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16 Apr 91

CF POLICY ON SEXUAL ORIENTATION
CHRONOLOGY OF POLICY DEVELOPMENT

Serial

Detail

Exhibit 2
Tab

1. CFAO 19-20 issued 9 July 76. Significant elements: 1
 - 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; and
 - e. stated that service policy does not allow homosexual members to be retained in the CF.

2. Message ADM(PER) 013 101800Z FEB 86. Paragraph 4 of the message amended CFAO 19-20 with following effect: 5
 - a. left definition of homosexual unchanged;
 - 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". ("reason to believe" replaces a report of awareness or suspicion and focus shifts from homosexuality (propensity) to homosexual acts).

Comment: This message is significant because it introduces homosexual acts (in para 2 of CFAO 19-20) vice homosexuality/propensity. However, the message did not make an explicit amendment to para 7 of CFAO 19-20 which contains the statement that service policy does not allow homosexual members to be retained in the CF. It is not entirely clear whether or not the message implied an amendment to para 7 of CFAO 19-20 to replace "homosexual members" with "members who commit homosexual acts".

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3. Equality For All (extracts enclosed), the Report of a Parliamentary Sub-Committee on Equality Rights that was empowered "to examine, inquire into and report on equality rights under the Canadian Charter of Rights and Freedoms" was tabled in the House in October 1985. The report recommended, in part, that the Canadian Human Rights Act be amended to add sexual orientation as a prohibited ground of discrimination and that the CF bring its employment practices in conformity with that act as amended. This report, when tabled, required a formal Government response within a specified period of time. --

4. Message CDS 041 041700Z MAR 86. Advance notice of forthcoming Government statement (see Serial 5). Message advised that "Concerning sexual orientation, the criterion for dealing with same will not be the nature of the orientation as such but the consequential implications of individuals (sic) cases for operational effectiveness;". Comment: This statement had no policy effect as it was simply anticipating what the Government would say. Moreover, the statement is sufficiently vague that a variety of meanings could be read into it. 10

5. Toward Equality, the Government response to the report of the Parliamentary Sub-Committee on Equality Rights, tabled in the House on 4 March 1986. The statement is made on page 13 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. 6

6. Message CDS 048 071950Z MAR 86. Follow-up from release of Toward Equality (Serial 5 above). Announced the formation of the Charter Task Force and stated that "Because of the complexity ... in reconciling the various requirements ... it is simply not possible to specify immediately what changes in policy and procedures can be expected...". In essence, confirmed that the publication of Toward Equality did not, by itself, represent a policy change for the CF. 9

7. NDHQ action directive issued 14 Mar 86 establishing 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". 7

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8. ADM(Per) memorandum dated 17 Mar 86 addressed to CPCSAs. Confirmed that the basic policy set out in CFAO 19-20 was still in effect. In para 3 of this memorandum, the statement is made that "... the authority for release of known homosexuals (emphasis added) ... is to rest with the CDS himself." The use of the word "known" is not considered significant; however, the reference to "homosexuals" (which implies propensity) rather than to those who have committed homosexual acts suggests that the policy implications of the changes contained in the 10 Feb 86 message (Serial 2 above) may not have been fully appreciated. 8

9. Minutes of Proceedings and Evidence of the Standing Committee on National Defence 15 Apr 86, Mr Andre (Assoc MND) appearing. 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 has been attributed to Mr Andre on a number of occasions, it is apparent that the policy shift really began with the message of 10 Feb 86 (see Serial 2 above). Mr Andre's responses constituted a policy modification only to the extent that he introduced the words, not defined, "inappropriate behaviour"; it is not certain that he intended to equate "inappropriate behaviour" to "homosexual acts". 11

10. Minutes of Proceedings and Evidence of the Standing Committee on Human Rights 17 Jun 86, Gen Thériault appearing. In response to a question from Mr Robinson, the CDS confirmed his (the CDS') understanding that, as stated by Mr Andre (Serial 9 above), 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. 12

11. Charter Task Force Final Report (2 volumes), Sept 86, submitted to the CDS. The recommendation in para 67 of Part 4 of the Report was 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." This recommendation had no immediate policy effect. 13

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12. ADM(Per) memorandum dated 7 Nov 86 addressed to CPCS and DPLS. 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 (Serial 11). Significant element in the interim policy was that DPLS was required to ensure with reasonable certainty that an individual being recommended for release had been engaged in recent homosexual activity. "Homosexuality activity" was not defined. 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. 14
13. Minutes of Proceedings and Evidence of the Standing Committee on Human Rights 11 Feb 87, Mr Beatty and Gen Manson appearing. 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 message, Serial 2). 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: This announcement by Mr Beatty was a watershed point of sorts. For close to a year there had been uncertainty about whether the CF could maintain an exclusionary policy, there was confusion over what the policy actually was (propensity versus behaviour), and there had been some hesitation in processing the release of members to whom CFAO 19-20 applied. However, despite confirming the intention to maintain an exclusionary policy and putting the emphasis on behaviour (homosexual activity equated to inappropriate behaviour), the announcement led to a continuation of interim arrangements pending the development and approval of a replacement for CFAO 19-20. 15
14. Memorandum to DPLS dated 30 Sep 87 from the Departmental Assistant in the office of the A/MND (copy enclosed). This memorandum purports to authorize the release of homosexuals provided certain conditions are met. Comment: Although it comes from the office of the A/MND, it has no status as the Departmental Assistant (a public servant on what amounts to a liaison appointment with ministerial staff) has no authority to issue a direction to the Department or the CF. It appears from the correspondence (copy enclosed) identified as reference A and dated 16 Sep 87, that ministerial staff had become involved in --

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the release processing of homosexuals. There is no paper trail to show when or how that involvement began. This material has not been released to plaintiffs' counsel as it is not considered to be policy or legitimate policy direction.

15. Memorandum dated 20 Jan 88 from DGPCOR to DPCOR and DPCAOR. This memorandum entitled "Interim Reply on Homosexuality" (presumably it was intended to be "Policy" vice "Reply") contains, in para 2, 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 memorandum at Serial 14 as the wording is similar to para 1 of that memorandum. Regardless, the publication of this DGPCOR memorandum established an interim release policy of sorts for NCMs. The following criteria were to be met: 16
- a. a requirement for self-acknowledgement of homosexuality and DND (sic) 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.

16. CPCSA OPM 310-3, undated, established interim administrative procedures for dealing with cases of homosexuality pending the review of CFAO 19-20. This OPM, issued as applying to NCMs only, is mostly concerned with administrative procedures but establishes some new standards in sub-para 8c: a member who committed an act of a homosexual nature was to be recommended for retention if the conduct was an isolated incident, out of character, etc. The OPM also codified, in a CPCSA document, the career restrictions that would apply to a member who objected to an Item 5(d) release. 17
17. Memorandum dated (?) Apr 89 from DPCAOR (Adm) to DGPCOR recommending changes to OPM 310-3 (Serial 16) so that it would apply equally to the Regular Force and the Reserve Force. Makes recommendations only; does not establish new policy. 19

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18. CPCSА OPM 310-3, undated, as amended by AL1/90. 18
Incorporates the changes recommended by Serial 17 above.
However, OPM 310-3 still appears to apply only to NCMs.
No equivalent policy for officers has been identified.
19. Memorandum dated 29 Aug 90 (copy enclosed) from CIS. An --
outcome of the "External Review of the Canadian Forces
Special Investigation Unit" (the Marin Report), this
memorandum removed the investigation of homosexuality
per se from the mandate of the SIU and represented a
de facto change to policy in CFAO 19-20.
20. ADM(Per) message dated 21 Nov 90 (copy enclosed). --
Deleted all references to the SIU in CFAO 19-20.
Moreover, required COs to refer any cases of suspected
homosexuality to NDHQ for direction before initiating
any formal investigation.
21. CPCSА OPM 310-3, undated, as amended by AL 3/90 (copy --
enclosed). This is the bilingual version of Serial 18
above. However, for some undetermined reason, sub-paras
10g and 10h from Serial 18 are not included in this
version. Those two sub-paragraphs had originally been
added to the OPM so that it would apply equally to the
Regular Force and the Reserve Force. It is believed
that the deletion of the two sub-paragraphs was the
result of an administrative error.

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