

PROPOSED CFAO 19-36/CFAO 19-20

SUMMARY OF CHANGES

TITLE

19-20           HOMOSEXUALITY - SEXUAL ABNORMALITY  
                  INVESTIGATION, MEDICAL EXAMINATION AND DISPOSAL

19-36           POLICY AND PROCEDURES - INAPPROPRIATE SEXUAL  
                  CONDUCT AND BEHAVIOUR

PURPOSE

Introduced by CFAO 19-36 - explains the purpose of the CFAO.

POLICY

19-20           The CF policy is clearly stated in para 7:  
  
                  "Service policy does not allow homosexual  
                  members or members with a sexual  
                  abnormality to be retained in the CF."

19-36           No policy statement except that the rationale  
                  for the policy is explained under GENERAL  
                  below.

GENERAL

Introduced by CFAO 19-36 - explains the rationale for the policy.

"The preservation of a high standard of morale and cohesion is essential to the maintenance of the effective operational capability of the CF. Experience has shown that cohesion and morale and hence operational capability are reduced to an unacceptable degree by inappropriate sexual conduct and behaviour within the CF."

DEFINITIONS

19-20           Defined homosexuality and sexual abnormality  
                  separately:

Homosexual. One who has a sexual propensity for persons of one's own sex; and

Sexual Abnormality. Any form of behaviour not conforming with accepted moral standards or constituting an offence under the C.C.C.

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- 19-36 Defines "INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR" (to be referred to as INAPPROPRIATE SEXUAL CONDUCT) to mean any SEXUAL ACT, OFFER OR REQUEST OF A SEXUAL NATURE WHICH:
- a. constitutes an offence under the Criminal Code of Canada or Code of Service Discipline; or
  - b. involves persons of the same gender.

#### PROCEDURES

##### Investigation

- 19-20 Directed CO's to investigate reports using MO if necessary, the Military Police, etc., preventing any form of embarrassment to the individual.
- If report is substantiated, call in the SIU and refer individual to psychiatrist if recommended by MO.
- 19-36 Introduces that a person who has engaged in inappropriate sexual conduct shall not normally be enrolled in the CF.
- Directs CO's to conduct preliminary investigation.
- If the act involves persons of the same gender, the member is to be questioned by or in the presence of a person of the same gender.
- If the preliminary investigations disclose evidence of inappropriate sexual conduct or indicates that further investigation is required the CO shall cause such follow-up investigation to be carried out as he deems appropriate in the circumstances.
- When the case is not substantiated, remove any reference from UPF and retain them separately for a period of two years upon the expiration of which they shall be destroyed in accordance with the Privacy Act and regulations made thereunder.

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Discipline

- 19-20 Normally, disciplinary action is not taken. However, it should be considered when there is scandal or discredit to the CF or when it constitutes an offence under the C.C.C.
- 19-36 When involvement is substantiated, CO shall take whatever administrative and disciplinary action as he deems appropriate.

Report

- 19-20 CO to forward investigation report, medical and SIU report to NDHQ through normal channels and make appropriate recommendations.
- 19-36 When substantiated, forward a confidential report of all the relevant details to NDHQ/DGPCOR or DGPCO, as appropriate.

Disposal

- 19-20 States that CF Policy does not allow homosexuals or members with a sexual abnormality to be retained in the CF.
- States that normally release is 5(d) except when as a result of a civil court or service tribunal, consideration shall be given for 2(a).
- 19-36 Introduces that:
- On receipt of a report at NDHQ, a committee composed of DGPCOR or DGPCO as chairman and DPLS and DMTS as members shall review and take action as indicated below:
- when no reasonable certainty exist of such involvement, return all copies of investigation reports with instructions that subject to those necessary for any criminal or disciplinary proceedings which have been or may be initiated, they be removed from the member's UPF and dealt with as previously described herein in accordance with the Privacy Act.

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when involvement is substantiated, the committee shall take the action below:

- if release is not justified (remoteness in time, isolated incident, out of character, etc.), recommend retention,
- any other circumstance, recommend release under 5(d) or 5(f) or when disciplinary or criminal misconduct is involved, such less favorable item as deemed appropriate by the committee.

Note: Recommendations of retention or release shall be submitted to ADM(Per).

On receipt of a recommendation, ADM(Per) shall:

In the case of a recommendation for retention, authorize the retention under such terms as he may prescribe or, if he considers that continued service is unacceptable he will take action below:

- when release is substantiated, ADM(Per) shall send the recommendation to the release authority and the CO. In addition,
  - ° when the act constitutes an offence against the C.C.C. or Code of Service Discipline, have member served with Notice of Intent
  - ° in other circumstances, refer case to normal release authority.
  - ° when no charges have been laid and Notice of Intent is not required, provide member with information on the basis for the release and with the opportunity to make representations as to the release.

In the case of Act with persons of the same sex, ADM(Per) shall:

- cause Notice of intent to be delivered, regardless of rank and length of Service

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- ensure member has an opportunity to make representations
- ensure member is aware of his right to redress.

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