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CHIEF OF THE DEFENCE STAFF



CHEF DE L'ÉTAT-MAJOR DE LA DÉFENSE

② DECSS for u.a. par.
see para 4.
W. H. HENNESSY
Jr. Admiral
MAR 7 1969
CP

RECORDS MANAGEMENT DIVISION CP BRANCH REGISTRY	S 5200-1 (CDS)
Referred to: <i>CP</i>	5 March, 1969
File No. <i>5200-14 TD 9045</i>	
Chg'd. to: <i>SPLS 25-267</i>	

CANADIAN FORCES POLICY
SEXUAL DEVIATES

- Reference:
- A. V 2100-1(CDS) dated 6 February 1969 *f. Jan 1*
 - B. CP 5200-14 TD 9045 dated 24 February 1969 *plan 2*

1. A copy of Reference B has been received and reviewed by me. In general the comments of the JAG are appreciated, however, it is my belief that a defence legal counsel could successfully argue the point in a court of law on the grounds of "violation of human rights" of the individual regardless of the fact that he is subject to the Code of Service Discipline. Although the official in the Department of Justice may firmly believe that the National Defence Act does adequately provide the means for dealing with service personnel who may be accused of committing homosexual acts (Reference B para 2) this belief cannot be accepted as adequate legal authority. One adverse finding in a court of law could jeopardize the legal position of the Canadian Forces and the applicability of the pertinent sections of the National Defence Act as it pertains to the disciplining of service personnel who may have in fact committed a homosexual act. It is significant, in my opinion, that the British Forces considered it necessary, as indicated in Reference A paragraph 4, to incorporate a Subsection in their Sexual Offences Act, 1967 which specifically catered for the problem from the viewpoint of Service Discipline. An individual legal opinion may be that such special action was redundant, however, as much of our Canadian Law is based on the heritage and precedence of British Law, it would appear prudent that we should consider the fact that it was believed to be necessary in the British Sexual Offences Act, 1967 and that we should follow the guidelines as set by this example.

2. In line with the opinion I expressed in Reference A para 5, I reiterate that steps should now be taken to ensure the present regulations for the Canadian Forces are exempted from the application of any new legislation related to homosexual acts between consenting adults. A legal opinion is significant but not substantive. There is no guarantee that

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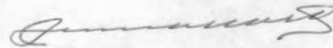
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the legal opinion expressed by the official of the Department of Justice would necessarily be upheld in a court of law.

3. As you can see by the foregoing I am deeply concerned that if the status of the pertinent sections of the National Defence Act are not properly established within the context of the proposed Canadian Sexual Offences Act that the Canadian Forces will find it difficult, if not impossible, to exercise disciplinary measures over service personnel committing homosexual acts between consenting adults.

4. You are requested to further review this matter, taking due consideration of the opinion expressed above, and to advise me of the proper course of action that we will take to ensure that the pertinent sections of the National Defence Act could not be challenged in a Court of Law.



J.V. Allard
General
CDS

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