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CFAO 19-36 - POLICY AND PROCEDURE - INAPPROPRIATE SEXUAL CONDUCT AND
BEHAVIOUR

PURPOSE

1. THIS ORDER PRESCRIBES THE POLICY APPLICABLE TO THE ENROLMENT OF
PERSONS OR DISPOSITION OF MEMBERS IN RESPECT OF WHOM THERE ARE
INDICATIONS 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. EXPERIENCE HAS SHOWN THAT COHESION AND MORALE AND
HENCE OPERATIONAL CAPABILITY ARE REDUCED TO AN UNACCEPTABLE DEGREE BY
INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR WITHIN 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.

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DEFINITION

4. FOR THE PURPOSES OF THIS ORDER, "INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR" (HEREINAFTER REFERRED TO AS "INAPPROPRIATE SEXUAL CONDUCT") 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

5. A PERSON WHO HAS ENGAGED IN INAPPROPRIATE SEXUAL CONDUCT SHALL NOT NORMALLY BE ENROLLED IN THE CANADIAN FORCES.

6. IF A COMMANDING OFFICER HAS REASONABLE GROUNDS TO BELIEVE THAT A MEMBER OF THE CANADIAN FORCES HAS BEEN INVOLVED IN INAPPROPRIATE SEXUAL CONDUCT, HE SHALL CAUSE A PRELIMINARY INVESTIGATION TO BE MADE.

7. A COMMANDING OFFICER MAY ORDER THAT A PRELIMINARY INVESTIGATION BE CARRIED OUT IN ANY MANNER HE DEEMS APPROPRIATE. HOWEVER, A MEMBER

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SHOULD NOT BE QUESTIONED ON MATTERS RELATED TO INAPPROPRIATE SEXUAL CONDUCT AS DEFINED IN SUBPARA 4.B. OF THIS ORDER OTHER THAN BY, OR IN THE PRESENCE OF, A MEMBER OF THE SAME SEX.

8. WHEN A PRELIMINARY INVESTIGATION DISCLOSES EVIDENCE OF INAPPROPRIATE SEXUAL CONDUCT, OR INDICATES THAT FURTHER INVESTIGATION IS REQUIRED, THE COMMANDING OFFICER SHALL CAUSE SUCH FOLLOW-UP INVESTIGATION TO BE CARRIED OUT AS HE MAY DEEM APPROPRIATE IN THE CIRCUMSTANCES.

9. WHEN THE REPORT OF A PRELIMINARY INVESTIGATION OR FOLLOW-UP INVESTIGATION DOES NOT CONTAIN REASONABLE SUBSTANTIATION OF INAPPROPRIATE SEXUAL CONDUCT BY A MEMBER, THAT MEMBER'S UNIT PERSONNEL RECORDS OF SUCH INVESTIGATION, AND ANY REFERENCE TO THE CIRCUMSTANCES WHICH LED TO THE INVESTIGATION, SHALL BE DESTROYED IF THE MEMBER CONSENTS. IN ANY OTHER CASE, THE COMMANDING OFFICER SHALL:

A. TAKE WHATEVER ADMINISTRATIVE AND DISCIPLINARY ACTION HE DEEMS APPROPRIATE IN THE CIRCUMSTANCES; AND

B. FORWARD A CONFIDENTIAL REPORT OF ALL THE RELEVANT DETAILS TO NDHQ/DGPCO OR DGPCOR, AS APPROPRIATE.

10. UPON RECEIPT AT NDHQ OF A CONFIDENTIAL REPORT REFERRED TO IN PARA 9 OF THIS ORDER, A COMMITTEE COMPOSED OF DGPCO OR DGPCOR AS APPROPRIATE

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AS CHAIRMAN, AND DPLS AND DMTS AS MEMBERS, SHALL REVIEW THE REPORT AS SOON AS PRACTICABLE AND TAKE ACTION IN ACCORDANCE WITH PARAGRAPH 11.

11. WHEN THE COMMITTEE CONCLUDES THAT THERE IS NOT REASONABLE CERTAINTY THAT THE MEMBER CONCERNED HAS BEEN INVOLVED 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 PARA 9 OF THIS ORDER IS TO BE TAKEN WITH REGARD TO DESTRUCTION OF RECORDS, SUBJECT TO ANY CRIMINAL OR DISCIPLINARY PROCEEDINGS WHICH HAVE BEEN OR MAY BE INITIATED. IN ANY OTHER CIRCUMSTANCE, THE COMMITTEE SHALL TAKE THE FOLLOWING ACTION:

- A. IF THE CONDUCT IS DETERMINED TO HAVE OCCURRED UNDER CIRCUMSTANCES WHICH DO NOT JUSTIFY RELEASE, SUCH AS BEING AN ISOLATED INCIDENT WHICH IS OUT OF CHARACTER AND WHICH DOES NOT INVOLVE CRIMINAL OR DISCIPLINARY PROCEEDINGS, OR WHICH DOES NOT INVOLVE THE WILLING PARTICIPATION OF THE MEMBER, RECOMMEND THAT THE MEMBER BE RETAINED; OR
- B. IN ANY OTHER CIRCUMSTANCES, RECOMMEND THE RELEASE OF THE MEMBER FROM THE CANADIAN FORCES, NORMALLY UNDER ITEM 5(D) OR 5(F) OF THE TABLE TO QR&O 15.01, NOT ADVANTAGEOUSLY EMPLOYABLE OR UNSUITABLE FOR FURTHER SERVICE, OR, WHERE DISCIPLINARY OR CRIMINAL MISCONDUCT IS INVOLVED, SUCH LESS FAVOURABLE RELEASE ITEM AS THE COMMITTEE MAY DEEM APPROPRIATE.

RECOMMENDATIONS OF THE COMMITTEE^a UNDER THIS PARA SHALL BE SUBMITTED TO ADM(PER).

12. UPON RECEIPT OF THE RECOMMENDATIONS OF THE COMMITTEE PURSUANT TO PARA 11 OF THIS ORDER, ADM(PER) SHALL:

- A. IF THE RECOMMENDATIONS ARE IN ACCORDANCE WITH SUBPARA 11.A., AUTHORIZE THE MEMBER'S RETENTION IN THE CANADIAN FORCES UNDER SUCH TERMS AND CONDITIONS AS HE MAY PRESCRIBE, UNLESS HE CONSIDERS THAT THERE ARE COMPELLING REASONS WHICH RENDER THE MEMBER'S CONTINUED SERVICE WHOLLY UNACCEPTABLE, IN WHICH CASE HE SHALL TAKE THE ACTION PRESCRIBED BY PARA 13 OF THIS ORDER;
OR
- B. IF THE RECOMMENDATIONS ARE IN ACCORDANCE WITH SUBPARA 11.B., TAKE THE ACTION PRESCRIBED BY PARA 13 OF THIS ORDER.

13. WHEN ADM(PER) DETERMINES THAT THERE IS SUFFICIENT EVIDENCE TO SUBSTANTIATE THE INITIATION OF RELEASE PROCEEDINGS, HE SHALL SEND THE RECOMMENDATION TO THE RELEASE AUTHORITY AND THE COMMANDING OFFICER. IN ADDITION, HE SHALL:

- A. IF THE INAPPROPRIATE SEXUAL CONDUCT FALLS WITHIN SUBPARA 4.A. OF THIS ORDER:

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(i) CAUSE ACTION TO BE TAKEN IN ACCORDANCE WITH QR&O ART 15.21 OR 15.36 AS APPROPRIATE, IN THE CASE OF A MEMBER TO WHOM EITHER OF THOSE ARTICLES APPLIES, OR

(ii) IN OTHER CIRCUMSTANCES, REFER THE CASE TO THE NORMAL RELEASE AUTHORITY; OR

(iii) IN CIRCUMSTANCES 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, PROVIDE THE MEMBER WITH INFORMATION ON THE BASIS FOR THE RELEASE AND WITH AN OPPORTUNITY TO MAKE REPRESENTATIONS AS TO THE RELEASE.

B. IF THE INAPPROPRIATE SEXUAL CONDUCT FALLS SOLELY WITHIN SUBPARA 4.B. OF THIS ORDER:

(i) 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,

(ii) ENSURE THAT THE MEMBER IS ACCORDED THE OPPORTUNITY TO MAKE REPRESENTATIONS THEREON IN THE SAME MANNER AS PROVIDED FOR IN QR&O ARTS 15.21 OR 15.36 AS APPROPRIATE, AND

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(iii) IF RELEASE IS APPROVED, ENSURE THAT THE MEMBER IS AWARE
OF HIS OR HER RIGHT TO APPLY FOR REDRESS OF GRIEVANCE
UNDER THE PROVISIONS OF SECTION 29 OF THE NATIONAL
DEFENCE ACT AND QR&O ART 19.26.

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