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MEMORANDUM

P 5200-14 TD 0036 (DPLS)
S 5200-14

6 February, 1970

The Minister (The DM)

CANADIAN FORCES POLICY -
SEXUAL DEVIATES

1. The present policy of the Canadian Forces in respect of sexual deviates is contained in paragraph 6 of CFAO 19-20 which states that "Service Policy does not allow the retention of sexual deviates in the Forces". This policy, which has been in force in the Canadian Forces for years, is required for reasons of security, morale, discipline and efficiency.
2. Cabinet Directive (CD) 35, Security in the Public Service of Canada, in paragraphs 5 and 6, states that a person who is unreliable, not because of his disloyalty, but because of features in his character which may lead him to indiscretion or dishonesty, or make him vulnerable to blackmail or coercion such as greed, debt, illicit sexual behaviour, etc, may not be permitted to have access to classified information, unless, after careful consideration of the circumstances, including the value of his service, it is judged that the risk appears to be justified. A person who engages in homosexual practices, even though his acts may not be criminal under the present Criminal Code, is unlikely to be reliable. This type of relationship carries the stigma of sexual deviation and homosexuals will continue to be vulnerable to compromise and therefore probable security risks.
3. The condonation of homosexuality in a military environment which requires men to serve together in close quarters for extended periods would result in a lowering of morale and would have a direct effect on efficiency and discipline. In addition where the participants are different ranks, respect for authority is undermined. A resume of illustrative cases is attached.
4. When the recent amendments to the Criminal Code were introduced my predecessor took steps to ensure that the amendments would not have the effect of weakening the policies contained in CFAO 19-20 and CD 35 in so far as they applied to

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sexual deviates in the Canadian Forces. The Deputy Minister of Justice gave the opinion that the enactment of the amendments to the Criminal Code relating to homosexual acts

"would not preclude homosexual acts committed in private by consenting adults over the age of twenty-one years from constituting a service offence under Sections 83 (Scandalous conduct by officers), 84 (Cruel or disgraceful conduct) or 118 (Conduct to the prejudice of good order and discipline) 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. In these circumstances I am of the opinion that it is not necessary to make any special provision in the Criminal Code in relation to the Canadian Forces."

On the question whether the arrest, trial and punishment under Sections 83, 84 or 118 of the National Defence Act of members of the forces who engage in homosexual activities would on moral grounds constitute an improper invasion of private rights, the Deputy Minister of Justice advised that

"it is pertinent to point out to you 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."

5. For the foregoing reasons the policy for dealing with members of the Canadian Forces who are sexual deviates is clear.

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It is considered that there is a need for a clear and compatible policy for civilian employees of the Department for the same reasons. A civilian employee could be denied clearance to a higher level of security classification or be precluded from posting to a sensitive position but it is doubtful if he could be dismissed or transferred solely for homosexual practices. However, as long as the service and civilian members of this department are commonly employed and may become involved in homosexual practices with one another, they should in my opinion be treated according to common security and administrative policy. This is particularly the case where the acts are committed within the confines of a DND establishment.

6. It is understood that the Deputy Minister has certain reservations concerning the universality of a policy such as that applied in the forces which he will no doubt raise with you.
7. I suggest that we meet and discuss the subject.


F.R. Sharp
General
Chief of the Defence Staff

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