

Delahunty, Terry AIRCDRE 1

From: John Devereux [ja_devereux REDACTED]
Sent: Sunday, 14 September 2014 10:39 PM
To: Delahunty, Terry AIRCDRE 1; ken.given REDACTED
Subject: FLTLT (AAFC) Todd Oakley
Follow Up Flag: Follow up
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SENSITIVE:PERSONAL

Sirs,

On 29 April 2014, upon taking advice from CDR-AAFC. I wrote to the above member advising that he had been suspended on a without prejudice basis, pending investigation.

The power to suspend is provided for in CFR 9(4), subject to the limitations outlined in CFR 9(5).

At the time, CDF Directive Number 22 of 2013, in Annex 3 delegated the CDF's powers to suspend to "a formation commander, in respect of an officer....not greater in rank than FLTLT (AAFC) and limited to a suspension of not greater than 90 days in total."

CDF Directive No 22 of 2013 also granted delegations to suspend to The National Senior Officer and Director General, such delegations not limited by rank of suspendee or duration of suspension to be imposed.

On one view, the direction to suspend FLTLT (AAFC) Oakley having been issued to me by CDR-AAFC, the decision to suspend was CDR-AAFC's - in which case the suspension remains on foot. If this is so, there is, however, an obligation to review the suspension every 3 months, and advise the member of the result of the review (para 62 (c) of CDF Directive No 22 of 2013).

Another view is that as I was the officer who communicated the suspension to the member, then perhaps I made the suspension decision - in which case any suspension decision I made expired 3 months after its imposition - ie July 29 2014.

I have had previous correspondence with DCDR (relating to another matter) as to exactly what documents currently govern the AAFC since the matter is most unclear to me.

Is it:

YOUTHPOLMAN - just issued by CDF

CDF Directive No 22 of 2013

and or

Manual of Management.

DCDR advises that YOUTHPOLMAN currently does NOT govern AAFC, pending advice from AIR FORCE (CB-AF) that they are happy with provisions in it.

27/05/2016

DCDR has further advised that CDF Directive No 22 of 2013 should not be referred to, the appropriate governance document being MOM.

If DCDR is correct (and I express no view either way) , then I need to make you aware of the paragraphs of the MOM below:

54. Under the provisions of the Cadet Forces Regulation 2013 and CDF Directives, the CAF has, by Instrument, delegated to DGCADETS-AF the authority to suspend the appointment of an OOC or IOC, but only if the DGCADETS-AF has acted in accordance with the principles of natural justice and the member has been accorded procedural fairness. Notice of suspension may be given orally or in writing, but if given orally must be confirmed in writing within seven days, and in any case must state the reasons for the suspension. A suspension takes effect upon receipt of the notice by the member, or such later date as is specified in the notice. An OOC or IOC who is suspended is not entitled to enter ADF or AAFC facilities, or participate in AAFC activities, or undertake AAFC duties during the period of suspension, except in order to deal with matters relating to the administration of the suspension and/or to remediate the reason/s for the suspension.
55. **Administrative suspension.** Administrative suspension is a serious and severe precaution and should generally be considered only if the DGCADETS-AF believes:
- that an allegation that the OOC or IOC has contravened the code of conduct and is being investigated;
 - that the OOC or IOC is subject to other administrative, disciplinary or legal action;
 - that the OOC or IOC has failed to complete or renew a mandatory qualification or training; or
 - that the OOC or IOC is temporarily incapable of rendering effective service as a result of physical or mental incapacity.
56. In considering whether to administratively suspend an OOC or IOC, the DGCADETS-AF must take into account:
- the paramount need to ensure the physical, mental and emotional safety of other members; and
 - whether that need can be satisfied by measures other than suspension.
57. Under subsection 9(5) of CFR13, suspension of an OOC or IOC can only occur in accordance with the principles of natural justice and subject to procedural fairness. The following procedures apply to comply with those requirements in respect of an administrative suspension.
- Except where subparagraph (b) applies, before deciding to suspend an OOC or IOC, the DGCADETS-AF must cause the member to be informed, orally or in writing that such action is being considered and the grounds for it, and allow the member a reasonable time to show cause why such action should not be taken. Ordinarily, a period of seven days after the member is notified of the proposed action and the grounds for it will be a reasonable time, but in cases of urgency a shorter time may be reasonable. An OOC or IOC who wishes to show cause must provide his or her response within the time specified by the DGCADETS-AF in the notice, or within any further period that may be allowed by the DGCADETS-AF. The DGCADETS-AF must take into account, in deciding whether or not to suspend an OOC or IOC, any response provided by the member. If the DGCADETS-AF decides to suspend the member, the DGCADETS-AF must give the member notice of suspension, including the reasons for the decision, in accordance with paragraph 52, and the next review date in accordance with subparagraph (c).
 - Where the considerations referred to in paragraph 54 so require, the DGCADETS-AF may suspend an OOC or IOC by notice under paragraph 52 without first giving notice of intention to do in accordance with subparagraph (a), but in such a case the DGCADETS-AF must then allow the member a reasonable time (usually, not less than seven days) to show cause why the suspension should not remain in force. A member who wishes to show cause must provide his or her response within the time specified by the DGCADETS-AF in the notice, or within any further period that may be allowed by the DGCADETS-AF. The DGCADETS-AF must take into account, in deciding whether or not the suspension should remain in force, any response provided by the member. If the DGCADETS-AF decides that the suspension should remain in force, the DGCADETS-AF must give the member the reasons for decision, and the next review date in accordance with subparagraph (c).
 - The DGCADETS-AF must review the suspension at intervals of no more than three calendar months and notify the member in writing of the outcome of the review.

Recommendation:

- Whether the original suspension was directed by me as delegate of the CDF, or by CDR-AAFC as delegate, it is time for the suspension to be urgently reviewed.
- That urgent advice be obtained as to who currently hold the delegation to suspend a member of FLTLT (AAFC) rank, and that person consider whether or not FLTLT (AAFC) Oakley should be suspended.

27/05/2016

Kind regards
John

27/05/2016