

BRIEFING NOTE FOR THE CDS

SUBJECT: CANADIAN FORCES POLICY ON SEXUAL MISCONDUCT

ISSUE

1. Proposed CFAO 19-36 dealing with sexual misconduct.

BACKGROUND

2. In Oct 91 a new draft CFAO 19-36 (Sexual Misconduct) was prepared to replace CFAO 19-20 (Homosexuality - Sexual Abnormality Investigation, Medical Examination and Disposal). It was expected that the CF policy on homosexuality would be revoked and it was considered desirable to have a new policy prepared to address the overall subject of sexual misconduct.

3. In drafting the proposed new CFAO 19-36, note was taken of the need to provide for improved definition, a clear expression of non-tolerance of sexual misconduct, better guidance for commanding officers, procedural fairness, and the timely resolution of individual cases.

MAIN FEATURES OF THE NEW CFAO

4. The new CFAO prescribes CF career policy and procedures applicable to cases of sexual misconduct. The order is directed at all sexual misconduct, whether heterosexual or homosexual. It does not deal with disciplinary procedures as these are sufficiently covered in existing regulations and orders.

5. In the new order, "sexual misconduct" is defined as:

- "a. an act which has a sexual purpose or is of a sexual or indecent nature and which constitutes an offence under the Criminal Code or the Code of Service Discipline; and
- b. an act of sexual harassment contrary to CFAO 19-39."

6. The CFAO describes the obligations of a commanding ^officer when there is an allegation of sexual misconduct, outlines the type of investigation that must be conducted, and provides guidance on the types of cases that may be handled at the unit level and those that must be referred to NDHQ for a decision. In general, cases where there is a victim will normally be referred to NDHQ.

7. The CF policy contained in the order is as follows:

"It is CF policy that sexual misconduct is unacceptable and will not be tolerated. A CF member who engages in sexual misconduct is liable to disciplinary and administrative action, including release if appropriate. An applicant for enrolment who has engaged in sexual misconduct may be refused enrolment."

For those cases that are referred to NDHQ, release will normally be recommended. Retention will be the exception.

8. Within the order, there is extensive provision for procedural fairness. In general, individuals will know what allegations have been made, have access to the evidence on which an administrative decision is based, and have an opportunity to make written representations on their own behalf.

9. Because it can take a long time to complete proceedings under the Criminal Code or the Code of Service Discipline, the order provides that administrative action may be taken before those proceedings are completed provided sufficient information is available to make a recommendation.

10. The order, when promulgated, will apply equally to the Regular Force and the Reserve Force.

11. In summary, the order reflects CF non-tolerance of sexual misconduct and establishes consistent investigative and administrative procedures to deal with it regardless of whether it is heterosexual or homosexual in nature.

CURRENT STATUS

12. The order was signed-off by JAG as to form and legality on Oct 91, received your approval on 14 Nov 91, and is being held for promulgation pending the revocation of CFAO 19-20. As there is considerable overlap between CFAO 19-20 and the proposed new CFAO 19-36, the latter cannot be issued until the former is revoked.

RESPONSIBLE GROUP
PRINCIPAL:

LGen K.R. Foster,
ADM(Per), 992-7582

PREPARED BY:

G.L. Logan,
DPP 2, 995-0014

OFFICER AVAILABLE TO
RESPOND TO QUESTIONS:

D.E. Munro
DGPP, 995-0018

DATE PREPARED:

24 Feb 92