

C O N F I D E N T I A L

D5203-1(JAG)

31 Mar 69

All AJAsG and DJAs:

CANADIAN FORCES POLICY RE SEXUAL DEVIATES
DISCIPLINARY ACTION

1. In the course of reviewing the amendments to the Criminal Code now before Parliament, this office has given careful consideration to the amendment removing the criminal aspect of homosexual acts committed in private by consenting adults. As you are aware, the present situation is that a serviceman may be charged under section 119 of the National Defence Act for a breach of the criminal law of Canada in relation to homosexual acts. Alternatively, he may be charged under section 83, 84, or 118 of the National Defence Act.

2. An opinion has now been received from the Department of Justice that the enactment into law of Bill C-150 would not preclude homosexual acts committed in private by consenting persons over the age of 21 years from constituting a Service offence under sections 83, 84 or 118 of the National Defence Act. From the point of view of Service discipline, acts of this nature stand in no different position from many other acts which constitute Service offences but which are not offences against the Criminal Code of Canada.

3. If this matter should be raised, it is pertinent to point out that the private rights of members of the Canadian Forces cannot be properly determined without reference to the duties imposed by the National Defence Act and the Code of Service Discipline and, therefore, the mere fact that a person who is not bound by those duties could not be prosecuted for a criminal offence if he engaged in certain conduct, is not a proper test for determining whether a member of the armed forces participating in such conduct has infringed sections 83, 84 or 118 of the National Defence Act. Conduct may be scandalous or disgraceful without constituting a criminal offence and the mere removal of certain acts from the ambit of the criminal law does not involve moral approval of those acts.

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4. The subject of this letter should be treated as confidential for the moment, but it is considered necessary that you be given some direction in this matter, as it is anticipated that commanding officers will raise the question of disciplinary action once the proposed amendments are passed. It should be noted, however, that no change in policy from that expressed in CFAO 19-20 is planned.

H. A. McLearn
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Brigadier-General
Judge Advocate General

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