

SECOND DRAFT

MEMORANDUM

1460-45-3

VCDS

ACTION PLAN - CHARTER OF  
RIGHTS AND FREEDOMS

Ref: A. 1460-45-3 (DJAG/L) 29 Jul 85

General

1. (C) Ref A anticipates that the House Committee on Human Rights will submit its report on or about 15 Oct 85. From that time; the government has 120 days to act. It is expected that the Committee's report will recommend the Canadian Forces remove limitations on:
  - a. the employment of women; and
  - b. the employment of homosexuals.
2. (C) It is also anticipated that the report will recommend more liberal policies on retirement age, marital status and the employment of handicapped persons.
3. (C) The Committee's report is, therefore, expected to recommend, at least in part, a substantial change in the position the Canadian Forces has adopted. Unless both the government and the courts support the Canadian Forces' position, a major negative impact on operational readiness and Force credibility can be expected.

Aim

4. (C) This memo proposes, for approval, a Canadian Forces staff plan to deal with action required following tabling of the Committee's report.

CF Position

5. (C) The Canadian Forces' position has been previously staffed and is considered to be in compliance with the Charter of Rights and Freedoms on the

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grounds of reasonable limitations in a free and democratic society. (See Annex A).

6. (C) It is not the purview of the Charter Working Group to modify the Canadian Forces' position.

7. (C) The sub-Committee's report can be considered as only another stage in the discussion of the issue. The government and, possibly parliament, will be required to assess the reasonableness of the CF position in light of all arguments presented and the courts may be required to rule on the legality of the position.

8. (C) The Canadian Forces' position is:

a. Women should not be employed in combat or deployed units in the combat zone:

(1) on board high sea or combat vessels;

(2) forward of the division rear boundary on land; and

(3) in Air Squadrons.

b. Homosexuals will not be enrolled or retained in the Canadian Forces.

c. Only physically and mentally fit personnel will be permitted to serve.

d. Mandatory retirement age will be retained.

e. Only legal spouses will be recognized by the Canadian Forces. If a practical and prudent definition of a co-habiting spouse can be developed then a liberalization of current policy is possible.

9. (C) Although the government, parliament or the courts may, in future, direct that the CF change its position, the Forces need not

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modify its position at this time. However, it needs to prepare to defend it and put forth its best argument on grounds of reasonable limitations and ensure that these limitations are prescribed by law.

Decision Level

10. (C) There are three distinct levels which must be dealt with:

- a. Cabinet. Ministerial agreement with the CF position and the Minister's willingness to sponsor the CF position in front of Cabinet should be confirmed in light of the Committee's report. Then, a memorandum to Cabinet, endorsed by the Minister, explaining the rationale behind the Canadian Forces' position and alternatives for prescription into law needs to be prepared.
- b. Parliament. The Cabinet could possibly decide to refer the matter to Parliament. It is also likely that opposition parties may themselves raise the issue in the House. In either eventuality, some staff action may be required to support the Minister. It is premature to determine at this time the staff action required for this phase.
- c. The Courts. Whatever decision is taken, we can expect any limitations to be challenged in court. Arguments and evidence for defence must, therefore, be prepared.

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Statement of Policy

11. (C) The first requirement is a clear statement of policy by the Canadian Forces. This statement of policy should:

- a. Acknowledge our liability towards the constitution and state our desire to comply with its provisions.
- b. Place Article 15 of the Charter in the context of Article 1.
- c. Establish that the development of maximum operational readiness within resources allocated is a reasonable requirement imposed on the Canadian Forces in a free and democratic society.
- d. Develop, within the context of reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, the parameters for personnel policies required by the military requirement of operational readiness.
- e. Place in the context of the high stake of risk to freedom and democracy the degradation of operational readiness.
- f. State that, on the grounds of reasonable limits, we are currently in compliance with the Charter.
- g. State our intent to continue to review those limitations and remove them only when we are satisfied against evidence that they are no longer required.

Prescription in Law

12. (C) Limits to Article 15 must be prescribed by law. CFAOs, ministerial orders, Governor General orders and the NDA are legal regulations

and orders and meet the requirement of prescription in law. To achieve the requirement of prescription in law, we require:

- a. a redraft of CFAO 19-20 to clarify our policy on homosexuality;
- b. a publication, at least in CFAOs, of the trades closed to women and the units where they may not serve; and
- c. clarify the definition of marital status in QR&Os.

Staff Action

- 13. (C) The following staff action is proposed:
  - a. approval of the staff plan by 30 Aug 85:
    - (1) submission of draft to VCDS for comments, 20 Aug 85;
    - (2) submission of final memo to VCDS for staffing/approval, 30 Aug 85;
  - b. development of a policy statement for CDS approval by 10 Sep 85:
    - (1) submission of draft to VCDS for comments, 20 Aug 85;
    - (2) submission of statement to VCDS for staffing/approval, 30 Aug 85;
  - c. seek DMC and ministerial approval of policy statement by 1 Oct 85;
  - d. preparation of memorandum to Cabinet by 10 Nov 85:
    - (1) preliminary confirmation of ministerial position is required with approval of staff plan;



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- (2) draft memorandum in anticipation of Committee report submitted to VCDS for obtention of CDS' and ministerial preliminary comments, 10 Oct 85;
- (3) adjustment of draft memorandum as required by Committee report, 1 Nov 85;
- (4) memorandum submitted for ministerial approval, 10 Nov 85;
- e. rewrite of CFAO 19-20 by 1 Oct 85, publish by 1 Dec 85;
- f. write CFAO on employment of women by 1 Oct 85, publish by 1 Dec 85;
- g. clarify in QR&O the definition of marital status as is currently understood by 1 Nov 85, publish by 1 Feb 86;
- h. preparation of well-researched and developed papers, including a list of potential authoritative national and international witnesses in anticipation of court challenges by 15 Jan 86, (prepared by a full-time staff, possibly academics on contract under military direction).

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