

CFAO 19-36

DRAFT 20 SEP 89

POLICY AND PROCEDURE -  
INAPPROPRIATE SEXUAL CONDUCT

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 as defined in paragraph 5 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. An applicant shall not be enrolled, or a member shall not be retained, in the Canadian Forces where it is established that that person has engaged in inappropriate sexual conduct, unless the applicant's enrollment, or the member's retention, is authorized in accordance with the procedures set out in this order.

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

#### DEFINITIONS

5. For the purposes of this order:

- a. "inappropriate sexual conduct" means any act, offer or request of a sexual nature that
  - (i) constitutes an offence under the Criminal Code or the Code of Service Discipline, or
  - (ii) involves persons of the same sex and does not constitute an offence under the Criminal Code or the Code of Service Discipline; and
- b. "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.

#### 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. The Committee shall review the evidence referred to in paragraph 6 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. whether or not it consisted of an isolated incident;
- d. the degree to which it was out of character for the applicant; and
- e. the extent to which the applicant was a willing participant;

determine whether the applicant 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 believe that a member of the Canadian Forces under his command has been involved in inappropriate sexual conduct shall cause an investigation to be made. Subject to paragraph 4, the investigation shall be carried out in any manner the Commanding Officer may consider appropriate.
- 9. Where the investigation does not establish inappropriate

sexual conduct by a member, all records relating to the investigation and 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.

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

- a. take whatever administrative and disciplinary action may be considered 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) whether or not it consisted of an isolated incident,
  - (4) the degree to which it was out of character for

the member, and

(5) the extent to which the member was a willing participant,

decide whether to recommend the member's retention in or release from the Canadian Forces; and

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

11. The Committee shall review the report referred to in paragraph 10 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, having regard to all the circumstances relating to the inappropriate sexual conduct,

including:

- a. its seriousness;
- b. its remoteness in time;
- c. whether or not 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;

determine whether or not the member should be recommended for release from the Canadian Forces.

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

15. Upon receipt of the recommendations referred to in paragraph 14, ADM(Per) may either authorize the member's

retention under such terms and conditions as ADM(Per) may consider appropriate or cause preliminary release action to be initiated.

16. Where ADM(Per) has decided to cause preliminary release action to be initiated in respect of a CF member pursuant to paragraph 15, ADM(Per) shall:

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

17. The Committee shall review any representations submitted by the member in response to a written 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 17, ADM(Per) may either authorize the member's retention under such terms and conditions as ADM(Per) may consider appropriate, or cause final release action to be



initiated.

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.

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