY

2. DND reimburses members the costs of moving from one post to another. If the member has dependants, reimbursement is provided for moving them. Also, to assist with the problems of finding accommodation after such a move, DND makes married quarters (PMQs) available for rent for about half the eligible members. Again, the criterion for eligibility is whether or not the member has dependants. Single members are eligible for PMQs if they have had certified as dependants people who rely on them, such as disabled or destitute parents, or an orphaned minor brother or sister, or blood-related offspring.

3. Members who have gone through a legal form of marriage are automatically classed as having a dependant, and the spouse and any children qualify for reimbursement of moving costs, and the member is eligible for a PMQ.

4. There are other, less significant entitlements for recognized dependants, such as eligibility for space-available passage on scheduled CF transport flights.

CHARTER IMPLICATIONS

5. Persons who are cohabiting with a member are not recognized by the CF as being dependants. It has been suggested that this policy, which does not confer certain material benefits in respect of such persons, may be discriminatory, either under the general proscription or under the specific grounds of marital status, in the Canadian Charter of Rights and Freedoms.

FACTORS

6. There are two major concerns in the consideration of any change in current policy: the practical aspects, and the philosophical questions.

7. Practical Aspects. There is no consistent standard for the criteria determining when cohabitation achieves recognized status. These vary among provinces and federal departments which accord recognition. Qualifying times for continuous cohabitation vary by as much as a year; in some cases, statements are required affirming public representation as man and wife during the qualifying period; and some authorities require that both parties be legally free to marry, while others do not.

8. Because there is no constitutional or legislative basis for recognition, any criteria established by the CF could be challenged continually as arbitrary. In effect, there is no reliable definition of the state of association against which the CF is held as possibly discriminating.

9. If the CF were to recognize cohabitation at a certain stage, there undoubtedly would be advocacy to accept a concomitant obligation not to move a member during any time period required for recognition. This would reduce the flexibility of the CF in moving people wherever and whenever needed.

10. Legally married members might feel that their rights were being diminished by CF recognition of cohabitation. For example, a member who had accepted all the responsibilities of legal marriage might have such a reaction if a PMQ were not available because of being occupied by a cohabiting member.

11. Philosophical Questions. The CF attempts to instill in its members a sense of service to Canadian society and western democratic ideals. In so doing, the CF has supported the traditional form of marriage and family. Recognition of some state of cohabitation would represent a change which might be detrimental to a sense of moral purpose.

12. More directly, there may be a moral dilemma in recognizing cohabitation without requiring that the participants be legally free to marry. Would so doing not put a federal department to some degree at odds with the intent of the federal statute prohibiting bigamy? On the other hand, to require that both participants be legally free to marry (i.e. not be legally married) in order to qualify for recognition would clearly be discrimination on the basis of marital status, which is specifically proscribed by the Charter.