

AIDE-MEMOIRE FOR THE MINISTER

SUBJECT POLICY AND PROCEDURE INAPPROPRIATE
SEXUAL CONDUCT NEW CFAO 19-36

AIM

1. The aim of this aide-memoire is to inform the MND of the action taken with regard to Canadian Forces (CF) policy on Inappropriate Sexual Conduct since his announcement 11 Feb 87.

REGULATIONS AND ORDERS

2. Canadian Forces Administrative Order (CFAO) 19-36 (Inappropriate Sexual Conduct and Behaviour) has been written, and is now ready for distribution by means of a CANFORGEN message. Once signed and dispatched, the new CFAO will immediately cancel CFAO 19-20 (Homosexuality - Sexual Abnormality Investigations, Medical Examinations and Disposal).

POLICY

3. As a direct result of your recent direction a new CFAO 19-36 has been prepared, the essence of which has been included in this Aide-Memoire. Since the preservation of a high standard of morale and cohesion is essential to the maintenance of the effective operational capability of the Canadian Forces, inappropriate sexual conduct and behaviour within the CF is unacceptable. Inappropriate sexual conduct and behaviour means sexual acts, offers or requests relating to sexual acts, advocacy of sexual acts, provision of descriptions or depictions relating to sexual acts except in the course of duty, or other conduct of a like nature that would promote or tend to promote sexual acts which:

- a. constitute an offence under the criminal code of Canada or the Code of Service Discipline;
or
- b. involve persons of the same sex.

PROCEDURE

4. Persons who have engaged in inappropriate sexual conduct shall not normally be enrolled in the CF. If a Commanding Officer has reasonable grounds to believe that a member of the CF has been involved in inappropriate sexual conduct, he shall cause a preliminary investigation to be made.

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5. When a preliminary investigation or follow-up investigation contains reasonable substantiation of inappropriate sexual conduct by a member, a confidential report is forwarded to National Defence Headquarters. A committee composed of Director General Personnel Careers Officers (DGPCO) or Director General Personnel Careers Other Ranks (DGPCOR) as appropriate as Chairman, and Director Personnel Legal Services (DPLS) and Director Medical Treatment Services (DMTS) as members shall review the report. This committee will take the following action:

- a. return the confidential report to the applicable unit for destruction should it be determined there is not reasonable certainty that the member has been involved in inappropriate sexual conduct;
- b. recommend retention of the member if the conduct is considered an isolated incident, out of character, does not include criminal or disciplinary proceedings, did not involve willing participation of the member; or
- c. recommend release from the CF under item 5(d) or 5(f), or a less favourable item as the committee may deem appropriate.

6. The committee recommendations will then be forwarded to ADM(Per), who will authorize the member's retention or cause release proceedings to be initiated depending on the recommendations of the committee, and his appreciation of the evidence presented.

7. When ADM(Per) determines the member is to be released, and the inappropriate sexual conduct falls solely within the type of acts referred to at paragraph 3(b) above, the member will receive:

- a. a notice of intent to recommend release, regardless of the status, rank or length of service of that member;
- b. the opportunity to object to the intended release; and
- c. if release approved, the member will be informed of his right to submit a redress of grievance.

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In cases involving inappropriate sexual conduct contemplated at paragraph 3(a) above, the normal release procedures will be effected, including the serving of a notice of intent to recommend release, when applicable. Except that where no charges have been laid under the Criminal Code of Canada or the Code of Service Discipline and no notice of intent to recommend release is required by regulation, the member will be provided with information on the basis for release and an opportunity to make representations as to the release.

ADMINISTRATIVE ACTION - STATUS

8. The last release of a homosexual member from the CF occurred in June 1986. Since that time, Commanding Officers have continued to forward confidential reports concerning members who have been involved in inappropriate sexual behaviour. At this time, there are 25 cases awaiting review by the appropriate committee. Of these, there are several cases which are considered urgent in that the members want their release from the CF in order to attend education courses etc. These cases will be reviewed, and actioned in priority once your concurrence is given as recommended below.

Recommendation

It is recommended that CFAO 19-36 receive your concurrence so that the policy described above can be published and actioned.

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