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DEVELOPMENTS RELATED TO
CF POLICY ON SEXUAL ORIENTATION
CHRONOLOGY OF EVENTS

<u>Date</u>	<u>Detail</u>
9 Jul 76	Current version of CFAO 19-20 issued. Significant elements: <ul style="list-style-type: none">a. defined "homosexual" as one who has a sexual propensity for persons of one's own sex;b. required members to report awareness or suspicions that another member is a homosexual to the CO;c. required CO to conduct preliminary investigation;d. if preliminary investigation tended to substantiate the report, required the CO to call in the SIU to investigate further; ande. stated that service policy does not allow homosexual members to be retained in the CF.
17 Apr 85	Section 15 of the Canadian Charter of Rights and Freedoms (the equality rights section) came into force.
Oct 85	<u>Equality For All</u> , the Report of a Parliamentary Sub-Committee on Equality Rights, was tabled in the House. The report recommended, in part, that the <u>Canadian Human Rights Act</u> be amended to add sexual orientation as a prohibited ground of discrimination and that the CF bring its employment practices in conformity with the Act as amended.
10 Feb 86	Message ADM(PER) 013 101800Z FEB 86 issued to promote medical aspects of HIV control. Paragraph 4 of the message amended CFAO 19-20 with following effect: <ul style="list-style-type: none">a. left definition of homosexual unchanged;

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- b. removed obligation for members to report awareness or suspicion that another member is a homosexual;
 - c. required CO to conduct preliminary investigation if he "has reason to believe that a member ... has committed ... a homosexual act". (Note: Focus shifted from propensity to homosexual acts).
- 4 Mar 86 Toward Equality, the Government response to the report of the Parliamentary Sub-Committee on Equality Rights, tabled in the House. It contains the statement that the "... Government will take whatever measures are necessary to ensure that sexual orientation is a prohibited ground of discrimination in relation to all areas of federal jurisdiction." This statement had no immediate policy effect.
- 14 Mar 86 NDHQ action directive issued 14 Mar 86 establishing the Charter Task Force (CTF). In part, the CTF was tasked to "... determine the effect on CF policies of the Government response (in Toward Equality) concerning ... sexual orientation".
- 17 Mar 86 ADM(Per) memorandum to CPCSA. Confirmed that the basic policy set out in CFAO 19-20 was still in effect.
- 15 Apr 86 Mr Andre (Assoc MND) appeared before the Standing Committee on National Defence. In response to questions from Mr Robinson, Mr Andre responded: "... I do not think I would be fulfilling my responsibilities if I were to foreclose the possibility of behaviour resulting in a dismissal. It would be behaviour, not the fact that somebody informed that such-and-such is a homosexual or lesbian." Mr Robinson replied: "It would be inappropriate behaviour by the individual, whether homosexual or heterosexual." Mr Andre confirmed this by saying "Precisely".
Comment: Although the policy shift from emphasis on propensity to emphasis on behaviour is occasionally attributed to Mr Andre, it is apparent that the policy shift really began with the message of 10 Feb 86.

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- 17 Jun 86 Gen Thériault appeared before the Standing Committee on Human Rights. In response to a question from Mr Robinson, the CDS confirmed his (the CDS') understanding that, as stated by Mr Andre, an individual would not be released solely on the basis of his homosexuality and that this represents a change from the policy in CFAO 19-20.
- Sep 86 Charter Task Force Final Report (2 volumes), submitted to the CDS. The report contained the recommendation that: "--- the current policy of not employing homosexuals in the Canadian Forces be continued as a reasonable limitation within the meaning of Section 1 of the Canadian Charter of Rights and Freedoms."
- 17 Nov 86 ADM(Per) memorandum advised that the CDS had agreed to an interim policy until a final decision was made on the recommendations in the Charter Task Force Final Report. Pending a final decision on the Charter Task Force recommendation, only cases where it was clearly in the interests of the service or the individual were to be processed for decision.
- 11 Feb 87 Mr Beatty (MND) and Gen Manson appeared before the Standing Committee on Human Rights. MND announced acceptance of the Charter Task Force recommendation concerning sexual orientation. Advised that obligation for members to report suspected homosexuality will be removed (in fact, already removed by 10 Feb 86 message). Also advised that exclusion of homosexuals would be based on conduct or behaviour rather than sexual orientation alone. Mr Robinson, pursuing the nature of the behaviour that could lead to release, got a clear statement from Gen Manson to the effect that homosexual activity is unacceptable behaviour. "Homosexual activity" was not defined. Comment: Despite confirming the intention to maintain an exclusionary policy, the announcement led to a continuation of interim arrangements pending the development and approval of a replacement for CFAO 19-20.
- 24 Mar 87 Draft CFAO 19-36, designed as a replacement for CFAO 19-20 and incorporating MND's 11 Feb 87 policy statement, referred to the MND for concurrence. Concurrence neither given nor denied. MND referred draft CFAO to Minister of Health and Welfare in Aug 87.

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30 Sep 87 Memorandum to DPLS from the Departmental Assistant in the office of the Assoc MND. This memorandum purports to authorize the release of homosexuals provided certain conditions are met. Comment: Although it came from the office of the Assoc MND, it is considered to have no particular status as it was issued by the Departmental Assistant and it does not appear that the policy it contains was approved by the Assoc MND personally.

Jan 88 Cabinet Committee on Social Development considered draft CFAO 19-36. Four options discussed but no decision taken.

20 Jan 88 Memorandum from DGPCOR to DPCOR and DPCAOR. This memorandum entitled "Interim Reply on Homosexuality" (presumably intended to be "Policy" vice "Reply") contains the statement that "--- we have been authorized by direction from Assoc MND ---". No such direction has been located. It is believed that DGPCOR was referring to the 30 Sep 87 memorandum from the Departmental Assistant as the wording is similar. Regardless, the publication of this DGPCOR memorandum provided the basis for what is now generally referred to as the interim policy. The following criteria were to be met:

- a. a requirement for self-acknowledgement of homosexuality and DND consideration that the member is a homosexual;
- b. a desire by the member to be released from the CF; and
- c. no objection by the member to release under QR&O 15.01 Item 5(d).

The memorandum also established a number of career restrictions (no promotion, no reengagement, etc) for a member to whom CFAO 19-20 applies but who does not meet the above criteria.

30 Aug 89 The Deputy PM, Min of Justice, MND and Assoc MND met and agreed to support the CF policy on sexual orientation. Min of Justice subsequently wrote the PM and suggested that proposed new CFAO (CFAO 19-36) be considered at the same time as Cabinet considered amendment to the Canadian Human Rights Act. Comment:

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Subsequently, Justice officials indicated their discomfort with the position of their Minister. The issue arose again in early 1990 as amendments to the CHRA were being discussed. Ultimately, neither the amendment to the CHRA nor the approval of the proposed CFAO 19-36 were progressed.

- 29 May 90 Gen de Chastelain appeared before the Standing Committee on National Defence and Veterans Affairs. He confirmed that an interim policy was in place until a policy (new CFAO 19-36) proposed by the department had been reviewed.
- 20 Aug 90 As an outcome of the "External Review of the Canadian Forces Special Investigation Unit" (the Marin Report), the CIS removed the investigation of homosexuality per se from the mandate of the SIU. This represented a de facto change to the policy in CFAO 19-20.
- 21 Nov 90 ADM(Per) message deleted all references to the SIU in CFAO 19-20. Moreover, the message directed COs to refer any cases of suspected homosexuality to NDHQ for direction before initiating any formal investigation.
- 24 Sep 91 Min of Justice letter to the MND recommended that the CF policy be revoked and that outstanding court cases be settled.
- 7 Oct 91 CDS letter to the MND accepted the opinion of the Min of Justice and recommended revocation of CF policy.
- 7 Oct 91 Matter considered by Operations Committee.
- 8 Oct 91 Matter considered by Planning and Priorities Committee.
- 9 Oct 91 Assoc MND briefed caucus on intended policy change.
- 9 Oct 91 Release of material to the media in expectation that policy change had been approved.
- 10 Oct 91 Matter reviewed in Cabinet. DM and CDS on call (unknown if they were present).

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- 22 Oct 91 Ms Collins, Assoc MND, appeared before the Standing Committee on National Defence and Veterans Affairs and acknowledged her personal agreement with the statement: "The Canadian Forces of today believe an individual's sexual orientation is irrelevant to whether or not that individual can perform his or her job."
- 29 Oct 91 Matter considered by Planning and Priorities Committee. VCDS and CPRM on call but not present during discussions.
- 30 Oct 91 Conservative MPs briefed by MND with Assoc MND, VCDS, CPRM, DGPP and DM Justice in attendance.
- 5 Nov 91 Conservative MPs briefed by Assoc MND with CDS, DGPP, ADM(Per), DM Justice and B. McIsaac (DOJ) in attendance.
- 5 Nov 91 Opposition MPs briefed by ADM(Per) with DGPP and B. McIsaac in attendance.

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