

CFAO 19-36

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 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 on the part of members 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.

000839

DEFINITION

4. For the purposes of this order, "inappropriate sexual conduct and behaviour" (hereinafter referred to as "inappropriate sexual conduct") means any act, offer or request of a sexual nature which:

- a. constitutes an offence under the Criminal Code of Canada or the Code of Service Discipline; or
- b. involves persons of the same gender.

NOTES

1. The offences under the Criminal Code referred to in subparagraph 4(a) include, but are not limited to, sexual assault, incest, indecent acts, and other similar offences, which, by their nature, are inconsistent with the standards of morality and decency generally accepted by Canadian society. Offences under the Code of Service Discipline include, but are not limited to, those prescribed by sections 92, 93, 95, 129, 130 and 132 of the National Defence Act.

2. Caution must be applied in the course of any investigation or inquiry to distinguish between inappropriate sexual conduct and normally accepted gestures of affection or expressions of camaraderie.

3. 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

5. Subject to paragraphs 6 and 7, a person who has engaged in inappropriate sexual conduct shall not normally be enrolled in the Canadian Forces.

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

it appears that denial of enrolment may not be warranted, 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, a committee composed of DGPCO or DGPCOR as appropriate, as chairman, and DPLS and DMTS as members, (hereinafter referred to as the Committee), shall review the matter as soon as practicable and make a determination based on the criteria set out in paragraph 6 as to whether the person should be enrolled. The chairman 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 has been involved in inappropriate sexual conduct, shall cause a preliminary investigation to be made.

9. The preliminary investigation may be carried out in any manner the Commanding Officer deems appropriate. However, a member should not be questioned on matters related to inappropriate sexual conduct, as defined in subparagraph 4(b) of this order, other than by, or in the presence of, a member of the same gender.

10. When a preliminary investigation discloses evidence of inappropriate sexual conduct or indicates that further investigation is required, the further investigation shall be carried out in any manner the Commanding Officer may deem appropriate.

11. When the report of a preliminary investigation or follow-up investigation does not contain reasonable

6

substantiation of 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.

12. When the report of a preliminary investigation or follow-up investigation does contain reasonable substantiation of inappropriate sexual conduct by a member, the Commanding Officer shall:

- a. take whatever administrative and disciplinary action deemed appropriate in the circumstances;  
and
- b. forward a confidential report of all the relevant details with recommendations to NDHQ/DGPCO or DGPCOR, as appropriate.

000844

13. Upon receipt at NDHQ of a confidential report referred to in paragraph 12 of this order, the Committee shall review the report as soon as practicable and take action in accordance with paragraph 14 or 15, as appropriate.

14. When the Committee concludes that there is no 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 paragraph 11 of this order be taken.

15. When the Committee concludes that there is reasonable certainty that the member has been involved in inappropriate sexual conduct, the Committee shall, subject to paragraph 16, recommend to ADM(Per) that the member be released from the Canadian Forces, normally under item 5(d) or 5(f) to the Table to QR&O 15.01.

16. 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.

17. Upon receipt of the recommendations of the Committee under paragraph 15 or 16, ADM(Per) shall:

- a. if the recommendation is in accordance with paragraph 16, and the recommendation is accepted, authorize the member's retention in the Canadian Forces under such terms and conditions as may be appropriate; or



9

- b. in any other case, take the action prescribed by paragraph 18.

18. If ADM(Per) concurs with a recommendation made by the Committee under paragraph 15, or does not concur with a recommendation made by the Committee under paragraph 16, ADM(Per) shall:

- a. if the inappropriate sexual conduct falls within the definition in subparagraph 4(a), cause release action to be initiated by the appropriate authority at NDHQ; or
- b. if the inappropriate sexual conduct falls within the definition in subparagraph 4(b):
  - (1) 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
  - (2) 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.

000847

NOTE

Subparagraph 18(a) provides that the normal release procedures prescribed by QR&O Chapter 15 will apply to members whose inappropriate sexual conduct falls within the definition in subparagraph 4(a) of this order. Subparagraph 18(b) provides that all members whose inappropriate sexual conduct falls within the definition in subparagraph 4(b) will receive the benefit of a notice of intent to recommend release and the right to make objection thereto, notwithstanding that they may not be otherwise entitled to have these procedures applied to them under QR&O Chapter 15. This recognizes the fact that members whose inappropriate sexual conduct falls within the definition in subparagraph 4(b) are released as the result of a life-style inconsistent with military service, rather than conduct constituting a civil or service offence.

19. 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).

000848

11

20. Upon receipt of the recommendations referred to in paragraph 19, 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.

21. The commanding officer of a member whose release has been approved on the basis of inappropriate sexual conduct as defined in subparagraph 4(b) of this order 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

000849