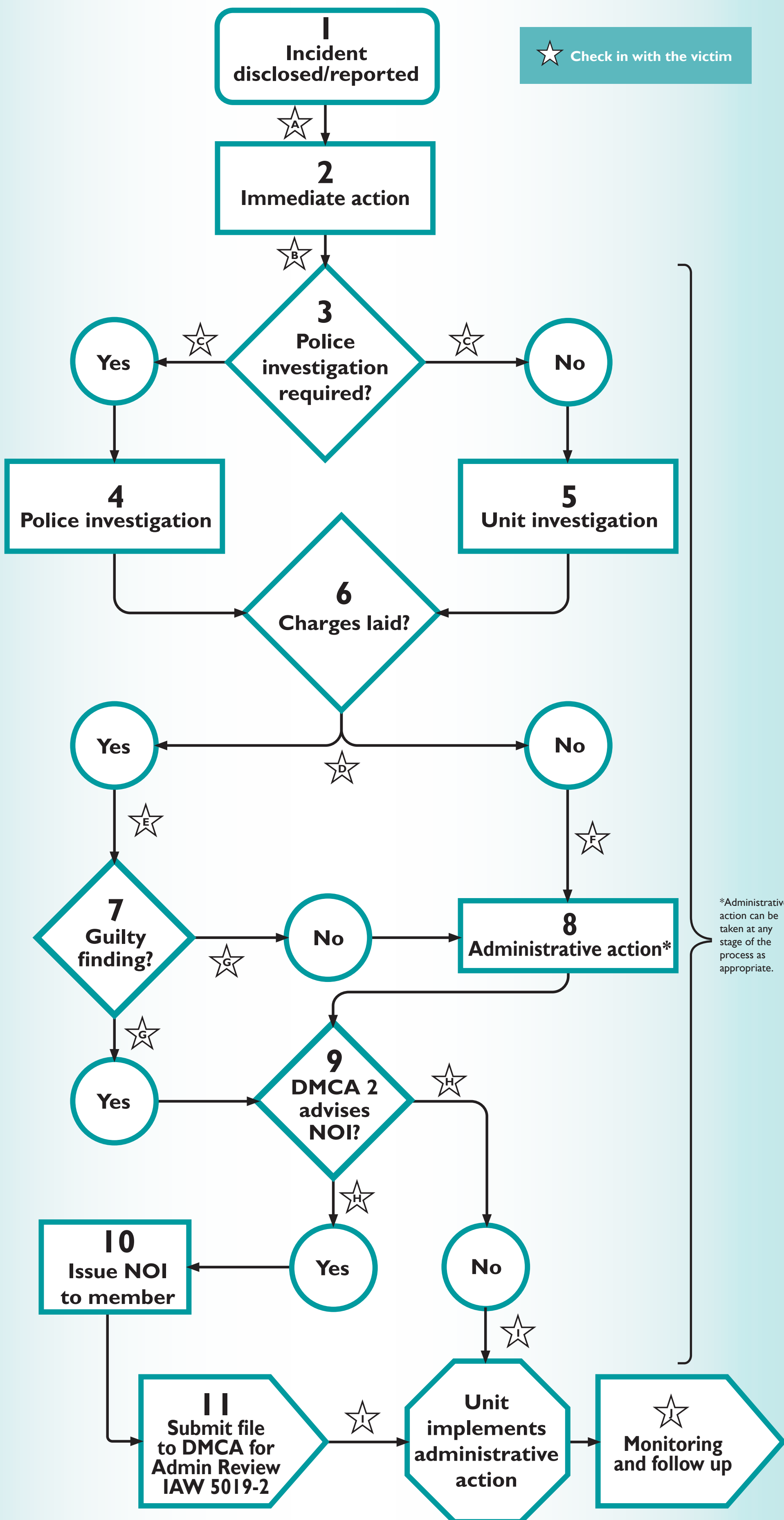




Sexual Misconduct Incident Management Decision Tree





Sexual Misconduct Incident Management Decision Tree

Note: This tool is intended as a guide only. If there is any conflict or discrepancy with Defence Administrative Orders and Directives (DAOD) 9005-1, the DAOD will take precedence.

Administrative/Disciplinary Action Focus

I. The chain of command's (CoC) role and responsibilities:

- Be knowledgeable on the actions required upon receipt of a report of sexual misconduct. Consult the Respect in the Canadian Armed Forces (CAF) App or the Operation HONOUR website for more details on how to be prepared, particularly with respect to support to victims, and procedural fairness;
- Ensure, subject to legal limitations, ongoing communication and transparency with the victim. Enquire with the victim as to immediate care, safety and support needs and ensure these are considered, 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);
- Consider how to mitigate (and monitor continually) the real and ongoing risk of reprisal and retaliation and immediately address, to the extent possible, any such issues;
- Consult local Conflict and Complaint Management Services (CCMS) when cases of sexual harassment are suspected; and
- Consider consulting with the SMRC for guidance on effective response and support to victims. The SMRC is available to provide advice to members of the CoC.

Upon an officer's receipt of a disclosure or report of an alleged incident of sexual misconduct, that officer must first determine whether they are required to report it to a proper authority or if they can adequately deal with the matter. Consult DAOD 9005-1, Sexual Misconduct Response for more detail.

Upon a Non-Commissioned Member's (NCM) receipt of a disclosure or report of an alleged incident of sexual misconduct, they must report the alleged infraction to the appropriate authority. Consult DAOD 9005-1, Sexual Misconduct Response for more detail.

Action by Commanding Officer (CO):

Upon becoming aware of an alleged incident of sexual misconduct, the CO must:

- take immediate action, as necessary, to ensure the well-being and safety of the victim;
- ensure that victims and witnesses are informed about the full range of support options that may be available to them;
- ensure that the well-being and safety of the respondent are considered, and that they are informed about the full range of services that may be available to them. The respondent has a right to due process and procedural fairness;
- consult the unit legal advisor to obtain advice throughout the process;
- consider whether it is appropriate to remove the respondent from supervisory, instructional or command positions, temporarily modify their work location, or order no contact or any form of communication, directly or indirectly with any victims or witnesses;
- ensure that the details are captured in the Operation HONOUR Tracking and Analysis System (OPHTAS) through their appointed representative in accordance with the relevant OPHTAS direction;
- in accordance with DAOD 2008-3 and the Chief of the Defence Staff's Critical Information Requirements (CCIRs), submit Significant Incident Reports (SIRs) through the CoC to the Canadian Forces Integrated Command Centre and Directorate Professional Military Conduct (Operation HONOUR) (DPMC-OpH), and info copy Director Military Careers Admin 2 (DMCA 2). The following information must not be included in sexual misconduct SIRs: names, service numbers or personnel record identifiers of victims or respondents; and
- monitor the impact on unit morale and cohesion.

Commanders at all levels must treat information regarding sexual misconduct complaints in a discreet and sensitive manner and in accordance with the proper handling of personal information.

2. There are circumstances that will warrant administrative action even before any police or disciplinary investigation is contemplated or completed, such as: removal from command, relief from the performance of military duty, relief from supervisory, instructional or key positions, remedial measures, separating the member from their unit, repatriation, or taking other actions to ensure separation between the victim and respondent as necessary. It is important to ensure that any administrative action anticipated by the CoC respects the right of the respondent to procedural fairness. Before taking action, consult your legal advisor.

Note - When the CoC has determined on a balance of probabilities that a CAF member has engaged in sexual misconduct, and is considering remedial measures or administrative review, the Initiating Authority (IA) must consult DMCA 2 and obtain advice. In weighing the evidence surrounding the incident of sexual misconduct, and before determining appropriate administrative action, the following factors must be considered:

- a. all relevant facts, including:
 - i. the degree to which the act was intrusive or violent;
 - ii. the sentence imposed, if any;
 - iii. whether the respondent ignored a request to stop or failed to confirm consent;
 - iv. the victim's circumstances, including the impact on their health and well-being; and
 - v. the respondent's relationship to the victim at the time of the incident, including:
 - position of authority or trust, if any; and
 - rank differential, if any.
 - b. the degree to which the respondent:
 - i. accepted responsibility and demonstrated remorse for the sexual misconduct; and
 - ii. actively took steps to modify their behaviour.
 - c. the respondent's entire period of service, taking into account their rank, military occupation, experience, position and leadership role, and previous conduct deficiencies; and
 - d. the impact on the respondent's unit and the CAF.
- 3 If an investigation is required, a unit disciplinary investigation may only be conducted once it is determined that all police with jurisdiction to investigate the matter have declined to investigate. Before proceeding to investigate, the unit legal advisor should be contacted and will advise on the most appropriate investigation process.
 - 4 Regardless of where the complaint was made, jurisdictions (mil or civ) will be decided among the implicated police services and prosecutors. If the incident is sensitive or complex, the Military Police (MP) may conduct the investigation even if the alleged behaviour does not constitute an offence under the Criminal Code.
 - 5 The unit should not conduct an investigation while there is an ongoing police investigation.
 - 6 If charges are to be laid, it is normally following consultation with the unit legal advisor. Lack of a charge should not be construed as a belief that unacceptable behavior did not occur.
 - 7 If the member was found not guilty of a charge, was discharged, or charges were not proceeded with, a review of the facts of the case is still required by the CoC to determine whether there is reliable evidence that establishes on a balance of probabilities that sexual misconduct has occurred.
 - 8 Administrative action can be taken at any stage of the process as appropriate. Consult DMCA 2 for advice. The CO must forward all related documents to DMCA 2 along with recommendations based on their review of the case.

Guidance for the Chain of Command with Respect to Victims

- A CAF members can be referred to the SMRC to receive confidential support and information. Regardless of whether the incident of sexual misconduct has been reported, those affected by sexual misconduct may access support and medical treatment as needed. Support can be obtained through the SMRC or the organizations listed on the Operation HONOUR website or both, with the understanding that these organizations will adhere to their respective professional codes of conduct and ethics. Consult DAOD 9005-1 for guidance on reporting obligations.

The CoC should apply the following guiding principles for supporting victims and other complainants to the extent feasible and preferred by the victim, regardless of which process is followed, if any:

- a. maintain regular and open two-way lines of communication, rather than only the one-way transmission of information;
- b. where the CoC is not the authority responsible for the investigation or proceedings, facilitate contact with the appropriate military or civilian justice system representative(s) (such as the MPs, Director Military Prosecutions (DMP), civilian prosecution services, etc.);
- c. check in throughout the process, including during any delays, as long periods without updates and inaction without information can be very difficult;
- d. verify at regular intervals, including after all proceedings have ended, whether access to the appropriate resources and support are available;
- e. determine if there are any barriers or other concerns preventing access to the required support, resources or information; and
- f. regardless of whether or not charges were laid or a guilty verdict was arrived at, the victim may continue to need support.

SMRC resources include a confidential 24/7 information and support line (available to victims, to those who support them, and to the CoC) and a Response and Support Coordination program to provide CAF victims with accompaniment services, as well as case coordination, advocacy, and assistance with workplace arrangements. Both of these services are provided by civilian employees. The SMRC can also facilitate anonymous contact with their military liaison team or Military Police liaison officer, who can provide further information on the options available to them and the processes that would be involved. The SMRC can support victims to submit reports to the appropriate authorities if the service is requested.

The CoC must ensure that information is not only conveyed to victims, but that every reasonable effort is made to ensure that it is understood. The CoC must encourage victims to seek support from the persons of their choosing, which could include their family, friends, CAF, non-CAF resources, or an SMRC RS coordinator. The victim should be permitted to have a support person with them throughout the process, where appropriate and within the limits of the CoC's authority.

Victims of sexual misconduct can experience significant emotional and psychological stress. This stress can impair executive functioning, including memory, planning, decision-making and multi-tasking. Victims may therefore need to receive information more than once and may need more time than usual to process their situation. Whenever possible, requiring victims to repeatedly recount their experiences should be minimized, as this can also be a significant source of stress.

Victims may experience difficulties in the workplace as a result of their experiences of sexual misconduct, regardless of the outcomes of disciplinary and administrative actions. Therefore, the CoC must consider requests made by victims to enable their effective functioning in the workplace if the request is in relation to effects experienced as a result of alleged sexual misconduct, whether or not a guilty finding was the outcome.

- 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.
- 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 Canadian Forces National Investigation Service, 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 in order to obtain information on the status of their investigation and case (e.g. Military Police Liaison Officer through SMRC, via the prosecutor, or the CoC). If the victim has opted in to the SMRC's Response and Support Coordination program, a coordinator will be able to support them through this process.
- D Victims may require differing levels of support throughout their experience. The processes associated with proceeding through the justice system, the decision to not lay charges, or other aspects of their experiences may be significantly upsetting for those affected. The CoC must ensure that the victim is made aware of the CAF and non-CAF resources available to them throughout the processes, including the availability of the SMRC's support resources.
- E Sexual misconduct can be addressed through the application of administrative action, through the military justice system by charging an individual with a service offence and, in the case of behaviour that is also captured in the Criminal Code, through the civilian criminal justice system.

Information for Victims during Disciplinary Processes

The CoC must ensure that victims are aware of their ability to request information and the proper means of requesting such information. The information desired and available in each case, and at each stage, may vary, but at a minimum the CoC should ensure the victim is aware that they may request the following information:

- a. confirmation that the incident was entered in OPHTAS;
- b. the unit or element conducting the investigation;
- c. the status of the investigation;
- d. the outcome of the investigation (including whether or not charges were laid); and
- e. if charges are laid: the appropriate military or civilian justice system representative to contact regarding the prosecution of the matter. The CoC should also ensure that the victim is aware of the applicable policies of the DMP. Where the matter is to be handled by civilian authorities, the CoC should facilitate contact with the appropriate authorities within the best of their ability.

Victim Concerns during the Summary Trial Process

If presiding officers have concerns relating to the particular needs of victims (for example minimizing re-victimization) during the summary trial process, they are encouraged to contact their local legal advisor.

- F The CoC must ensure that victims have adequate support in place even if charges are not laid.
- G Discuss the process following the results of proceeding through the justice system. The process may not stop here, and administrative action up to and including release could still be applied. A victim may require different levels of support throughout their experience. The processes associated with proceeding through the justice system, the decision to not lay charges or other aspects of their experiences may be significantly upsetting for those affected.
- H Ensure that the victim understands the contents of DAOD 9005-1 which does not automatically necessitate that the CoC issue a NOI to Recommend Release. Administrative action short of release can also be applied.



Sexual Misconduct Incident Management Decision Tree

9 If DMCA 2 recommends issuing a NOI to Recommend Release, the CO must issue the NOI to Recommend Release to the member and forward the following to DMCA 2 for administrative review in accordance with DAOD 5019-2:

- a. commanding officer's administrative action recommendation;
- b. investigation report(s);
- c. member's conduct history;
- d. synopsis of member's personnel file;
- e. member's representation;
- f. the court transcript, if applicable; and
- g. any other pertinent information.

In order to ensure consistent CAF-wide application of this DAOD, the CO of any CAF member convicted of sexual misconduct, either by summary trial, court martial or civilian court, must consult DMCA 2 to determine if a NOI to Recommend Release should be issued, or if any remedial measures should be initiated. DMCA 2 will conduct an administrative review if a NOI to Recommend Release is issued.

A guilty finding is not required to recommend a release or impose other administrative actions.

10 If the recommendation is for release, a NOI to Recommend Release will be required. The notice format and requirements can be found at DMCA 2 – Misconduct Administrative Review.

11 If a CAF member is tried for an offence, the CAF member's CO must obtain, upon the conclusion of the service tribunal or civil court proceeding, the documents listed in the following table:

If the CAF member is ...	obtain the following documents ...
convicted	<ul style="list-style-type: none"> • the sentencing order; • the probation order, if any; • the prohibition order, if any; and • the certificate of conviction and conduct sheet. (See QR&O article 19.61, Certificate of Conviction, and QR&O article 19.62, Action Following Conviction by Civil Authority.)
discharged, found not guilty, or a stay of proceeding is directed	<ul style="list-style-type: none"> • the court transcript; • the decision of the court; and • MP investigation case file.

Post disciplinary proceeding, the CO must forward to DMCA:

- a. all the above applicable documents;
- b. a summary of the evidence;
- c. a recommendation, with explanation, as to administrative action that should be taken in respect of the CAF member; and
- d. any other relevant information to assist the administrative review.

Guidance for the Chain of Command with Respect to Victims

I IAW DND PPE 814 the outcomes of administrative actions taken in response to complaints of sexual misconduct can be disclosed to the victim, if it is deemed appropriate to do so. Where the victim is a member of the CAF or a DND employee, the victim's CO is responsible for informing the victim of their ability to request this information, and providing the information as required. If the victim is a CAF member or DND employee and the victim's supervisor is a civilian, the respondent's CO is responsible for informing the victim of their ability to request this information, as well as for the provision of that information. If the victim is a civilian outside CAF/DND, the respondent's CO is responsible for informing the victim of their ability to request this information, as well as for the provision of that information. Actions or measures that include highly sensitive personal information such as medical or psycho-social assessments or treatment will not be shared.

J The CoC 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.