

CFAO 19-36

DRAFT 31 AUG 89

POLICY AND PROCEDURE -  
INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR

PURPOSE

1. This order prescribes the policy applicable to the enrolment of persons and the disposition of members in respect of whom there is evidence of inappropriate sexual conduct and behaviour as defined in paragraph 4 below.

GENERAL

2. The preservation of a high standard of morale and cohesion is essential to the maintenance of the effective operational capability of the Canadian Forces.

3. Any action taken or investigation carried out pursuant to this order shall be in such a manner as to ensure maximum confidentiality and to protect the privacy and dignity of any persons involved.

DEFINITIONS

4. For the purposes of this order:

000497

- a. "inappropriate sexual conduct and behaviour"  
(hereinafter referred to as "inappropriate sexual  
conduct") means, subject to paragraph 16, any act,  
offer or request of a sexual nature which  
constitutes an offence under the Criminal Code of  
Canada or the Code of Service Discipline; and
  
- b. "the Committee" means a committee composed of  
DGPCO or DGPCOR, as appropriate, as chairperson,  
and DPLS and DMTS as members.

NOTES

1. The offences under the Code of Service  
Discipline referred to in subparagraph (a) include,  
but are not limited to, those prescribed by sections  
92, 93, 95, 129, 130, and 132 of the National  
Defence Act.
  
2. CFAO 19-39 (Personal Harassment) prescribes the  
CF policy on personal harassment, which includes  
sexual harassment. Pursuant to subsection 129 of the  
National Defence Act, contravention of that order may  
constitute a service offence and may, in some  
circumstances, be considered inappropriate sexual  
conduct.

000498

5. Subject to paragraphs 6 and 7, a person shall not normally be enrolled or retained in the Canadian Forces where it is established that that person has engaged in inappropriate sexual conduct.

PROCEDURE - APPLICANTS FOR ENROLMENT

6. Where during the recruiting procedure, evidence is disclosed that an applicant for enrolment in the Canadian Forces has engaged in inappropriate sexual conduct, the matter shall be referred to NDHQ/DGPCO or DGPCOR, as appropriate, with an information copy to DGRET.

7. Upon receipt at NDHQ of a matter referred to in paragraph 6, the Committee shall review the matter as soon as practicable and, having regard to all the circumstances relating to the inappropriate sexual conduct, including:

- a. its seriousness;
- b. its remoteness in time;
- c. the extent to which it consisted of an isolated incident;
- d. the degree to which it was out of character for

- 4 -

the person; and

- e. the extent to which the person was a willing participant,

make a determination as to whether the person should be enrolled. The chairperson shall advise DGRET and the originator of the Committee's determination.

#### PROCEDURE - SERVING MEMBERS

8. A Commanding Officer who has reasonable grounds to suspect that a member of the Canadian Forces has been involved in inappropriate sexual conduct, shall cause an investigation to be made. Subject to paragraph 3, the investigation shall be carried out in any manner the Commanding Officer may deem appropriate.

9. Where the investigation does not establish inappropriate sexual conduct by a member, all records relating to the investigation or to the circumstances which led to it, other than those necessary for any disciplinary or criminal proceedings which have been or may be initiated, shall be removed from the member's Unit Personnel Records and retained separately for a period of two years, upon the expiration of which they shall be destroyed, in accordance with the Privacy Act and regulations made thereunder.

000500



10. Where the investigation discloses grounds to believe that the member has engaged in inappropriate sexual conduct, the Commanding Officer shall:

- a. take whatever administrative and disciplinary action may be deemed appropriate in the circumstances;
- b. having regard to all the circumstances relating to the inappropriate sexual conduct, including;
  - (1) its seriousness,
  - (2) its remoteness in time,
  - (3) the extent to which it consisted of an isolated incident,
  - (4) the degree to which it was out of character for the person, and
  - (5) the extent to which the person was a willing participant,

decide whether or not to recommend the member's retention in or release from the Canadian Forces;

000501

- 6 -

a d

- c. forward a confidential report of all the relevant details with the recommendation under subparagraph (b) to NDHQ/DGPCO or DGPCOR, as appropriate.

11. Upon receipt at NDHQ of a confidential report referred to in paragraph 10 of this order, the Committee shall review the report as soon as practicable and take action in accordance with paragraph 12 or 13, as appropriate.

12. Where the Committee concludes that the investigation does not establish that the member concerned has engaged in inappropriate sexual conduct, the Committee shall return all copies of the investigation report to the member's Commanding Officer, with instructions that the action described in paragraph 9 of this order be taken.

13. Where the Committee concludes that the investigation establishes that the member has engaged in inappropriate sexual conduct, the Committee shall, subject to paragraph 14, recommend to ADM(Per) that the member be released from the Canadian Forces normally under item 5(d) or 5(f) of the Table to QR&O 15.01, but in the event that circumstances warrant, under item 2(a).

000502

- 7 -

14. Where, having regard to all the circumstances of the inappropriate sexual conduct, including:

- a. its seriousness;
- b. its remoteness in time;
- c. the extent to which it consisted of an isolated incident;
- d. the degree to which it was out of character for the member; and
- e. the extent to which the member was a willing participant,

the Committee concludes that release of the member may not be warranted, the Committee shall recommend to ADM(Per) that the member be retained in the Canadian Forces.

15. Upon receipt of the recommendation of the Committee under paragraph 13 or 14, ADM(Per) shall:

- a. if the recommendation is in accordance with paragraph 13, and the recommendation is not accepted, or if the recommendation is in accordance with paragraph 14, and the

000503

- 8 -

recommendation is accepted, authorize the member's retention in the Canadian Forces under such terms and conditions as may be appropriate; or

- b. if the recommendation is in accordance with paragraph 13, and the recommendation is accepted, or if the recommendation is in accordance with paragraph 14, and the recommendation is not accepted, cause release action to be initiated by the appropriate authority at NDHQ.

16. Any act, offer or request of a sexual nature which involves persons of the same gender and which does not constitute an offence under the Criminal Code or the Code of Service Discipline has an adverse impact on the operational effectiveness of the Canadian Forces. Any such act, offer or request constitutes inappropriate sexual conduct and paragraphs 5 - 15 of this Order apply to any person who is believed on reasonable grounds to have engaged in such conduct. In any case involving such conduct, where ADM(Per) has decided to cause release action to be initiated pursuant to paragraph 15, ADM(Per) shall:

- a. cause a notice of intent to recommend release to be delivered to the member, regardless of the status, rank or length of service of the member; and

000504



- b. ensure that the member is given the opportunity to make representations regarding the proposed release in the same manner as provided in QR&O 15.21, 15.22 or 15.36, as appropriate.

17. The Committee shall review any objection submitted in response to a notice of intent to recommend release issued in accordance with this order and shall make appropriate recommendations to ADM(Per).

18. Upon receipt of the recommendations referred to in paragraph 18, ADM(Per) may either approve the release of the member or authorize the member's retention under such terms and conditions as may be appropriate.

19. The Commanding Officer of a member whose release has been approved on the basis of inappropriate sexual conduct shall ensure that the member has been informed of the right to apply for redress of grievance in accordance with QR&O 19.26.

(C)

1605-19-36 (DPCAOR)

Issued

Index