

OFFICE OF THE
JUDGE ADVOCATE GENERAL



CANADA

CABINET DU
JUGE AVOCAT GÉNÉRAL

MEMORANDUM

NOTE

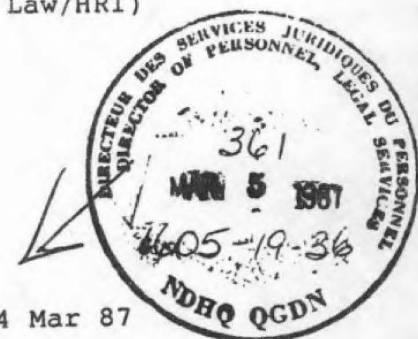
1456-2-2 (D Law/HRI)

5 Mar 87

DPLS

PROPOSED CFAO 19-36 - POLICY AND PROCEDURE -
INAPPROPRIATE SEXUAL CONDUCT AND BEHAVIOUR

Refs: A. 1605-19-36 (DPLS 3) 19 Feb 87
B. Discussion DJAG/L/D Law/HRI/DPLS 4 Mar 87



1. As requested at Ref A, the draft CFAO 19-36 has been reviewed. I have several concerns with the order as it is presently drafted.

2. To begin with, it appears that the order is mixing problems relating to sexual harassment and homosexual activity in one CFAO. This could create confusion among those required to implement the order. In addition, with the difficulties that have been experienced in the past with respect to sexual harassment and its definition, it appears to be a subject requiring separate consideration. Furthermore, some of the provisions of the CFAO are of questionable application to sexual harassment cases. For instance, is it intended that the statement in para 5 of the draft that "a person who has engaged in inappropriate conduct shall not normally be enrolled" will apply to a person who may have been involved in a minor incident of sexual harassment? Because of the potential difficulties, I recommend that CFAO 19-36 be restricted to inappropriate sexual conduct other than that relating to sexual harassment or else the CFAO be broken down into two different parts; one relating to inappropriate sexual conduct such as that involving homosexual acts and another relating to sexual harassment.

3. On a more technical point, I recommend that paragraph 10 be modified to delete the last portion of the paragraph where it requires the Committee to "consider the career disposition of the member involved". As the only action that can be taken by the Committee in accordance with the

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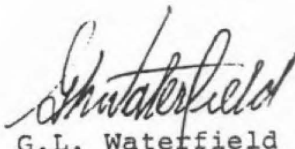
rest of the order is specified in paragraph 11, I recommend that this be made clear. This can be done by replacing the phrase mentioned above with the phrase "take action in accordance with paragraph 11".

4. In subparagraph 11.A., I recommend that the phrase "in the opinion of the Committee" be deleted as this introduces a subjective standard that is likely to be the subject of comment by the Parliamentary Committee responsible for review of statutory instruments. The deletion of the phrase would not, in my opinion, alter the intent or substance of the subparagraph.

5. Paragraph 13 describes the action to be taken by ADM(Per) if he determines that there is sufficient evidence to substantiate the initiation of release proceedings. However, it makes no reference to the recommendations of the Committee. As those recommendations constitute the basis for possible release, I recommend that paragraph 13 be modified so that the opening of the paragraph states: "When ADM(Per) determines that there is sufficient evidence to substantiate the initiation of release proceedings, he shall send the recommendations to the release authority and the commanding officer. In addition, he shall".

6. If the recommendations with respect to the deletion of sexual harassment of this order or the placing of sexual harassment in a separate section of this order are accepted, the references in the current draft of the order to paragraph 2.b. should be deleted.

7. Other than the above comments, I have no major legal concerns with the order. Should you require any further consultation on the matter, please contact me.


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DJAG/L
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