

SECOND DRAFT

STATEMENT

EQUALITY RIGHTS IN THE CANADIAN FORCES

BACKGROUND

1. (C) Section 15 of the Canadian Charter of Rights and Freedoms (the Charter) prohibits discrimination in general and in particular on the basis of race, national or ethnic origin, religion, sex, age, or mental or physical disability. Section 1 of the Charter provides that these rights are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic.
2. (C) The Canadian Forces, like all Canadian citizens and institutions, is subject to the Charter and must and intends to comply with its provisions. Any limitations of the rights guaranteed under Article 15 must, therefore, under Article 1 be reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

THE MILITARY REQUIREMENT

3. (C) History, including recent events, clearly illustrates that when a free and democratic society has been unwilling and/or unable to defend itself, its survival as a free and democratic society is often jeopardized. Although Canada has enjoyed a long period of peace, it is not immune from the possibility of war. The threat of war remains; since the end of the Second World War, there have been over 300 civil or international wars and over 50 countries have regressed in the fight for freedom and democracy. It is estimated that there has been a greater loss of life as a result of these wars than during either the First or Second World War.
4. (C) It is reasonable for a free and democratic society to do its utmost to:
 - a. preserve its freedom and democracy;
 - b. deter war;
 - c. exercise its sovereignty;
 - d. defend itself against aggression;
 - e. defend its vital interest; and/or
 - f. participate in international peacekeeping missions.
5. (C) The provision of an effective, combat-ready military capability by the Canadian Forces for the defence of Canada is a reasonable, demonstrably justifiable and vital national objective.

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(C) Recognizing that:

- a. the present resources of the Canadian Forces are barely sufficient to meet its current peacetime commitment and are insufficient to meet wartime projected requirements, and
- b. it would not be reasonable for a free and democratic society to require its population to provide additional resources to meet the vital national objective of defence before current resources are developed and used to the maximum extent,

it is reasonable for the Canadian Forces, in a free and democratic society, to introduce, preserve and develop practices which attempt to get maximum operational readiness effect from its current personnel resources.

7. (C) In order to maximize combat effectiveness, the Canadian Forces assess that it is essential that its personnel policies and practices permit and foster the development and maintenance of:

- a. a real and perceived credibility as an effective military force on a domestic and international scene;
- b. combat effectiveness in Canada or abroad in peace and in war;
- c. discipline, physical, moral and mental fitness and robustness of its military personnel;
- d. military ethics and group cohesion;
- e. the immediate availability of its personnel for deployment; and
- f. the effectiveness of Command.

In order that, to deter aggression, the nation, the members of the Canadian Forces and our allies are secure in the knowledge that we can, and have confidence in our ability to, defend our vital interests and that other nations have the conviction that we are able and determined to do so.

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STATEMENT OF COMPLIANCE

8. (C) The Canadian Forces are currently in compliance* and intend to continue to comply with the Charter of Rights and Freedoms. Some policies, which are not in consonance with Article 15, are deemed essential to fulfill the national objective of defence and are therefore considered to be reasonable limitations as provided for in Section 1 of the Charter.

OBJECTIVES

9. (C) The Canadian Forces will continue efforts to impartially and critically examine limitations in effect under Section 1 of the Charter of Rights and Freedoms.

10. (C) Decisions to remove limitations must be taken in the context that the stakes are extremely high. A deterioration of the combat effectiveness of the Canadian Forces may jeopardize the survival of the nation as a free and democratic society or limit Canada's ability to achieve the national objectives of defence as listed at paragraph four above. Therefore, limitations will be discontinued only when there is evidence, or an assessment in light of the military requirement, that they no longer meet the condition set out in Section 1 of the Charter. When a limitation can be discontinued without prejudice to the national objective for defence, it will be discontinued.

EVIDENCE

11. (C) Acknowledging that obtaining evidence on the reasonableness of our policy measured against the military requirement under the full demands of conditions prevailing in war through projection and assessment, evidence to be considered in assessing limitations will include:

- a. evolutions in Canadian and other societies, the wide acceptance and enduring nature of which influence the acceptability of a limitation under Section 1 of the Charter;
- b. the policy and practices of the Armed Forces of other nations who may become potential protagonists in the domain of deterrence, sovereignty, aggression, subversion or peacekeeping. Potential changes in policy of the Canadian Forces will be assessed against the possible relative military advantage they could give a potential protagonist.

* Assumes completion of attached action plan.

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- c. recommendations arising from routine, periodic staff reviews, or from special studies;
- d. the results of experiences of the armed forces of other nations when considered applicable to the Canadian Forces; and
- e. when they can be conclusive and prudently conducted, trials conducted within the Canadian Forces when a reasonable assessment is not possible and when reliable evidence is not otherwise available.

12. (C) Evidence necessary to assess the acceptability of limitations under Section 1 of the Charter will continue to be obtained as soon as is practicable.

13. (C) When evidence indicates that maximum operational readiness measured against the parameters of the military requirement can prudently be met without a limitation, the action necessary to implement discontinuation of a limitation will be taken forthwith.