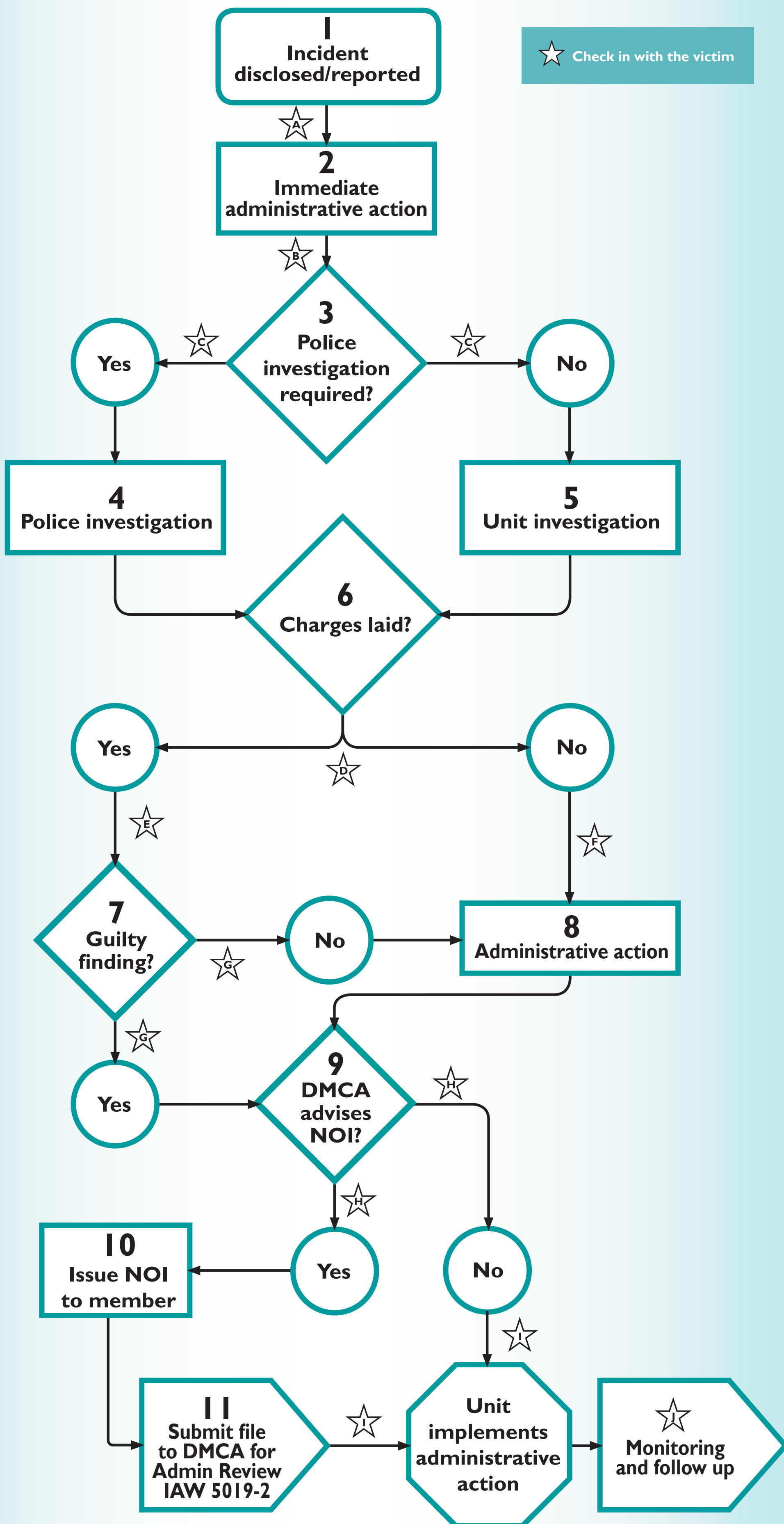




# Sexual Misconduct Incident Management Decision Tree

★ Check in with the victim







## Sexual Misconduct Incident Management Decision Tree (Administrative/Disciplinary Action Focus)

- 1** The chain of command's role and responsibilities:
  - Be prepared to receive disclosures. Consult the Respect in the CAF App or the online Operation HONOUR Manual for more details on how to be prepared, particularly with respect to support to victims, and procedural fairness.
  - Ensure ongoing communication and transparency with the victim. Inquire with the victim as to immediate care, safety and support needs and ensure these are addressed, including encouraging the victim to seek support from individuals close to them (such as friends, partners or colleagues) and referring the victim to support services such as the Sexual Misconduct Response Centre (SMRC).
  - Determine whether there is a relationship between the victim and the alleged perpetrator which may need to be mitigated. Do you need to separate those involved? Check what the victim would like to have happen. Consider how to mitigate (and monitor continually) the real and ongoing risk of retaliation and immediately address any such issues.
  - Document lessons, as they are part of a prevention strategy.
  - Initiate Operation HONOUR Tracking & Analysis System (OPHTAS) case management.
  - Consult your local Conflict and Complaint Management Services (CCMS) centre for suspected cases of harassment.
  - Consult with the SMRC for guidance on effective response as well as on support to victims. SMRC is available to provide coaching to members of the chain of command.
- 2** The commanding officer should consult the Unit Legal Advisor to determine the best approach to dealing with the incident. There are circumstances that will warrant administrative action even before any police or disciplinary investigation is contemplated/complete, such as: removal from command, relief from the performance of military duty (e.g., from supervisory, instructional or key positions), separating the member from their unit, and ordering no contact, nor any form of communication, directly or indirectly with the victim(s) if applicable. A Significant Incident Report (SIR) or CDS Commander's Critical Information Requirement (CCIR) may be required.
- 3** Commanding officers are not to investigate alleged incidents of sexual misconduct until it is clear that all police with jurisdiction to investigate the matter have declined to investigate. Before proceeding they are to seek advice from their Unit Legal Advisor.
- 4** Regardless of where the complaint was made, jurisdictions (mil or civ) will be decided among the implicated police services and prosecutors, in consultation with the victim. If the incident is sensitive or complex, the Military Police may conduct the investigation even if the alleged behaviour does not constitute a criminal offence. Your Unit Legal Advisor will advise on the most appropriate investigation process. The unit should not conduct an investigation while there is an ongoing police investigation.
- 5** The incident may best be served by conducting a disciplinary investigation, administrative investigation, or a harassment investigation. If a police investigation is not required, and on advice from the Unit Legal Advisor, a Unit Disciplinary Investigation may be conducted. Cases of sexual harassment may be of a serious/sensitive nature such that a special harassment investigator is required in accordance with DOAD 5012-0. Consult with your Harassment Advisor (HA) and your local CCMS centre to determine the need. Alternate Dispute Resolution may be desired by the affected person for incidents where they feel the impact is minor, or where they prefer a restorative approach, but they must not be ordered to pursue such processes.
- 6** Charges will normally be laid after consultation with the appropriate legal advisor. Lack of a charge should not be construed as a belief that unacceptable behavior did not occur; administrative decision-makers must exercise their own discretion, based on the evidence that is available to them, and based on the standard of proof that they are required to consider (i.e. proof on a balance of probabilities) in making decisions to take or not take any particular administrative action.
- 7** If the member was found not guilty on all charges the chain of command should still evaluate if, based on the known facts, it is more likely than not that sexual misconduct did occur, in order to determine whether administrative action is warranted. A review of the facts of the case is required to determine whether, on a balance of probabilities, an incident, special circumstance, or professional deficiency has occurred. If such a determination is made, then a review of the facts of the case is required in order to ensure that the most appropriate administrative action is selected in accordance with DAOD 5019-2. This includes the CAF member's entire period of service (taking into account their rank, military occupation, experience & position), previous conduct deficiencies, if any, and leadership role, if any.
- 8** Administrative action, including remedial measures, may be taken regardless of the outcome of any disciplinary/criminal investigation or trial. For a conviction in a court, the standard of proof is 'beyond a reasonable doubt', for administrative purposes the standard of proof is 'balance of probabilities'. In conducting the review of the case, keep these principles in mind and carefully look at the evidence based on this standard of proof in order to determine whether an incident, special circumstance, or professional deficiency has occurred. If so, then, in accordance with DAOD 5019-2, carefully look at the facts of the case, their entire period of service (taking into account the CAF member's rank, military occupation, experience and position), previous conduct deficiencies, if any, and leadership role, if any, in order to ensure that the most appropriate administrative action is selected. Investigation reports may be sought from the MPs/CFNIS by the commanding officer as part of the review. Civilian investigative reports are not normally made available to the chain of command; however, in the event that a CAF member is found "not guilty", a review of the trial transcript, decision of the court, or account of the proceedings obtained from the attending officer may be necessary to determine whether there is sufficient evidence to determine, on a balance of probabilities, that sexual misconduct did occur. Legal advice should be sought in such cases, and Director Military Career Administration (DMCA) 2 consulted, to ensure consistency across the CAF.
- 9** If the case involves repeat offences, cumulative misconduct, or based on other considerations is serious, then a release may be warranted. After reviewing the [DMCA 2 - Misconduct Administrative Review web page](#), consult DMCA 2 for guidance on what administrative actions are warranted. If a Notice of Intent (NOI) to Recommend Release is not advised, and in conjunction with all available information and advice from DMCA 2, take the appropriate administrative action. A guilty finding is not required to recommend a release or impose other administrative actions.
- 10** The NOI to Recommend Release is in and of itself an administrative action. The notice format and requirements can be found at [DMCA 2 - Misconduct Administrative Review](#).
- 11** In accordance with DAOD 5019-2, the administrative review file to DMCA 2 shall include the following:
  - Commanding officer's administrative action recommendation
  - Investigation report(s)
  - Member's conduct history
  - Synopsis of member's personnel file
  - Member's representation
  - The court transcript, if applicable
  - Any other pertinent information
 Ensure that the OPHTAS case management file is updated as necessary.

## Sexual Misconduct Incident Management Decision Tree (Guidance for the Chain of Command with respect to victims)

- A**
  - Victims should not be forced to report if they do not feel prepared to do so; they can be referred to SMRC to receive confidential support and information. SMRC can also facilitate anonymous contact with their Military Police Liaison Officer, who can provide further information on the options available to them and the process that would be involved.
  - The guiding principles for supporting affected members, particularly victims, through any process include: maintaining regular and open two-way lines of communication (rather than only one-way transmission of information); checking in with the victim throughout the process at all stages, including during delays (long silences and inaction without information can be very difficult); verifying at regular intervals whether the necessary and appropriate resources and services have been secured for the affected member and whether there are any barriers or other concerns preventing them from reaching out and seeking the needed supports, resources or information. Victims should be strongly encouraged to reach out to, and receive support from, the person(s) of their choosing. In certain regions, professionally trained victim accompaniment personnel may be available, although this new service is not yet widely implemented. Consult the SMRC for more information on the accompaniment services which may be available.
  - Given that sexual misconduct can often be an experience of losing control and having choices taken away from a victim, it is essential to avoid, as much as possible, repeating that experience through the formal reporting and investigation process. Providing choices and information and ready access to resources at all stages will help ensure that the impact on the affected member is minimized as much as possible and will increase the chances of retention in the long term. This includes being clear and upfront about what kinds of information they may and may not have access to throughout the process (e.g. privacy limitations on the sharing of sensitive personal information such as medical or psycho-social assessments or treatment).
  - It is important to remember that those affected by sexual misconduct, particularly the more severe and harmful forms, can be under significant emotional/psychological stress. One of the effects this can have is to impair executive functioning (including memory, planning, decision-making, multi-tasking, etc.). Affected members may need to receive information more than once, and it is important to not only convey information, but also to ensure that it has been understood. This is one of the reasons for ensuring that the affected member has a trusted support person to accompany them; they can assist them through the process.
  - Consult with victims on any accommodations needed to enable them to function effectively until the situation is fully resolved. It is important to work with the victim to balance their perspective and needs with the requirements of the service.
- B** The response to alleged incidents of sexual misconduct should, to the greatest extent possible, reflect the victim's preferences, including the decision whether to proceed with disciplinary or administrative processes. The victim should be made aware that an administrative process (such as harassment or ADR) may be conducted and the victim will be informed and constantly updated throughout either (disciplinary, administrative, harassment) process.
- C** Explain to the victim who will be investigating and why. Provide information on what factors contribute to deciding whether the matter will be investigated by CFNIS, the MPs, the civilian police, or the Unit. Provide information to the victim, via the investigator on case progress. The victim should also be made aware of the different avenues available to them IOT obtain information on the status of their investigation and case (e.g. Military Police Liaison Officer through SMRC, via the prosecutor, or the chain of command). SMRC response and support coordinators may also be available to support them through this process, should the victim choose to make a request. If the decision is not to lay a charge the investigator should explain why and discuss the next steps. Victim should be made aware if a Service and/or Criminal Offence is suspected to have occurred and who will be conducting the investigation. Chain of command should discuss with the victim how the determination was made (and by whom) and ensure a clear understanding of the difference between Code of Service Discipline and Criminal Code and what constitutes an offence under each, as it relates to the incident.
- D** Explain whether charges were laid and why, in consultation with legal advisor. When determining which system will exercise jurisdiction, investigators and military prosecutors consider a number of factors including the degree of military interest in the case, the degree of civilian community interest (e.g., public safety concerns), whether the accused, the victim, or both are members of the CAF, and the views of the victim. It should also be noted that the Military Justice System has more options in the type of charges that can be laid with respect to sexual misconduct. In addition to offences under the Criminal Code and the civilian Criminal Justice System, service offences that can be prosecuted also include sexual assault, as well as disgraceful conduct, abuse of a subordinate, and conduct to the prejudice of good order and discipline (including sexual harassment). A decision to not lay charges may be significantly upsetting for those affected by the incident. It is important to set aside sufficient time for a discussion with them to help them understand the decision taken, and to ensure they understand their options if they are not satisfied with the process undertaken. It is important at this stage to check in with the victim about the impact of the decision on them, and to ensure again that they have adequate supports in place.
- E** The case will proceed either through a Court Martial, Summary Trial, or through the civilian criminal justice system. The chain of command needs to ensure that the victim is provided with the necessary information regarding the type of trial that will take place. The chain of command should provide information regarding the Summary Trial process. The prosecutor and the investigator will provide information to the victim in accordance with their policies about the Court Martial process. If the matter proceeds through the civilian criminal justice system, the participants in that system will provide information to the victim as per their policies. Victims may obtain information about the status of their case and the court martial process, from military prosecutors at [CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca](mailto:CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca), monitored daily, or to get answers on questions they may have about their file. Information available to victims includes the decision of the prosecutor on whether to prefer a charge against the accused.
- F** The chain of command must ensure that victims have adequate supports in place if charges are not laid. Victims should also be provided adequate information regarding options available to them in cases where their complaint is not pursued or they are not satisfied with the outcome (administrative action, relocation request, etc.).
- G** Discuss the process after a finding of guilty or not guilty. The process does not stop here, and administrative action up to and including release could still be applied.
- H** Ensure that the victim understands the contents of CANFORGEN 049/19 which does not automatically necessitate that the chain of command issue a NOI to Recommend Release. Administrative action short of release can also be applied.
- I** Inform the victim whether any administrative actions or disciplinary measures have been or will be taken and the substance of these actions/measures if it is deemed appropriate to do so. However information about such actions/measures that include highly sensitive personal information such as medical or psycho-social assessments or treatment will not be shared..
- J** The chain of command should check in on occasion with the victim, to ensure they are fully supported in their recovery (e.g., access to support services). Monitor the impact on unit morale and cohesion and seek supports (CCMS, SMRC, etc) to address remaining issues.