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AIDE-MÉMOIRE - ADM(PER) INFORMATION BOOK

POLICY IN RESPECT OF HOMOSEXUAL CONDUCT

Aim

1. The aim of this article is to provide ADM(Per) with essential facts pertaining to the CF policy in respect of homosexual conduct.

Regulations and Orders

2. Canadian Forces Administrative Order 19-20 (Homosexuality - Sexual Abnormality Investigations, Medical Examinations and Disposal)

Policy

3. The Canadian Forces enrol, and retain, only such persons as are capable of performing all military tasks that are assigned to them, and whose life-styles are compatible with a military environment. In the case of homosexuals, it is the considered view of the Minister of National Defence, and authorities in both the Department and the Canadian Forces, that such persons, because of their sexual orientation, create a number of serious problems for the Canadian Forces which militate against their employment. Canadian Forces policy in respect of homosexuals is, and remains, that they are not knowingly enrolled or retained in the Canadian Forces. This policy, in respect of serving members, is set out in Canadian Forces Administrative Order 19-20. A member who is to be released from the Canadian Forces as a result of the application of this Order will normally be honourably released under Item 5(d) of the Table to Article 15.01 of the Queen's Regulations and Orders for the Canadian Forces.

Reasons for Policy

4. Bona fide operational/occupational impediment - Homosexuality presents a bona fide operational impediment in that it is not possible to fully utilize homosexuals to meet the exigencies of the CF. A substantial number of military personnel serve outside the country: under the United Nations, North American Aerospace Defence and North Atlantic Treaty Organization auspices, or in Canadian military missions throughout the world. In a great many cases, homosexuals would be ineligible for such service, because of the laws or the social mores of the host country. Such limitations on the employment of homosexuals are a fact of life and would seriously reduce the operational flexibility of the Canadian Forces. Experience has shown that the presence of

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homosexuals at isolated postings, in communal life in barracks, on board ship, in the field and other situations where personal privacy is most difficult or impossible, is most disruptive and at times results in physical attacks on the homosexual(s) concerned. To permit homosexuals in the Forces would adversely affect the operational efficiency of the CF.

5. Discipline - Discipline is essential in a standing armed force in any democracy and a strict and hierarchial rank structure is essential to the maintenance of discipline in an organization capable of applying force on direction. This requirement for a highly disciplined and structured Force, and for the maintenance within a closed society of a life-style acceptable to the vast majority of its members inevitably results in some restriction of personal freedoms. Certain practices which may be tolerated in civilian society may have to be barred in order to meet military requirements. Homosexuality falls within this category and is one such practice.

6. Morale - Morale is seen to be an integral and necessary part of any military force. Military forces have historically seen morale, a function of self-image, group cohesion, spirit and a host of intangible factors, as being necessary to accomplish any military mission. Morale can easily be destroyed, but is extremely difficult to rebuild. To enrol or retain known homosexuals would do grave damage to morale in the Canadian Forces and, for that reason alone, such a course of action is unacceptable.

7. Public Image and Recruitment - A primary concern of the CF is and must be to recruit and retain, on a voluntary basis, a disciplined military force required to fulfill our defence commitments. The image of the CF in the eyes of the public is of direct concern, since the maintenance of a volunteer force depends a great deal on how the Forces are viewed by potential recruits, and by their relatives and friends. The majority of Canadians are not prepared to accept the idea of homosexuals in the Forces and they would not see such an organization as an acceptable or suitable environment for their sons and daughters.

8. Self-Image - A military force, particularly one composed of volunteers, has an image of itself which is to some extent determined by how it is viewed in the eyes of the nation, of foreign nationals and of other allied military forces. Military forces have historically seen self-image to be of extreme importance in crisis situations. The "military spirit" or "esprit de corps" depends upon self-image and a number of intangible factors. It can be easily destroyed and is extremely difficult to rebuild. To enrol homosexuals would do grave damage to the self-image of the Canadian Forces.

9. Security - Past experience has shown that homosexuals are at greater risk to being subverted by authorities of foreign countries

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whose interests are inimical to those of Canada and her allies. Such persons are still in society, either directly or indirectly, subject to blackmail. Even if a homosexual is entirely open about the matter and thereby reducing the risk of direct blackmail, he is still a security risk indirectly because of the involvement of a partner "who may not have come out of the closet" or because the member's propensity may be exploited. Experience, over the years, has demonstrated a degree of vulnerability to blackmail. Unless and until social attitudes change considerably, it is impossible to place homosexuals in security sensitive positions.

10. Hierarchical Rank Structure - Discipline requires a strict and hierarchical rank structure in the CF, which places leaders in a dominant position vis-à-vis their subordinates. The operational effectiveness of the Forces requires subordinates to obey orders first, unless they are manifestly unlawful, and to question the wisdom of such orders at a later time and through a prescribed procedure. This could create a unique problem pertaining to the use of rank or position to impose or solicit a homosexual relationship upon a subordinate. This is a particularly unwholesome situation where the subordinate is a youthful member of the military or a member of one of the reserve or cadet units. Apart from being socially abhorrent, this would undermine leadership, authority and respect between the ranks, and adversely affect the military chain of command.

11. Illegality - Not only is homosexual activity illegal in some countries of the world where members of the CF may be required to serve, but it is also illegal in Canada, when involving persons under the age of 21 with or without their consent or when committed in public places. Consequently, as a significant number of members of the Canadian Forces, especially at the recruit level, are under the age of 21 years, the Canadian Forces has a duty to exercise great care so as not to unnecessarily expose them to dangers in this regard. There is also the problem of communal living in barracks, ships or in a field environment. These are clearly not private places, and any homosexual acts committed in such places would in fact be criminal offences. Notwithstanding that certain homosexual activity is not a criminal offence, it may still constitute an offence in the CF under Sec 82 of the NDA for Scandalous Conduct; Sec 83 of the NDA for Disgraceful Conduct, or Conduct to the Prejudice of Good Order and Discipline under Sec 119 of the NDA. These offences are contained in the Code of Service Discipline, which forms part of the NDA, an Act of the Parliament of Canada. It is worthy to note that, when the Canadian Criminal Code was amended to legalize homosexual acts between consenting adults over 21 years of age when committed in a private place, a legal opinion was sought from the Department of Justice as to whether or not the Criminal Code should be amended to specifically exempt members of the CF from its application, as did the British in their Sexual Offences Act of 1967.

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In his letter of Mar 24, 1969, the Deputy Minister of Justice stated, in part:

"...in my opinion the enactment into law of Bill C-150 would not preclude homosexual acts committed in private by consenting adults over 21 years from constituting a Service offence under sections 83, 84 or 118 of the National Defence Act. From the point of view of Service discipline, acts of this nature stand in no different position from many other acts which constitute Service offences but which are not offences against the Criminal Code of Canada...."

At about the same time, in a conversation between the JAG and the official in the Department of Justice responsible for drafting the Bill to amend the Criminal Code, in which the question of exempting the CF was again raised, the official is reported to have stated that the British provision was considered to be redundant and therefore unnecessary in the Canadian context. This was considered to be so because the National Defence Act itself contemplated offences occurring in the military context that may not be punishable under the ordinary laws of Canada.

12. Micro environment - The Canadian Forces, unlike most employers, provides, in many instances, a combined working and social milieu. Where employees, in this case members of the Canadian Forces, have little or no choice as to either this environment, the company they keep or where they will serve, the employer, the Canadian Forces, has an obligation to provide a milieu that is acceptable to the vast majority of his employees as well as doing all possible to preserve the cohesiveness and harmony of the organization. Because in such a milieu persons having unusual behavioural traits may attempt to inflict their views upon others, and that this may be found offensive to the majority, there is only one method of assuring our servicemen and servicewomen that these rights will be respected. It is possible to prevent the situation where behavioural patterns will cause additional stress, both social and work-related, only by avoiding the employment of homosexuals in the first place. Furthermore, the employment of homosexuals could be most disruptive and lead to incidents of violence against the homosexual. The effectiveness of military service is, more so than any other activity, predicated on strong group cohesion and morale. The employment of homosexuals would be subversive of both.

13. Cohesiveness - The cohesiveness of a military force is of paramount concern in the operational efficiency of day-to-day tasking and deployment. It is an age-old rule that a house divided cannot stand, and the employment of homosexuals would indeed divide the cohesiveness of the military unit.

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14. Majority Rights - Military forces of the world have traditionally exhibited a strong abhorrence to homosexual behaviour to a far greater degree than some segments of their corresponding civilian population. The CF adopts a paternalistic relationship to its members and, as such, it endeavours to ensure that the majority are kept happy and that their individual rights will be respected to the greatest degree possible within the military framework. This is done, in part, by avoiding the employment of homosexuals.

15. Moral Disapproval - The CF encourages and enforces a strict compliance to the accepted moral standards. The mere fact that homosexuality is not a criminal offence when committed in private between consenting adults (over 21) does not involve moral approval of that conduct, and conduct may be scandalous or disgraceful without committing a criminal offence. Consequently, the Canadian Forces does not wish to employ or retain those males and females who engage in homosexuality, voyeurism, gross indecency, bestiality or other behaviour which does not conform to accepted moral standards.

Sexual Orientation - The Canadian Charter of Rights and Freedoms and The Canadian Human Rights Act

16. The Canadian Charter of Rights and Freedoms and The Canadian Human Rights Act do not proscribe sexual orientation as a prohibited ground of discrimination. Even if they prohibited discrimination on the ground of sexual orientation, it is the CF view that such a prohibition would not apply to the CF, in light of the CF bona fide occupational requirement which can be demonstrably justified in a free and democratic society.

Detection

17. The Canadian Forces does not place undue or special emphasis in obtaining information on the sexual orientation of potential or serving members.

- a. Potential members - In regard to potential members of the Canadian Forces, Recruiting Units, as part of the screening process, ask questions relating to social activities and social skills, with a view to determining whether there is in existence a personality factor that would hinder the working relationship of the applicant with peers of either sex. No questions are asked that directly relate to sexual orientation unless, in answer to questions posed during the interview, there is an indication that the candidate has shown homosexual tendencies. If the interviewing officer

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believes that such an inclination exists, he may, in his discretion, ask the question directly.

- b. Serving members - For serving members, this type of information may surface in the course of a police investigation into the complaint of an alleged assault under the Criminal Code or the Code of Service Discipline. Another time that an investigation may turn up evidence of homosexuality is when a serving member is the subject of a routine security clearance investigation, which is conducted in accordance with Cabinet Directive #35.

Allied Armed Forces Position on Homosexuals

18. United Kingdom: The Army Act, the Naval Discipline Act and the Air Force Act all proscribe homosexual conduct on the part of servicemen and servicewomen and render such conduct offences under the respective Acts. Homosexuals are not recruited and, if it is determined that a member is a homosexual, that member is released.

19. United States: The United States Army, the United States Air Force, the United States Navy and the United States Marines all share a common policy of discharging known homosexual service members and preventing entry of homosexuals into their respective Services.

20. Federal Republic of Germany: German authorities consider that it is impossible for homosexuals to function in their armed forces and their policy is one of non-toleration. Homosexuals are not permitted to enrol in the German Armed Forces and, if it is determined that a member is a homosexual, that member is released.

21. The arguments used in support of the United Kingdom, United States and the German position are, in the main, the same as those advanced in support of Canadian Forces policy.

Rehabilitation of Homosexuals

22. The issue of rehabilitation of homosexuals is a difficult one because the psychiatric community has not accepted homosexuality as a disease. The discussion, therefore, is not rehabilitation of a disease but rather of a pattern of behaviour. Rehabilitation then would require psychoanalysis for which the CF would have to contract for civilian treatment. Generally, the prognosis is not good, and considerable expense (at least 75 dollars per hour for 350 hours, i.e., 26,000 dollars) would be incurred with very minimal assurance of success. American experience has shown that such re-orientation attempts are

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successful in less than one third of cases where the prognostic features were good.

23. Accurate figures for the management of lesbians are not available, a reflection of the fact that far fewer females are referred for treatment in our society where female homophile activity is tolerated to a much greater extent than is male homosexuality. However, it is reasonable to assume that rehabilitation of females would present the same problem and have a similar outcome.

24. In consideration of all the factors:

- a. the age of the personnel involved;
- b. their generally low level of training at point of discernment of the problem;
- c. the length of the treatment process;
- d. the cost involved; and
- e. the low probability of success,

a rehabilitation program for homosexuals in the CF has not been recommended or established.

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