

DEPARTMENT OF NATIONAL DEFENCE

OFFICE OF THE
JUDGE ADVOCATE GENERAL



MINISTÈRE DE LA DÉFENSE NATIONALE

CABINET DU
JUGE AVOCAT GÉNÉRAL

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MEMORANDUM

1605-19-20 (DJAG/L)
28 Feb 86

DPCAOR (Adm)

DRAFT CFAO ON HOMOSEXUALITY

Ref: DGPCOR Minute of 26 Feb 86

1. Pursuant to Reference, I have reviewed the draft order on homosexuality and have a number of concerns relating to both form and legality, which I have set out below.

2. One of the major difficulties with the order as presently drafted, which prevents us from providing immediate sign-off as requested, is that its stated policy of precluding enrolment and employment of those who have committed a homosexual act, does not coincide with the recently developed general policy relating to enrolment in, and employment within, the Canadian Forces. This general policy, as set out in draft CFAO 49-14 (Employment Within the Canadian Forces - General) and in proposed amendments to CFAOs 6-1, 49-10 and 49-11 concerning enrolment, provides that, subject to meeting certain conditions and requirements, anyone who can contribute effectively to the operational capability of the Canadian Forces may be enrolled or employed therein. It is my understanding that the general policy set out in these orders is to be an "umbrella" policy and is intended to cover a variety of personnel concerns, including homosexuality. I therefore feel that the discrepancy between the general policy and the specific homosexual policy should be resolved by DGPCOR and DG Charter before proceeding with the draft homosexuality order.

3. In addition, I have a number of specific concerns relating to the drafting of the order. I have discussed these concerns with the legal officers from DPLS with whom you worked on the order, and we have agreed upon some recommended

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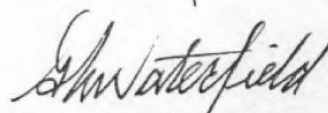
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changes to the draft. These recommendations are set out in the Annex to this memorandum.

4. Finally, I wish to make the observation that if the only proposed change to CFAO 19-20 is the elimination of the references to homosexuals, the policy iterated in that order might still be legally invalid for vagueness. If so, it is unlikely that it would withstand scrutiny by officials in the Department of Justice or by the Standing Joint Parliamentary Committee on Statutory Instruments or that it would survive a court challenge. I recommend, therefore, that the order be reviewed in the light of the general policy referred to in paragraph 2 above. It may be that, in view of this general policy, CFAO 19-20 may no longer be necessary.

5. I trust that the above is helpful to you. If I can be of further assistance in the preparation of this order, do not hesitate to contact me.



G.L. Waterfield
Col
DJAG/L
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