

Message from The Judge Advocate General

The military justice system (MJS) is fundamental to the maintenance of discipline, efficiency and morale of the Canadian Armed Forces (CAF). The creation of the summary hearing system was a significant change to the MJS. The Military Justice at the Unit Level Policy plays a vital role in assisting those members who perform duties or carry-out responsibilities within the MJS, whether prescribed or by virtue of being a part of the chain of command, in addressing misconduct at the unit level.

Importantly, this policy provides direction and guidance for military justice authorities concerning their interactions with both victims of service offences (Annex B) as well as persons affected by service infractions (Annex C). Rights and entitlements must be respected and people must be supported.

Discipline must be administered fairly and swiftly. This policy ensures persons alleged of misconduct, those charged, and those found to have committed a service infraction are afforded procedural protections. Equally important is ensuring that charges are dealt with as expeditiously as possible.

Included in this policy is guidance on: the pre-charge phase, including investigations; charge laying; the summary hearing process; the review process; and post-hearing administration. This policy is not a standalone document. It supplements the existing provisions in the *National Defence Act* (NDA) and the *Queens Regulations and Orders for the Canadian Forces* (QR&O). Taken together, they provide support and assistance for misconduct to be addressed fairly and swiftly, with due consideration paid to the rights of victims and the entitlements of affected persons.

If you have any comments about either official language version of this policy, please email: mjpolengagement-engagementjmpol@forces.gc.ca

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Military Justice at the Unit Level Policy 2.0

This Policy applies to officers and non-commissioned members of the Canadian Armed Forces (CAF).

The Military Justice at the Unit Level Policy 2.0 was issued 12 April 2024 under the authority of:

the Chief of Defence Staff, pursuant to subsection 18(2) of the [National Defence Act](#); and

the Judge Advocate General pursuant to subsection 9.2(1) of the [National Defence Act](#).

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Enquiries: Office of the Judge Advocate General

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RECORD OF AMENDMENTS

The authorities for changes to this policy are the CDS and JAG

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Chapter 1 - Pre-Charge

Context

This chapter of the Military Justice at the Unit Level Policy (the Policy) is meant to provide guidance about the process to be followed from the moment a complaint of an alleged service offence¹ or service infraction² is made, until a charge is laid. This chapter applies to all alleged disciplinary matters, regardless whether the alleged misconduct results in a charge being laid for a service infraction or service offence or results in no charge being laid. This chapter is to be read in conjunction with the relevant provisions in Division 5 of Part III of the [National Defence Act](#) (NDA) (Summary Hearings) and Chapter 102 of the [Queen's Regulations and Orders](#) (QR&O) (Investigation and Laying of Charges).

1.1 Complaint

1.1.1 When an appropriate authority in the military justice system (MJ Authority) receives a complaint or has other reasons to believe that a service offence or a service infraction has been committed, the MJ Authority must cause an investigation to be conducted as soon as circumstances permit, to determine whether there are sufficient grounds to lay a charge.³ A MJ Authority includes, but is not limited to, members of the Military Police including the CFNIS (the MP), an officer, or another member of the Chain of Command (CoC) who ordinarily deals with matters of discipline. The requirement to investigate, however, does not apply to complaints that are frivolous or vexatious.⁴

1.2 Investigation

1.2.1 The investigation should be carried out swiftly but completely. It must, as a minimum, collect all reasonably available evidence relevant to determining whether a service offence or a service infraction has been committed.⁵ The investigation should work to uncover evidence relevant to proving or disproving any possible charge(s) to be laid. In respect of investigating possible service infractions, a guide to the elements of service infractions is set out at [Annex A](#).

1.2.2 Before an investigation is conducted a MJ Authority must take the following steps:

- a.** Confirm whether there is a requirement to seek pre-investigation legal advice; and,

¹ A service offence means an offence listed at NDA sections (ss) 73-129 and an offence punishable under the [Criminal Code](#) or any other Act of Parliament that can be charged through NDA section (s) 130, subject to s 70.

² A service infraction means a service infraction listed at QR&O articles (arts) 120.02–120.04.

³ QR&O paragraph (para) 102.02(1).

⁴ QR&O para 102.03(2). A frivolous or vexatious complaint is a complaint that clearly has no merit. A frivolous complaint may be one that lacks a reasonable basis for the allegation; is not serious; or is not reasonably purposeful (*Currie v Halton Regional Police Services Board*, 179 OAC 67, 233 DLR (4th) 657 (ONCA); *Love v Canada (Privacy Commissioner)*, 2015 FCA 198). A vexatious complaint may be one that is brought for an improper purpose (*Canada v Olumide*, 2017 FCA 42). The determination as to whether or not a complaint is frivolous or vexatious is made by the MJ Authority.

⁵ QR&O para 102.03(1).

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- b.** Determine whether the complaint is most appropriately investigated at their level or whether it should be referred to a different investigative body. The investigative bodies include: civilian law enforcement, the MP, and unit-level investigators. For example: if a complaint is reported to an officer or another member of the CoC it must be determined whether it is most appropriately investigated at the unit level or should be referred. Similarly, if a complaint is reported to the MP it must be determined whether it is most appropriately investigated by the MP or should be referred.

Appropriate investigative body

1.2.3 The determination by a MJ Authority as to whether to investigate or to refer a complaint to a different investigative body must be made in consideration of the seriousness⁶, sensitivity⁷ and complexity⁸ of the matter. When making this determination, the MJ Authority may consult with their legal advisor as well as the relevant policing and unit authorities as appropriate. The engagement of civilian law enforcement will be coordinated by the MP in collaboration with the specific law enforcement agency who has concurrent jurisdiction on a matter.

1.2.4 The determination of whether to investigate or to refer a complaint is not relevant to any allegation of sexual misconduct, which must be referred to the MP for a decision on investigatory jurisdiction (see paragraph (para) [1.2.15](#)).

Pre-investigation legal advice

1.2.5 Pre-investigation legal advice is required when the MJ Authority believes:

- a.** That any alleged service offence or service infraction was committed against a person; or
- b.** That a person may have suffered physical or emotional harm, property damage or economic loss as a result of any alleged commission of a service offence or service infraction.⁹

1.2.6 The requirement to obtain legal advice before causing an investigation to be conducted provides the MJ Authority the opportunity to receive advice with respect to the appropriate investigative body as well as the application of the Declaration of Victims Rights (DVR) in the circumstances.

⁶ For example: An allegation may be more serious when it represents a repeat of a similar service offence or service infraction committed or allegedly committed previously by the same individual.

⁷ For example: An allegation may be more sensitive and/or serious when it may have been committed against a person, or a person may have suffered physical or emotional harm, property damage or economic loss as a result.

⁸ For example: An allegation may be more complex when it implicates multiple units, formations or commands; the allegation is made against more than one person; and/or the allegation may require a high level of experience and expertise to investigate.

⁹ See QR&O para 102.02(2).

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1.2.7 The requirement to seek pre-investigation legal advice does not prohibit a MJ Authority from first carrying out the duty to engage in relevant and lawful pre-investigative activities that are appropriate in the circumstances, such as:

- a. Responding to an emergency;
- b. Taking measures to ensure the safety and security of any person, information or property;
- c. Securing or preserving evidence;
- d. Establishing the identity of the person alleged to have committed the service offence or service infraction when time is of the essence; and
- e. Affording DVR rights when applicable.

1.2.8 Pre-investigation legal advice should be requested within 3 days from the date on which the incident was reported to a MJ Authority.

Application of the DVR

1.2.9 As set out at para [1.2.5](#), pre-investigation legal advice is required when a MJ Authority believes that a service offence or a service infraction was committed against a person or that a person may have suffered physical or emotional harm, property damage or economic loss as the result of an alleged service offence or service infraction.¹⁰ One of the principal purposes of this legal advice is to ensure the MJ Authority has all the information and advice they require to assess whether, in those particular circumstances, the rights set out in the DVR apply.

1.2.10 The rights set out in the DVR apply only to victims, as defined at subsection (subs) 2(1) of the NDA.¹¹ Critically, the NDA definition of victim pertains only to misconduct constituting a service offence or a service offence allegation. It does not pertain to misconduct constituting a service infraction, alleged or otherwise. The rights set out in the DVR may first be accessed by a victim when an alleged service offence is being investigated¹² and are available to victims during their interactions with the military justice system,¹³ including when the charge is being prosecuted and when the offender is serving a punishment in service custody.¹⁴

¹⁰ See QR&O para 102.02(2).

¹¹ NDA subs 2(1) provides the following definition of victim: a person against whom a service offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence and includes, for the purposes of Division 1.1 of Part III and ss 202.201, 203.6 and 203.7, a person who has suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service offence against any other person.

¹² Pursuant to NDA subs 71.14(2) if a service offence is reported to the appropriate authorities in the military justice system, the investigation of the service offence is deemed to begin at the time of the reporting.

¹³ See NDA s 71.01 for the definition of Military Justice System.

¹⁴ See NDA paras 71.14(1)(a)-(c).

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1.2.11 If the DVR does apply, a victim¹⁵ is to be provided with clear information about their DVR rights¹⁶ including what information they are entitled to receive, who is responsible for providing it and when it should be provided, as well as their right to request the appointment of a victim liaison officer.¹⁷ The guide set out at [Annex B](#) may be used by a MJ Authority when providing information about DVR rights to a victim. The MJ Authority should also refer victims to the [Victims and Survivors of Service Offences webpage](#), which includes information and resources concerning DVR rights as well as programs and services available. The MJ Authority should also discuss with a victim the possibility that a charge for a service offence may not be laid or the investigation may result in a service infraction charge, and in those instances the DVR would no longer apply. However, it should be explained that if the investigation results in a service infraction charge and the DVR no longer applies as a result, the person is entitled through QR&O and this Policy to receive certain information and protection as well as the opportunity to participate in a summary hearing. The guide set out at [Annex C](#) may be used by MJ Authorities to assist in providing these entitlements.

1.2.12 When assessing the applicability of the DVR in the pre-charge phase, there are key factors that the MJ Authority should consider. If one or more factors are present, the more likely a service offence is alleged and therefore the more likely the DVR is to apply. The factors include the following:

- a.** The allegation may meet the elements of a service offence, whether those at NDA ss 73-129, or whether an offence punishable under the [Criminal Code](#) or any other Act of Parliament that can be charged as a service offence through NDA s 130, subject to s 70;
- b.** The person against whom the allegation is made may have been in a position of trust or authority at the relevant time,¹⁸ and in particular:
 - (1)** The alleged misconduct may have involved a violation of that position of trust or authority; and/or
 - (2)** The alleged misconduct may have been committed against a person in a position of subordination or vulnerability and that person is alleged to have suffered physical or emotional harm, property damage or economic loss as a result.
- c.** The allegation may involve aggravating circumstances, including a negative operational impact; and/or
- d.** The allegation may have negatively impacted the CAF or the wider local community.

¹⁵ The term victim used here means victim as defined at NDA subs 2(1).

¹⁶ The DVR is set out in the Code of Service Discipline Part III: Division 1.1, NDA ss 71.02 - 71.13.

¹⁷ See NDA subs 71.16(1) concerning the request and appointment of a VLO.

¹⁸ For example: A service offence or service infraction alleged to have been committed by a person in a position of authority may in some circumstances be considered more serious than if a service offence or service infraction was alleged to have been committed by a person who does not hold a position of authority.

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Conduct of the investigation

1.2.13 While an investigation is being conducted, it is not yet known whether a charge will be laid and, if so, whether the charge will be for a service offence or a service infraction. As a result, all investigations will follow the same general practice. This practice includes, for example: administering a caution about the right to remain silent to the person alleged to have committed any service offence or service infraction; providing the right to counsel to the person alleged to have committed any service offence or service infraction; and using search warrants when appropriate. For more information on unit investigations the MJ Authority should consult the [Resource Guide for Unit Disciplinary Investigations and Charge Laying](#) (only accessible on the Defence Wide Area Network). The MJ Authority should consult their legal advisor with respect to any questions concerning the appropriate investigative practice. This practice will ensure that any evidence collected during the investigation is more likely to be admissible if the investigation ultimately leads to a service offence charge.

Investigating sexual misconduct

1.2.14 Further to the requirement to seek pre-investigation legal advice when a matter involves any person who may have had a service offence or service infraction committed against them or who is alleged to have suffered harm, property damage or economic loss as a result,¹⁹ legal advice should be sought in any circumstance when a disciplinary investigation is to be conducted concerning an allegation of sexual misconduct, no matter how serious.

1.2.15 When a MJ Authority determines that an investigation is required with respect to an allegation of sexual misconduct,²⁰ the matter must be referred to appropriate law enforcement for a decision on investigatory jurisdiction. A unit disciplinary investigation may only be conducted once it has been determined that an investigation will not be conducted by civilian law enforcement and the MP have also declined to investigate.

1.2.16 If, during the course of a unit disciplinary investigation, misconduct that may constitute sexual misconduct is uncovered, it is highly recommended to seek legal advice even in circumstances where it is not explicitly required²¹ in order to among other things, determine if the matter should be referred to a different investigative body and determine the applicability of the DVR.

¹⁹ QR&O para 102.02(2).

²⁰ QR&O para 102.02(1).

²¹ QR&O para 102.02(2) requires legal advice to be obtained before causing an investigation to be conducted if the MJ Authority believes that a service offence or service infraction was committed against a person or that a person may have suffered physical or emotional harm, property damage or economic loss as a result of the alleged commission of the offence or infraction.

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1.3 Laying a Charge

Service infraction or service offence

1.3.1 In order to lay a charge, a person authorized to do so must have a reasonable belief that a service offence or a service infraction has been committed.²² There are two parts to this requirement. First, the person authorized to lay the charge must have an actual belief that the person to be charged has committed the alleged service offence or service infraction. Second, that belief must be reasonable – in other words, a reasonable person in the position of the charge layer who considers the same evidence would come to the conclusion that the person is probably guilty of the alleged service offence or probably committed the alleged service infraction.

1.3.2 In accordance with QR&O para 102.07(2) (Procedure for the Laying of a Charge) the charge layer must obtain pre-charge legal advice concerning the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and the appropriate charge, if:

- a.** The charge concerns a person against whom a service offence or a service infraction is alleged to have been committed or who is alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the alleged commission of the offence or infraction; or
- b.** The charge alleges the commission of a service offence.²³

1.3.3 The charge layer may seek legal advice at any time, including in the pre-charge phase, should any questions or concerns arise.

1.3.4 Before a charge can be laid, the charge layer must determine whether a service offence or a service infraction would be appropriate in the circumstances. This determination begins with the charge layer identifying whether the evidence gathered during the investigation establishes all of the essential elements of any applicable service offence or service infraction.

1.3.5 An allegation of the commission of a service offence means that the matter concerns a service offence as set out either at NDA ss 73-129, or at s 130, subject to s 70.

1.3.6 An allegation of the commission of a service infraction means that the matter concerns a service infraction as set out at QR&O articles 120.02 (Infractions in Relation to Property and Information), 120.03 (Infractions in Relation to Military Service) and/or 120.04 (Infractions in Relation to Drugs and Alcohol).

1.3.7 In some instances, the alleged misconduct will clearly concern a service offence because there is no service infraction that applies to the matter. In other instances, the matter may be less clear if both a service infraction and a service offence could apply. In these circumstances, pre-

²² QR&O para 102.07(1).

²³ QR&O subparagraphs 102.07(2)(a) and (b).

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charge legal advice should be sought in order to receive advice relevant to the determination as to whether the alleged misconduct is most appropriately considered and dealt with as a service offence or service infraction. The key factors that the charge layer should consider when making this determination include the following:

- a. The seriousness and/or sensitivity of the matter. The consideration of the following factors in part includes an assessment of the impact and outcome of the alleged misconduct. In general, the more serious and/or sensitive the matter is, the more likely a service offence charge is most appropriate. The factors include an assessment of:
 - (1) The impact on any person alleged to have had a service offence or service infraction committed against them or alleged to have suffered physical or emotional harm, property damage or economic loss as a result. In assessing this impact, the charge layer should provide the person the opportunity to communicate their views of the impact the alleged misconduct has had on them. This person may share their views if they so desire, and they are entitled to communicate with the charge layer in a way that is most appropriate for them;
 - (2) Whether the person against whom the allegation is made may have been in a position of trust or authority at the relevant time,²⁴ and in particular whether:
 - (a) The alleged misconduct may have involved a violation of that position of trust or authority; and/or
 - (b) The alleged misconduct may have been committed against a person in a position of subordination or vulnerability and that person is alleged to have suffered physical or emotional harm, property damage or economic loss as a result.
 - (3) The significance of aggravating circumstances, including any negative operational impact; and/or
 - (4) The impact on the CAF or the wider local community.
- b. The additional circumstances surrounding the allegations. A consideration of the following factors may assist the charge layer in their assessment of the particular facts and context of each case:
 - (1) The complexity of the case. The more complex the case, the more likely that a service offence charge is appropriate. An assessment of complexity may include, without being limited to, a consideration of whether an allegation is made against more than one person, whether there are multiple persons alleged to have had

²⁴ For example: A service offence or service infraction alleged to have been committed by a person in a position of authority may in some circumstances be considered more serious than if the service offence or service infraction was alleged to have been committed by a person who does not hold a position of authority.

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misconduct committed against them or who have alleged to have suffered physical or emotional harm, property damage or economic loss as a result, and/or whether the investigation involved the execution of a warrant;

- (2) The circumstances of the person the allegation is made against. This consideration may include the rank, years of service and the experience the person has had in their position;
- (3) The prevalence of the alleged misconduct in the unit or wider military community;
- (4) Whether the person against whom the allegation is made has a history of similar misconduct; and
- (5) Whether the evidence alleges more than one charge, and these charges allege both a service infraction and a service offence.²⁵

1.3.8 Before laying a charge, the charge layer must also determine whether it is in the public interest to proceed with laying a charge. The following factors, in addition to any of the above factors set out at para [1.3.7](#), may assist in determining whether it is in the public interest to proceed with the laying of a charge:

- a. Whether in the circumstances, it would be in the best interest of the administration of military justice;
- b. Whether in the circumstances, the laying of the charge would be disproportionately harsh;
- c. The availability and appropriateness of alternative courses of action to laying a charge;
- d. The likely effect of laying or not laying the charge on public confidence in the military justice system; and
- e. The likely effect of laying or not laying the charge on discipline, efficiency and morale of the CAF.

1.3.9 A person tried in respect of a service offence cannot be charged with having committed a service infraction arising from the same set of facts.²⁶ Conversely, a person may face service offence charges and a Court Martial after a summary hearing has been conducted in respect of a service infraction arising from the same set of facts.²⁷ In the interest of justice, at the charge laying phase, a charge layer may not simultaneously lay a service offence and a service

²⁵ In such a circumstance, a consideration must be made in respect of the impact a multiplicity of proceedings may have on the person facing more than one charge and on the administration of justice.

²⁶ NDA subs 162.6(1).

²⁷ NDA subs 162.6(2).

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infraction charge against a person in relation to the same set of facts. For example, a member who does not attend at work at the correct time may not be simultaneously charged for both AWOL pursuant to NDA subs 90(1) and tardiness pursuant to QR&O para 120.03(f).

1.3.10 A charge is laid when the charge layer completes the relevant sections of the charge report.²⁸ The post charge procedure to be followed depends on whether a charge is laid for a service offence or a service infraction.

1.3.11 With regard to a service offence charge, the charge layer must refer the charge directly to the Director of Military Prosecutions (DMP)²⁹ by providing the DMP with the charge report and the complete report of investigation.³⁰ If DMP chooses to withdraw or to not prefer the charge and the unit is considering laying a service infraction charge in respect of the same set of facts, legal advice must be sought.

1.3.12 With regard to a service infraction charge, the charge layer must refer the charge to the Commanding Officer (CO) of the person alleged to have committed the infraction³¹ by providing the CO with the charge report and the investigation file.³²

1.3.13 If a charge layer decides not to lay a charge, they must as soon as the circumstances permit notify, among others, the person alleged to have committed a service offence or a service infraction of this decision.³³ It is best practice to send this notification in writing. The charge layer is not required to provide reasons for the decision not to lay a charge, but may, in certain circumstances, exercise their discretion to do so.

1.4 Mental health supports

1.4.1 MJ Authorities, including the person who received the complaint and the charge layer, should recognize the impact that the investigation and the laying of a charge may have on the mental health of those involved. Information on and referrals to mental health supports should be made available by the MJ Authorities throughout the investigation phase and beyond to those who are involved including, those alleged to have had a service offence or service infraction committed against them or alleged to have suffered physical or emotional harm, property damage or economic loss as a result, and those who are alleged to have committed a service infraction or a service offence. MJ Authorities should make it known that if any such individual wishes to seek out mental health supports, such supports are available, and those authorities should provide relevant mental health support contact information.

²⁸ See QR&O para 102.07(1) with respect to the procedure for the laying of the charge. The charge report for service offences is DND 4814 and the charge report for service infractions is CF 78.

²⁹ NDA subs 161.1(1).

³⁰ QR&O article (art) 107.09.

³¹ NDA subs 161.1(2).

³² QR&O art 121.01.

³³ See QR&O para 102.11(a).

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Context

This chapter of the Military Justice at the Unit Level Policy is meant to provide guidance about the military justice system processes from the moment a charge is laid through to the decision to:

- a. conduct a summary hearing (SH);
- b. not proceed with a service infraction charge; or
- c. refer a service infraction charge to another officer.

This chapter is to be read in conjunction with the provisions contained in Division 5 of Part III of the *National Defence Act* (NDA) (Summary Hearings) and Chapters 121 (Referral of Charges and Post Charge Procedure) and 122 (Summary Hearings) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O).

2.1 Provision of information to person charged with having committed a service infraction

2.1.1 Any proceeding that carries the possibility that a decision will be made that could be adverse to a person's interests must be conducted in a fair manner.³⁴ There is no one definition for procedural fairness. However, it is generally accepted that in order to be fair in a legal sense, the common law rules of natural justice, freedom from bias on the part of the decision maker and meaningful and informed participation by the person in the proceedings, must be followed throughout the process.

2.1.2 The Commanding Officer (CO) of the person charged with having committed a service infraction (person charged) has the responsibility to ensure the person charged is provided with a copy of, or access to, any information that is to be relied on as evidence at the SH or that tends to show the person charged did not commit the service infraction.³⁵ When an investigation is conducted by the military police (MP), the CO of the person charged will cause this information to be provided to the person charged. Any questions the CO of the person charged may have with respect to the provision of this information may be directed to the MP. This provision of information facilitates the informed participation in the proceeding by the person charged and must be made available to them in sufficient time to allow them to properly prepare for the SH.³⁶

2.1.3 The requirement to provide information to the person charged is continuous. Any additional information that comes to light that will be relied on as evidence at a SH or that tends to show the person charged did not commit the service infraction must be provided. There is no corresponding duty on the part of the person charged to provide information pertaining to the subject matter of the charge.

³⁴ Sara Blake, *Administrative Law in Canada*, 7th ed (Toronto: LexisNexis, 2022) at 13.

³⁵ QR&O paragraph (para) 121.03(1).

³⁶ QR&O para 121.03(2).

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2.1.4 The following are examples of the types of information relating to a service infraction charge that would need to be provided to a person charged:

- a. A copy of any written statement made by the person charged;
- b. A copy of any documentary evidence;
- c. A copy of any written statement made by a witness;
- d. A copy of any photographs, videos, sound clips, screenshots;
- e. A copy of the Investigation Report; and/or
- f. Where physical evidence exists, access to the physical evidence.

2.1.5 When providing copies of documents to the person charged, those documents must be handled appropriately in light of their security classification or designation. Similarly, should those documents contain the personal information of individuals other than the person charged, that personal information will need to be handled in a manner consistent with the requirements of the [Privacy Act](#).³⁷ In this context, only the minimal amount of personal information that is required to fulfill the specific purpose may be disclosed.³⁸ The specific purpose of providing information to the person charged is to ensure they understand the charge and can properly prepare for the SH. Therefore, only the minimal amount of personal information relevant to that specific purpose may be disclosed. The types of personal information that could be redacted from relevant documents before they are disclosed to the person charged include, but are not limited to:

- a. private family, financial or medical data related to the parties involved in the investigation;
- b. the use of counseling services;
- c. personal information about third parties;
- d. personal identifiers such as social insurance numbers and service numbers; and
- e. home addresses and phone numbers.³⁹

³⁷ For the definition of personal information, see section (s) 3 of the [Privacy Act](#), RSC 1985, c P-21.

³⁸ [DAOD 1002-6, Disclosure of Personal Information](#), para 6.4.

³⁹ This list of examples is drawn from following resources:

1. Treasury Board Secretariat, [“Content and Disclosure of Harassment Investigation Reports,” Investigation Guide for the Policy on Harassment Prevention and Resolution and Directive on the Harassment Complaint Process](#), Annex 11 (21 August 2015) (archived).
2. National Defence, Chief of the Defence Staff, [Harassment Prevention and Resolution Instructions](#), A-PM-007-000/FP-001, Part 8: Disclosure, Security and Privacy (Ottawa: National Defence, 2017) at 42-43.

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2.1.6 The CO of the person charged is required to maintain a written record of the following: copies of all documents and other evidence the person charged was provided with or was given access to; who provided the copy or access; and when the copy or access was provided. The form set out at [Appendix 1](#) should be used for maintaining this written record. This written record must be appended to the charge report.

2.1.7 The provision of information to the person charged and a copy of the written record of disclosure should be provided in electronic format in all but exceptional cases, having regard to the nature of the information and to the exigencies of the service.

2.1.8 Questions with respect to the provision of information to the person charged should be directed to the unit legal officer.

2.2 Assisting Member

2.2.1 Every person charged has the opportunity to have an officer, or in exceptional circumstances, a non-commissioned member (NCM) above the rank of sergeant, appointed to assist them.⁴⁰ Exceptional circumstances may include when there is no eligible officer that could act due to the exigencies of the service.⁴¹ The assisting member (AM) who is appointed may assist, advise and make representations on behalf of the person charged to the extent the person charged desires.⁴²

2.2.2 After laying a charge for a service infraction, the charge layer must confirm with the person charged whether they want to have an AM appointed and, if so, whether they want to have a particular officer or NCM appointed.⁴³ When posing these questions, the charge layer must explain the role of the AM to the person charged. The explanation should provide enough information for the person charged to make a reasonably informed decision with respect to the appointment of the AM.

2.2.3 The officer or NCM requested by the person charged to act as an AM must have successfully completed the Military Justice – Unit Level Course (MJUL Course) within the last four years.⁴⁴ If the person requested to act as an AM has not successfully completed the MJUL Course at the time they are requested to act as an AM, they should be provided sufficient time to complete it before acting as an AM. If this is not possible, the person may still act as an AM provided the person charged has been informed of and accepts their lack of training and certification. The AM should also be provided with sufficient time, in light of their other duties, to adequately prepare for and carry out their responsibilities as an AM.

⁴⁰ QR&O para 121.02(1).

⁴¹ For example, the exigencies of the service may include where no officers are available because they are absent from the unit on duty, or all officers are unavailable due to other essential duties.

⁴² QR&O para 121.02(4).

⁴³ QR&O subpara 102.10(2)(b).

⁴⁴ Within the last four years of the date on which they would be appointed.

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2.2.4 If an AM is requested, the charge layer must indicate this in Part 2 of the charge report. If a specific person is requested to act as the AM, the charge layer must also indicate this in Part 2 of the charge report. In accordance with QR&O article (art) 121.02 (Assistance to Person Charged with a Service Infraction), the CO of the person charged must appoint the person requested as the AM if the exigencies of the service permit and the person requested is willing to act as the AM.⁴⁵ In the event the person requested to act as the AM does not have the same CO as the person charged, the CO of the person charged must confirm with the requested person's CO that QR&O subparagraph (subpara) 121.02(2)(a) is met. If an AM is requested, either specifically named or otherwise, they must be appointed within 3 days of receipt of the charge report by the CO of the person charged if the person charged is regular force and within 7 days if the person charged is a member of a reserve unit. Once appointed, the name and rank of the AM must be recorded in Part 3 of the service infraction charge report.

2.2.5 In the event a person requested does not wish to act as an AM, or an AM no longer wishes to act, they may decline or withdraw, as the case may be, without an obligation to provide reasons. If the person charged wants a different AM, the CO of the person charged will consider the request. While the QR&O do not provide the person charged with an explicit ability to request to have their AM replaced, should the opportunity to make such a request arise, the CO of the person charged, in accordance with QR&O art 101.04 (Cases Not Provided for in QR&O) and in the interests of fairness, will consider the request and, if appropriate in the circumstances, appoint a new AM.

Responsibilities

2.2.6 An AM does not act as legal counsel for the person charged. The role of the AM is to assist, advise and make representations throughout the proceedings and during any review, to the extent that the person charged desires.⁴⁶ This involvement by the AM may include assisting with preliminary matters such as the identification of relevant witnesses and evidence and arranging to have such witnesses and evidence available at the SH. Also, the AM may help the person charged prepare for the SH, and may assist them by presenting evidence, questioning witnesses, and making representations on their behalf both at the SH as well as in relation to a review.

2.2.7 The AM should inform the person charged that should the person charged require or wish to seek out mental health support, such support is available, and the AM should provide the person charged with relevant mental health support contact information.

Confidentiality of communication

2.2.8 The professional duties and responsibilities that legal advisors have to protect the information that their clients share with them in confidence do not apply to AMs. However, given the harm that can be caused to the integrity of the AM's role and in turn the effectiveness of the SH process, the communications between an AM and the person charged should be kept

⁴⁵ QR&O subparagraphs 121.02(2)(a)-(b).

⁴⁶ QR&O para 121.02(4).

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confidential. In any case where an AM is uncertain as to whether these communications should be disclosed, including being requested to disclose these communications, they should seek legal advice.

2.3 Legal counsel

Service infraction charge

2.3.1 A person charged with having committed a service infraction is not entitled to be represented by legal counsel appointed by the Director of Defence Counsel Services (DDCS), but they, or their AM on their behalf, are entitled to legal advice of a general nature to assist on matters relating to a SH.⁴⁷ The officer conducting a summary hearing (OCSH) has the discretion to permit a person charged with having committed a service infraction, upon request, to be represented by civilian legal counsel at their own expense. The OCSH, when addressing such a request, should consider at least the following:

- a.** the nature of the infraction;
- b.** the interests of the person charged with having committed a service infraction; and
- c.** the exigencies of the service.

If the OCSH is of the opinion the person charged with having committed a service infraction should be granted permission to be represented by legal counsel, the OCSH should further consider whether the matter may more appropriately be treated as a service offence allegation.

Service offence charge

2.3.2 When the charge layer provides notification of the charge to the person charged with a service offence, in accordance with QR&O subpara 102.10(2)(c) (Notice of Decision to Lay Charges) the charge layer must confirm with the person charged with a service offence whether they want to be represented by legal counsel, and if so, whether they wish to be represented by legal counsel appointed by DDCS or retained at the person's own expense. These preferences must be recorded at Part 2 of the service offence charge report.

2.4 Preliminary determinations (QR&O article 121.07)

2.4.1 The CO of the person charged, before complying with the obligation under NDA section (s) 162.95 (Commanding officer's obligation) to:

- a.** conduct a SH;

⁴⁷ QR&O subpara 101.11(1)(d). Legal advice of a general nature means non-case specific legal advice.

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- b.** decide not to proceed; or
- c.** refer the charge,

must make a determination with respect to the following three matters:

- a.** the official language of the proceeding;
- b.** the limitation period; and
- c.** whether legal advice is mandatory.

Each of these determinations are discussed in further detail below. Similarly, the officer to whom a charge is subsequently referred, before complying with the obligation under NDA s 163.2 (Obligation after referral), must make a determination with respect to the official language of the proceeding and the limitation period.⁴⁸

Official language

2.4.2 When the charge layer provides notification of the charge to the person charged with either a service offence or service infraction, the charge layer must ask the person charged whether they would like the proceeding to be conducted in either English or French.⁴⁹ The charge layer must mark the official language selection in the appropriate space on the relevant charge report. An OCSH must be able to understand the official language in which the hearing is to be conducted without the assistance of an interpreter.⁵⁰

2.4.3 If the CO or any officer to whom a charge is subsequently referred determines that they do not have the required language ability, the officer must refer the charge to another CO, superior commander or delegated officer who holds the necessary language ability.

2.4.4 Witnesses may testify in their preferred official language, and if it is not the official language chosen for the hearing, an interpreter must be provided. The OCSH must ensure that the interpreter is competent to translate the witness' testimony into the language chosen for the proceedings. The person charged, however, may consent to dispense with the interpreter if they understand the language the witness will be using. The OCSH is not required to dispense with the interpreter in such circumstances, and should not do so despite the consent of the person charged where it is considered to not be in the interest of justice to do so.

⁴⁸ QR&O para 121.12(a).

⁴⁹ QR&O subpara 102.10(2)(a).

⁵⁰ QR&O subpara 121.07(a)(i).

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Limitation period

2.4.5 The CO of the person charged or the officer to whom the charge has been subsequently referred, as the case may be, must determine whether they are precluded from conducting a SH due to the expiration of the limitation period.⁵¹ A SH must be commenced within six months after the day on which the service infraction is alleged to have been committed.⁵² The commencement of a SH occurs when the OCSH has taken an oath or solemn affirmation in accordance with QR&O art 122.06 (Oath or Solemn Affirmation) and has caused the charges to be read aloud (paragraph (para) [3.2.1](#)).

2.4.6 In the event a limitation period has passed, there is no jurisdiction to hear the matter, and as a result, the charge cannot be proceeded with. If the charge cannot be proceeded with by reason of the limitation period, the CO of the person charged or the officer to whom the charge was subsequently referred, as the case may be, must communicate this to the persons listed at QR&O art 121.09 (Decision Not to Proceed) and complete Part 5 of the service infraction charge report.

Legal advice

2.4.7 Legal advice must be sought by the CO of the person charged if the charge alleges an infraction has been committed against a person or alleges a person has suffered physical or emotional harm, property damage or economic loss as a result.⁵³ It is the responsibility of the CO of the person charged to determine whether legal advice must be sought, and if so, to seek that legal advice and to forward that legal advice on to any officer to whom a charge is subsequently referred.⁵⁴

2.4.8 Should the officer⁵⁵ who receives the legal advice required under QR&O para 121.07(b) (Preliminary Questions) either directly or as a result of a subsequent referral⁵⁶ decide to not act on that advice, the officer must provide their decision and reasons in writing to both the next superior officer to whom they are responsible in matters of discipline and to the unit legal officer who provided the advice.

2.5 Decision to conduct a summary hearing/not proceed/refer

2.5.1 Subject to the completion of the preliminary determinations required under QR&O art 121.07 (Preliminary Determinations) as set out above at s [2.4](#), the CO of the person charged must comply with NDA s 162.95 and the officer to whom the charge was subsequently referred must

⁵¹ QR&O subpara 121.07(a)(ii).

⁵² NDA s 163.4.

⁵³ QR&O para 121.07(b).

⁵⁴ QR&O para 121.11(1).

⁵⁵ The officer in this instance includes the CO of the person charged or any other officer to whom the charge is subsequently referred.

⁵⁶ See QR&O para 121.11(1).

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comply with NDA s 163.2. Complying with NDA s 162.95 or NDA s 163.2 as the case may be, requires the relevant officer, after taking into account the jurisdictional conditions set out at NDA subsection (subs) 163(1) (Jurisdiction) as well as the additional jurisdictional considerations (para [2.6.6](#), below), to: conduct a SH in relation to the charge; decide to not proceed with the charge; or, refer the charge.

Conduct a summary hearing – NDA subsection 162.95(a)/163.2(a)

2.5.2 Upon a decision to conduct a SH, the OCSH must choose a date, time and location for the hearing. The hearing may occur either inside or outside of Canada. The determination of the location of the hearing will depend on a number of factors, including:

- a.** The availability and location of the person charged, the witnesses and any person against whom a service infraction is alleged to have been committed or who is alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the alleged commission of the service infraction;
- b.** Location of the incident that gave rise to the charge; and
- c.** The operational posture of the unit.

2.5.3 The discretion to choose a location will be exercised based upon a balancing of convenience and the disciplinary interests of the unit, bearing in mind the principles of fairness, and the six month limitation period.

Decision not to proceed with charge – NDA subsection 162.95(b)/163.2(b)

2.5.4 A decision not to proceed is a discretionary one, resting with the officer to whom the charge has been referred.⁵⁷ One of the circumstances in which a decision not to proceed would be made is when it is determined the conditions set out at NDA paragraphs (paras) 163(1)(c)-(d) (para [2.6.2](#), below) are not satisfied.

2.5.5 If a decision is made to not proceed, no SH is held. The officer to whom the charge has been referred must complete the relevant sections in Part 5 of the charge report. The officer must communicate the decision not to proceed and the reasons why in writing as soon as circumstances permit to the persons listed at QR&O art 121.09.

2.5.6 A decision to not proceed does not preclude conducting a SH of the matter at a later date, as long as the six month limitation period is respected.⁵⁸

⁵⁷ NDA subs 162.95(b), or NDA subs 163.2(b) as the case may be.

⁵⁸ NDA s 163.3.

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Decision to refer the charge to another officer – NDA subsection 162.95(c)/163.2(c)

2.5.7 Should the relevant officer determine that while a SH should be held in respect of the matter, they will not conduct the SH, they are obliged to make a subsequent referral of the charge to another CO, superior commander or delegated officer. Delegated officers who decide to refer the charge must refer the charge back to their delegating CO who will then make the determination as to whom the charge will subsequently be referred.

2.5.8 A subsequent referral may occur in circumstances including:

- a. when the jurisdictional conditions set out at NDA paras 163(1)(a)-(b) are not satisfied;
- b. when jurisdiction is lost at another time during the SH process; or
- c. when one of the prohibitions on conducting a SH set out at NDA subs 163(2) (Prohibition on conducting hearing) apply.

A CO prohibited from conducting a SH as a result of one of the prohibitions in NDA subs 163(2) cannot refer the charge to a delegated officer.⁵⁹

2.6 Jurisdiction/ability to conduct a summary hearing

2.6.1 Within the context of a SH, the term jurisdiction refers to the legal authority to conduct the SH and make a decision. The CO of the person charged or the officer to whom a charge is subsequently referred, as the case may be, must take jurisdictional considerations into account when complying with NDA s 162.95 or NDA s 163.2. Complying with NDA sections 162.95/163.2 requires the relevant officer to: conduct a SH in relation to the charge; decide to not proceed with the charge; or, refer the charge. The jurisdictional considerations to take into account are set out below at para [2.6.2](#) (concerning NDA subs 163(1)) and at para [2.6.6](#) (additional jurisdictional considerations).

The jurisdictional conditions set out at NDA subsection 163(1)

2.6.2 The conditions set out at NDA subs 163(1) that must be satisfied in order for the relevant officer to have the jurisdiction to conduct the SH are:

- a. The person charged is an officer who is at least one rank below the officer to whom the charge has been referred or is an NCM;
- b. The powers of the officer to whom the charge has been referred to impose the sanction are adequate having regard to the gravity of the facts that gave rise to the charge;

⁵⁹ QR&O para 121.11(2).

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- c. There are no reasonable grounds to believe that the person charged is unable on account of mental disorder to understand the nature, object or possible consequences of the proceedings;⁶⁰ and
- d. Having regard to the interests of discipline, efficiency and morale of the CAF, it would be appropriate to conduct the hearing.

2.6.3 The determination as to whether it would be appropriate to conduct the SH in accordance with NDA para 163(1)(d) (as set out above) requires the exercise of discretion on the part of the relevant officer. For the purposes of guiding this discretion as to whether it would be appropriate to conduct the SH, having regard to the interests of discipline, efficiency and moral of the CAF, the following considerations may be taken into account, including whether:

- a. The matter should proceed by way of a service offence charge;
- b. There are reasonable grounds to believe the person charged was suffering from a mental disorder at the time of the alleged infraction;⁶¹ and
- c. It is in the public interest to proceed with a SH.

2.6.4 Taking into account whether it is in the public interest to proceed may include a number of different considerations, including without being limited to:

- a. The level of triviality of the alleged infraction;
- b. Whether there are significant mitigating or aggravating factors;
- c. The background of the person charged and any extraordinary personal circumstances;
- d. The age, or physical or mental infirmity of the person charged;
- e. The alleged degree of responsibility of the person charged for the infraction;
- f. The degree of staleness of the alleged infraction;

⁶⁰ If the relevant officer has such reasonable grounds, the matter should proceed by way of a service offence charge. In such circumstances, the relevant officer should seek legal advice and consult the local CAF medical clinic.

⁶¹ While the consideration of mental disorder of the person charged in relation to their ability to understand the nature, object or possible consequences of the proceedings forms part of the jurisdictional considerations pursuant to NDA para 163(1)(c), the consideration of mental disorder of the person charged at the time of the infraction forms part of the consideration of the OCSH pursuant to NDA para 163(1)(d). If the relevant officer has reasonable grounds to believe the person charged was suffering from a mental disorder at the time of the infraction, the matter should proceed by way of a service offence charge. In such circumstances, the relevant officer should seek legal advice and consult the local CAF medical clinic.

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- g. Whether the consequences of proceeding with the charge are disproportionately harsh, considering how other persons implicated in the infraction or in previous similar cases have been or are likely to be dealt with; and
- h. The prevalence of the alleged infraction in the unit or the military community and the need for discipline to be seen to be done.

2.6.5 If the relevant officer has any questions concerning the determination as to whether it would be appropriate to conduct the SH having regard to the interests of discipline, efficiency and morale of the CAF, including taking into account the public interest, a unit legal officer should be consulted.

Additional jurisdictional considerations

2.6.6 An officer's lack of ability to conduct the SH, including a lack of jurisdiction, may result from, but is not limited to the following:

- a. The expiration of the six month limitation period;⁶²
- b. The inability of the officer to whom the charge was referred to understand the official language in which the hearing is to be conducted without the assistance of an interpreter;⁶³
- c. A prohibition set out at NDA subs 163(2) (Prohibition on conducting hearing) is applicable;⁶⁴
- d. Partiality/bias or the appearance thereof;
- e. The relevant officer does not have valid certification of qualification from the Judge Advocate General, pursuant to QR&O art 101.07 (Certification of Qualification to Administer the Code of Service Discipline);⁶⁵ and
- f. The person charged has been previously tried for a service offence arising from the same facts on which the charged service infraction is based.⁶⁶

2.6.7 The CO of the person charged or the officer to whom a charge is subsequently referred, as the case may be, must continue to ensure they have jurisdiction throughout the SH process. When the relevant officer does not have the jurisdiction to conduct a SH, they do not have the

⁶² NDA s 163.4; see also QR&O subpara 121.07(a)(ii).

⁶³ QR&O subpara 121.07(a)(i).

⁶⁴ Note: NDA subs 163(2) provides that, if one of the prohibitions are applicable, the officer to whom the charge has been referred may conduct a SH if, having regard to all the circumstances, it is not practicable for any other superior commander, commanding officer or delegated officer to conduct the hearing.

⁶⁵ QR&O art 101.07.

⁶⁶ NDA subs 162.6(1).

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legal authority to proceed. A loss of jurisdiction will result in either no SH being held, or the charge being referred, depending on the circumstances. If no SH is to be held, the relevant officer must communicate this and the reason why it is not to be held to the persons listed at QR&O art 121.09 (Decision not to proceed).

2.6.8 A person charged may, at any point after they receive notice of the decision to conduct the hearing, including during the SH itself, request that the OCSH withdraw from the proceeding due to a lack of jurisdiction.⁶⁷ When considering this request, the OCSH must consider any representations from the person charged and provide the person with reasons for the decision reached.⁶⁸ Prior to receiving any evidence concerning whether or not the person charged committed the service infraction, the OCSH must ask whether the person charged wishes to make representations with respect to the officer's lack of ability to conduct the SH, including any lack of jurisdiction.⁶⁹

2.6.9 The relevant officer is encouraged to contact their unit legal officer at any time if their lack of ability to conduct a SH, including a lack of jurisdiction, is either raised by the person charged, or on their own initiative. In the event they choose to withdraw from conducting a SH, they should contact their unit legal officer.

2.7 Adjournments

2.7.1 Either the person charged, or the AM on their behalf, can request an adjournment of a SH at any time. Prior to receiving any evidence at the hearing, the OCSH must ask the person charged whether they require more time to prepare for the hearing. The OCSH has the obligation to grant any reasonable adjournment requested for that purpose.⁷⁰ Reasonable adjournments ensure a proceeding is procedurally fair by allowing a person charged to meaningfully participate in the hearing process. When considering what would be a reasonable adjournment, the following factors should be considered:

- a.** The amount of time that has passed since the person charged received a copy of the service infraction charge report;⁷¹
- b.** The amount of time that has passed since the person charged received a copy of, or was given access to, all the information referred to in QR&O art 121.03 (Provision of Information);
- c.** The number of charges;

⁶⁷ QR&O para 121.13(1).

⁶⁸ QR&O para 121.13(2).

⁶⁹ QR&O para 122.07(b).

⁷⁰ QR&O para 122.07(a).

⁷¹ Pursuant to QR&O subpara 102.10(1)(a) the charge layer, as soon as the circumstances permit, must provide a copy of the charge report referred to at QR&O para 102.07(1) to the person charged.

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- d.** The number of witnesses being called;
- e.** The availability of the witnesses being called for the person charged;
- f.** The amount of evidence to be considered;
- g.** Whether the adjournment would cause unreasonable delay of the proceedings; and
- h.** Whether the request for the adjournment was made in good faith.

2.8 Attendance of witnesses

2.8.1 The OCSH must facilitate the attendance of the witnesses. This includes facilitating the attendance of the witnesses requested by the person charged. However, the person charged is under no obligation to disclose to the OCSH who they may call as a witness during the SH. In light of the requirement to conduct a fair hearing, all efforts should be made to accommodate the request of the person charged. The OCSH may order the appearance of any witness subject to the Code of Service Discipline and request the appearance of any other witness.⁷² However, the OCSH is not obliged to arrange for the attendance of witnesses where the officer believes the request by the person charged is frivolous or vexatious,⁷³ or where the attendance of a witness cannot be reasonably effected.

2.8.2 Witnesses may give evidence at the hearing by telephone or other electronic means so long as the identity of the witness can reasonably be confirmed and the witness may be properly heard and questioned by the OCSH and the person charged or their AM. Videoconference is preferable to attendance by telephone.

2.8.3 Questions with respect to witnesses, including arranging their attendance and appearance at the SH, should be directed to the unit legal officer.

2.9 Attendance of the person charged

2.9.1 The person charged must attend their SH, but they may do so by any means permitting simultaneous visual and oral communication. The attendance of the person charged is an essential element of procedural fairness. It allows for meaningful participation or awareness as well as the opportunity to make representations.

⁷² QR&O para 122.05(1). The OCSH may not compel the person charged to give evidence at the SH (see QR&O para 122.05(2)).

⁷³ A frivolous or vexatious request is a request that clearly has no merit. A frivolous request may be one that lacks a reasonable basis; is not serious; or is not reasonably purposeful (*Currie v Halton Regional Police Services Board*, 179 OAC 67, 233 DLR (4th) 657 (ONCA); *Love v Canada (Privacy Commissioner)*, 2015 FCA 198). A vexatious request may be one that is brought for an improper purpose (*Canada v Olumide*, 2017 FCA 42).

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2.10 Bias

2.10.1 It is essential for ensuring procedural fairness that the SH be conducted in an impartial manner by an impartial officer. The OCSH must be impartial and must be seen to be impartial. Impartiality in the context of a SH means the OCSH is not only unbiased but there is also no reasonable apprehension of bias. When confirming that they are not precluded from acting on the ground of bias, the officer to whom the charge was referred or the OCSH will consider the following test:

What would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would [they] think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.⁷⁴

2.10.2 The test for bias is not only whether an actual bias exists, but whether a reasonably well informed person, viewing the situation, would think that the decision-maker is likely to make a decision that is not entirely based on the admissible evidence. In other words, would “... a reasonably well-informed person, ... conclude that there is a reasonable apprehension of bias”.⁷⁵

2.10.3 An apprehension of bias on the part of the officer to whom the charge was referred or the OCSH could arise from a number of circumstances, including when the officer to whom the charge was referred or the OCSH has:

- a.** A close relationship with the person charged or with a witness who is to give evidence at the hearing;
- b.** Unfavorable feelings towards the person charged or a witness who is to give evidence at the hearing;
- c.** A direct personal interest in the outcome; or
- d.** Expressed a preference towards a certain outcome.

2.10.4 Should the officer to whom the charge was referred or the OCSH have any questions regarding their impartiality or whether their circumstances could raise an apprehension of bias, they are strongly encouraged to obtain legal advice from their unit legal officer.

⁷⁴ *Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369; see also *Yukon Francophone School Board, Education Area #23 v Yukon (Attorney General)*, 2015 SCC 25 at paras 20-21.

⁷⁵ *Pelletier v Canada (Attorney General)*, 2008 FC 803.

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Context

This chapter of the Military Justice at the Unit Level Policy is intended to provide guidance on the summary hearing (SH) process during the hearing stage. This chapter includes guidance on matters including hearing attendance, taking oaths, pronouncing a decision and imposing a sanction, if applicable. This chapter is to be read in conjunction with the provisions contained in Division 5 of Part III of the [National Defence Act](#) (NDA) (Summary Hearings) and Chapters 120 (Service Infractions), 122 (Summary Hearings) and 123 (Sanctions) of the [Queen's Regulations and Orders for the Canadian Forces](#) (QR&O).

3.1 Conduct of the hearing

3.1.1 The conduct of a SH is solely the responsibility of the officer conducting the summary hearing (OCSH), and no superior authority may interfere in the proceedings. The OCSH may seek legal advice at any time with respect to the SH.

3.1.2 By default, a SH will be open to the public. However, the OCSH may order all or part of the SH to be held in private when they are of the opinion that any of the circumstances set out at QR&O subparagraphs 122.02(1)(a) to (c) (Public Hearings) have been met. Reasons must be provided during the hearing when a decision is made to hold all or part of a SH in private.⁷⁶

3.1.3 Before commencing the SH, the OCSH must ensure that the person charged with having committed a service infraction (person charged) and the assisting member (AM), if one has been requested by the person charged, are present and that all witnesses to be called to give evidence are available in person or by telephone or electronic means.⁷⁷ The person charged may be ordered to appear before the OCSH, and failure to appear may constitute a service infraction pursuant to QR&O paragraph (para) 120.03(f) (Infractions in Relation to Military Service) or a service offence pursuant to NDA section (s) 118.1 (Failure to appear or attend).

3.2 Oath or solemn affirmation and reading of charges

3.2.1 Once the person charged is present, the next step is for the OCSH to take an oath or solemn affirmation. The language of the OCSH oath or solemn affirmation is set out at QR&O article (art) 122.06 (Oath or Solemn Affirmation). After taking the oath or solemn affirmation, the OCSH will next cause the charges as they appear on Part 1 of the charge report⁷⁸ to be read aloud. It is at this point in the proceedings when the commencement of the SH occurs.⁷⁹

⁷⁶ QR&O paragraph (para) 122.02(2).

⁷⁷ See para [2.8.2](#) on witness attendance by telephone or electronic means.

⁷⁸ CF 78: Charge Report – Service Infraction.

⁷⁹ In accordance with NDA s 163.4, a SH must be commenced within six months after the day on which the service infraction is alleged to have been committed.

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3.3 Preliminary questions

3.3.1 Prior to receiving any evidence, the OCSH must, in accordance with QR&O art 122.07 (Preliminary Questions), ask the person charged whether they:

- a. Require more time to prepare for the hearing;⁸⁰
- b. Wish to make representations with respect to the OCSH's lack of ability to conduct the summary hearing, including a lack of jurisdiction;⁸¹ and
- c. Wish to admit to any details of the charge.

3.3.2 When the OCSH asks the person charged whether they wish to admit any of the details of the charge⁸² or admit to any of the charges laid, the response must be recorded in writing and appended to the charge report. The admission of any of the details of a charge or of a whole charge means that evidence does not need to be presented at the SH to prove that particular detail or charge. If the person charged admits to details of the charge without admitting to the charge itself, the OCSH must still determine whether the person charged actually committed the service infraction. For example, the OCSH must still consider whether the person charged had taken all reasonable care or made an honest and reasonable mistake of fact.⁸³ A written record of the admitted details and charges is important for the purpose of informing the finding, the reasons, and any potential review.

3.4 Hearing evidence and representations

3.4.1 Once the steps detailed in sections [3.1](#) through [3.3](#), above, have been completed, the OCSH can begin to receive the evidence relating to the charge.

3.4.2 A SH is an inquisitorial process. This means that the OCSH conducts the hearing as a fact-finding activity and "takes charge of the gathering of evidence in an independent and impartial way."⁸⁴ In that role, the OCSH fully controls the process of the SH and the order in which evidence is to be presented. Evidence and representations can be presented at any time and in any order. There is no set format for the SH.

3.4.3 The OCSH is responsible for receiving any evidence that may assist them in deciding whether or not the person charged committed the alleged service infraction. This responsibility

⁸⁰ If the person charged requires more time, the OCSH grants any reasonable adjournment requested. For more information on reasonable adjournment, see s [2.7](#).

⁸¹ The person charged may request the OCSH to withdraw from the proceeding due to lack of jurisdiction at any time after they are informed of the OCSH's decision to conduct the SH. For more information on the lack of the OCSH's ability to conduct the SH, see s [2.6](#).

⁸² QR&O para 122.07(c).

⁸³ See subparagraph [3.5.2\(b\)](#), below.

⁸⁴ *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 50.

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includes introducing evidence that tends to show the person charged committed the service infraction and evidence that tends to show the person charged did not commit the service infraction, including evidence relating to the person charged taking all reasonable care or making an honest and reasonable mistake of fact. The evidence to be considered may be introduced in different ways, such as through the questioning of witnesses or the acceptance of documentary, electronic or physical evidence.

3.4.4 The person charged must be given a reasonable opportunity to engage during the SH. The person charged may, if they wish, speak about the evidence as it is introduced, introduce their own evidence, including calling their own witnesses,⁸⁵ question any witnesses, and make representations during all phases of the hearing.⁸⁶ The OCSH cannot compel the person charged to give evidence,⁸⁷ which includes giving oral evidence under oath or solemn affirmation. The OCSH also cannot compel the person charged to make any representations. The person charged has no responsibility or requirement to give any evidence or speak during the SH. After the OCSH has received and heard all the evidence, the person charged must also have the opportunity to make representations on whether the evidence shows that the service infraction was committed or whether their conduct can be otherwise excused. The person charged has the option of engaging and making representations personally or having their AM do so on their behalf.

3.4.5 During the SH, the person charged must request permission from the OCSH if they wish to question any person against whom a charged service infraction is alleged to have been committed or any person who is alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the alleged commission of the service infraction. This request must include a general description of each line of questioning the person charged wishes to ask.

3.4.6 In response, the OCSH must, after consultation with the person to be questioned, decide what lines of questioning may be asked and whether the person charged may question that person directly themselves, or indirectly (such as through their AM or the OCSH). The determination as to what lines of questioning may be asked should be based solely on whether each line of questioning is relevant to the matters to be determined in the SH. The OCSH should give reasons for their decision, including reasons for refusing to allow certain lines of questioning to be put to the person to be questioned.

3.4.7 Before giving evidence at a SH, a witness, including the person charged, must take an oath or solemn affirmation in accordance with QR&O paras 122.06(3)-(4).

⁸⁵ While the OCSH must provide the person charged with a copy of or access to any information that is to be relied upon as evidence at the SH or that tends to show the person charged did not commit the service infraction (QR&O para 121.03(1)); there is no duty on the part of the person charged to provide any information pertaining to the subject matter of the charge (see para [2.1.3](#)). As such, the person charged may call their own witnesses to provide evidence at the SH.

⁸⁶ QR&O art 122.08.

⁸⁷ QR&O para 122.05(2).

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3.4.8 Witnesses who will be giving evidence during the SH, other than the person charged, must be excluded from the hearing room until they are called in to give their evidence.

Additionally, the OCSH should inform those witnesses that until they are called to give their evidence, they must not:

- a. Discuss what they may say during the SH with any other witness, or
- b. Receive any information on what other witnesses may say, or have said, during the SH.⁸⁸

3.4.9 The OCSH is required to maintain a list of all evidence that was received during the SH, which includes the names of all witnesses heard and any documentary, electronic and/or physical evidence received. This list must be attached to the charge report at the end of the SH.

3.5 Findings

3.5.1 Once the OCSH has received and heard all the evidence and representations, the OCSH must next make a finding as to whether or not the person charged committed the alleged service infraction.⁸⁹ When making such a finding, the OCSH may consider only the evidence and representations received during the SH, which may include:

- a. Written statements and/or oral evidence;
- b. Documentary, electronic and physical evidence;
- c. Any admitted details of the charge (see para [3.3.2](#)); and
- d. Representations by the person charged.

3.5.2 When making a finding, it is essential for the OCSH to consider the following:

- a. First, whether there is clear and convincing evidence⁹⁰ which shows, on a balance of probabilities,⁹¹ that the person charged committed the service infraction. In other words, in order to make a finding that a person committed a service infraction, there must be clear and convincing evidence that it is more likely than not that the person charged committed the service infraction. It is not relevant to this determination whether the

⁸⁸ Note that this does not prevent witnesses, if they wish, from discussing with the person charged, even if the person charged may be a witness.

⁸⁹ QR&O para 122.09(1).

⁹⁰ See *F.H. v McDougall*, 2008 SCC 53 at para 46.

⁹¹ “On a balance of probabilities” means that it is more likely than not that the alleged event occurred. See *F.H. v McDougall*, above, at para 49.

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person charged knew they were committing the service infraction or intended to commit it;⁹²

- b. Second, whether on the balance of probabilities the evidence establishes that in the course of their conduct the person charged had either:

 - (1) Taken all reasonable care to avoid committing the service infraction; or
 - (2) Made an honest and reasonable mistake of fact.⁹³

3.5.3 For it to be established that all reasonable care was taken, the evidence must show that the person charged took the steps that a reasonable person would have taken in similar circumstances to avoid committing the service infraction.⁹⁴

3.5.4 The factors relevant to the determination as to whether all reasonable care had been taken may include:

- a. Whether the situation was beyond the person's control;
 - b. The skill level expected of a member belonging to that occupation and holding that rank; and
 - c. The complexities involved.⁹⁵

3.5.5 For it to be established that the person charged made an honest and reasonable mistake of fact, the evidence must show that the person charged made an honest mistake of fact relevant to the finding of whether they committed a service infraction, and that a reasonable person could have made a similar mistake in similar circumstances.⁹⁶ However, such misunderstandings do not include a failure to understand that the act or conduct in question gives rise to a service infraction. This concept is illustrated by the phrase “ignorance of the law is no excuse.”⁹⁷

3.5.6 The OCSH must find that the person charged committed a service infraction if they conclude on a balance of probabilities that:

⁹² A service infraction is not criminal in nature. Unless otherwise noted in [Annex A](#), proof of a service infraction only requires proof of the act, and does not require proof of a fault element such as purposely, knowingly, recklessly or negligently.

⁹³ *R v Sault Ste Marie (City)*, [1978] 2 SCR 1299.

⁹⁴ *R v Sault Ste Marie (City)*, above, at page 1326; *La Souveraine, Compagnie d'assurance générale v Autorité des marchés financiers*, 2013 SCC 63 at para 56.

⁹⁵ Adapted from John Swaigen & Susan McRory, *Regulatory Offences in Canada: Liability and Defences*, 2nd ed (Toronto: Thomson Reuters Canada, 2018) at pages 64-66; see original text for a discussion of different factors.

⁹⁶ *R v Sault Ste Marie (City)*, above, at page 1326; *La Souveraine, Compagnie d'assurance générale v Autorité des marchés financiers*, above, at para 56.

⁹⁷ Lévis (City) v Tétreault; Lévis (City) v 2629-4470 Québec inc, 2006 SCC 12 at para 22; *La Souveraine, Compagnie d'assurance générale v Autorité des marchés financiers*, above, at para 57.

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- a. There is clear and convincing evidence that the person charged committed the service infraction;
- b. The person charged did not take all reasonable care; and
- c. The person charged did not make an honest and reasonable mistake of fact.

3.5.7 Conversely, the OCSH must find that the person charged did not commit a service infraction if they conclude on a balance of probabilities either that:

- a. The person charged did not commit the service infraction;
- b. The person charged took all reasonable care; or
- c. The person charged made an honest and reasonable mistake of fact.

3.5.8 Having received and heard the evidence with respect to the charges, the OCSH may adjourn the hearing to consider the evidence in accordance with the two matters set out above at para [3.5.2](#) and determine the finding they believe is supported by the available evidence. Having made the finding, the OCSH may resume the SH, if adjourned, and pronounce the finding, with reasons.

3.5.9 The reasons, which are given orally at the SH and subsequently in writing,⁹⁸ must explain how and why the OCSH has arrived at the particular finding they are pronouncing. The reasons must demonstrate that the OCSH considered the evidence and the representations relevant to the service infraction before them and considered the two matters set out above at para [3.5.2](#).

3.5.10 Where the person charged is found to have committed the service infraction, the hearing proceeds to the sanction stage and the OCSH must notify the person found to have committed a service infraction of their right to make an application for a review of the finding and/or sanction and of the process and deadline for requesting a review.⁹⁹ If the person charged is found to have not committed the service infraction, the OCSH will close the SH and dismiss the participants and any other persons in attendance.

3.6 Sanctions

Sanctioning principles and objectives

3.6.1 The fundamental principle of sanctioning is that sanctions must be proportionate to the gravity of the service infraction and the degree of responsibility of the person found to have

⁹⁸ QR&O para 122.09(4). Note that the OCSH must provide the written reasons no more than 3 days after pronouncing the decision.

⁹⁹ QR&O subparagraph (subpara) 122.09(2)(b).

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committed a service infraction.¹⁰⁰ A sanction must also be imposed in accordance with the other principles outlined at NDA s 162.92 (Other principles). Particularly, a sanction should be increased to account for any aggravating circumstance, such as evidence of abuse of rank or other position of trust or authority, evidence the infraction was motivated by bias, prejudice, or hate, or evidence of harm to military operations or training.¹⁰¹ A sanction should be reduced to account for any relevant mitigating factors,¹⁰² which may include the age, rank, or years of service of the person found to have committed a service infraction, the fact that this is a first infraction, and any admissions that simplified the SH process.

3.6.2 Along with the fundamental principles of sanctioning, sanctions should also be intended to achieve at least one of the objectives of sanctioning stated in the NDA, including maintaining public trust, denouncing undisciplined conduct, and promoting a sense of responsibility.¹⁰³

Sanctioning powers

3.6.3 The sanctions that can be imposed at a SH are listed in order of severity at NDA s 162.7 (Scale of sanctions). Minor sanctions for the purposes of NDA para 162.7(e) are listed at QR&O art 123.02 (Minor Sanctions). The sanctioning powers available to the OCSH depend on whether the OCSH is a superior commander, Commanding Officer (CO) or delegated officer¹⁰⁴ and may depend on the rank of the person found to have committed a service infraction.¹⁰⁵ The following table summarizes the sanctioning powers available to the different types of OCSH. Each sanction is discussed in more detail below the table.

¹⁰⁰ NDA s 162.91.

¹⁰¹ NDA paras 162.92(a)(i)-(iii).

¹⁰² NDA subsection (subs) 162.92(a).

¹⁰³ NDA s 162.9.

¹⁰⁴ NDA subsections 163.1(1)-(3).

¹⁰⁵ The rank of the person found to have committed a service infraction is relevant to the sanction of reduction in rank. See NDA subs 162.8(1) and para [3.6.4](#).

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SANCTION*	Delegated Officer	Commanding Officer	Superior Commander
Reduction in Rank (By 1 Rank)			✓
Severe Reprimand			✓
Reprimand		✓	✓
Deprivation of Pay	Up to 7 Days	Up to 18 Days	Up to 18 Days
MINOR SANCTION*	Delegated Officer	Commanding Officer	Superior Commander
Confinement to Ship or Barracks (Up to 14 Days)	✓	✓	✓
Extra Work & Drill (Up to 14 Days)	✓	✓	✓
Withholding of Leave (Up to 30 Days)	✓	✓	✓

*In accordance with NDA subsections 163.1(1)-(3), the OCSH can impose one or more of the sanctions available to them.

Reduction in rank

3.6.4 Reduction in rank is the most severe sanction that can be imposed at a SH. It only applies to officers above the rank of second lieutenant and to non-commissioned members above the rank of private.¹⁰⁶ The rank of the person found to have committed a service infraction can only be reduced by one substantive rank at the highest classification in the reduced rank.¹⁰⁷ Officers cannot be reduced to a rank lower than a commissioned rank (i.e. an officer rank above the rank of officer cadet or naval cadet).¹⁰⁸

3.6.5 Reduction in rank may have a long lasting and significant financial impact on the person found to have committed a service infraction.¹⁰⁹ The reduction in rank continues even if the service infraction is removed from the conduct sheet, and will remain effective until the person found to have committed a service infraction is once again promoted to the rank they previously held. The OCSH should weigh the financial impact of this sanction, having regard to the seriousness of the infraction and the degree of responsibility. This sanction may be appropriate

¹⁰⁶ NDA subs 162.8(1).

¹⁰⁷ QR&O art 123.01. Note: An appointment to master corporal is not a rank. Therefore, a sergeant who is sanctioned with a reduction in rank would be reduced to the rank of corporal, and both a master corporal and corporal would be reduced to the rank of private.

¹⁰⁸ NDA para 162.8(2)(b).

¹⁰⁹ Pay in the reduced rank is determined in accordance with the [Compensation and Benefits Instructions Chapter 204](#) (Pay of Officers and Non-Commissioned Members), and is based on qualifying years of service.

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when a person has been found to have abused their rank or other position of trust or authority,¹¹⁰ or has acted in a manner which demonstrates the person cannot meet the standards of leadership expected at that rank level.

3.6.6 The CO of the person against whom the sanction of reduction in rank has been imposed must, as soon as practicable, notify the [National Defence Headquarters \(Director General Military Careers\)](#) (only accessible on the Defence Wide Area Network).

Severe reprimand and reprimand

3.6.7 A severe reprimand or a reprimand is intended to reflect a sanction against misconduct. They are intended to stand out as a blemish on the career record of the person found to have committed a service infraction. In imposing a severe reprimand or a reprimand, the OCSH should recognize that these sanctions are more severe than deprivation of pay and minor sanctions.

Deprivation of pay

3.6.8 NDA subsection 162.7(d) provides for the deprivation of pay and any allowances prescribed in regulations. However, there are currently no allowances prescribed in regulations. Therefore, this sanction is currently limited to only deprivation of pay. Deprivation of pay can be used to impress upon a person found to have committed a service infraction the gravity of that infraction, but should not cause unnecessary hardship. Deprivation of pay must be expressed in a number of days or fractions of days, up to a maximum of 18 days.¹¹¹ It is not to be expressed as a dollar amount.

Minor sanctions

3.6.9 The rationale of minor sanctions is to address the conduct of a person found to have committed a service infraction while allowing them to remain a productive member of the unit. Minor sanctions must in all cases be completed within 30 days of the day they are imposed.¹¹²

Confinement to ship or barracks

3.6.10 Confinement to ship or barracks can help instill the habit of obedience with respect to time and routine by preventing the person found to have committed a service infraction from leaving the geographic limits of their base or unit without permission.¹¹³ There is no discretion to define the geographic limits of confinement to be any smaller than the geographic limits of the base or unit. Confinement can be for no more than 14 days¹¹⁴ and cannot be completed in a

¹¹⁰ The aggravating factor of abuse of authority is set out at NDA para 162.92(a)(i).

¹¹¹ NDA subs 162.7(d).

¹¹² QR&O para 123.02(2).

¹¹³ QR&O para 123.03(1).

¹¹⁴ QR&O subpara 123.02(1)(a).

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service prison, detention barrack, or unit detention barrack.¹¹⁵ The sanction cannot interfere with the performance of normal duties,¹¹⁶ and the person found to have committed a service infraction must enjoy at least eight hours within each 24 hour period where they are not required to perform normal duties or carry out the sanction of extra work and drill, if also imposed.¹¹⁷ The sanction of confinement to ship or barracks does not automatically include extra work and drill, but the two sanctions can be imposed with respect to one charge.

Extra work and drill

3.6.11 Extra work and drill can help improve military efficiency and discipline, and the extra work and drill should be linked to the service infraction. It may include the performance of normal duties for longer periods than would be required, other useful work and extra drill, or other military training. The extra work and drill may be of any type that the person found to have committed a service infraction is medically fit to carry out. As such, any medical limitations must be considered when determining the type of extra work and drill to impose. Extra work and drill can be imposed for no more than 14 days.¹¹⁸

Withholding of leave

3.6.12 Withholding leave includes withholding annual leave, accumulated leave, special leave, and short leave for not more than 30 days.¹¹⁹ It can be effective in operational deployments. The person found to have committed a service infraction shall not be granted leave during the term of the sanction.

Administrative details

3.6.13 In respect of the implementation of minor sanctions,¹²⁰ COs should ensure that orders¹²¹ governing persons undergoing minor sanctions are issued, that the orders are made known to those persons, and that they are enforced. While these orders can provide details for confinement, extra work and drill, and withholding of leave, these details cannot contravene the QR&O. For example, these orders cannot limit confinement beyond what is defined in QR&O para 123.03(1) (Confinement to Ship or Barracks), and they cannot automatically impose the sanction of extra work and drill without the OCSH imposing this sanction.

3.6.14 In cases where no such orders have been issued, the OCSH should, upon giving reasons for the sanction, provide the administrative direction necessary for the appropriate implementation of the minor sanction(s). Administrative details necessary for the appropriate implementation of minor sanctions may include:

¹¹⁵ QR&O subpara 123.03(2)(a).

¹¹⁶ QR&O subpara 123.03(2)(b).

¹¹⁷ QR&O subpara 123.03(2)(c).

¹¹⁸ QR&O subpara 123.02(1)(b).

¹¹⁹ QR&O subpara 123.02(1)(c).

¹²⁰ QR&O articles 123.02 - 123.03.

¹²¹ Including, but not limited to, Base Standing Orders, Unit Standing Orders, etc.

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- a. Any required or prohibited behaviours during confinement (i.e. limitations on electronic devices, prohibitions on alcohol, etc.); and
- b. A daily schedule while confined and/or a schedule for any performance of extra work and drill imposed (i.e. daily drill requirements and expectations).

The sanction process

3.6.15 At the beginning of the sanction phase of the SH, the OCSH must ask the person found to have committed a service infraction whether they are ready to proceed. If the person found to have committed a service infraction is not ready to proceed, the OCSH must grant a reasonable adjournment in order for them to prepare.

3.6.16 When a service infraction is found to have been committed against a person or is found to have caused a person to have suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction, the OCSH will inform that person that they are permitted, but not required, to make a statement during the sanction phase.¹²² The person found to have committed a service infraction may not ask any questions of the person making this statement.

3.6.17 During the sanction phase, the SH continues to be an inquisitorial process. This means the OCSH must also conduct the sanction phase as a fact-finding activity. The evidence to be considered may be introduced in the same ways described at para [3.4.2](#) above. The OCSH may hear any relevant evidence relating to sanctioning, including any mitigating or aggravating factors.¹²³

3.6.18 With the exception of statements described at para [3.6.16](#), above, the OCSH must give the person found to have committed a service infraction a continued reasonable opportunity to engage, as described at para [3.4.4](#) above. After the OCSH has received and heard all the evidence, the person found to have committed a service infraction (or their AM) may make representations concerning the appropriate sanction.

3.6.19 In determining a sanction, the OCSH must consider all of the circumstances surrounding the commission of the service infraction. The OCSH may impose one or more sanctions¹²⁴ in respect of a service infraction found to have been committed. If more than one service infraction is found to have been committed and more than one sanction is imposed, the sanctions must be imposed for the totality of the service infractions found to have been committed, and not in respect of each particular service infraction. For example, a person found to have committed a service infraction for being both late and intoxicated upon reporting for duty may receive a single sanction, which accounts for both infractions, or may receive multiple sanctions, which together account for both infractions. They may not receive separate sanctions for each individual infraction.

¹²² For details on this statement, see para [C.4.3](#).

¹²³ See NDA subs 162.92(a).

¹²⁴ QR&O para 122.09(3).

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3.6.20 Having considered the circumstances of the service infraction, including any statement from a person described at para [3.6.16](#) above, the OCSH will pronounce the sanction, with oral reasons. The reasons for the sanction(s) must, like the reasons for the finding(s), show that the OCSH considered the evidence and representations relevant to the service infraction(s).

3.7 Written reasons

3.7.1 Written reasons with respect to the findings (and sanctions if applicable) must be attached to the charge report and provided to the person found to have committed a service infraction or to the person found to not have committed a service infraction (collectively “the person charged”), and to that person’s CO, within three days following the pronouncement of the decision.¹²⁵

3.7.2 On request, a copy of the written reasons will also be provided to any person against whom a service infraction is alleged to have been committed or who is alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the alleged commission of the infraction. When disclosing the written reasons to any such person, only the minimal amount of personal information, as defined in s 3 of the *Privacy Act*¹²⁶ required to fulfill the specific purpose may be disclosed.¹²⁷ The specific purpose of providing personal information to this person is to ensure they understand the basis for the decision. The OCSH must redact any personal information that is not necessary for this specific purpose. See para [2.1.5](#) for examples of personal information that may need to be redacted.

3.7.3 Giving written reasons allows the OCSH to communicate the rationale for their decision and helps the person charged to understand the basis for the finding and sanction, if applicable. It also permits an authority undertaking a review to scrutinize the finding(s) and sanction(s) if requested.¹²⁸ The decision should be “based on an internally coherent and rational chain of analysis” and be “justified in relation to the facts and law that constrain the decision maker”.¹²⁹ The reasons should also be intelligible and transparent, allowing the person charged and any authority undertaking a review to understand why the decision was made.¹³⁰

3.7.4 This means the reasons should include, without being limited to:

- a.** The relevant facts;
- b.** Any relevant legal authorities;

¹²⁵ While QR&O para 122.09(4) only provides for written reasons to be provided to the person who committed the service infraction and their CO, by policy, the OCSH must also provide written reasons to the person found not to have committed a service infraction and their CO.

¹²⁶ RSC 1985, c P-21.

¹²⁷ [DAOD 1002-6, Disclosure of Personal Information](#), para 6.4.

¹²⁸ *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, at para 16; *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85.

¹²⁹ *Vavilov*, above, at para 85.

¹³⁰ *Vavilov*, above, at para 95.

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- c. The key issues raised by the person charged;
- d. A rational and logical line of reasoning, leading from the evidence and legal authorities to the decision made;
- e. An understanding of the impact of the decision, including any sanctions, on the person charged; and
- f. If applicable, the relevant sanctioning principles, including aggravating and mitigating factors.¹³¹

3.7.5 The written reasons should be similar in content to the oral reasons and must identify the appropriate review authority, if applicable.

3.8 Mental health supports

3.8.1 When appropriate, mental health supports should also be made available during the hearing phase to those who are involved, including the person charged and any person who has or who has alleged to have had a service infraction committed against them or who has suffered or who has alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction. Appropriate military justice authorities should make it known that if any such individual wishes to seek out mental health supports, such supports are available, and those authorities should provide relevant mental health support contact information.

¹³¹ *Vavilov*, above, generally at paras 82 – 135; see also paras [3.6.1-3.6.2](#), above.

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Context

An essential aspect of ensuring procedural fairness in the summary hearing (SH) process is the opportunity to have a military justice authority, other than the officer who conducted the SH, review the results of that SH when the person charged was found to have committed a service infraction.

This chapter of the Military Justice at the Unit Level Policy (the Policy) is to be read in conjunction with the provisions contained in Division 5 of Part III of the *National Defence Act* (NDA) (Summary Hearings) and Chapter 124 (Review) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) which provide a framework for reviewing the findings made and the sanctions imposed at a SH. This chapter addresses how a review can be initiated, who can act as a review authority (RA), the RA's powers, and how the review is to be conducted.

4.1 Initiation of review

4.1.1 There are two ways by which a review can be initiated.

4.1.2 Firstly, a person found to have committed a service infraction has the right to submit an application for review.¹³² The officer conducting the summary hearing (OCSH) must inform them of this right upon finding that the person committed a service infraction.¹³³ The person found to have committed a service infraction must submit their application for review to a RA, which is the next officer superior in matters of discipline to the officer who conducted their SH.¹³⁴

4.1.3 Secondly, a RA may also initiate a review on their own initiative.¹³⁵ For example, this may occur when a legal officer, upon review of the documents placed on the Unit Registry of Disciplinary Proceedings, alerts a RA to the presence of a ground for review.

4.1.4 Mistakes on the face of the charge report, such as missing or inaccurate information, may not necessarily constitute a ground for review, and as such, may in some circumstances be remedied outside of the review process.

¹³² QR&O paragraph (para) 124.03(1).

¹³³ QR&O subparagraph 122.09(2)(b).

¹³⁴ QR&O para 124.02(1). This language interprets the common intent of the French and English versions of QR&O para 124.02(1). The officer conducting the SH should name the proper RA at the close of the SH and include the name in the written reasons. If not, the person found to have committed a service infraction should contact their Commanding Officer for the name of the proper RA.

¹³⁵ NDA subsection (subs) 163.6(2).

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4.2 Referral of review

4.2.1 A RA who is of the opinion that it would be inappropriate to act as a RA in a particular case having regard to the interests of military justice and discipline¹³⁶ must:

- a. Refrain from making any determination in respect of the application for review; and
- b. Refer the application for review to another officer who is superior in matters of discipline to the officer who conducted the SH.

4.3 Powers of review authorities

4.3.1 The powers and limitations of RAs in respect of reviewing a finding and reviewing a sanction imposed are set out below.

Reviewing a finding

4.3.2 Upon completing a review of a finding, a RA has the authority to quash that finding.¹³⁷ The RA must quash a finding if the RA determines that one of the following grounds exist: (1) the finding was invalidly made or (2) the finding cannot be supported by the evidence presented at the SH and/or any new information as described at section (s) [4.5](#). If the RA determines that neither of these grounds exist, the RA must leave the finding as it is. The RA should consider first whether the finding was invalidly made, and only if the finding was validly made should the RA proceed to determine whether the evidence cannot support it.

4.3.3 An invalidly made finding is one that:

- a. arises from a hearing that did not conform to the applicable legal requirements, including those set out in the NDA, QR&O and the common law governing administrative decisions; or
- b. is based on faulty legal analysis. A faulty legal analysis is one that does not accord with para [3.5.2](#); for example, if the officer who conducted the SH, in determining whether or not a person charged committed a service infraction, failed to consider whether the person charged took all reasonable care or made an honest and reasonable mistake of fact.

¹³⁶ For example, in cases where there might be reasonable apprehension of bias. See section (s) [2.10](#).

¹³⁷ See NDA subs 163.7(1). There are only two options available to the RA on review: to leave the finding as it is or to quash it. The RA does not have the ability to substitute a new finding for any finding that a person committed a service infraction that was invalidly made or cannot be supported by the evidence despite the option to do so provided by NDA s 163.8. A statutory or regulatory regime is required to facilitate the substitution of a finding and such a regime is not presently in place.

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4.3.4 A finding that cannot be supported by the evidence is one that is made without an adequate factual foundation. A RA is to consider whether there are facts proved at the hearing sufficient to support the finding. The RA must not re-consider the interpretation of the facts found by the officer who conducted the SH.

4.3.5 If a RA determines that a finding was not validly made or cannot be supported by the evidence, the RA may not leave the finding as it is. The finding must be quashed. On the other hand, the RA has no authority to quash a finding that was validly made and is supported by the evidence. In other words, the RA may not quash a finding simply because they would not have arrived at the same finding as the officer who conducted the SH.

The effect of a quashed finding on sanctions

4.3.6 If a person was found to have committed only one service infraction at the SH and that finding is quashed by a RA, then every sanction imposed is automatically quashed.¹³⁸ If a person was found to have committed more than one service infraction at the SH and all of those findings are quashed by a RA, then every sanction imposed is also automatically quashed.¹³⁹ After the finding(s) and sanction(s) are quashed, they are rendered void and treated as if they were never made.

4.3.7 If a person was found to have committed more than one service infraction at the SH and one or more but not all findings are quashed by a RA, the RA must consider the appropriateness of the sanction(s) imposed at the SH. If the RA forms the opinion that the sanction(s) is unduly severe in respect of the remaining finding(s), the RA must substitute the sanction(s) with any new sanction(s) they consider appropriate.¹⁴⁰

4.3.8 There remains the possibility that a new SH may be held in respect of the same service infraction(s) when all of the findings made at the SH are quashed by the RA.¹⁴¹ However, the new SH still must be commenced within the six-month limitation period.¹⁴² If a new SH is to be held, legal advice should be sought with respect to who may act as the OCSH.

Reviewing a sanction

4.3.9 The RA may modify a sanction if they make one of the following two determinations: (1) the sanction is invalid or (2) the sanction is too severe. If the RA determines that the sanction is neither invalid nor too severe, the RA must leave the sanction as it is. The RA should consider

¹³⁸ NDA subs 163.7(2).

¹³⁹ While the wording of NDA s 163.7 does not directly address this scenario, this interpretation of NDA s 163.7 is in accordance with the purpose of furthering the administration of military justice.

¹⁴⁰ NDA subs 163.7(3). The portion of NDA subs 163.7(3) providing that the RA must substitute the sanction if it is in excess of any that may be imposed in respect of the remaining findings is presently not applicable. There are no limitations or restrictions concerning the type of sanctions that may be imposed in respect of any particular finding.

¹⁴¹ NDA subs 163.7(2).

¹⁴² NDA s 163.4.

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first whether the sanction is invalid, and only if the sanction is valid should the RA proceed to determining whether it is too severe.

4.3.10 An invalid sanction is one that:

- a.** did not conform to the applicable legal requirements, including those set out in the NDA, QR&O and the common law governing administrative decisions; or
- b.** is based on faulty legal analysis.

A sanction is invalid when, for example, the sanction imposed was not within the sanctioning powers of the officer who conducted the SH, or when the person charged was not given appropriate procedural fairness.

4.3.11 If a sanction is found to be invalid, the RA may substitute any other sanction that the RA considers appropriate, as long as the new sanction is not higher in the scale of sanctions than the one that was originally imposed.¹⁴³

4.3.12 An RA may also determine that a sanction is too severe. When considering whether a sanction is too severe, the RA must comply with the principles of sanctioning set out at NDA sections 162.91 (Fundamental principle) - 162.92 (Other principles), which in part require sanctions be proportionate to the gravity of the infraction and the degree of responsibility of the person found to have committed a service infraction. A sanction may be considered too severe if it is of a much greater severity than the range of sanctions that would normally or reasonably be given for the same infraction in similar circumstances. The RA should exercise restraint in reviewing a sanction on the ground that it is too severe, as the RA may not be in a better position to assess the sanction than the officer who conducted the SH. Therefore, as a general rule, RAs should avoid disturbing a sanction on this ground unless it is clearly or obviously too severe.

4.3.13 In the event the RA determines the sanction was too severe, the RA may commute, mitigate or remit any or all of the sanctions imposed by an officer who conducted a SH.¹⁴⁴

4.3.14 Aside from when the RA determines that a sanction is invalid or too severe, the RA must leave the sanction as it is, unless either the finding for which it was imposed has been quashed and no other finding remains; or another finding made at the same SH has been quashed. In such cases, see paragraphs (paras) [4.3.6-4.3.7](#) and NDA subsections 163.7(2) (Effect of complete quashing) - (3) (Effect of partial quashing).

¹⁴³ NDA s 163.9.

¹⁴⁴ NDA subs 163.91(1). See also NDA subs 163.91(2) for definitions of commute, mitigate, and remit.

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4.4 Review process

4.4.1 In circumstances where the person charged committed a service infraction against a person or caused a person to suffer physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction, the RA must ensure this person affected by a service infraction is informed that a review is to be conducted and then provided with a copy of the written reasons for the RA's determination if requested (see paras [4.4.14-4.4.15](#)).

4.4.2 An assisting member (AM) may assist, advise, and make representations on behalf of the person found to have committed a service infraction throughout the review process.¹⁴⁵

4.4.3 In accordance with QR&O paragraph (para) 124.02(2) (Review Authorities), the RA must obtain legal advice prior to conducting a review. That is, the RA must obtain legal advice before considering any of the information listed at para [4.4.13](#).

Review initiated by application (Figure 4.1)

4.4.4 If the person found to have committed a service infraction seeks to exercise their right to a review of the finding and any sanction imposed at SH (see [figure 4.1](#)), the person must apply in writing to the RA within 14 days of receiving the written reasons in respect of the finding and any sanction imposed.¹⁴⁶ The application must state the grounds for the review and describe the evidence that supports those grounds.¹⁴⁷

4.4.5 Upon receiving an application for review and confirming that they are an appropriate authority to conduct the review, the RA must, as soon as practicable, forward the application to the officer who conducted the SH and inform that officer and the person found to have committed a service infraction of the timelines relevant to the review.

Review initiated by review authority (Figure 4.2)

4.4.6 A RA has the authority to conduct a review, on their own initiative, of a finding that a person committed a service infraction and any sanction imposed (see [figure 4.2](#)).¹⁴⁸

4.4.7 Upon deciding to initiate a review and confirming that they are an appropriate authority to conduct the review, the RA must, as soon as practicable, forward the written reasons for initiating the review and the timelines relevant to the review to the officer who conducted the SH and to the person found to have committed a service infraction.

¹⁴⁵ QR&O para 121.02(4).

¹⁴⁶ QR&O para 124.03(1). Note QR&O para 124.03(2) where it is provided that the RA may extend the 14 day application period.

¹⁴⁷ QR&O para 124.03(3).

¹⁴⁸ NDA subs 163.6(2).

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Responses and representations

4.4.8 The officer who conducted the SH may, upon receipt of the application for review or the written reasons for the RA's initiated review, provide representations concerning the review, including in relation to the ground for review and any other matter relevant to the RA's determination. Any representations must be provided to the RA within 7 days of receiving either the application or the reasons for initiating the review. The RA will then, within 3 days, forward the representations of the officer who conducted the SH to the person found to have committed a service infraction, or inform that person that no representations were provided by the officer who conducted the SH within the 7 days.

4.4.9 In respect of an application for review, if the officer who conducted the SH provides representations, the person found to have committed a service infraction may provide a response (to the representations of the officer who conducted the SH) to the RA within 7 days of receiving the representations of the officer who conducted the SH. If the officer who conducted the SH does not provide representations within 7 days (provided no extensions were granted; see para [4.4.11](#)), there will be no further response from the person found to have committed a service infraction. In such cases, the RA must determine the outcome of the review within 21 days of the date on which the officer who conducted the SH received the application for review.

4.4.10 In respect of a review initiated by a RA, if the officer who conducted the SH provides representations, the person found to have committed a service infraction may provide both a response to the representations of the officer who conducted the SH, as well as any representations concerning the review itself. Any response and/or representations by the person found to have committed a service infraction must be provided to the RA within 7 days of receiving the representations of the officer who conducted the SH or of being informed that the officer who conducted the SH did not provide representations.

4.4.11 If the officer who conducted the SH or the person found to have committed a service infraction requires more time to prepare their response or representations, the RA may grant a reasonable extension.¹⁴⁹

4.4.12 Within 14 days of receiving the response and/or representations from the person found to have committed a service infraction, or within 14 days of the expiry of the appropriate time limit, the RA must determine the outcome of the review.

4.4.13 When conducting a review, the RA must consider only the following:

- a.** The reasons for initiating the review;
- b.** The charge report and anything appended to the charge report in accordance with this Policy;

¹⁴⁹ QR&O article (art) 101.04.

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- c. The reasons furnished in accordance with QR&O para 122.09(4) (Decision and Sanction);
- d. Any representations provided by the officer who conducted the SH and any response or representations by the person found to have committed a service infraction or the AM on their behalf; and
- e. Any new information the RA determines is relevant to the review (see para [4.5.1](#)).

Conclusion of review

4.4.14 Once the RA has determined the outcome of the review, the RA must record in writing the reasons for the determination.¹⁵⁰ A copy of the written reasons for the determination must be provided to the person found to have committed a service infraction, their Commanding Officer (CO), the officer who conducted the SH, and if requested, any person against whom a service infraction was committed, or who suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction. The written reasons must:

- a. Address all issues identified in the application for review or in the reasons for initiating a review;
- b. Identify any evidence relied upon by the RA in the conduct of the review; and
- c. Explain the basis for the determinations made.

4.4.15 Personal information, as defined in section 3 of the [Privacy Act](#),¹⁵¹ may only be included in the written reasons if it is necessary for the RA to meet the above requirements set out at para [4.4.14](#). When disclosing the written reasons to any person against whom a service infraction was committed, or who suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction, only the minimal amount of personal information that is required to fulfill the specific purpose may be disclosed.¹⁵² The specific purpose of providing personal information to this person is to ensure they understand the basis for the determination of the RA. The RA must redact any personal information that is not necessary for this specific purpose. See para [2.1.5](#) for examples of personal information that may need to be redacted.

4.4.16 The RA must cause the written reasons and copies of their correspondence with the following persons to be appended to the charge report:

- a. The officer who conducted the SH;
- b. The person found to have committed a service infraction; and

¹⁵⁰ For further guidance on drafting reasons, see paras [3.7.3-3.7.4](#).

¹⁵¹ RSC 1985, c P-21.

¹⁵² [DAOD 1002-6, Disclosure of Personal Information](#), para 6.4.

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- c. Any person against whom the service infraction is found to have been committed or who has suffered harm, damage or loss as a result of the commission of the service infraction.

4.5 New information (Figure 4.3)

4.5.1 When a review is conducted, whether on application or initiated by a RA, and new information is brought to the attention of the RA, the RA must first determine whether the information is admissible.¹⁵³ Information is admissible when:

- a. It could not reasonably have been presented during the SH;
- b. It is relevant in that it bears upon a ground of review; and
- c. If believed, it can reasonably be expected to affect the result of the review.

4.5.2 If the information is determined to be admissible, the information must be disclosed to the following persons (see [figure 4.3](#)):

- a. The officer who conducted the SH;
- b. Any person against whom a service infraction was committed or who has suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction, if the RA determines the new information is relevant to their interests; and
- c. The person found to have committed a service infraction.

4.5.3 The officer who conducted the SH and any person against whom the service infraction is found to have been committed or who has suffered harm, damage or loss as a result of the commission of the service infraction both have 7 days to provide representations about the new information to the RA. The RA will then, within 3 days, forward the representations to the person found to have committed a service infraction, or inform that person that no representations were provided by either or both parties within the 7 days. Upon receipt of any such representations or notice, the person found to have committed a service infraction has 7 days to provide any response to the representations provided and/or any further representations to the RA.

4.5.4 In conducting the review, the RA must assess the impact of the new information on the finding(s) in order to determine whether one or more findings must be quashed as a result. Once the outcome of the review has been determined, the RA must explain in the written reasons any

¹⁵³ If any new information leads the RA to believe that a service infraction or service offence has been committed, other than the one under review, the RA must, in accordance with QR&O para 102.02(1), cause an investigation to be conducted.

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impact the new information has had on their decision, including any conclusion that the new information was not sufficient to result in the quashing of a finding. The RA must also explain in the written reasons why the new information was deemed either relevant or irrelevant to the interests of any person against whom the service infraction is found to have been committed or who has suffered harm, damage or loss as a result of the commission of the service infraction.¹⁵⁴

4.5.5 The timelines for the review process when new information is introduced, as set out at [figure 4.3](#), may vary depending on when the new information is received by the RA.

4.6 Mental health supports

4.6.1 When appropriate, mental health supports should also be made available throughout the review to those who are involved, including the person charged and any person who has or who has alleged to have had a service infraction committed against them or who has suffered or who has alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction. Military justice authorities should make it known that if any such individual wishes to seek out mental health supports, such supports are available, and those authorities should provide relevant mental health support contact information.

4.7 Review authority's administrative duties

4.7.1 Upon completion of the review, the RA must cause Part 7 of the charge report to be completed and cause it and any appended documents, including the written reasons for the RA's decision, to be forwarded to the CO of the person found to have committed a service infraction.

4.7.2 The CO of the person found to have committed a service infraction must place the completed charge report and any appended documents, including the written reasons of the RA, on the Unit Registry of Disciplinary Proceedings and take any necessary action to give effect to the determination.

4.7.3 If, upon review, a sanction of reduction in rank is quashed, substituted by a new sanction or commuted,¹⁵⁵ the [National Defence Headquarters \(Director General Military Careers\)](#) (only accessible on the Defence Wide Area Network) must be notified.

4.7.4 Should the sanction of deprivation of pay be quashed, substituted, commuted, mitigated or remitted,¹⁵⁶ only the deprivation (if any) set out in the new sanction imposed by the RA may be carried out, and any additional amount deducted from the pay account of the person found to have committed a service infraction from the previous sanction must be restored.¹⁵⁷

¹⁵⁴ For further guidance on drafting reasons, see paras [3.7.3-3.7.4](#).

¹⁵⁵ See NDA subs 163.91(2) for the definition of *commute*.

¹⁵⁶ See NDA subs 163.91(2) for the definitions of *commute*, *mitigate* and *remit*.

¹⁵⁷ QR&O art 208.35.

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4.8 Judicial review

4.8.1 If dissatisfied with the decision of a RA, the person found to have committed a service infraction may make an application for judicial review by the Federal Court at their own expense, in accordance with the *Federal Courts Act*¹⁵⁸ and the *Federal Courts Rules*.¹⁵⁹ The person found to have committed a service infraction normally has 30 days from the date the decision of the RA was communicated to them to make their application for judicial review.¹⁶⁰

¹⁵⁸ RSC 1985, c F-7.

¹⁵⁹ SOR/98-106.

¹⁶⁰ See *Federal Courts Act*, RSC 1985, c F-7, subs 18.1(2).

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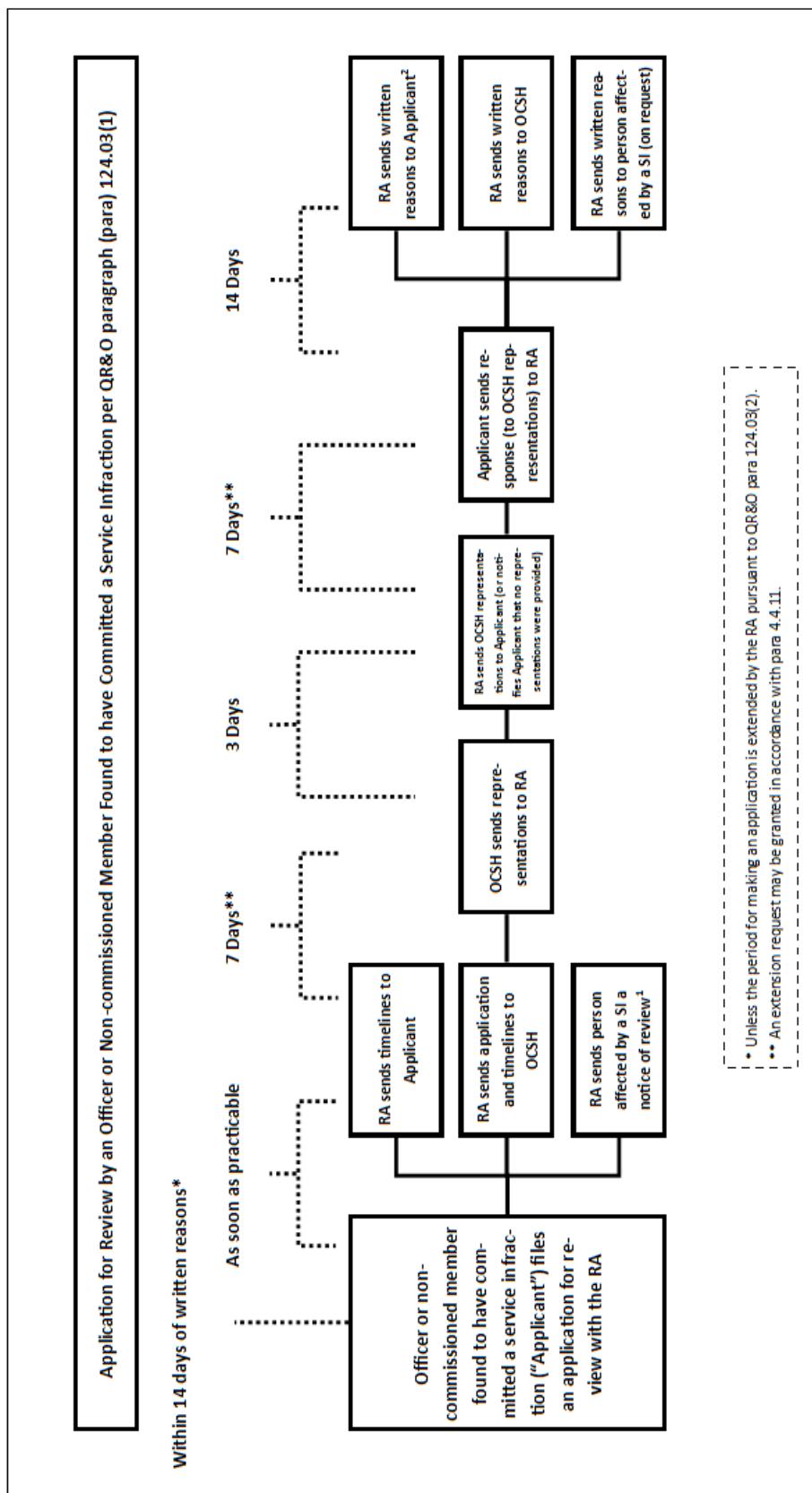


Figure 4.1 – Review Initiated by Application

¹If the review concerns the introduction of new information relevant to the interests of the person affected by a SI, they have the opportunity to provide representations. See figure 4.3 for associated timelines.

² If the review concerns the introduction of new information during the phase of the review process when representations are being submitted, additional time will be required. See figure 4.3 for associated timelines.

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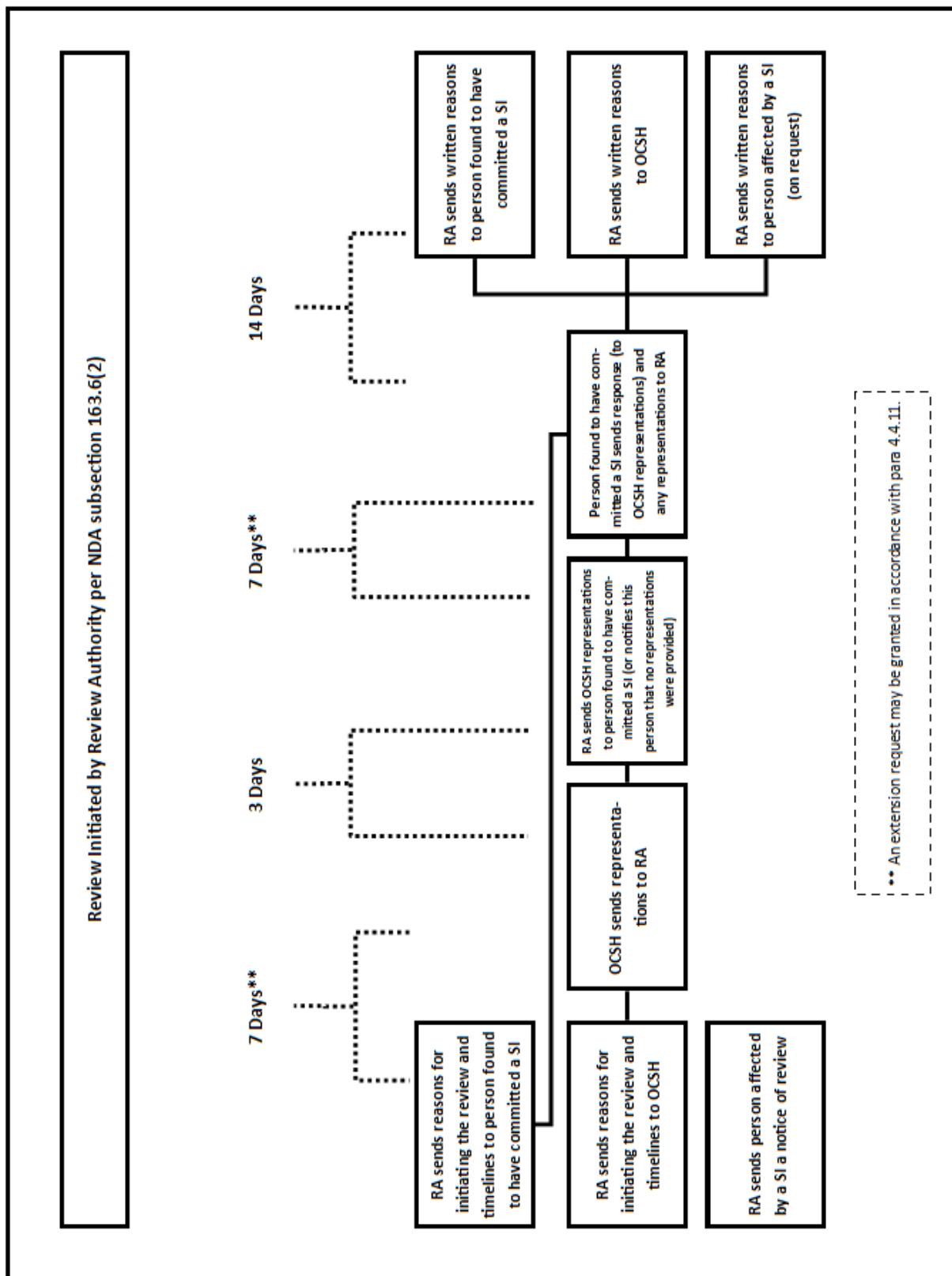


Figure 4.2 – Review Initiated by Review Authority

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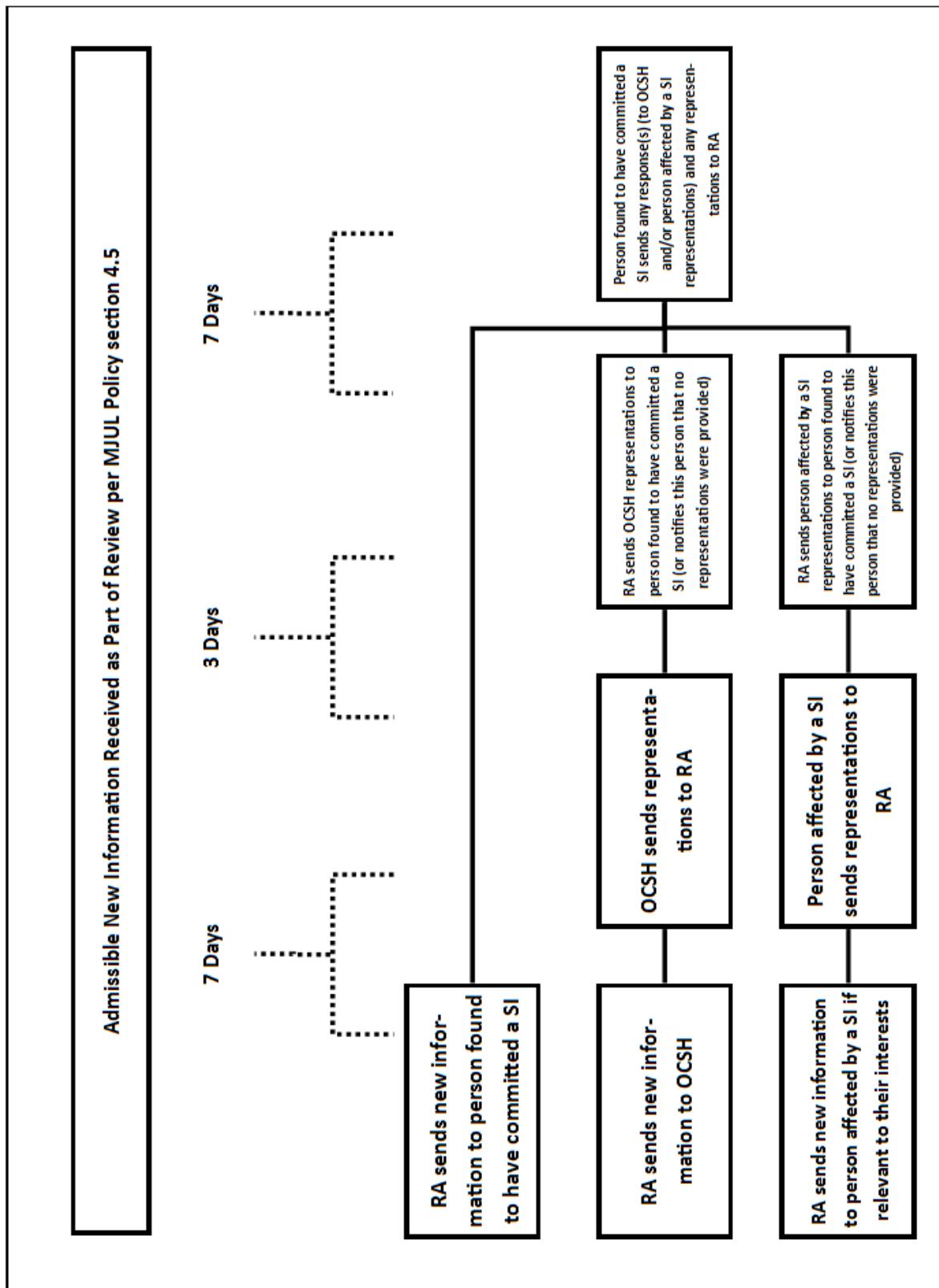


Figure 4.3 -- Admissible New Information Received as Part of Review

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Chapter 5 – Post - Hearing

Context

This chapter of the Military Justice at the Unit Level Policy (the Policy) provides guidance on the post-hearing process, including administrative duties. This chapter stands alone as there are no companion provisions in the *Queen’s Regulations and Orders for the Canadian Forces* (QR&O) that address this subject.

5.1 Application of post-hearing policy

Meaning of final disposition

5.1.1 In this chapter, there is a “final disposition” when the officer conducting the summary hearing (OCSH) makes one of the following decisions:

- a. To discontinue a summary hearing (SH) before making a finding;
- b. That the service infraction charged was not committed; or
- c. That the service infraction charged was committed, resulting in the imposition of a sanction.

5.2 Post-hearing administration

5.2.1 An OCSH who makes a final disposition in accordance with paragraph (para) [5.1.1](#) must complete the relevant sections in Part 6 of the charge report. When a SH is held, the OCSH must provide written reasons with respect to the finding and any sanction imposed to the person found to have committed a service infraction or to the person found to not have committed a service infraction (collectively “the person charged”) and to that person’s Commanding Officer (CO), within three days following the pronouncement of the decision.¹⁶¹ When there is not an appropriate section in the charge report to indicate the details of the final disposition, the OCSH must prepare written reasons and append a copy to the charge report.

5.2.2 An OCSH who makes a final disposition but is not the CO of the person charged must forward a copy of the completed charge report, any appended documents including the written reasons, and the investigation file to the CO of the person charged. Upon receipt, the CO of the person charged must place these documents on the Unit Registry of Disciplinary Proceedings (Unit Registry).

5.2.3 If a review is conducted, the CO of the person found to have committed a service infraction must also place the amended charge report, and any appended documents including the

¹⁶¹ While QR&O para 122.09(4) only provides for written reasons to be provided to the person who committed the service infraction and their CO, by policy, the OCSH must also provide written reasons to the person found not to have committed a service infraction and their CO.

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written reasons of the Review Authority (RA), on the Unit Registry. If the service infraction charge was laid by a member of the military police (MP)¹⁶² the CO should provide the MP with a copy of the completed charge report.

5.2.4 If a sanction is imposed, in accordance with the Defence Administrative Orders and Directives (DAOD) 7006 series,¹⁶³ the CO of the person who received the sanction must cause the appropriate entries, amendments and removals to be made to the conduct sheet of the person sanctioned.

Sanction implementation

5.2.5 The CO of the person sanctioned is responsible for ensuring that the sanction is implemented.

Return of physical or documentary evidence

5.2.6 After the final disposition of a SH at which physical or documentary evidence was submitted, the CO of the unit where this evidence is held must ensure that, to the extent possible, the evidence is returned to the person who is apparently entitled to it unless:

- a.** A finding is made that a person committed a service infraction and the period for requesting a review of the finding and sanction has not expired;¹⁶⁴
- b.** A person found to have committed a service infraction has requested a review of the finding or sanction after the expiry of the application period, and the RA has not yet decided whether to conduct the requested review; or
- c.** The evidence is required for the purposes of an investigation or another proceeding.

5.2.7 In the circumstances set out in subparagraphs **5.2.6(a)** and **(b)** where the evidence is not returned, the CO of the unit where the evidence is held must cause the person apparently entitled to it to be informed and provided with the reasons for its retention along with a general time estimate for when it may be returned.

Additional communication of findings and sanctions

5.2.8 COs must cause to be forwarded all completed charge reports and appended documents, including written reasons (where applicable) to their legal advisor within 15 days of receipt of

¹⁶² Pursuant to QR&O paragraphs 102.04(c)-(d) members of the military police assigned to investigative duties with the Canadian Forces National Investigation Service and members of the military police assigned to investigative duties may lay charges under the Code of Service Discipline.

¹⁶³ [DAOD 7006-0, Conduct Sheets](#), and [DAOD 7006-1, Preparation and Maintenance of Conduct Sheets](#).

¹⁶⁴ Pursuant to QR&O para 124.03(1) a person found to have committed a service infraction may apply for a review of the finding and any sanction imposed within 14 days of the receipt of the written reasons with respect to the findings and any sanction imposed.

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the written reasons (or of the decision if written reasons are not required). If an application for review has been submitted, the CO should wait until the review has been completed before carrying out this document forwarding responsibility. Upon the completion of the review, the CO must, within 15 days of receipt of the written reasons of the RA, cause to be forwarded (as above) the amended charge report and appended documents, including the written reasons of the RA.

5.2.9 The forwarding of these documents enables legal officers to conduct a review of them in furtherance of the Judge Advocate General's statutory duty to superintend the administration of military justice in the CAF.

5.2.10 The CO of the person against whom the sanction of reduction in rank has been imposed, must, as soon as practicable, notify the [National Defence Headquarters \(Director General Military Careers\)](#) (only accessible on the Defence Wide Area Network).

5.3 Unit Registry

5.3.1 The CO of a unit must ensure that a Unit Registry is maintained. The maintenance of a Unit Registry ensures that standardized procedures govern the retention of charge reports and other documents pertaining to SHs. All documents in the Unit Registry must be maintained in accordance with the [Defence Subject Classification and Disposition System](#) (only accessible on the Defence Wide Area Network).

5.4 Access to copies of summary hearing records

5.4.1 For the purpose of the following paragraphs, SH records include the completed charge report, the documents appended to the completed charge report, and the investigation file.

Access by the person charged

5.4.2 Access by the person charged to a copy of the completed charge report and appended documents is available on request through their Chain of Command and is governed by [DAOD 1002-1](#), *Privacy Act Requests and Correction of Personal Information*. Access to the investigation file is provided in accordance with para [2.1.5](#) of this Policy. Necessary redactions to these documents will be made in accordance with the [Privacy Act](#)¹⁶⁵ prior to disclosure.

Access by person affected by a service infraction

5.4.3 Access to a copy of the completed charge report and the written reasons with respect to the finding(s) and sanction(s) if applicable, is available in accordance with paragraphs (paras) [3.7.2](#) and [C.2.7](#) of this Policy. This access is available to any person who has or who has alleged to have had a service infraction committed against them or who has suffered or who has alleged

¹⁶⁵ RSC 1985, c P-21.

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to have suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service infraction. Access to a copy of the written reasons for the determination of the RA is available in accordance with paras [4.4.15](#) and [C.2.10](#) of this Policy. Necessary redactions to these documents will be made in accordance with the [Privacy Act](#)¹⁶⁶ prior to disclosure. Access to the other documents appended to the charge report and the investigation file are governed by the [Access to Information Act](#),¹⁶⁷ the [Privacy Act](#)¹⁶⁸ and DAOD including the 1001¹⁶⁹ and 1002¹⁷⁰ series.

Access by the public

5.4.4 Access to SH records by the public is governed by the [Access to Information Act](#),¹⁷¹ the [Privacy Act](#)¹⁷² and DAOD including the 1001 and 1002 series.

¹⁶⁶ RSC 1985, c P-21.

¹⁶⁷ RSC 1985, c A-1.

¹⁶⁸ RSC 1985, c P-21.

¹⁶⁹ The [DAOD 1001 series](#) comprises [DAOD 1001-0, Access to Information](#), and [DAOD 1001-1, Access to Information Act Requests](#).

¹⁷⁰ The [DAOD 1002 series](#) comprises, among others, [DAOD 1002-0, Administration of the Privacy Act](#), and [DAOD 1002-6, Disclosure of Personal Information](#).

¹⁷¹ RSC 1985, c A-1.

¹⁷² RSC 1985, c P-21.

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Annex A – Elements of the Service Infraction

Context

This Annex serves to supplement and provide guidance on Chapter 120 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) (Service Infractions). It is designed as a guide to understanding the elements of service infractions for the purpose of informing investigations, guiding the charge laying process, making a finding as to whether or not the person charged committed the alleged service infraction, and conducting a review. This Annex is not designed as a replacement for legal advice, mandatory or otherwise.

A.1 General

A.1.1 The elements of service infractions do not generally include an element of fault. That is, fault elements such as purposely, knowingly, recklessly or negligently are not present in the listed elements of the infractions.¹⁷³ In order to make a finding that a person committed a service infraction, there must be clear and convincing evidence which shows, on a balance of probabilities, that the person committed the service infraction. Further, it must also be determined that, on a balance of probabilities, the person charged did not take all reasonable care to avoid committing the act, or did not make an honest and reasonable mistake of fact.¹⁷⁴

A.1.2 The date and place¹⁷⁵ of the infraction are usually elements of each service infraction. However, a discrepancy in time and/or place between the charge report and the facts found at a SH will not affect the ultimate finding if the difference does not prejudice the person charged. Further, pursuant to QR&O article (art) 124.08 (Effect of Irregularities), a finding or sanction is not invalid because of a defect in form or a technical irregularity. Therefore, if for example a difference in time and/or place is clearly based on a charge report typo or error, this alone will not affect the finding or sanction.

QR&O 120.02 – Infractions in relation to property and information

A.2 QR&O 120.02(a)

A.2.1 “A person commits a service infraction who takes or uses, for other than authorized purposes, non-public property, public property, materiel or government-issued property or damages that property or materiel.”

A.2.2 Elements of the infraction

- a.** The identity of the person charged;

¹⁷³ An exception to this is QR&O paragraph (para) 120.03(e) wherein the element of *deceitful conduct* imparts intent. See note [202](#) for further details.

¹⁷⁴ See section (s) [3.5](#).

¹⁷⁵ The meaning of *place* includes virtual places, such as online meeting rooms, conference calls, etc. Therefore, the place of an infraction in the particulars can be a virtual place.

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- b.** Date and place of the infraction;
- c.** The person took or used, for other than authorized purposes,¹⁷⁶ or damaged:
 - (1)** non-public property;¹⁷⁷
 - (2)** public property;¹⁷⁸
 - (3)** materiel;¹⁷⁹ or
 - (4)** government issued property.

A.2.3 Example statement of the infraction

Charge # QR&O 120.02(a)	USED, FOR OTHER THAN AUTHORIZED PURPOSES, GOVERNMENT-ISSUED PROPERTY <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), used a DND issued vehicle to travel to the LCBO liquor store, a purpose for which they did not have authorization.
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Charge # QR&O 120.02(a)	DAMAGED NON-PUBLIC PROPERTY <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), pushed a table in the mess causing several dishes to fall and break.
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A.3 QR&O 120.02(b)

A.3.1 “A person commits a service infraction who without permission or legal justification, takes property that belongs to another person.”

¹⁷⁶ The meaning of *authorized purposes* includes any purposes for which permission or power was granted by an authority.

¹⁷⁷ *Non-public property* means, as defined at *National Defence Act* (NDA) subsection (subs) 2(1):

- a. all money and property, other than issues of materiel, received for or administered by or through messes, institutes or canteens of the Canadian Forces,
- b. all money and property contributed to or by officers, non-commissioned members, units or other elements of the Canadian Forces for the collective benefit and welfare of those officers, non-commissioned members, units or other elements,
- c. by-products and refuse and the proceeds of the sale thereof to the extent prescribed under (NDA) subsection 39(2), and
- d. all money and property derived from, purchased out of the proceeds of the sale of, or received in exchange for, money and property described in paragraphs (a) to (c).

¹⁷⁸ *Public property* means, as defined at NDA subs 2(1): all money and property of Her Majesty in right of Canada.

¹⁷⁹ *Materiel* means, as defined at NDA subs 2(1): all public property, other than real property, immovables and money, provided for the Canadian Forces or for any other purpose under (the NDA), and includes any vessel, vehicle, aircraft, animal, missile, arms, ammunition, clothing, stores, provisions or equipment so provided.

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A.3.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person took property;
- d. The person did not have:
 - (1) permission; or
 - (2) legal justification;¹⁸⁰
- e. The property belongs to another person.

A.3.3 Example statement of the infraction

Charge # QR&O 120.02(b)	WITHOUT PERMISSION OR LEGAL JUSTIFICATION TOOK PROPERTY BELONGING TO ANOTHER PERSON
	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), without permission or legal justification, took a cellphone belonging to Cpl Smith.

A.4 QR&O 120.02(c)

A.4.1 “A person commits a service infraction who accesses, possesses, uses or communicates information for a purpose unrelated to the performance of their duties.”

A.4.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person:

¹⁸⁰ The reasonable belief on the part of the charge layer required for a charge to be laid pursuant to QR&O para 102.07(1) must be informed, in part, by facts indicating an absence of permission or legal justification. The absence of a legal justification forms part of the elements of the infraction rather than forming part of the Officer Conducting the Summary Hearing’s (OCSH’s) considerations at a SH (see s [3.5](#)). *Legal justification* includes: lawful authorization (for example: a search warrant); having taken all reasonable care to avoid committing the alleged act; or, an honest and reasonable mistake of fact.

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Annex A – Elements of the Service Infraction

- (1) accessed information;¹⁸¹
 - (2) possessed information;
 - (3) used information; or
 - (4) communicated information;
- d. The person did so for a purpose that was not related to the performance of their duties.¹⁸²

A.4.3 Example statement of the infraction

Charge # QR&O 120.02(c)	ACCESSED INFORMATION FOR A PURPOSE UNRELATED TO THE PERFORMANCE OF THEIR DUTIES <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), accessed electronic gaming sites from their DWAN computer.
Charge # QR&O 120.02(c)	COMMUNICATED INFORMATION FOR A PURPOSE UNRELATED TO THE PERFORMANCE OF THEIR DUTIES <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), communicated images depicting nudity through their DWAN email.

A.5 QR&O 120.02(d)

A.5.1 “A person commits a service infraction who fails to disclose actual, apparent or potential conflicts between their duties and private interests.”

A.5.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. There is an:
 - (1) actual;¹⁸³

¹⁸¹ *Information* may exist in the human mind, in document form and in electronic form. Information in document form includes without being limited to: memos, reports, invoices, contracts, and photographs. Information in electronic form includes without being limited to: e-mails, instant messages, and text messages. Information also includes communication media such as conversations in person and virtually, voice messages, and films.

¹⁸² The meaning of *duties* includes any tasks expected or required by reason of position, occupation, or rank.

¹⁸³ *Actual* means a conflict of interest that is existing at the present time in a situation.

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(2) apparent;¹⁸⁴ or

(3) potential¹⁸⁵

conflict between their duties¹⁸⁶ and private interests;¹⁸⁷

d. The person failed to disclose the conflict of interest.

A.5.3 Example statement of the infraction

Charge # QR&O 120.02(d)	FAILED TO DISCLOSE AN APPARENT CONFLICT BETWEEN THEIR DUTIES AND PRIVATE INTERESTS <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), operated a business which provides cleaning services to CFB Kingston.
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QR&O 120.03 – Infractions in relation to military service

A.6 QR&O 120.03(a)

A.6.1 “A person commits a service infraction who handles a weapon, explosive substance or ammunition in a dangerous manner.”

A.6.2 Elements of the infraction

a. The identity of the person charged;

b. Date and place of the infraction;

c. The person handled:¹⁸⁸

(1) a weapon;¹⁸⁹

¹⁸⁴ *Apparent* means a conflict of interest that could be perceived by a reasonable observer to exist in a situation, whether or not it is the case.

¹⁸⁵ *Potential* means a conflict of interest that could reasonably be foreseen to exist in the future.

¹⁸⁶ See note [182](#).

¹⁸⁷ A conflict between duties and private interests includes a situation where a person has private interests that could improperly influence the performance of their duties. This could include financial gains, personal relationships, or business interests. Conflicts of interest may arise from circumstances including political activities, the acceptance of gifts or other benefits. A conflict of interest does not necessarily relate exclusively to matters concerning financial transactions and the transfer of economic benefit. While financial activity is important, conflicts of interest in any area of activity can have a negative impact on the perceived objectivity of the CAF.

¹⁸⁸ The meaning of *handling* includes managing, dealing with, or being responsible for.

¹⁸⁹ The meaning of *weapon* includes any device or instrument intended to be used in attack or defence in combat, fighting, or war.

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- (2) explosive substance;¹⁹⁰ or
 - (3) ammunition;¹⁹¹
- d. The person handled it in a dangerous manner.¹⁹²

A.6.3 Example statement of the infraction

Charge #	HANDLED A WEAPON IN A DANGEROUS MANNER
QR&O 120.03(a)	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), played “quick draw” with their Browning 9mm pistol.

A.7 QR&O 120.03(b)

A.7.1 “A person commits a service infraction who discharges a firearm without authorization.”

A.7.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person discharged¹⁹³ a firearm;¹⁹⁴
- d. There was no authorization¹⁹⁵ for the discharge.

A.7.3 Example statement of the infraction

Charge #	DISCHARGED A FIREARM WITHOUT AUTHORIZATION
QR&O 120.03(b)	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), discharged their C7 rifle without authorization.

¹⁹⁰ The meaning of *explosive substance* includes a solid or liquid substance or mixture of substances that, through a chemical reaction caused by a suitable stimulus, changes rapidly and violently to other more stable substances, usually gases, with the accompanying development of high pressure and release of heat. An explosive substance includes but is not limited to solid and liquid high explosives, propellants and pyrotechnics.

¹⁹¹ The meaning of *ammunition* includes any device charged with explosives, propellants, pyrotechnics, or initiating composition, for use in military operations.

¹⁹² The meaning of *dangerous manner* includes any manner that is risky, hazardous, or unsafe, or otherwise able or likely to cause physical injury.

¹⁹³ The meaning of *discharge* includes the act of firing a weapon.

¹⁹⁴ The meaning of *firearm* includes a barreled weapon from which any shot, bullet or other projectile can be discharged and that is capable of causing serious bodily injury or death to a person.

¹⁹⁵ The meaning of *authorization* includes permission or power granted by an authority.

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A.8 QR&O 120.03(c)

A.8.1 “A person commits a service infraction who behaves in a manner that could reasonably undermine the authority of a superior officer.”

A.8.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person behaved in a manner that could reasonably¹⁹⁶ undermine¹⁹⁷ the authority of a superior officer.¹⁹⁸

A.8.3 Example statement of the infraction

Charge # QR&O 120.03(c)	BEHAVED IN A MANNER THAT COULD REASONABLY UNDERMINE THE AUTHORITY OF A SUPERIOR OFFICER
	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), mocked a briefing given by (rank, name) stating words to the effect, “That was the stupidest thing I’ve ever heard. How did that loser ever get promoted past Private?”

A.9 QR&O 120.03(d)

A.9.1 “A person commits a service infraction who fails or while on duty is unfit to effectively perform their duties or carry out responsibilities.”

A.9.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person:
 - (1) failed to effectively perform their duties;¹⁹⁹

¹⁹⁶ The use of the term *reasonably* requires an objective assessment of the behavior at issue. The manner in which the person behaved is assessed from the perspective of a reasonable person.

¹⁹⁷ The meaning of *undermine* includes to injure or destroy by insidious activity or imperceptible stages, sometimes tending toward a sudden dramatic effect, whether or not in the presence of the superior officer.

¹⁹⁸ *Superior officer* means, as defined at NDA subs 2(1): any officer or non-commissioned member who, in relation to any other officer or non-commissioned member, is by (the NDA), or by regulations or custom of the service, authorized to give a lawful command to that other officer or non-commissioned member.

¹⁹⁹ See note [182](#).

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- (2) failed to effectively carry out responsibilities;²⁰⁰
- (3) while on duty was unfit²⁰¹ to effectively perform their duties; or
- (4) while on duty was unfit to effectively carry out responsibilities.

A.9.3 Example statement of the infraction

Charge # QR&O 120.03(d)	WHILE ON DUTY WAS UNFIT TO EFFECTIVELY PERFORM THEIR DUTIES <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), were found asleep at their workstation during their duty hours.
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A.10 QR&O 120.03(e)

A.10.1 “A person commits a service infraction who in relation to military service, furnishes false or misleading information or engages in deceitful conduct.”

A.10.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The conduct was in relation to military service;
- d. The person:
 - (1) provided information that was false;
 - (2) provided information that was misleading; or
 - (3) engaged in deceitful conduct.²⁰²

²⁰⁰ The meaning of *responsibilities* includes anything for which a person is responsible, answerable, or accountable.

²⁰¹ The meaning of *unfit* includes unsuitable or not having the requisite capacity.

²⁰² The meaning of *deceitful conduct* includes fraudulent conduct; acting to delude, mislead or falsely persuade others. Satisfying the element of *deceitful conduct* includes consideration of the intent of the person: namely, the intent to deceive, defraud, delude, mislead, or falsely persuade others.

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Annex A – Elements of the Service Infraction

A.10.3 Example statement of the infraction

Charge # QR&O 120.03(e)	IN RELATION TO MILITARY SERVICE, FURNISHED FALSE INFORMATION
	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), signed the log book indicating that they had checked the secured area when they had not done so.
Charge # QR&O 120.03(e)	IN RELATION TO MILITARY SERVICE, ENGAGED IN DECEITFUL CONDUCT
	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), failed to declare the ammunition that was hidden in their pockets, when it was their duty to declare any live rounds on their person.

A.11 QR&O 120.03(f)

A.11.1 “A person commits a service infraction who without reasonable excuse, fails to attend or is tardy to their place of duty.”

A.11.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person was required to be in a given place²⁰³ at a specific time;
- d. The person:
 - (1) failed to attend;²⁰⁴ or
 - (2) was tardy;²⁰⁵
- e. The person did not have a reasonable excuse.²⁰⁶

²⁰³ The meaning of *place* includes virtual places, such as online meeting rooms, conference calls, etc.

²⁰⁴ The meaning of *attend* includes to be present at.

²⁰⁵ The meaning of *tardy* includes behind time; not on time; delayed through reluctance.

²⁰⁶ The reasonable belief on the part of the charge layer required for a charge to be laid pursuant to QR&O para 102.07(1) must be informed, in part, by facts indicating an absence of a reasonable excuse. The absence of a reasonable excuse forms part of the elements of the infraction. The use of the term *reasonable* requires an objective assessment of the behavior at issue. The manner in which the person behaved is assessed from the perspective of a reasonable person. At the SH, the OCSH must consider whether the elements of the infraction are made out, including the absence of a reasonable excuse. The OCSH must also consider whether the person charged took all reasonable care to avoid committing the service infraction or made an honest and reasonable mistake of fact (see s [3.5](#)).

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A.11.3 Example statement of the infraction

Charge # QR&O 120.03(f)	WITHOUT REASONABLE EXCUSE, WAS TARDY TO THEIR PLACE OF DUTY <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), arrived at their place of duty 4 hours late.
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A.12 QR&O 120.03(g)

A.12.1 “A person commits a service infraction who dresses in a manner or adopts an appearance or demeanour that is inconsistent with Canadian Forces requirements.”

A.12.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person:
 - (1) dressed; or
 - (2) adopted an appearance or demeanour²⁰⁷

in a manner that was inconsistent with Canadian Forces requirements.²⁰⁸

A.12.3 Example statement of the infraction

Charge # QR&O 120.03(g)	DRESSED IN A MANNER THAT IS INCONSISTENT WITH CANADIAN FORCES REQUIREMENTS <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), wore a visible civilian tee-shirt with their military issued uniform contrary to the Canadian Forces Dress Instructions.
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Charge # QR&O 120.03(g)	ADOPTED A DEMEANOUR THAT IS INCONSISTENT WITH CANADIAN FORCES REQUIREMENTS <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), harassed (rank, name) on social media contrary to DAOD 5012-0.
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²⁰⁷ The meaning of *demeanour* includes conduct, behaviour, deportment, bearing, way of acting.

²⁰⁸ The meaning of *requirement* includes anything to be called on authoritatively, which may include instructions issued on the CDS's authority, CANFORGENs, and Standing Orders.

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Annex A – Elements of the Service Infraction

A.13 QR&O 120.03(h)

A.13.1 “A person commits a service infraction who fails to maintain personal equipment or assigned quarters in accordance with Canadian Forces requirements.”

A.13.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person failed to maintain:
 - (1) personal equipment;²⁰⁹ or
 - (2) assigned quarters²¹⁰

in accordance with Canadian Forces requirements.²¹¹

A.13.3 Example statement of the infraction

Charge # QR&O 120.03(h)	FAILED TO MAINTAIN ASSIGNED QUARTERS IN ACCORDANCE WITH CANADIAN FORCES REQUIREMENTS
	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction) left their quarters without removing the garbage, contrary to the Canadian Forces requirement that quarters be left in clean condition.

A.14 QR&O 120.03(i)

A.14.1 “A person commits a service infraction who otherwise behaves in a manner that adversely affects the discipline, efficiency or morale of the Canadian Forces.”

A.14.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The behaviour of the person;

²⁰⁹ *Personal equipment* means, as defined at NDA subs 2(1): all materiel issued to an officer or non-commissioned member for the personal wear or other personal use of that officer or non-commissioned member.

²¹⁰ The meaning of *quarters* includes accommodation inside the garrison and may also include accommodation in an operational environment.

²¹¹ See note [208](#).

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d. The adverse effect²¹² on:

- (1) discipline;
- (2) efficiency; or
- (3) morale

of the Canadian Forces.

A.14.3 Example statement of the infraction

Charge # QR&O 120.03(i)	BEHAVED IN A MANNER THAT ADVERSELY AFFECTS THE DISCIPLINE, EFFICIENCY OR MORALE OF THE CANADIAN FORCES <i>Particulars:</i> In that they, on (date), at (indicate place of infraction), laughed out loud while on parade.
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QR&O 120.04 – Infractions in relation to drugs and alcohol

A.15 QR&O 120.04(a)

A.15.1 “A person commits a service infraction who while on duty, is impaired by a drug or alcohol.”

A.15.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person was on duty;
- d. The person was impaired;²¹³
- e. The impairment was caused by:

²¹² The element of *adverse effect* includes a direct adverse effect and may also include behaviour that would tend to or would likely result in an adverse effect. In deciding whether behavior would tend to or would likely result in an adverse effect, the OCSH may apply their experience and general service knowledge to make inferences.

²¹³ The meaning of *impaired* means functioning poorly or inadequately, which may be demonstrated by sloppy work, errors in judgment, or inappropriate responses or behaviours. Physical signs of impairment by a drug or alcohol may include odour of alcohol or drugs, glassy or red eyes, unsteady gait, slurring, or poor coordination. Any level of impairment is sufficient to make out this element of the infraction.

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Annex A – Elements of the Service Infraction

(1) a drug;²¹⁴ or

(2) alcohol.

A.15.3 Example statement of the infraction

Charge #	WHILE ON DUTY, WAS IMPAIRED BY ALCOHOL
QR&O 120.04(a)	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), while on duty, were impaired by alcohol.

A.16 QR&O 120.04(b)

A.16.1 “A person commits a service infraction who uses a drug contrary to article 20.04 (Prohibition).”

A.16.2 Elements of the infraction

- a. The identity of the person charged;
- b. Date and place of the infraction;
- c. The person used a drug;²¹⁵
- d. The use was contrary to QR&O article 20.04.

A.16.3 Example statement of the infraction

Charge #	USED A DRUG CONTRARY TO QR&O ARTICLE 20.04 (PROHIBITION)
QR&O 120.04(b)	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), consumed “MDMA” contrary to QR&O article 20.04 (Prohibition).

²¹⁴ Drug means, as defined at QR&O art 20.01:

- a) a controlled substance as defined in the *Controlled Drugs and Substances Act (Statutes of Canada, 1996, Chapter 19)*; or
- b) any other substance, except for alcohol, the use of which can impair normal psychological or physical functioning and the use of which has been prohibited by the Chief of the Defence Staff.

To note: cannabis meets the definition of drug pursuant to QR&O para 20.01(b) when it is used contrary to the prohibitions on its use set out at [DAOD 9004-1, Use of Cannabis by CAF members](#).

²¹⁵ See note [214](#).

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Annex A – Elements of the Service Infraction

A.17 QR&O 120.04(c)

A.17.1 “A person commits a service infraction who introduces, possesses or consumes an intoxicant contrary to article 19.04 (Intoxicants).”

A.17.2 Elements of the infraction

a. The identity of the person charged;

b. Date and place of the infraction;

c. The person:

(1) introduced;

(2) possessed; or

(3) consumed

an intoxicant;²¹⁶

d. The person did so in a manner that was contrary to QR&O article 19.04.

A.17.3 Example statement of the infraction

Charge # QR&O 120.04(c)	POSSESSED AN INTOXICANT CONTRARY TO QR&O ARTICLE 19.04 (INTOXICANTS)
	<i>Particulars:</i> In that they, on (date), at (indicate place of infraction), had a bottle of scotch in their desk drawer contrary to QR&O article 19.04.

²¹⁶ *Intoxicant* means alcohol.

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Annex B – Victims of Service Offences: Interactions with the Military Justice System

Context

This Annex serves to supplement and provide guidance on the [National Defence Act](#) (NDA) and the [Queen's Regulations and Orders for the Canadian Forces](#) (QR&O). This Annex is designed as a guide for appropriate authorities in the military justice system (MJ Authorities)²¹⁷ to follow when interacting with victims²¹⁸ at all stages of the military justice system (MJS).²¹⁹ The rights set out in the [Declaration of Victims Rights](#) (DVR)²²⁰ apply only to victims, as defined at subsection (subs) 2(1) of the NDA. Critically, the NDA definition of victim pertains only to misconduct constituting a service offence or a service offence allegation. The rights set out in the DVR are available to victims during their interactions with the MJS. While meeting this definition of victim is required to access rights under the DVR, an individual may define their own context and experience differently and may not recognize themselves as a victim.

MJ Authorities must employ a trauma-informed approach when interacting with victims. A trauma-informed approach includes recognizing that victims may be affected by trauma and may experience trauma differently based on their identity and past experience. Being trauma-informed means exhibiting empathy, patience, consistency, transparency and reliability towards victims.

MJ Authorities should refer victims to the [Victims and Survivors of Service Offences webpage](#), which includes information and resources concerning DVR rights as well as programs and services available, and the [Interim Victim's Liaison Officer Policy](#).

B.1 Intent

When victims' rights apply

B.1.1 MJ Authorities should be aware of when the DVR applies and be in a position to clearly communicate information about those rights to a victim when appropriate. DVR rights begin to apply when an investigation into an alleged service offence is initiated, and the investigation is

²¹⁷ MJ Authorities include, but are not limited to, members of the Military Police, an officer, or another member of the Chain of Command (CoC) who ordinarily deals with matters of discipline. Certain rights under the Declaration of Victims Rights (DVR) are accorded or administered by authorities other than these.

²¹⁸ *Victim* means, as defined at subsection (subs) 2(1) of the NDA: a person against whom a service offence has been committed, or is alleged to have been committed, who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence and includes, for the purposes of Division 1.1 of Part III and sections 202.201, 203.6 and 203.7 (of the NDA), a person who has suffered physical or emotional harm, property damage or economic loss as a result of the commission of a service offence against any other person.

²¹⁹ See NDA section (s) 71.01 for the definition of Military Justice System.

²²⁰ The DVR was enacted by the coming into force of [An Act to amend the National Defence Act and to make related and consequential amendments to other Acts](#) (Bill C-77), SC 2019, c 15. For more information, see the [Backgrounder: Enhancing Victims' Rights in the Military Justice System](#), and CANFORGEN 089/22, [Victim Rights and Summary Hearing Implementation](#) (only accessible on the Defence Wide Area Network).

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Annex B – Victims of Service Offences: Interactions with the Military Justice System

deemed to begin at the time the service offence allegation was reported to a MJ Authority.²²¹ DVR rights continue to apply through all stages of the MJS including but not limited to the following:

- a. While the service offence is being investigated;²²²
- b. While the service offence is being referred;²²³
- c. While the service offence is being prosecuted;²²⁴
- d. While the offender is serving a punishment in relation to the service offence, unless the offender has been committed to a penitentiary or civil prison;²²⁵ and
- e. If the person alleged to have committed a service offence is found unfit to stand trial or not responsible on account of mental disorder in relation to the offence, while they are under the jurisdiction of a court martial or a Review Board.²²⁶

B.1.2 Victims' rights under the DVR cease in circumstances including but not limited to the following:

- a. When the case is transferred to a civilian jurisdiction;²²⁷
- b. When there is a decision not to lay a charge, or to lay a charge only for a service infraction;
- c. When a service offence charge is not preferred by the Director of Military Prosecutions;
- d. When a finding of not guilty is made at court martial;
- e. When the offender's punishment in the MJS has been served; or
- f. When the offender is committed to a civilian institution to serve punishment.

B.1.3 MJ Authorities play a crucial role in supporting victims in accessing programs and services. When interacting with victims, the MJ Authority should confirm whether access to

²²¹ NDA paragraph (para) 71.14(1)(a) and subs 71.14(2).

²²² NDA para 71.14(1)(a).

²²³ NDA para 71.14(1)(a).

²²⁴ NDA para 71.14(1)(a).

²²⁵ NDA para 71.14(1)(b). See NDA subs 2(1) for the definitions of *civil prison* and *penitentiary*.

²²⁶ NDA para 71.14(1)(c).

²²⁷ In such a case, the civilian *Canadian Victims' Bill of Rights*, SC 2015, c 13, s 2 will then apply instead of the DVR.

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support is available and should help identify and resolve barriers or other concerns preventing access to that available support.

B.2 The Victim’s Liaison Officer

B.2.1 The DVR provides for the appointment of a [Victim’s Liaison Officer](#) (VLO) at the victim’s request.²²⁸ The VLO can assist the victim by explaining how service offences are charged, dealt with, and tried under the Code of Service Discipline. The VLO can also help obtain and transmit information relating to a service offence that the victim has requested and has a right to under the DVR.²²⁹

B.2.2 If the victim would prefer not to interact directly with MJ Authorities in navigating their available DVR rights, they may opt to make contact through the VLO. If authorized by the victim, the VLO can handle certain interactions for the victim, including but not limited to submitting documentation and receiving status updates.

B.2.3 A VLO is not an advocate on behalf of the victim. A VLO does not provide any form of personal, material, physical or mental health support to the victim, though they can provide the victim with information about support programs and services available.

B.2.4 For a person to become a VLO, they must meet a number of conditions, including receiving required training.²³⁰ A victim may request that a Commanding Officer (CO) appoint a specific VLO. The CO may appoint that requested VLO if the VLO falls within their command.²³¹

B.2.5 The Chain of Command (CoC) may nominate individuals to receive VLO training, who are then appointed to a standing list maintained by the [Chief Professional Conduct and Culture](#) (CPCC). If a victim requests a VLO who is not available, the victim can be referred to CPCC for selection of a different VLO from the standing list. For more information on the VLO, consult the [Interim Victim’s Liaison Officer Policy](#).

²²⁸ NDA subs 71.16(1). The [Interim Victim’s Liaison Officer Policy](#) provides the following recommendations to the CoC: be familiar with the DVR, including that a victim may request a VLO; where the CoC is the first point of contact for a victim, ensure the victim is informed of the DVR, including the opportunity to request a VLO; support a victim who is undecided about requesting a VLO; inform the victim that they may request a support person as needed; and respect the confidentiality of a victim. Where the victim does not name a specific individual, the Commanding Officer (CO) may contact the Chief Professional Conduct and Culture (CPCC) for assistance in identifying a suitable VLO, either in their own command or from another command.

²²⁹ See NDA subs 71.16(3) and QR&O art 108.02.

²³⁰ See QR&O art 108.02.

²³¹ If the requested member falls outside of their command, COs may request support from CPCC in facilitating the request and appointment.

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Annex B – Victims of Service Offences: Interactions with the Military Justice System

B.3 Overview of the DVR

Summary of the DVR

Right to Information (on request) <ul style="list-style-type: none">• Information about the MJS and the role of victims in it - programs and services available to victims - the right to file a complaint• Investigations and proceedings• About the offender or accused
Right to Protection <ul style="list-style-type: none">• Security considered by MJ Authorities• Protection from intimidation and retaliation• Privacy considered by MJ Authorities• Identity protection on request• Testimonial aids on request
Right to Participation <ul style="list-style-type: none">• Have their views considered regarding certain decisions made• Present a Victim Impact Statement
Right to Restitution <ul style="list-style-type: none">• Restitution order• Enforcement of restitution order (i.e. entered as a civil court judgement) if not paid
Victim's Liaison Officer (VLO) <ul style="list-style-type: none">• A victim can request the appointment by a CO of a VLO. A CO needs to appoint one except for operational reasons - to the extent possible, the VLO appointed will be the one requested by the victim• VLO must satisfy the conditions set out at QR&O article 108.02 (Conditions for Victim Liaison Officer Appointment)• Role: assist victim by explaining how service offences are charged, dealt with, and tried under the Code of Service Discipline; obtaining and transmitting information relating to a service offence that the victim has requested and to which they have a right
Complaints Mechanism <ul style="list-style-type: none">• Victims have the right to file a complaint when they are of the opinion that their DVR rights have been infringed or denied• Complaint submission process is set out in regulations²³²

Right to information

B.3.1 Under the DVR, victims have the right, on request, to certain types of information, including:

²³² See QR&O article (art) 108.03.

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- a.** Information about the MJS and the role of victims in it;²³³
- b.** Information about programs and services available to them;²³⁴
- c.** Information about their right to file a complaint for an infringement or denial of their DVR rights;²³⁵
- d.** Information about the status and outcome of the investigation;²³⁶
- e.** Information about proceedings in the MJS relating to the service offence of which they are a victim;²³⁷ and
- f.** Information about the offender while they are in a service prison or detention barrack, including the offender’s release from such custody.²³⁸

B.3.2 Various MJ Authorities may be implicated in providing information on request to victims. The context will dictate who is best positioned to provide the information requested. For example: the CoC, when a complaint is being investigated at the unit level; the Military Police when they are investigating a complaint; and military prosecutors when a service offence charge is laid and referred to the Director of Military Prosecutions. The types of information various MJ Authorities may be implicated in providing include, but are not limited to:

- a.** **The CoC**, when dealing with a complaint at the unit level, provides, when requested, information about:
 - (1)** The MJS,
 - (2)** The status and outcome of a unit investigation, and/or
 - (3)** Services and programs available to victims.
- b.** **Military Police**, when dealing with a complaint, offers their own Victim Services Program (VSP) that can help victims request most of the information under this category of DVR rights.²³⁹

²³³ NDA subs 71.02(a).

²³⁴ NDA subs 71.02(b).

²³⁵ NDA subs 71.02(c).

²³⁶ NDA subs 71.03(a).

²³⁷ NDA subs 71.03(b).

²³⁸ NDA paras 71.04(1)(a)-(b) and QR&O art 108.01.

²³⁹ Victim Services Program actors maintain contact throughout the investigative process and during any hearing that results from the investigation. Military Police will, as required, provide the victim with appropriate referrals to local and independent legal services, if available, that provide information to victims about legal proceedings.

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- c. **Military prosecutors**, when a service offence charge is laid and referred to the Director of Military Prosecutions, inform victims on request about:
 - (1) The MJS proceedings in relation to the service offence; and
 - (2) Programs and services available to them.²⁴⁰

Programs and services available to victims of service offences

B.3.3 MJ Authorities may refer victims to relevant programs and services which may be useful to them, including but not limited to:

- a. The [Conflict Solutions and Services](#) program (formerly the Integrated Conflict and Complaint Management program);
- b. The [Sexual Misconduct Support and Resource Centre](#), which can also, upon request, facilitate access to other CAF/DND and civilian resources; and/or
- c. Outside the Department of National Defence and the Canadian Armed Forces, the [Victim Services Directory](#) can help victims locate services across Canada.

B.3.4 Mental health supports should be made available throughout all stages of MJS. MJ Authorities should make it known that if the victim wishes to seek out mental health supports, such supports are available, and provide relevant contact information.

Right to protection

B.3.5 Under the DVR, victims have the right to protection, including the right to:

- a. Have their security and privacy considered by MJ Authorities;²⁴¹
- b. Be protected from intimidation and retaliation;²⁴² and
- c. Ask the court martial that their identity be protected.²⁴³

B.3.6 Various MJ Authorities may be implicated in the right to protection, including but not limited to:

²⁴⁰ With respect to transfers to civilian police forces of all allegations of sexual offences, including allegations currently under investigation, prosecutors will explain to victims what changing jurisdiction would entail; and the risks associated with changing jurisdiction (See [DMP Directive 0160-8-06520-00](#)).

²⁴¹ NDA sections (ss) 71.05 and 71.07.

²⁴² NDA s 71.06.

²⁴³ NDA s 71.08.

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a. The CoC:

- (1)** The CoC must consider the role they can play in ensuring awareness of the right to protection and in facilitating and supporting victims in accessing this right;
- (2)** The CoC must investigate any report of reprisal or other intimidating behaviour taken in response to a report of sexual misconduct, and consider how to immediately address it to the extent possible including but not limited to administrative or disciplinary action; and
- (3)** The CoC, when acting as custody review officer, must state they considered the safety and security of every victim of the alleged offence when directing the release, with or without conditions, of a person alleged to have committed a service offence.²⁴⁴

b. Military Police:

- (1)** Military Police will consider a victim's safety throughout an investigation and legal proceeding, and will facilitate or provide reasonable and necessary measures to protect them from intimidation and retaliation;²⁴⁵ and
- (2)** The Military Police VSP assists victims by providing victim services coordinators, who will inform the victim of available resources and can arrange for victim safety measures.

c. Military Prosecutors:

- (1)** Military prosecutors consult victims about any concerns they may have regarding the accused's compliance with any conditions of release imposed pending the start or completion of relevant court martial proceedings;
- (2)** Military prosecutors consider, in consultation with victims, appropriate measures to enhance the security and comfort of victims who are testifying in a court martial;²⁴⁶ and

²⁴⁴ NDA subs 158.6(1.1).

²⁴⁵ Safety measures by the Military Police can include but are not limited to: protection orders made by civilian criminal courts, and referrals to women-only shelters or to private military quarters. Measures to protect from intimidation or retaliation include access to shelters or homes available to victims of crime, imposing conditions of release or other measures to ensure a safe workplace for the victim, and/or arrests made and further charges pursued.

²⁴⁶ Measures can include informing victims of court dates, and taking reasonable steps to ensure the victim is aware of the offender's release pending start or conclusion of proceedings. See also NDA ss 71.08 and 71.09 and subs 180(2).

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- (3) Military prosecutors ask military judges to make orders to protect vulnerable witnesses.²⁴⁷

Right to participation

B.3.7 Victims have the right to convey their views about decisions to be made by MJ Authorities that affect their rights under the DVR and to have those views considered at various stages in the MJS.²⁴⁸

B.3.8 Various MJ Authorities may be implicated in the right to participation, including but not limited to:

a. The CoC:

- (1) The CoC must consider the role they can play in ensuring awareness of the right to participation and in facilitating and supporting victims in accessing this right, and to ensure the victim is provided an opportunity to offer their views when a decision is made that will have an impact on their DVR rights; and
- (2) The CoC, in determining whether alleged misconduct is most appropriately considered and dealt with as a service offence or service infraction, should provide the person the opportunity to communicate their views of the impact the alleged misconduct has had on them. This person may share their views if they so desire, and they are entitled to communicate in a way that is most appropriate for them.²⁴⁹

b. Military Police:

- (1) Victims may wish to share their views with a Military Police investigator in relation to decisions to be made that affect them.²⁵⁰

²⁴⁷ Protections can include an order banning any publication that might identify the victim; and/or a prohibition against producing the victim's personal records to the accused.

²⁴⁸ NDA s 71.1.

²⁴⁹ See sub subparagraph [1.3.7\(a\)\(1\)](#). The CoC should also discuss the possibility that a charge for a service offence may not be laid or the investigation may result in a service infraction charge, and in those instances the DVR would no longer apply. However, it should be explained that if the investigation results in a service infraction charge and the DVR no longer applies as a result, the person is entitled through QR&O and this policy to receive certain information and protection as well as the opportunity to participate in the summary hearing (see para [1.2.10](#) and [Annex C](#)).

²⁵⁰ Such decisions may include whether it is in the victim's interests that a charge be laid; or that a charge be dealt with in the MJS or in the civilian justice system; and that a charge be laid as service offence or service infraction. However, the decision to proceed with a charge rests with the person who has the authority to lay charges and the determination as to whether a service offence or a service infraction has been committed rests with the charge layer.

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c. Military Prosecutors:

- (1)** Military prosecutors consider a victim's views when a decision is to be made at any stage of a case in which the victim is involved, including decisions about which jurisdiction, military or civilian, is better suited to deal with it;²⁵¹ and
- (2)** Military prosecutors assist victims of service offences in presenting their views on the impacts of the offence on them, which will then be considered in determining the offender's sentence. Usually this is done through the use of a Victim Impact Statement.

The Victim Impact Statement

B.3.9 A victim impact statement is a statement from a victim that describes the physical or emotional harm, property damage, or economic loss that the victim has suffered.²⁵² The statement of any victim must be considered when determining the sentence to be imposed on an offender,²⁵³ or when making certain dispositions concerning an accused person found unfit to stand trial or not responsible on account of mental disorder.²⁵⁴

The right to restitution

B.3.10 Under the DVR, victims have the right to request that a military judge consider making a restitution order.²⁵⁵ A military judge can make a restitution order when imposing a sentence on an offender for the victim's readily ascertainable losses or damages suffered due to the commission of the service offence.²⁵⁶

B.3.11 Various MJ Authorities may be implicated in the right to restitution, including but not limited to:

a. The CoC:

- (1)** The CoC is encouraged to consider the role they can play in ensuring awareness of the right to restitution and in facilitating and supporting victims in accessing this right; and

²⁵¹ See for example DMP Policy Directive 007/00, para 10.

²⁵² NDA s 71.11; see also NDA subs 203.6(1). A victim can present a victim impact statement with the help of a support person and outside the court room or behind a screen if certain conditions are met (see NDA subs 203.6(3)).

²⁵³ NDA s 71.11 and subs 203.6(1).

²⁵⁴ NDA subs 202.201(16). See also NDA s 197 for the meaning of *disposition*.

²⁵⁵ NDA s 71.12.

²⁵⁶ See NDA subs 203.81(2), s 203.9 and Victims of Service Offences: The Right to Restitution.

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- (2) The CoC can specifically encourage the victim to start documenting their financial losses as soon as possible, to help ensure they are ready to present these if the offender is to be sentenced.

b. Military Police:

- (1) Military police can make the victim aware of this right, and can encourage them to start documenting their financial losses as soon as possible, to help ensure they are ready to present these if the offender is to be sentenced; and
- (2) Military police are encouraged to consider the role they can play in ensuring awareness of the right to restitution and in facilitating and supporting victims in accessing this right.

c. Military Prosecutors:

- (1) Military prosecutors take reasonable steps to provide victims with an opportunity to indicate whether they are seeking restitution.

B.4 DVR Complaints Mechanism

B.4.1 Victims have the right to file a complaint if they believe their DVR rights have been infringed or denied.²⁵⁷ MJ Authorities are encouraged to consider the role they can play in ensuring awareness of the complaints mechanism and in facilitating victim access to it.

B.4.2 A complaint must be filed in writing with the Director External Review (DER).²⁵⁸ For information on how to submit a complaint, including access to a Victim Complaint Form, consult the [Victims' Rights Complaint Review Mechanism](#). The DER must review the complaint or forward it for review by the Deputy Commander of the Canadian Forces Military Police Group, the Assistant Director of Military Prosecutions, or the Deputy DER.²⁵⁹ The DER's decision to review or forward the complaint must consider, among others, the factors set out at QR&O paragraph 108.03(3) (Complaints - Declaration of Victims Rights), which include the nature and severity of the alleged infringement or denial and the victim's preference.²⁶⁰

²⁵⁷ NDA subs 71.22(1). See also QR&O art 108.03, as well as the [Victims' Rights Complaint Review Mechanism policy webpage](#). Before filing a complaint, victims are strongly encouraged to first bring any concerns or issues to the attention of the MJ Authority.

²⁵⁸ QR&O para 108.03(1).

²⁵⁹ QR&O para 108.03(2).

²⁶⁰ See QR&O para 108.03(3) for a non-exhaustive list of factors.

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B.4.3 The complaint review will include the determination as to whether any of the victim's rights under the DVR were infringed or denied and may include recommendations to remedy any such infringements or denials.²⁶¹ The reviewing authority will forward the completed review to the DER, who will notify the victim of the result and any recommendations.²⁶²

B.4.4 If a victim is of the opinion that the result of the review or any recommendations do not address the complaint, they may file a request for a second review with the DER within 30 days of the notification of the result of the first review.²⁶³

²⁶¹ QR&O para 108.04(1).

²⁶² QR&O para 108.04(4).

²⁶³ QR&O para 108.05(1).

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Annex C – Persons Affected by a Service Infraction: Interactions with the Military Justice System

Context

This Annex serves to supplement and provide guidance on the *Queen's Regulations and Orders for the Canadian Forces* (QR&O). This Annex is designed as a guide to assist appropriate authorities in the military justice system (MJ Authorities) throughout all stages of the Military Justice System (MJS) when a service infraction has been or is alleged to have been committed against a person or a person has or is alleged to have suffered physical or emotional harm, property damage or economic loss as a result of the alleged commission of a service infraction (Person Affected by a Service Infraction). This Annex applies from the time when MJ Authorities (including investigators, charge layers, and the Officer Conducting the Summary Hearing (OCSH)) decide to treat a matter as a service infraction, through to the conclusion of a review of the results of the Summary Hearing (SH). This Annex provides a general scope of who may be the MJ Authority throughout key stages of the MJS.

C.1 Interpretation

C.1.1 The rights set out in the *Declaration of Victims Rights* (DVR)²⁶⁴ apply only to victims, as defined at subsection (subs) 2(1) of the *National Defence Act* (NDA). Critically, the NDA definition of victim includes a person against whom a service offence has been committed, or is alleged to have been committed; or a person who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence. This Annex does not address DVR rights or the appointment of a Victim Liaison Officer. For further information on those matters, please see [Annex B](#). This Annex, provides guidance when MJ Authorities decide to treat a matter as a service infraction, whereby the NDA definition of victim would not be satisfied and the DVR would not be available. An individual may however, define their own context and experience differently and may recognize themselves as a victim regardless of the confines of the NDA definition of victim.

C.1.2 MJ Authorities must employ a trauma-informed approach when interacting with Persons Affected by a Service Infraction. A trauma-informed approach includes recognizing that these persons may be affected by trauma and may experience trauma differently based on their identity and past experience. Being trauma-informed means exhibiting empathy, patience, consistency, transparency and reliability towards Persons Affected by a Service Infraction.

C.1.3 A Person Affected by a Service Infraction is entitled to receive certain information and protection and to participate in a SH in accordance with the QR&O and the Military Justice at the Unit Level Policy (the Policy), including this Annex. This Annex explains these different entitlements, including those that must be provided to a Person Affected by a Service Infraction

²⁶⁴ The DVR was enacted by the coming into force of [An Act to amend the National Defence Act and to make related and consequential amendments to other Acts](#) (Bill C-77), SC 2019, c 15. For more information, see the [Backgrounder: Enhancing Victims' Rights in the Military Justice System](#), and CANFORGEN 089/22, [Victim Rights and Summary Hearing Implementation](#) (only accessible on the Defence Wide Area Network).

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and those that are available upon request. In order for a Person Affected by a Service Infraction to meaningfully access these entitlements, MJ Authorities must inform them about how to do so, which may include referring them to this Annex.

C.1.4 The purpose of this Annex is to serve as a resource guide for MJ Authorities to use in informing a Person Affected by a Service Infraction about their entitlements and in providing these entitlements. Aside from what MJ Authorities are required to provide, each Person Affected by a Service Infraction may choose a different level of involvement in the MJS, and this level of involvement may change over time. MJ Authorities must be sensitive to and respect the choices of a Person Affected by a Service Infraction. This Annex is to be understood and applied in a way that is reasonable and in a manner that is not likely to interfere with the proper administration of justice or endanger the life or safety of an individual.²⁶⁵

Summary of entitlements

Information (on request) <ul style="list-style-type: none">• General information about military justice at the unit level and their role in it• Status and the outcome of the investigation• Explanation of the charge referral process for that particular charge and how the charge is managed after it is referred; and the name, rank and contact information of the officer to whom the charge is referred• A copy of the written reasons with respect to the finding(s) and sanction(s) if applicable• A copy of the written reasons for the Review Authority's determination
Protection <ul style="list-style-type: none">• Security considered by MJ Authorities• Privacy considered by MJ Authorities• Appropriate action by MJ Authorities concerning reprisal or intimidation• To request to attend the SH with a support person present• To give evidence by telephone or other electronic means• To be consulted when the person charged requests permission to question them at the SH
Participation <ul style="list-style-type: none">• To share their views about any decisions made that could affect their entitlements• To make a statement during sanctioning• To make representations during a review under certain circumstances
Recourse for founded infringement or denial of entitlements <ul style="list-style-type: none">• To have these remedied as soon as circumstances permit

²⁶⁵ Interference with the proper administration of justice may include: compromising an investigation, the laying or referral of a charge, or the SH.

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C.2 Information

Investigation

C.2.1 MJ Authorities shall, on request, provide to a Person Affected by a Service Infraction the name, rank and contact information of a person(s) who will be responsible for the provision of requested information about the investigation.

C.2.2 The following information must be provided on request to a person Affected by a Service Infraction:

- a.** General information about military justice at the unit level and the Person Affected by a Service Infraction's role in it including information about:
 - (1)** Investigating an alleged service infraction;
 - (2)** Laying charges;
 - (3)** Referring charges;
 - (4)** Conducting a SH;
 - (5)** Implementing a sanction; and
 - (6)** SH reviews.
- b.** Information about the status and the outcome of the investigation; and
- c.** Information about relevant services and programs which may be useful to them, including:
 - (1)** The [Conflict Solutions and Services](#) (CSS) program (formerly the Integrated Conflict and Complaint Management (ICCM) program);
 - (2)** [Chaplain services](#);
 - (3)** [Canadian Armed Forces Member Assistance Program \(CFMAP\)](#);
 - (4)** The [Sexual Misconduct Support and Resource Centre](#) (SMSRC), which can also, upon request, facilitate access to other CAF/DND and civilian resources; and
 - (5)** Mental health support contact information.

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Charge laying and referral

C.2.3 If a service infraction charge is laid, the charge layer must provide a copy of the charge report to a Person Affected by a Service Infraction.²⁶⁶ A Person Affected by a Service Infraction is entitled to request the following information from the charge layer:

- a.** An explanation of the charge referral process for that particular charge;
- b.** An explanation of how the charge is managed after it is referred;²⁶⁷ and
- c.** The name, rank and contact information of the officer to whom the charge is referred.

C.2.4 If the charge layer decides not to lay a charge, they must, as soon as circumstances permit, inform a Person Affected by a Service Infraction of the decision not to lay a charge.²⁶⁸ It is best practice to send this notification in writing. The charge layer is not required to provide reasons for this decision, but may, in certain circumstances, exercise their discretion to do so.

C.2.5 If an officer to whom a charge was referred decides to subsequently refer that charge to another officer, they must inform a Person Affected by a Service Infraction of this decision. A Person Affected by a Service Infraction is entitled to request the following information from the officer making the subsequent referral:

- a.** the reason for the referral; and
- b.** the name, rank and contact information of the officer to whom the charge is referred.

Summary hearing

C.2.6 If the officer to whom the charge has been referred decides to conduct a SH, they must provide notice of the decision to conduct a SH to a Person Affected by a Service Infraction in writing.²⁶⁹ The notice must include the date, time and information with respect to the hearing procedures that will be followed.²⁷⁰ The hearing procedure information to be provided to the Person Affected by a Service Infraction should include, without being limited to, the following:

- a.** Their role as a witness, should they be called (see paragraphs (paras) [3.4.7-3.4.8](#));
- b.** How their questioning at the hearing will be managed (see paras [3.4.5-3.4.6](#) and [C.3.6](#)); and

²⁶⁶ See QR&O subparagraph (subpara) 102.10(1)(b).

²⁶⁷ An explanation of the process pursuant to NDA section 162.95.

²⁶⁸ See QR&O paragraph (para) 102.11(c).

²⁶⁹ See QR&O para 121.08(1).

²⁷⁰ See QR&O para 121.08(2). The notice of the decision to conduct a SH should also include information on the location of the SH.

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- c. That they will be permitted, but are not required, to provide a statement should the hearing proceed to the sanction phase (see paras [3.6.16](#) and [C.4.3](#)).

C.2.7 A Person Affected by a Service Infraction is entitled to request a copy of the written reasons with respect to the finding(s) and sanction(s) if applicable, and the completed charge report. Necessary redactions in accordance with the *Privacy Act*²⁷¹ must be made to these documents prior to their disclosure to a Person Affected by a Service Infraction. For more information concerning disclosure and redactions see paragraph (para) [3.7.2](#).

C.2.8 If the officer to whom the charge has been referred decides that a charge should not be proceeded with, they must as soon as circumstances permit inform a Person Affected by a Service Infraction and provide them with the written reasons for that decision.²⁷² If the officer to whom the charge has been referred decides the matter should be treated as a service offence allegation and refers the matter for further investigation, the rights set out in the DVR would apply as the definition of victim as set out at NDA subs 2(1) will have been met. In such cases, that officer must ensure the person is notified that they meet the definition of victim and have access to the rights set out in the DVR. That officer should also consult [Annex B](#) for information on the DVR, including when the DVR applies and who may be the appropriate MJ Authority to interact with a victim at any given stage of the MJS.²⁷³

C.2.9 If a service infraction charge cannot be proceeded with by reason of a missed limitation period, the relevant officer must communicate this to a Person Affected by a Service Infraction.²⁷⁴ If the relevant officer loses jurisdiction for any other reason and a SH is not to be held as a result, they must inform a Person Affected by a Service Infraction and provide them with reasons for why the SH is not to be held.

Review

C.2.10 If a review of the finding or sanction imposed at a SH is to be conducted, the Review Authority (RA) must ensure a Person Affected by a Service Infraction is informed that a review is to be conducted. A Person Affected by a Service Infraction is entitled to request the RA provide them with a copy of the written reasons for the RA's determination. Necessary redactions in accordance with the *Privacy Act*²⁷⁵ must be made to the written reasons prior to their disclosure to a Person Affected by a Service Infraction. For more information concerning disclosure and redactions see para [4.4.15](#).

²⁷¹ RSC 1985, c P-21.

²⁷² See QR&O para 121.09(d).

²⁷³ See NDA section (s) 71.01 for the definition of Military Justice System for the purposes of the DVR.

²⁷⁴ See para [2.4.6](#).

²⁷⁵ RSC 1985, c P-21.

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C.3 Protection

C.3.1 A Person Affected by a Service Infraction is entitled to have their security and privacy considered by MJ Authorities on an ongoing basis. Throughout any stage in the proceedings, a Person Affected by a Service Infraction is entitled to have MJ Authorities take appropriate action, including initiating an investigation, upon receipt of any complaint or report of reprisal or other intimidating behavior being carried out against a Person Affected by a Service Infraction or any other person, in response to an allegation under investigation.²⁷⁶

Investigation

C.3.2 A Person Affected by a Service Infraction is entitled to have their security considered by MJ Authorities throughout the investigation. The consideration of the security of a Person Affected by a Service Infraction during the investigation should include investigators inquiring with them at the outset of an investigation as to whether they have security concerns or needs. This consideration should also include MJ Authorities, namely, investigators, charge layers and members of the relevant Chain of Command (CoC), putting a stop to any ongoing behaviour that formed the substance of the complaint.

C.3.3 A Person Affected by a Service Infraction is entitled to have their privacy considered by investigators throughout the investigation. The consideration of the privacy of a Person Affected by a Service Infraction during the investigation may include investigators inquiring with them at the outset of an investigation where and when they may prefer to interact, including over the telephone, by email or by other means of communication. Investigators should encourage a Person Affected by a Service Infraction to contact them should they require assistance.

Summary hearing

C.3.4 A Person Affected by a Service Infraction is entitled to have their security and privacy considered by MJ Authorities throughout the SH process. The OCSH should maintain communication with a Person Affected by a Service Infraction to allow them to share any security and privacy concerns or needs they may have. A Person Affected by a Service Infraction may submit a request to the OCSH should they wish to attend the SH with a support person present. The OCSH may grant such a request taking into consideration, among other matters, whether it would facilitate the giving of evidence or would otherwise be in the interest of the proper administration of military justice. Witnesses, including a Person Affected by a Service Infraction, may also give evidence at a SH by telephone or other electronic means so long as their identity can reasonably be confirmed and they may be properly heard and questioned.²⁷⁷

²⁷⁶ Pursuant to QR&O para 102.02(1), if an appropriate authority in the military justice system receives a complaint or has other reasons to believe that a service offence or a service infraction has been committed, the authority must cause an investigation to be conducted as soon as circumstances permit to determine whether there are sufficient grounds to lay a charge.

²⁷⁷ See para [2.8.2](#).

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C.3.5 A SH is usually open to the public. However, an OCSH has the discretion, in certain circumstances, to order all or part of a SH closed. One of those circumstances is when it is likely there will be information disclosed at the SH affecting a person's privacy or security interest, including a Person Affected by a Service Infraction, and that interest outweighs the public's interest in that information.²⁷⁸

C.3.6 During the SH, if a person charged with a service infraction wishes to question a Person Affected by a Service Infraction, the person charged must request permission to do so from the OCSH. The person charged must provide the OCSH with a general description of each intended line of questioning. The OCSH must, after consultation with the Person Affected by a Service Infraction, decide what lines of questioning may be asked and whether the person charged may question that person directly themselves, or indirectly (such as through their Assisting Member or the OCSH). The determination as to what lines of questioning may be asked should be based solely on whether each line of questioning is relevant to the matters to be determined in the SH.²⁷⁹

C.4 Participation

C.4.1 Throughout any stage in the proceedings, a Person Affected by a Service Infraction is entitled to share their views about decisions made that could affect their information, protection and participation entitlements pursuant to the QR&O and this Policy including this Annex. Should such views be shared, MJ Authorities must consider those views.

Charge laying

C.4.2 In some instances, at the close of an investigation, a charge could be laid for either a service infraction or a service offence on the same set of facts. In those cases, the charge layer must make a determination as to whether the alleged misconduct is most appropriately dealt with as a service infraction or a service offence. In making this determination, the charge layer should seek out and consider the views of the person alleged to have had a service offence or service infraction committed against them or alleged to have suffered physical or emotional harm, property damage or economic loss as a result, with respect to the impact the alleged misconduct has had on them. This person may share their views if they so desire, and they may communicate with the charge layer in a way that is most appropriate for them.²⁸⁰ While these views will be considered by the charge layer, the charge layer holds the ultimate discretion to determine if and what charge should be laid.

²⁷⁸ See QR&O subpara 122.02(1)(c).

²⁷⁹ See paras [3.4.5-3.4.6](#).

²⁸⁰ See sub-subparagraph [1.3.7\(a\)\(1\)](#).

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Summary hearing

C.4.3 When a service infraction is found to have been committed against a Person Affected by a Service Infraction, they will be permitted, but not required, to make a statement during the sanctioning phase. The statement may provide information on the physical or emotional harm or any property damage or economic loss suffered by the Person Affected by a Service Infraction as a result of the commission of the service infraction. The statement must not include any irrelevant information or any opinion or recommendation on the sanction, and the OCSH may disregard any such inclusions. The person found to have committed the service infraction may not ask the Person Affected by a Service Infraction any questions during this phase of the SH.

Review

C.4.4 When a RA is conducting a review and new admissible information is brought to their attention, and this information is determined by the RA to be relevant to a Person Affected by a Service Infraction's interests, this information must be disclosed to them. The Person Affected by a Service Infraction may, but is not required, within 7 days, to make any representations they may have with respect to the new information and to provide those representations to the RA, who will then pass them on to the person found to have committed a service infraction. The person found to have committed a service infraction will then have 7 days to provide to the RA any response to the representations provided and/or any further representations.²⁸¹

C.5 Infringement or denial of entitlements

C.5.1 Every Person Affected by a Service Infraction who is of the opinion that any of their entitlements to receive information, protection and to participate in a SH in accordance with the QR&O and this Policy, including this Annex, have been infringed or denied has the right to make a report to their CoC. Any founded infringements or denials must be remedied as soon as circumstances permit. The CoC should direct any questions with respect to an alleged infringement or denial to the unit legal officer.

²⁸¹ See s [4.5](#) and [figure 4.3](#).

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Appendix 1

INFORMATION PROVIDED IN ACCORDANCE WITH QR&O ARTICLE 121.03

Name of person charged: _____

Date charge laid: _____

Rank: _____

SN: _____

Unit / UIC: _____

1. Material made available to the person charged with having committed a service infraction. This material includes without being limited to, the Investigation Report and any materials attached to the Investigation Report, such as: written witness statements; a Cautioned Statement Form; and documentary or electronic material (i.e.: text messages, photographs, screenshots, videos, recordings or other materials). This material does not include physical evidence (see Part 2).

Material	Format Provided	Date Provided	Name and Signature of Person Providing the Information

2. Physical evidence: all physical evidence made available to the person charged with having committed a service infraction.

Evidence	Location of Physical Access	Means to Access Physical Evidence	Date Provided	Name and Signature of Person Providing the Information

3. Witnesses: witnesses to attend the summary hearing, who may be called by the Officer Conducting the Summary Hearing (OCSH) to provide evidence.

Name and rank (if applicable) of witnesses

1.

2.

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Appendix 1

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Notes:

1. Electronic disclosure: The information should be provided in electronic format in all but exceptional cases. For example, the nature of the information may cause the disclosure to not be in electronic form because of security or privacy considerations. The exigencies of the service (i.e.: on deployment or training) may also prevent this information from being provided in an electronic format.
2. Ongoing disclosure: Additional information uncovered after initial disclosure that (a) is to be relied on as evidence at the summary hearing; or (b) tends to show that the person charged did not commit the infraction²⁸² must be disclosed. In doing so, Part 1 and/or Part 2 of this form should be updated and provided along with the additional information.
3. Line entries: Each line on this form pertains to a single piece of information. However, for the purposes of initial disclosure the Investigation Report and any materials attached to it may be treated as a single entry.
4. Evidence available to the OCSH: The materials and physical evidence listed at Part 1 and 2 of this form respectively, will be available to the OCSH to be presented at the summary hearing.
5. Timing: The list of witnesses (Part 3) may not be known at the time of initial disclosure and/or may require modification. This list or any revisions to it must be provided in sufficient time to permit the person charged with having committed a service infraction to properly prepare for the summary hearing.
6. Solicitor-client privilege: Any legal advice provided pursuant to QR&O articles 102.02, 102.07, 121.07 or otherwise provided to appropriate authorities in the military justice system, must not be disclosed to the person charged. This legal advice is solicitor-client privileged information. Any questions regarding solicitor-client privilege should be directed to the unit legal advisor.

²⁸² See paragraphs [2.1.2](#) and [2.1.3](#) of the MJUL Policy.