

-> ADM (Per)

CONFIDENTIAL

MEMORANDUM

30 July 1987

The Minister

POLICY AND PROCEDURE - INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR

1. (C) The purpose of this memorandum is:
  - a. to provide information concerning recent developments in the quest for Ministerial concurrence in the proposed Canadian Forces Administrative Order (CFAO) 19-36, entitled Policy and Procedure - Inappropriate Sexual Conduct and Behaviour;
  - b. to describe the circumstances of a current case of homosexuality, Corporal Yade; and
  - c. to make recommendations and to obtain your concurrence in respect of (a) and (b) above.
2. (C) On 1 May 1987, at a meeting attended by myself and the Assistant Deputy Minister (Personnel) (ADM(Per)), you and your staff were briefed on the then current status of the Canadian Forces policy concerning homosexuality, and the proposed CFAO 19-36 which it is intended will reflect and implement that policy. At your direction, the Briefing Note attached as Annex A was prepared and submitted, summarizing developments to 6 May 1987, and recommending that the proposed CFAO 19-36, Annex B, receive your concurrence in order that it can be published under my authority as soon as practicable.
3. (C) Approximately two months later, on 2 July 1987, the attached letter dated 29 June 1987 signed by the Minister of Justice, Annex C, was received in your office. The letter states in part that:

"I cannot give my approval to the proposed C.F.A.O. in its present form. I am of the view that there is a serious risk that it would be in conflict with the Canadian Charter of Rights and Freedoms."
4. (C) On 20 July 1987, a Minute dated 17 July 1987 from your Chief of Staff was received by ADM(Per), requesting that a legal opinion on

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the Canadian Charter of Rights and Freedoms statement quoted above be obtained. On the same day, pursuant to that request, the Director of Personnel Legal Services (DPLS) was instructed to prepare a reply to the letter from the Minister of Justice for your signature by 3 August 1987. It is the intention that the reply will be based on and make reference to the legal opinion requested by the Minister's Chief of Staff. To this end, a meeting was scheduled for 28 July 1987 with Mr. D.M. Low, General Counsel, and Ms C. Beckton, both of the Human Rights Law Section of the Department of Justice, to obtain further information concerning the reasons for the conclusion of the Minister of Justice that he cannot support the proposed CFAO 19-36 as presently written. The meeting was attended by Canadian Forces legal officers on the staffs of DPLS and the Judge Advocate General (JAG).

5. (C) As a result of the meeting, the JAG has provided me with the memorandum at Annex D. The closing paragraphs of the memorandum state, in part, that:

"In summary, the policy of the Canadian Forces of refusing to enrol or releasing individuals for homosexual conduct would stand a good chance of being justified under section 1 of the Charter even if it is determined to violate subsection 15(1)....

...

... the current CFAO may have some technical difficulties but there is a reasonable possibility of successfully defending the policy of refusing to enrol or releasing persons engaged in homosexual conduct from the Canadian Forces if the policy is challenged under the Charter so long as the policy is promulgated as a CFAO. If the policy is not promulgated as a CFAO, or in some other manner recognized as law, the policy will likely be struck down as not being prescribed by law. Although there may be some technical difficulties with the proposed CFAO, the major difficulties appear to be of a political nature and will likely have to be resolved at the political level."

6. (C) Insofar as the Yade case is concerned (paragraph 1(b) above), on 17 December 1986, [redacted] at Canadian Forces Base (CFB) [redacted], submitted an application for redress of grievance to her commanding officer, complaining about her recommended release from the Canadian Forces on grounds of homosexuality. Not satisfied with her commanding officer's response wherein he indicated that he saw no grounds to grant redress, [redacted] forwarded her complaint to the next higher level of authority, the Base Commander, CFB [redacted], and, in doing so, stated that, "I fully

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intend to pursue this matter until I feel I am being treated fairly and that my human rights have not been violated."

7. (C) The Base Commander also did not support [redacted]'s redress, and commented, in replying to her, that:

"... You have readily admitted that you were involved in a homosexual relationship and that you and your partner were both desirous in continuing the relationship. The Service policy on this matter is clear in that members involved in homosexual activities or sexual abnormalities will not be retained...."

8. (C) In a letter dated 23 February 1987, forwarding her complaint to the Commander, Canadian Forces Training System (CFTS), [redacted] stated that:

"This matter is being dragged out and reflects poor man management on the part of the CF. Refusal to make a decision in this matter is not only very stressful to me but totally unfair.

I therefore request that a decision be made immediately or the entire matter be dropped, enabling me to carry out my duties as per normal. The inability of the CF to reach a decision, in my opinion, shows a definite lack of leadership qualities."

9. (C) Following denial of redress by the Commander, CFTS, [redacted] forwarded her complaint through normal channels to National Defence Headquarters (NDHQ) on 23 April 1987, and, in doing so, stated that:

"Note that [my grievance] was dated 17 Dec 86. Four months have elapsed and NDHQ has reached no decision on my release or retention. I have given [redacted] of service to the CF and after four months of patiently awaiting a decision I am now requesting that the decision be made immediately.

A quality of good leadership is to look to the welfare of subordinates, and, in my case NDHQ is exerting unnecessary mental stress and strain by avoiding the issue at hand. I do not toy with other peoples' lives and I expect the same consideration to be given to me. Being a homosexual is not a crime and I am tired of being treated as a criminal.

I therefore request an immediate decision on this matter, and if one is not forthcoming I request that all recommendations for release be retracted and I be allowed to carry on with my duties as per normal. I think that this is a reasonable request and if

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the powers that be have the welfare of their subordinates in mind, then a decision will be forthcoming soonest."

10. (C) On the basis of the information on file, including [redacted]'s acknowledgements of her propensity for persons of her own gender and participation in acts of a homosexual nature, there is no doubt that she is a person to whom the existing Canadian Forces policy of non-retention of homosexuals applies. It is also apparent that, in the interests of both the Service and [redacted], a decision is required with the utmost urgency on the question of her release. Apart from the continuing complaints of [redacted] about the length of time required to resolve this matter at NDHQ, and the pleas of Service authorities to act quickly to prevent further damage to morale and discipline caused by [redacted]'s continuing employment, CFAO 19-32, Redress of Grievance, stipulates that "an application for redress of grievance shall be dealt with as expeditiously as possible ..." There is a justifiable perception on the part of all concerned, including the applicant for redress herself, that this Order is not being complied with in this case, and this non-compliance is itself becoming a morale problem of serious proportions.

11. (C) Based on the foregoing paragraphs, your concurrence is urgently required on the following recommended courses of action:

- a. a letter in the form attached at Annex E to be dispatched to the Minister of Justice, indicating that, notwithstanding the potential legal problems which he foresees in applying our present policy on homosexuality through the medium of the proposed CFAO, we feel that our position is both legally defensible and mandatory in the interest of the continued operational effectiveness of the Canadian Forces;
- b. immediate promulgation and implementation of CFAO 19-36;
- c. denial of redress to [redacted], in the form of the letter at Annex F, and immediate implementation of her (honourable) release as being not advantageously employable in the Canadian Forces; and
- d. the provisions of CFAO 19-36 to be applied to the list of 23 other current homosexual cases, Annex G, and, where appropriate, the members concerned to be released.

12. (C) If you feel that you are not in a position to concur in the recommendations cited above as they apply to [redacted], since I am bound in all conscience both legally and morally to give her an

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immediate decision, I am left with only two possible options, as described in the ensuing paragraphs.

13. (C) First, to grant [redacted] redress by approving her retention in the Canadian Forces. This, of course, will be the end of any further attempts to maintain our present policy, since her case will immediately be cited as a precedent by others who have similarly engaged in sexual acts with persons of the same gender. As stated in the proposed CFAO 19-36, experience has shown that cohesion and morale and hence operational capability are reduced to an unacceptable degree by inappropriate sexual conduct and behaviour, including participation in acts of a homosexual nature, within the Canadian Forces. I must also point out that this repudiation of our policy would run counter to the statement which, you will recall, you made before the Standing Committee on Human Rights on 11 February 1987, and which is reflected in paragraph 2 of the Briefing Note attached at Annex A.

14. (C) The only other option open to me is to deny [redacted]'s application for redress of grievance within the constraints of the interim policy concurred in by you pending decision on approval of the proposed CFAO 19-36, i.e., send her the letter at Annex H, refusing to grant her request that the recommendation for her release be withdrawn, but taking no further action to implement her release. This, while being a technically correct response, would simply maintain the status quo, thereby exacerbating the problem in the eyes of all concerned. Further, it would almost certainly induce [redacted] to pursue her redress to the next higher level for adjudication, the Associate Minister, and, if necessary, to the Governor in Council, with attendant possibility of unfavourable media reports and Ministerial inquiries. For these reasons, I most certainly do not recommend this option.

15. (C) As you will appreciate, I consider this to be a policy question of the utmost urgency and importance to the Armed Forces of Canada. I most earnestly ask for your support and favourable decision, since I know that you share my concern that military capability, and therefore the security of the Nation, should not in any way be jeopardized by decisions taken for other than purely military reasons. I would, of course, be delighted to have the opportunity to discuss this matter with you personally or, in my absence, to designate ADM(Per) to do so, particularly if you feel that you cannot accept the recommendations set out above as written. If, on the other hand, you are now prepared to accept them on the basis of this memorandum, I would

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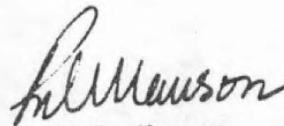
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ask that you sign the Minute appended below and return the file to me as soon as possible.



P.D. Manson  
General  
Chief of the Defence Staff

Minute

I concur in the recommendations set out at paragraph 11 above, and direct that action to implement those recommendations be taken as soon as possible.

Perrin Beatty  
Minister of National Defence

Date:

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