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POLICY RE SEXUAL OFFENCES

Appendix "a" to
WCC 3040-1 (AAG)
WCC 3700-1
Dated 7 Jun 57

1. All cases of rape committed in Canada will be tried by the civil courts under NPA Section 61. Where other sexual offences are committed by servicemen against women such as indecent assaults, etc it is left to the discretion of the CO to decide whether or not the offence will be tried by a service tribunal or by the civil courts. However, if the woman herself is a member of the Services, it is preferable to deal with the case through service tribunals.

2. Where acts of homosexuality or other aberrations of sexual behaviour come to notice, greater care must be exercised by COs and Commanders in view of the discredit that publicity about such acts may cast on the Services and because of the policy laid down by AHQ that servicemen or servicewomen involved in such acts must be released from the Services.

3. Whilst nothing is said explicitly concerning servicewomen involved in acts of homosexuality it is considered that they should be released forthwith from the service through administrative channels only. This opinion is based on the interpretation given to the policy laid down by AHQ which is outlined hereunder.

4. The policy laid down in WCC 3040-1 (A3) dated 8 Dec 55 reflects word for word the policy laid down by Army Headquarters concerning homosexual and gross indecency offences by men. It is realized that this policy mainly provides for the release from the service of the servicemen involved but it is so worded as to give great discretion to local authorities and as to imply a recommendation that disciplinary action is not desirable in such cases.

"approved" not stated

5. This interpretation has been confirmed by the directives received from AHQ in recent cases which were submitted for its consideration by this Command. In these instances AHQ explicitly stated that disciplinary action was not desirable. In these instances AHQ approved administrative disposal of the Service persons rather than the furtherance of disciplinary action. AHQ at this time stated that this "was its usual practice and reaction in similar cases". ?

6. The conclusion appears clearly to be that disciplinary action will not be taken unless the special circumstances of a case make such action warranted. All persons who have committed or participated in overt acts involving aberrations of behaviour of a homosexual or grossly indecent nature, eg, acts which could possibly give rise to charges under Sections 147, 148 and 149 of the Criminal Code, that is, buggery, indecent assault on males or gross indecency, should not immediately nor necessarily be charged or treated as accused. On the contrary the first consideration to be borne in mind is that they must be released from the Services. It is obvious that it is usually in the better interest of the Service that they be so released quietly and quickly. Therefore unless some other factor intervenes or accompanies the occurrence, confidential administrative disposal of the servicemen implicated is the course to be aimed at.

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7. Bearing the above in mind, COs should approach any such cases with caution and ensure that it is so handled throughout by giving to it their priority and personal attention. To attain these results successfully a procedure is suggested in paras 8 to 18 hereunder.

8. All ranks should be warned that if and as soon as they become aware of any act or conduct manifesting aberrations of behaviour of a homosexual or grossly indecent nature, they should not discuss it with anyone but should report the matter forthwith and directly to their CO.

9. On receiving this report the CO should discuss the matter with his unit MO or with the Command MO.

10. If the CO then decides that no further investigation is warranted he will either direct that the matter be considered closed and warn his informant accordingly or he will direct the MO to arrange a medical or psychiatric examination of the person or persons involved with a view to carry out an administrative release if warranted.

*Why not
C. R. E.*

11. If the CO, after discussing the matter with his MO or the CMD decides that an investigation is warranted, he should appoint a competent officer to investigate the matter under the direction of the MO. When the investigation is completed the investigator and the MO should discuss the results thereof with the CO.

12. If the results of the investigation are negative the matter should be closed. If the results do not show grounds for disciplinary action but do disclose admissions of homosexual misbehaviour or again evidence of facts leading to a definite conclusion that homosexual conduct or tendencies have been manifested by the persons involved, the CO will direct the MO to arrange for a medical or psychiatric examination of those persons again with a view to releasing the persons involved administratively.

13. If the results of the investigation tend to disclose a basis for initiating disciplinary action the CO will weigh the following before initiating such action:

- (a) Whether or not disciplinary action is taken, the servicemen involved must be released from the service;
- (b) AHQ Policy is that disciplinary action in such cases is not desirable; *(not stated)*
- (c) If no juvenile is involved or if all participants were non-objecting partners or if no publicity surrounded the commission of or participation in the acts or conduct, then generally speaking, disciplinary action is not warranted. *desirable*

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(d) On the contrary, if a juvenile is involved, whether he be a service dependent, or, a civilian, or, if one of the participants was forced, harmed or seriously abused by another or again, if there was publicity which might have prejudicial consequences in respect of the Service or of the local civil population, then disciplinary action may be warranted.

14. No hard and fast rule may be laid down as to whether or not disciplinary action should actually be taken from certain aspects it appears to be warranted because each instance will differ in its circumstances and will necessitate the consideration of a variety of factors. For example, a case might involve a juvenile, who might also have been harmed by the act and some publicity might have accompanied the act, yet, because the Service, the child or his parents would suffer greater prejudice by becoming further involved in disciplinary proceedings and/or because no advantage would derive from such proceedings to the Service or to the juvenile or to the culprit party, no disciplinary action should be taken. It is felt that the criterions above should be sufficient to guide the COs in most instances. Special/border cases should be discussed with higher authority before action is initiated.

15. It should be noted also that the prosecution of offences of this nature involves legal difficulties and therefore when a CO has decided from a policy point of view that disciplinary action is warranted, he should, before initiating same, discuss the results of his investigation with his nearest legal advisor in order to ascertain whether or not there is sufficient legal evidence to support the laying of charges.

16. It should be noted also that in most every instance custody of the suspects is not warranted before such time as it is decided to lay charges against them.

17. When the above have been duly considered by the CO he will take the necessary administrative or disciplinary action and following the result thereof will arrange for the release of the persons involved in accordance with WCC 3040-1 (A3) dated 8 Dec 55. It may be noted that if an individual has been tried and found not guilty there may still be sufficient facts before the CO, eg, admissions, etc. to justify the CO in initiating the administrative release of that individual in pursuance to para 2 (c) of the above mentioned letter.

18. When occurrences of this type involve civilians the COs may in his discretion inform the local civilian police and/or welfare authorities. Further when a serviceman who has been diagnosed as a psychopathic personality-homosexual type is released, the CO may in his discretion arrange for the civilian police and/or welfare authorities of the place of release to be informed.

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