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JUDGE ADVOCATE GENERAL  
MILITARY JUSTICE DIVISION

# Code of Service Discipline and Me

Canada



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**JUDGE ADVOCATE GENERAL**  
**MILITARY JUSTICE DIVISION**



This guide provides general information for Canadian Armed Forces (CAF) members on what to expect during disciplinary proceedings under the Code of Service Discipline (CSD), and their rights and entitlements in the military justice system afforded by the *Canadian Charter of Rights and Freedoms* and the *National Defence Act*.

Aussi disponible en français sous le titre : *Le Code de discipline militaire et moi*

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Version 2



## Code of Service Discipline and Me

### Important Notice

This version of the 'Code of Service Discipline and Me' replaces the earlier guide (2015) and reflects changes introduced to the military justice system by *An Act to amend the National Defence Act and to make related and consequential amendments to other Acts*, SC 2019, c 15 (Bill C-77).

### Who this guide is for

- Regular Force members of the CAF
- Reserve Force members of the CAF
- Civilians who accompany the CAF on service
- Civilians who attend a training or education institution of the CAF

## Code of Service Discipline

### What is the CSD?

The Code of Service Discipline (CSD), found in Part III of the *National Defence Act (NDA)*, is the body of law that prescribes and regulates the standard of conduct expected of people serving in and with the military and defines how breaches of that standard may be disciplined. As such, the CSD forms the basis of the military justice system for the CAF.

The military justice system in Canada has two types of procedures, enabling a wide spectrum of misconduct to be addressed:

- **Courts martial** try services offences, which are misconducts of a serious nature, in a formal court presided over by a military judge
- **Summary hearings** deal with service infractions, which are minor breaches of military discipline that are heard at the unit level.

Operationally, the CSD sets out the procedures and organization of courts martial and summary hearings, establishes the authority of personnel who serve in the military justice

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system, defines the scale of punishment, and provides the mechanisms for reviewing or appealing a disciplinary decision.

Strategically, the CSD is designed to support military commanders in maintaining discipline, efficiency and morale within the CAF by:

- setting out who can be disciplined by the military justice system
- establishing service offences and service infractions for which a person can be charged
- establishing who has the authority to arrest and hold CAF members in custody
- establishing service tribunals and their jurisdiction to conduct trials of persons charged with service offences
- establishing summary hearings and their jurisdiction to hear persons charged with service infractions
- establishing processes for reviewing and appealing findings, decisions and punishments after proceedings

You are encouraged to consult with your supervisor if you have any questions about the CSD and how it applies to you.

## **Why do we have a CSD?**

The CSD provides for a separate justice system for the CAF to enforce the high disciplinary standards expected and required in the military.

The need for a separate justice system to enforce disciplinary standards in the military has a history dating back to the earliest organized military forces.

The Supreme Court of Canada (SCC), in the *R v Généreux* case, recognized the continuing need for a separate system for military justice. The SCC stated that Canada depends on the CAF to defend against threats to our security and that the military must be able to enforce discipline effectively to maintain readiness and its ability to fight. Breaches of discipline, therefore, must be dealt with efficiently, fairly, and speedily through a justice system that is designed to meet the disciplinary needs of the military. The SCC noted that ordinary civilian courts are generally inadequate to serve the particular needs of the military.

More recently, in 2019, the SCC reaffirmed Canada's need for a separate military justice system in *R v Stillman*. The SCC acknowledged that the military justice system is "designed to meet the unique needs of the military" and has evolved to become a "full partner in administering justice alongside the civilian justice system."

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## When am I subject to the CSD?

If you are a CAF member of the Regular Force, you are always subject to the CSD, whether you are inside or outside of Canada.

If you are a CAF member of the Reserve Force, you are subject to the CSD depending on the situation. The exact criteria for when a Reserve Force member is subject to the CSD is listed in section 60 of the *NDA*.

Below are examples of when, as a Reserve Force member, you are subject to the CSD:

- in uniform
- while undergoing drill or training, whether in uniform or not
- on duty
- when participating in domestic or international operations
- while on a military base or wing or in a CAF vehicle, aircraft or ship
- serving with any unit or other element of the Regular Force or the Special Force

If you are a civilian, you are subject to the CSD in exceptional situations:

- when accompanying a unit or other element of the CAF that is on service in any place
- when attending a CAF training or education institution
- when serving with the CAF under an engagement with the Minister of National Defence

## Arrests

### Who can arrest me?

The military police (MP) have jurisdiction to arrest anyone who is subject to the CSD.

No matter your rank or status, or whether you are in Canada or overseas, the military police may detain or arrest you, without a warrant, when you are subject to the CSD and you:

- have committed a service offence
- are found committing a service offence
- are believed to have committed a service offence
- are believed to be about to commit a service offence

- have been charged with having committed a service offence

MPs do not have the power to arrest you if you have committed or are suspected of committing a service infraction.

Aside from the military police, there are circumstances when a CAF member may arrest you.

If you are an officer, the following CAF members have the power to arrest you without a warrant:

- any officer of equal or higher rank
- any officer of lower rank if you are engaged in a quarrel, fight or disorder

If you are a non-commissioned member (NCM), the following CAF members have the power to arrest you without a warrant:

- any officer
- any NCM of higher rank
- any NCM of equal or lower rank if you are engaged in a quarrel, fight or disorder

Finally, any CAF member with a warrant for arrest issued under the provisions of the *NDA*, or any member called upon to assist, can arrest another person subject to the CSD.

### **Can I be arrested under the CSD if I have released from the CAF?**

After you release from the CAF and are no longer subject to the CSD, you cannot be arrested, nor charged, with a service infraction.

You can, however, be arrested and charged for a service offence after you release from the CAF, if you were subject to the CSD at the time you allegedly committed the offence.

### **What happens if I am arrested?**

In certain circumstances, you do not need to be formally charged with an offence for military authorities to hold you in custody.

If you are arrested or detained under the CSD, you must be informed, without delay, of:

- the reason for the arrest or detention
- the right to retain and instruct counsel of your choice: this right includes access to free and immediate advice from duty legal counsel provided by Defence Counsel Services (DCS)

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If you are arrested for an alleged incident under the CSD, you should be released from custody as soon as possible by either:

- the person arresting you
- a custody review officer (CRO)
- a military judge

Whether you are released from custody depends on the considerations listed in section 158 of the *NDA*:

- the gravity of the offence alleged to have been committed
- the need to establish your identity
- the need to secure or preserve evidence
- the need to ensure that you will appear before a court martial or civilian court
- the need to prevent the continuation or repetition of the offence alleged to have been committed or the commission of any other offence
- the need to ensure your safety and security, as well as the safety of any victim of the offence or any other person

### **What happens if I am held in custody?**

If you are held in pre-trial custody, typically you will be kept in a cell, guardroom or any other suitable place at a base, unit or other element. If it is not practical to keep you in military custody, you might be placed in civilian custody.

You will be informed of the name and rank of the person who ordered that you be held in custody as well as the reason(s) why you are being held.

DCS will be informed that you have been taken into custody. If you are not released by the person who arrested you or the CRO (that is, your commanding officer (CO) or an officer designated as a CRO by your CO), you are entitled to be represented by military legal counsel from DCS at no expense to you, or you can choose to be represented by a civilian legal counsel at your own expense.

- **Within 24 hours:** within 24 hours of your arrest and being placed in custody, you will be given the opportunity to express your views concerning your release
- **Within 48 hours:** within 48 hours of your arrest and being placed in custody, a CRO will determine whether you will be released or kept in custody. For certain serious

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offences, termed "designed offences", the CRO must keep you in custody. Designated offences are described in section 153 of the *NDA*.

If you are kept in custody, you are entitled to a hearing before a military judge as soon as practicable to determine if you will remain in custody beyond 48 hours. During that hearing, you are entitled to be represented by DCS legal counsel or you can choose to be represented by civilian legal counsel at your own expense.

If you are released from pre-trial custody with conditions, you may submit an application to your CO or a military judge to review the conditions of your release, if any. During the hearing to review the conditions of your release you are again entitled to be represented by DCS legal counsel or by civilian legal counsel.

## Charges

### What is a charge?

A charge is a formal allegation that a person has committed:

- a service infraction
- a service offence
- an offence under the *Criminal Code*
- an offence under any other Act of Parliament

A charge is considered to be laid when the following information has been entered in Part 1 of a charge report:

- the name, rank and unit or element of the person alleged to have committed a service offence or a service infraction
- a statement of the service offence or service infraction alleged to have been committed
- a statement of the details of the service offence or service infraction
- the name, rank, position and signature of the officer or non-commissioned member who is laying the charge and the date of their signature

### What can I be charged with under the CSD?

When you are subject to the CSD, you may be charged with any number of service offences or service infractions. Charges for service offences are laid for more serious incidents, whereas charges of service infractions are for relatively minor misconduct.



- **Service offences:** the CSD establishes service offences that are uniquely military in nature (for example, absence without leave or desertion), as well as offences under the *Criminal Code*, other Acts of Parliament and, in certain circumstances, foreign laws. Service offences are created by legislation passed by Parliament. For a comprehensive list of service offences, you can consult Chapter 103 of the Queen's Regulations and Orders (QR&Os).
- **Service infractions:** the CSD establishes service infractions for minor misconduct in relation to property and information, military service, drugs and alcohol. Service infractions are distinct from service offences and are created by regulations made by the Governor in Council. For a comprehensive list of service infractions, you can consult Chapter 120 of the QR&Os.

## Who can lay charges against me?

Charges under the CSD can be laid by:

- a CO
- an officer or a NCM who has been authorized by the CO to lay charges
- a MP assigned to investigative duties with the Canadian Forces National Investigation Service (CFNIS)
- any other MP assigned to investigative duties

To have a charge laid against you, the charge layer must have an actual belief that you committed the service offence or service infraction, and the belief must be reasonable (that is, if someone else evaluated the same evidence, they would arrive at the same conclusion).

## When are charges under the CSD laid?

Generally, all charges of service offences and service infractions must be laid as early as the circumstances permit.

- **Service offences:** Anyone subject to the CSD at the time of the incident may be charged with a service offence at any time. With the exception of services offences punishable under section 130 or 132 of the *NDA* (that is, offences that are punishable under the *Criminal Code*, other Acts of Parliament, or foreign law), there are no limitation periods that specify the time frame within which a charge of a service offence must be laid.
- **Service infractions:** For service infractions, there is a limitation period that requires summary hearings to begin within six months from the date of an incident occurring. Consequently, charges for service infractions must be laid within six months after the

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day the infraction was allegedly committed. Otherwise, there is no jurisdiction for a summary hearing to be held and the charges cannot be pursued.

### **Can I be charged under the CSD if I have released from the CAF?**

It is possible that you can be charged under the CSD for a service offence if you have ceased to be part of the CAF (for example, after you have released). Anyone who was subject to the CSD at the time they allegedly committed a service offence continues to be liable to be charged, dealt with, and tried through the military justice system even if charges are laid after you are no longer subject to the CSD.

You cannot, however, be charged with a service infraction after you have ceased to be part of the CAF, even if the service infraction was allegedly committed while you were a member of the CAF and subject to the CSD.

### **How do I know if I have been charged?**

If you are charged with a service offence or service infraction, you must be provided with a copy of the charge report.

Generally, once you have been charged, you are brought before a charging authority. The charging authority will inform you that you have been accused of having committed a service offence or service infraction, and will read the particulars of any charges against you.

### **Who decides if I am charged with an offence or infraction?**

The person who is authorized to lay a charge is responsible for determining whether a violation is a service offence or service infraction. If you are alleged to have committed a service infraction, the charge layer will most likely be someone from your unit chain of command. That person may receive legal advice from their local legal advisor to help determine which is the most appropriate charge for a particular incident.

Determining whether a charge is laid as a service offence or service infraction, or whether the charge will be heard in the civilian justice system depends on many factors:

- Does the evidence collected during an investigation meet the established criteria (or elements) for an offence or an infraction?
- What is the level of seriousness and sensitivity of the incident (for example, was anyone emotionally or physically harmed, was there property damage, was there a financial loss)?
- What are the circumstances surrounding the incident (for example, how complex is the case, are people in positions of trust or authority involved, are civilians involved, what are the circumstances of the accused)?

- Where did the incident occur (for example, did the incident happen in Canada or overseas, did the incident occur on military property or personal or commercial property)?
- Is the alleged offence one that automatically falls outside the jurisdiction of military courts (i.e. murder, manslaughter, or abduction of a child within Canada)

## Who decides whether my charge should proceed?

The authorities who can decide whether to proceed with a charge depends on if the charge was laid for a service offence, service infraction, or a Criminal Code offence that may be heard within civilian courts.

- **Service offences:** Charges of service offences are referred directly to the Director of Military Prosecutions (DMP) for review. The DMP decides if charges of service offences will be preferred to court martial after evaluating the reasonable prospect of conviction and the benefit to public interest in prosecuting. If DMP chooses to withdraw or to not prefer the charge, your CO may still consider laying a service infraction charge in respect of the same set of facts.
- **Service infractions:** Charges of service infractions are referred to your CO for review. Your CO will first consider if they have the authority and jurisdiction to conduct a summary hearing or if they need to refer the charges to another CO. The CO who has the authority and jurisdiction to conduct the summary hearing will assess the circumstances and determine if your charge will proceed to a summary hearing. You may consult section 163(1) of the *NDA* for a list of the conditions that qualify a CO as having the jurisdiction to conduct a summary hearing.

## Who else will know about my charge?

Both courts martial and summary hearings are open to the public. Only in limited circumstances will proceedings be closed to the public, such as when information, if disclosed, could compromise the defence of Canada, when the hearing involves a minor, or when information disclosed at a hearing could harm a person's privacy or security.

If you are charged with a service offence that is preferred for court martial, the public will have access to information about:

- the offence you have been charged with
- the finding (that is, guilty or not guilty, or if charges were withdrawn)
- any sentence that has been passed

This information is publicly available on the Office of the Chief Military Judge website.

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The public can request access to summary hearing records under the *Access to Information Act* and Defence Administrative Orders and Directives 1001-0 and 1001-1, while respecting the *Privacy Act* and Defence Administrative Orders and Directives 1002-0, 1002-1, 1002-3, 1002-4, 1002-5 and 1002-6.

## **Assistance**

### **How do I prepare my case at court martial?**

If you are facing charges for service offences that have been referred to trial by court martial, you are entitled to counsel (legal advice and representation) from DCS at no cost to you. If you do not wish to use the services of DCS, you have the right to consult or hire a civilian lawyer at your own expense.

Military legal officers of the DCS are members of a provincial law society and are bound to the same professional obligations as civilian defence counsel to represent the interests of their clients and to provide independent legal advice. To avoid a conflict of interest, legal officers of the DCS work independent from the chain of command.

### **Defence counsel**

- If you request to be represented (to have someone act and speak on your behalf in court) by DCS, you will be contacted by email or letter to notify you of which lawyer you have been appointed.
- Defence lawyers have a professional duty to protect the information that their clients disclose to them in confidence. Any information you provide your defence lawyer about your case will be protected by law under solicitor-client privilege.
- The Military Prosecutor and military police must provide you and your defence counsel with a copy of or access to any information that will be relied on at court martial or that tends to show that you did not commit the service offence.
- Copies of or access to this information must be provided in sufficient time to allow you and your lawyer to properly prepare a defence prior to the beginning of proceedings. Any additional information that comes to light that may be relied on at trial or tends to show you did not commit the service offence must similarly be provided immediately to you and your defence counsel.
- In contrast, you and your defence counsel do not have a duty to provide information to investigators or the chain of command.

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## How do I prepare for a summary hearing?

If you are charged with a service infraction, you are entitled to have an officer, or in exceptional circumstances, a NCM above the rank of sergeant appointed to assist you.

You are not entitled, however, to the services of DCS if you are charged with a service infraction, except for requesting legal advice of a general nature.

### Assisting member

- On being charged with a service infraction, you may request a particular member to act as your assisting member. If you do not request anyone specific to be your assisting member, your chain of command will appoint one to you.
- If you are in the Regular Force, an assisting member must be appointed within three days of your CO receiving the charge report.
- If you are in the Reserve Force, you must be appointed an assisting member within seven days of your CO receiving the charge report.
- An assisting member does not act as or qualify as legal counsel to defend you. As such, assisting members are not bound by solicitor-client privilege. Any communication shared between you and your assisting member, however, should be kept confidential.
- The assisting member may assist, advise, and make representations for you throughout your hearing and during any review to the extent that you are comfortable with. They should also inform you of mental health support and services that are available and provide you with respective contact information.
- You may request that your assisting member help you with:
  - preparing for the summary hearing by identifying relevant witnesses, determining what evidence could be used as a defence to the charge(s), and organizing evidence to be presented at the summary hearing
  - during the summary hearing, ensuring witnesses testify, present evidence, question witnesses, and make representations
  - preparing for and make representations at a summary review
- To assist you in preparing your defence, you are entitled to have copies of or access to any information that may be relied on as evidence at the summary hearing, or information that shows that you did not commit the alleged infraction. Your CO is responsible for ensuring you have this information.

- As further evidence or relevant information becomes available, it must be provided to you and your assisting member immediately. You do not have a corresponding duty to provide information to investigators or the chain of command.
- You can request permission from the officer conducting the summary hearing (OCSH) to be allowed to be represented by legal counsel at your own expense, although allowing this is discretionary.

In order to help you prepare for your summary hearing, you will be provided with:

- a copy of any written statement you made
- a copy of any documentary evidence
- a copy of any written statement made by a witness
- a copy of any interviews with you or a witness
- a copy of any photographs, videos, sound clips, screenshots
- a copy of the investigation report
- access to the physical evidence, where physical evidence exists

Before the summary hearing begins, you must be advised of your right to give representations on these documents and be given a reasonable period (usually 24 hours from when you receive the documents).

The OCSH may order the appearance of any witness subject to the CSD and request the appearance of any other witness but cannot compel the person charged with having committed a service infraction to give evidence.

## **Victims' and affected persons' rights**

### **What are my rights as a victim of a service offence?**

If a service offence has been committed against you and you have suffered physical or emotional harm, property damage, or economic loss as a result, you are entitled to certain rights under the Declaration of Victims' Rights in the *NDA*.

When a charge of a service offence is laid, as a victim you have the right to:

- be provided information about the military justice system, support services, the investigation, proceedings at court martial, and the offender

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- be protected from intimidation and retaliation, and protection of your privacy
  - participation in the investigation, court martial, and sentencing in order to have your views considered
  - request restitution for loss, injury, and/or damages as a result of the offence

You also have the right to request assistance from a Victim's Liaison Officer (VLO).

A VLO can help:

- explain your rights under the Declaration of Victims' Rights
- explain how charges are tried at court martial
- facilitate getting information that you are entitled to have

Information about when and how victims' rights apply can be accessed at Annex B – Victims of Service Offences: Interactions with the Military Justice System.

### **What support is available if I am affected by a service infraction?**

If a service infraction has been committed against you or you have suffered physical or emotional harm, property damage, or economic loss as a result of a service infraction, you are entitled to receive certain information, protection, and to participate in the summary hearing.

When a service infraction is laid, as an affected person you have entitlement to:

- be provided general information about the military justice system at the unit level, the status of the investigation, and how the charge referral process operates
- request to attend the summary hearing with a support person present
- give evidence at the summary hearing by telephone or electronic means
- receive the written reasons of the OCSH in respect of finding(s) and sanction, if applicable
- receive the written reasons of the Review Authority of the hearing, if applicable
- have your security considered by military justice authorities and be protected from reprisal or intimidation

Further information about what support is available to affected persons and what your entitlements are can be accessed at Annex C – Framework for persons affected by service infractions.

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## Proceedings and hearings

### What are the differences between a court martial and a summary hearing?

Courts martial and summary hearing are two types of disciplinary procedures within the military justice system, designed to address different kind of misconduct.

#### Courts martial

- Courts martial are formal military courts, with powers and procedures established under the *NDA* to deal with service offences. Service offences are listed in Part III, Division 2 of the *NDA*.
- Courts martial are presided over by military judges who have powers of punishment up to and including imprisonment for life. Powers of punishment refers to the range of penalties that can be imposed on a person found guilty of an offence.
- Courts martial are conducted according to the *NDA* and Military Rules of Evidence, and procedures are similar to those used in civilian criminal courts. As such, a Military Prosecutor is assigned to each trial and the accused is represented by defence counsel, either military or civilian.
- At courts martial, the standard of proof is beyond a reasonable doubt.

#### Summary hearings

- Summary hearings are a non-penal, administrative process to deal with service infractions, which are minor breaches of military discipline and are held at the unit level. Service infractions are defined in Chapter 120 of the QR&Os and cover a variety of behaviours, omissions, or misconduct in three categories: property and information, military service, and drugs and alcohol.
- Summary hearings are conducted by an officer who is at least one rank above the member charged with the infraction. The OCSH may impose a sanction according to their status.
- Summary hearings are conducted according to the principles of Canadian administrative law, particularly the principles of procedural fairness and natural justice. As such, the member charged with the service infraction must be given the opportunity to request the presence of witnesses, present evidence, and make representations at all stages of the hearing.
- At summary hearings, the standard of proof is on a balance of probabilities. That means the OCSH will find a service infraction has been made out if, based on the



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evidence, they determine it is more likely than not that the service infraction was committed.

## **Where are proceedings and hearings held?**

Courts martial and summary hearings have no territorial limitations, meaning that they can be held inside or outside of Canada.

### **Courts Martial**

- The location of a court martial is decided collectively by the military judge, Military Prosecutor, defence counsel, and Court Martial Administrator based on a number of factors.
- Courts martial are typically held at the base or unit where you are serving at the time that charges are laid.
- In some cases, your trial may be held elsewhere from your unit or base (for example, if you were serving at another unit at the time of the alleged offence or if most of the witnesses are located at another unit).
- If you are with a unit deployed or posted outside of Canada, courts martial proceedings can be conducted in operational theatres or on ship. Alternatively, depending on your circumstances, you may be sent home to stand trial.

### **Summary hearings**

- Summary hearings are typically conducted at the base or unit where you are serving at the time that charges are laid.
- The location of a summary hearing will depend on:
  - the availability and location of the accused, the witnesses, or any person against whom a service infraction is alleged to have been committed
  - the location of the incident that gave rise to the charge
  - the operational posture of the unit
- The location for a summary hearing needs to balance the convenience and disciplinary interests of the unit with the principles of fairness and the six-month limitation period.

## **How will I know where and when to stand trial?**

How you will be notified of the date, time, and location of your trial or hearing will depend on whether you are summoned to attend a court martial or a summary hearing.

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## Courts martial:

- When a court martial is scheduled by the Court Martial Administrator, the accused person will receive the original Summons to the Accused Person, which contains information about the date, time, and location of the trial.
- Additionally, the Court Martial Administrator sends the Convening Order to the CO of the person accused. Included in the Convening Order are instructions for the CO to provide the accused person with copies of:
  - the Convening Order
  - the charge sheet
  - the Summons to the Accused Person
  - sections 118.1 and 249.23 of the *NDA*, which explain what happens if the accused fails to appear at their trial
- You will be required to sign a Delivery of Documents to Accused Person form, acknowledging that you have received these files from your CO.

## Summary hearings:

- If a summary hearing is to be commenced, you will be given written notice that the hearing will be convened, including the date and time where it will be held. Your CO and the OCSH must ensure you have also received any documents that will be relied upon as evidence.

## How long do proceedings and hearings last?

The duration of courts martial and summary hearings can be affected by any number of circumstances, which can lengthen or shorten them.

## Courts martial:

- If you are charged with a service offence, your case will be subject to a presumptive ceiling.<sup>1</sup>

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<sup>1</sup> *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631 was a decision of the Supreme Court of Canada which rejected the framework traditionally used to determine whether an accused was tried within a reasonable time under section 11(b) of the Canadian Charter of Rights and Freedoms. This determination was replaced with the presumptive ceiling of 18 months between the charges and the trial in the provincial court, and 30 months for cases in the superior court (or cases tried in the provincial court after a preliminary inquiry). Delay attributable

- If your case exceeds the presumptive ceiling, without evidence of exceptional circumstances, the delay can be considered unreasonable and the military judge may issue a stay of proceedings and cease the trial.

### **Summary hearings:**

- If you are charged with a service infraction, there is a limitation period that stipulates your summary hearing must begin within six months from the day you allegedly committed the infraction.
- When the limitation period has passed, there is no jurisdiction to hear your case, and as a result, the charge cannot be proceeded with. When a case cannot proceed due to an expired limitation period, you must be informed by your CO or the officer to whom the charge was subsequently referred.

For more information on timelines, refer to the Military Justice System Time Standards.

### **What happens if I don't attend proceedings?**

There are consequences for not appearing at a court martial or summary hearing when you have been summoned or ordered to attend.

If you do not have a lawful excuse for failing to appear at a court martial or summary hearing, you may be charged with a service offence, under section 118.1 of the *NDA*, which carries a maximum punishment of imprisonment for less than two years.

Additionally, if you fail to appear at a court martial when summoned, the Court may issue a warrant for your arrest.

### **Who makes the decisions for my case?**

The authority who decides your verdict after hearing your case depends on whether you are appearing at a court martial or a summary hearing.

### **Courts martial:**

- There are two types of courts martial: standing courts martial and general courts martial.
- Military judges preside over both types of trial, although the authority who determines a verdict (whether you are found guilty or not guilty of a service offence) differs between the two types of trial.

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to or waived by the defence does not count towards the presumptive ceiling. At this time, nor the Court Martial Appeal Court or the Supreme Court of Canada have determined the specific ceiling applicable to Court Martial.

- **Standing courts martial:** At standing courts martial, the military judge sits alone and determines the finding of your case and, if applicable, passes a sentence.
- **General courts martial:** At general courts martial, a military judge presides over proceedings, but a panel of five CAF members determines your verdict. If you are found guilty, the military judge passes the sentence. A court martial panel performs a function similar to a jury in a civilian court, and is composed of CAF members selected at random by the Court Martial Administrator on behalf of the Office of the Chief Military Judge. If the person facing charges is an officer, the panel members will all be officers. If the person facing charges is a NCM, two members of the panel must also be NCMs, both holding the rank of Warrant Officer or above.
- The type of court martial that is convened depends on the maximum punishment for the offence.
  - For offences that are punishable by imprisonment for less than two years, or a punishment that is lower in the scale of punishments, standing courts martial are normally convened.
  - For offences that are punishable by a maximum penalty of imprisonment for life, general courts martial are convened, unless both parties consent to appear before a standing court martial.
  - For offences that are punishable by other punishments, the accused is given the right to choose the type of trial between a standing court martial and a general court martial: standing or general.
- To understand who else is involved in conducting courts martial, you can consult the Court martial procedure guide.

### **Summary hearings:**

- Summary hearings are conducted by either a superior commander, a CO, or a delegated officer (an officer to whom a commanding officer has delegated powers of punishment) who was not involved with the investigation, issuing a warrant, or laying the charge. The officer who conducts a summary hearing is the OCSH.
- In the case where the person facing charges is an officer, the OCSH must be at least one rank above the accused member.
- The OCSH is responsible alone for hearing your case and finding whether you committed a service infraction or not. At the start of a summary hearing the OCSH

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must swear an affirmation or oath to administer justice according to law without partiality, favour, or affection.

## **Disciplinary consequences**

### **What disciplinary repercussions could I face for misconduct?**

The type of consequences that you could face for misconduct depends on whether you are convicted of a service offence or found to have committed a service infraction. Any disciplinary measures that are imposed on you must be in proportion with the seriousness of the offence or infraction and the degree of your responsibility for the misconduct.

#### **Service offences:**

- If you are convicted of a service offence, the military judge who presided over your court martial may impose a sentence. Sentences may comprise one or more punishments for breaches of the CSD, but they will not exceed the maximum punishment of the most serious offence for which you have been convicted.
- From most severe to least severe, the scale of punishments consists of:
  - imprisonment for life
  - imprisonment for two years or more
  - dismissal with disgrace from His Majesty's service
  - imprisonment for less than two years
  - dismissal from His Majesty's service
  - detention
  - reduction in rank
  - forfeiture of seniority
  - severe reprimand
  - reprimand
  - fine
  - other minor punishment

- Further information on these punishments can be accessed in section 139(1) of the *NDA*.

### **Service infractions:**

- If you are found to have committed a service infraction, the OCSH may impose one or more sanctions.
- From most severe to least severe, the scale of sanctions includes:
  - reduction in rank
  - severe reprimand
  - reprimand
  - deprivation of pay (up to 18 days)
  - minor sanction, such as confinement to ship/barracks (up to 14 days), extra work or drill (up to 14 days), and withholding leave (up to 30 days)
- Further information on these sanctions can be accessed at Chapter 123 of the QR&Os.
- The range of sanctions that may be imposed depends on the status of the officer who conducted the summary hearing.
  - Superior Commanders have the authority to impose any and all sanctions.
  - COs have the authority to impose sanctions from reprimands and below.
  - Delegated officers have the authority to impose sanctions from deprivation of pay, up to seven days, and minor sanctions.

### **What happens if I am sentenced to detention?**

A term of detention starts on the day the sentence is pronounced at court martial.

If you are a NCM sentenced to detention at court martial, you will be deemed to be reduced to the rank of Private and paid at this rank for the duration of your detention. For sentences of 14 days and above, detention is generally carried out at the Canadian Forces Service Prison and Detention Barracks (CFSPDB) in Edmonton, Alberta.

On your release from detention, your rank and pay will be reinstated, unless your sentence also includes a punishment of reduction in rank.

Officers cannot be sentenced to detention.

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## **What happens if I am sentenced to imprisonment?**

A term of imprisonment starts on the day the sentence is pronounced at court martial.

Where you are imprisoned will depend on the length of the term of your sentence.

- If you are sentenced to imprisonment for less than two years, you will be incarcerated in a civil prison.
- If you are sentenced to imprisonment for more than two years, you will be incarcerated in a federal penitentiary.

While imprisoned, you will forfeit all pay and allowances for the duration of your prison term.

## **Appeals and reviews**

### **Can I have the findings of my case reviewed?**

If you have been convicted of a service offence or found to have committed a service infraction, you have the right to request that the judgment (finding or decision) or punishment (sentence or sanction) be reviewed if you believe a procedural or legal mistake occurred. Your case will not be re-heard or re-judged, but it will be examined to ensure that proceedings were fair, impartial, and lawful.

The grounds and procedure for requesting a review of your case depends on if you are challenging the findings and/or punishment from a court martial or a summary hearing.

#### **Courts martial:**

- If you have been convicted before a court martial, you may file an appeal of your decision or sentence to the Court Martial Appeal Court of Canada (CMAC) within 30 days from the end of court martial proceedings.
- The CMAC is composed of a panel of three civilian judges. During appeals, a decision from the majority determines the outcome.
- For a list of the grounds on which you may appeal, you can consult section 230 of the *NDA*.
- Your defence counsel, whether military or civilian, can advise you on appealing your case and guide you through the process.

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## Summary hearings:

- If you have been found to have committed a service infraction at a summary hearing, you may apply in writing for a review to a Review Authority within 14 days of receiving the written reasons for your finding and/or sanction. Alternatively, a Review Authority may initiate a review on their own initiative.
- A Review Authority is the next officer superior to the OCSH. The proper Review Authority for your case is identified in the written reasons you'll receive within three after your summary hearing has ended.
- Your application for a review must state the grounds for review and describe the evidence that supports those grounds.
- A Review Authority, on review of your case, may:
  - uphold or quash the finding
  - substitute, commute, mitigate or remit the sanctions

## How long does a CSD conviction stay on my conduct sheet?

If you are convicted of a service offence or are found to have committed a service infraction, this will be recorded on your personnel file in a conduct sheet.

A conduct sheet does not create a criminal record. However there are service offences that, if you are convicted of them, will result in a criminal record (see section 249.27 of the *NDA*).

There are provisions in the Defence Administrative Orders and Directives - 7006, Conduct Sheets series (DAOD 7006) for certain entries of service offence convictions and service infraction findings to be automatically removed from your conduct sheet.

## Service offences:

- If you are convicted of a service offence, all mention of a service offence must be removed from your conduct sheet:
  - when your record is suspended\* under the *Criminal Records Act* by the Parole Board of Canada
  - if your finding is set aside through an appeal
  - after three years have passed since you were convicted of a non-criminal offence (service offences for which a conviction is not considered a criminal offence are listed in section 249.27(1)(a) of the *NDA*)



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- \*If you are convicted of a service offence that results in a criminal record under the *Criminal Records Act*, you may apply for a record suspension when certain criteria are met.
  - If your conviction resulted in a fine of \$200 or less or other minor punishment, all mention of a service offence must be removed from your conduct sheet if:
    - you have completed six months of service from the date of enrolment or initial military occupation training
    - 12 months have passed since you were convicted and no other conviction has been entered
    - you are promoted to the rank of Sergeant, or as an Officer Cadet or NCM you then attain a commissioned rank
    - you released from the CAF without completing initial military occupation training

#### **Service infractions:**

- If you are found to have committed a service infraction, all mention of the service infraction must be removed from your conduct sheet:
  - if a Review Authority quashes the findings of your summary hearing
  - if you have completed six months of service from the date of enrolment or initial military occupation training
  - after 12 months have passed since you were found guilty of the service infraction and no other infraction has been entered
  - if you are promoted to the rank of Sergeant, or as an Officer Cadet or NCM you then attain a commissioned rank

If you have questions regarding criminal records or record suspensions, you should consult your chain of command.

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## Details and history

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