

MEMORANDUM

1605-19-36 (ADM(Per))

09 Mar 87

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CDS

POLICY AND PROCEDURE
INAPPROPRIATE SEXUAL CONDUCT
NEW CFAO 19-36

INDHQ - CDS/VCDS/D Sec GENERAL OFFICE		
REFERRED TO	DATE	BY
EA/CDS	10/3/87	JLP

Ref: 1605-19-36 (ADM(Per)) 26 Feb 87

1. On 26 Feb 87, a revised version of the new draft CFAO 19-36 was forwarded for your approval under cover of the memo at Ref. As in previous versions, "inappropriate sexual conduct and behaviour" included sexual offences under the Criminal Code, sexual harassment, and homosexual acts.

2. At para 4 of the memo at Ref, it was observed that JAG clearance as to the form and legality of the draft Order would be sought pending your approval. It was assumed that there would be no difficulty in this regard, since much of the definition of "inappropriate sexual conduct and behaviour", the key to the whole Order, was drafted originally on the basis of advice received from D Law/HRI.

3. Unfortunately, such is not the case. In a memo dated 5 Mar 87 to DPLS, written by D Law/HRI and signed by DJAG/L, it is stated that:

"... 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 ... Because of the potential difficulties, I recommend that CFAO 19-36 be restricted to inappropriate sexual conduct other than that relating to sexual harassment ..."

4. Despite lengthy discussions with DPLS, and efforts by the latter to restructure the Order to accommodate JAG's concerns, DJAG/L remains adamant in his opinion. This leaves us a choice of promulgating the Order as originally drafted without JAG's approval as to form and legality, or to delete all references to sexual harassment, in which

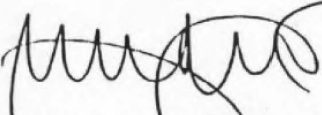
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case, subject to a number of other changes, only one of which is of sufficient significance to be mentioned here (see below), DJAG/L has indicated that he has no further problem with the draft Order, and will presumably approve it on submission to him.

5. After becoming aware of the importance of JAG's agreement in connection with the promulgation of the Conflict of Interest CFAO, I have no hesitation in recommending the latter course of action which, although not in keeping with our original intention, does maintain what I believe is the most important part of this whole project, i.e., the publication of an Order which will reflect our policy and procedure, based on the Minister's recent statement, in cases of homosexuality. If you agree, I would ask that the attached draft CFAO 19-36, which omits all reference to sexual harassment, be substituted for the version forwarded at Ref. The only other substantive change, again at JAG's insistence, is that contained in para 13(A)(iii), concerning reasons for release to be given to persons who have engaged in sexual conduct which constitutes an offence, but no charges have been laid and no notice of intent to recommend release is otherwise required.


A.J.G.D. de Chastelain
LGen
ADM(Per)
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