

11 Dec

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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 AND
EMPLOYMENT OF PERSONS IN RESPECT OF WHOM THERE ARE INDICATIONS OF
INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR AS DEFINED BELOW.

DEFINITION

2. FOR THE PURPOSES OF THIS ORDER, "INAPPROPRIATE SEXUAL CONDUCT AND
BEHAVIOUR" (HEREINAFTER REFERRED TO AS "INAPPROPRIATE 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. CONSTITUTE HARASSMENT, IN THAT THEY ARE DIRECTED AT AND
OFFENSIVE TO A MEMBER OR CIVILIAN EMPLOYEE, ENDANGER THE
EMPLOYMENT OF A MEMBER OR CIVILIAN EMPLOYEE, UNDERMINE THE
PERFORMANCE OF A MEMBER OR CIVILIAN EMPLOYEE, OR THREATEN THE

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ECONOMIC LIVELIHOOD OF A MEMBER OR CIVILIAN EMPLOYEE; OR

C. INVOLVE PERSONS OF THE SAME GENDER.

GENERAL

3. THE PRESERVATION OF A HIGH STANDARD OF MORALE AND COHESION IS ESSENTIAL TO THE MAINTENANCE OF THE EFFECTIVE OPERATIONAL CAPABILITY OF THE CF. EXPERIENCE HAS SHOWN THAT COHESION AND MORALE AND HENCE OPERATIONAL CAPABILITY WOULD BE REDUCED TO AN UNACCEPTABLE DEGREE SHOULD INAPPROPRIATE CONDUCT EXIST WITHIN THE CANADIAN FORCES.

4. 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.

PROCEDURE

5. A PERSON WHO HAS ENGAGED IN INAPPROPRIATE 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 CF HAS BEEN INVOLVED IN INAPPROPRIATE CONDUCT, HE SHALL CAUSE A PRELIMINARY INVESTIGATION TO BE MADE.

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7. A CO MAY ORDER THAT A PRELIMINARY INVESTIGATION BE CARRIED OUT IN ANY MANNER HE DEEMS APPROPRIATE. HOWEVER, A MEMBER SHOULD NOT BE QUESTIONED ON MATTERS RELATED TO INAPPROPRIATE CONDUCT AS DEFINED IN PARAGRAPH 2.C. OF THIS ORDER OTHER THAN BY, OR IN THE PRESENCE OF, A MEMBER OF THE SAME GENDER.

8. WHEN A PRELIMINARY INVESTIGATION DISCLOSES EVIDENCE OF INAPPROPRIATE CONDUCT, OR INDICATES THAT FURTHER INVESTIGATION IS REQUIRED, THE CO 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 CONDUCT, UNIT PERSONNEL RECORDS OF SUCH INVESTIGATION, AND ANY REFERENCE TO THE CIRCUMSTANCES WHICH LED TO THE INVESTIGATION, SHALL BE DESTROYED. IN ANY OTHER CASE, IN ADDITION TO ANY OTHER ADMINISTRATIVE OR DISCIPLINARY ACTION REQUIRED OR DEEMED APPROPRIATE IN THE CIRCUMSTANCES, THE CO SHALL FORWARD A CONFIDENTIAL REPORT OF ALL RELEVANT DETAILS TO NDHQ/DGPCO OR DGPCOR, AS APPROPRIATE.

10. UPON RECEIPT AT NDHQ OF THE CONFIDENTIAL REPORT REFERRED TO IN PARAGRAPH 9 ABOVE, AN ADVISORY COMMITTEE COMPOSED OF DGPCO OR DGPCOR AS APPROPRIATE AS CHAIRMAN, AND DPLS AND DMTS AS MEMBERS, SHALL CONVENE AS SOON AS PRACTICABLE TO REVIEW THE REPORT AND CONSIDER THE CAREER DISPOSITION OF THE MEMBER INVOLVED.

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11. WHEN THE COMMITTEE CONCLUDES THAT THERE IS NOT REASONABLE CERTAINTY THAT THE MEMBER CONCERNED HAS BEEN INVOLVED IN INAPPROPRIATE CONDUCT, THE COMMITTEE SHALL RETURN ALL COPIES OF THE INVESTIGATION REPORT TO THE MEMBER'S CO, WITH INSTRUCTIONS THAT THE ACTION DESCRIBED IN PARAGRAPH 9 ABOVE 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, IN THE OPINION OF THE COMMITTEE, DO NOT JUSTIFY RELEASE, SUCH AS BEING AN ISOLATED INCIDENT WHICH IS OUT OF CHARACTER AND CRIMINAL OR DISCIPLINARY PROCEEDINGS ARE NOT INVOLVED, OR INVOLVING OTHER THAN WILLING PARTICIPATION, SUBMIT A REPORT TO ADM(PER) RECOMMENDING THAT THE MEMBER BE RETAINED; OR

- B. IN ANY OTHER CIRCUMSTANCES, RECOMMEND THE RELEASE OF THE MEMBER FROM THE CF, 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.

REPORTS OF THE COMMITTEE TO ADM(PER) UNDER THIS PARAGRAPH SHALL BE SUBMITTED THROUGH CPCS.A.

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12. UPON RECEIPT OF THE REPORT OF THE COMMITTEE PURSUANT TO PARAGRAPH 11 ABOVE, ADM(PER) SHALL PERSONALLY:

A. IF THE REPORT IS SUBMITTED UNDER SUBPARAGRAPH 11.A., APPROVE THE RECOMMENDATION OF THE COMMITTEE AND AUTHORIZE THE MEMBER'S RETENTION IN THE CF UNDER SUCH TERMS AND CONDITIONS AS HE MAY PRESCRIBE, UNLESS COMPELLING REASONS EXIST WHICH RENDER THE MEMBER'S CONTINUED SERVICE WHOLLY UNACCEPTABLE. IN THE LATTER CASE, HE SHALL TAKE THE ACTION DESCRIBED IN B. BELOW; OR

B. IF THE REPORT IS SUBMITTED UNDER SUBPARAGRAPH 11.B., TAKE THE ACTION PRESCRIBED BY PARAGRAPH 13 OF THIS ORDER.

13. WHEN ADM(PER) DETERMINES THAT THERE IS SUFFICIENT EVIDENCE TO SUBSTANTIATE THE INITIATION OF RELEASE PROCEEDINGS, HE SHALL:

A. IF THE INAPPROPRIATE CONDUCT FALLS WITHIN (A) OR (B) OF THE DEFINITION CONTAINED IN PARAGRAPH 2 ABOVE,

(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

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B. IF THE INAPPROPRIATE CONDUCT FALLS ONLY WITHIN (C) OF THE DEFINITION CONTAINED IN PARAGRAPH 2 ABOVE,

- (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 ACCORDANCE WITH QR&O ARTS 15.21 OR 15.36 AS APPROPRIATE,
- (iii) PERSONALLY TAKE THE DECISION AS TO WHETHER THE MEMBER SHALL BE RETAINED IN OR RELEASED FROM THE CF, AND
- (iv) 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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