

FEB 26 1969



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MEMORANDUM

C. P 5200-14 T.D. 9045

24 February, 1969

[Handwritten signature]
DPLS

DGPS

CANADIAN FORCES POLICY
SEXUAL DEVIATES

1. I have considered the content of the memorandum from CDS to CP respecting the above subject and set out below the legal aspects as I see them.

2. I have spoken with the official in the Department of Justice responsible for drafting the Bill to amend the Criminal Code. I asked him whether that department had considered including a provision, similar to that contained in the British Sexual Offences Act, 1957, prescribing that homosexual acts committed in private between consenting adults does not apply to such acts to which British military legislation would apply. He informed me that the British provision was considered to be redundant and, therefore, unnecessary. This was held to be so because the National Defence Act itself in section 83 proscribes scandalous conduct by officers, in section 84 cruel or disgraceful acts by officers and men, and in section 118, conduct to the prejudice of good order and discipline. Those provisions in the National Defence Act contemplate offences occurring in a military context that may or may not be punishable under the ordinary law of Canada. The conduct described could justifiably be the subject of a charge under one of those provisions because of:

- (a) possible undermining of authority where different ranks are involved;
- (b) the possibility of corruption of younger service men because of the nature and aggressiveness of many homosexuals;
- (c) security implications as a participant would still be open to blackmail on the basis of general abhorrence of such an act, the effect on family relations, or the certainty that his service career would be terminated; and
- (d) the lowering of morale among all ranks where practices of this nature are condoned.

*How can an act
undermine if it
is legal & acceptable*
*How can an act
be corrupt if it
is legal*

If there is fear that the service might be open to criticism in future by charging members of the forces for conduct that has ceased to be criminal under the general law of Canada, the answer would be that Parliament has not amended the National Defence Act and therefore did not intend to tie our hands in this respect.

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3. In view of the attitude taken by the Department of Justice, and for the reasons stated above, no defence interest would be prejudiced by the proposed amendment to the Criminal Code in its present form. Therefore, I suggest that this department should not propose amendment of the Bill now before Parliament.



H.A. McLearn
Brigadier General
Judge Advocate General
2-2633

cc: DM
CDS
DCPSS
DCPS

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