



Director of Military Prosecutions

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## **DMP Policy Directive**

**Directive #: 007/00**

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**Cross Reference: Witness Interviews, Sexual Misconduct Offences**

**Subject: Responding to Victims' Needs**

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### APPLICATION OF POLICY

1. Any reference in this policy to “Regional Military Prosecutor (RMP)”, “Prosecutor” or “Prosecutors” shall be deemed to refer to any officer or officers who have been authorized by the Director of Military Prosecutions (DMP) to assist or represent the DMP pursuant to section 165.15 of the *National Defence Act* in preferring charges to court martial and in conducting prosecutions at courts martial. Any reference in this policy to “victim” means any Person directly affected by the alleged conduct giving rise to one or more offences.<sup>1</sup>

### STATEMENT OF POLICY

2. Victims must be afforded a meaningful role in military justice proceedings so that they are protected, considered, informed, respected and heard. The Prosecutor plays a vital role in the delicate balance between the needs and interests of the victim and the proper administration of military justice.
3. In all court martial proceedings, the Prosecutor shall carry out his or her duties in a manner that gives victims the opportunity for meaningful participation in the process within the parameters of law and fundamental justice. The Prosecutor must ensure early in the process a clear understanding that he or she does not represent victims as their legal advisor or act as their representative in the proceedings. The Prosecutor must, however, take every reasonable opportunity to invoke the mechanisms and procedures provided by law to engage the interests of victims in the proceedings. No formula can prescribe the manner in which this delicate balance is achieved; the principles enunciated in this policy will provide guidance for application in a wide variety of specific circumstances.

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<sup>1</sup> Prosecutors are reminded that in court martial proceedings, it is proper not to refer to the complainant as a victim until such time as the court martial has made a finding of guilt, leading to the logical conclusion that the complainant is a victim of the act(s) alleged.

## SPECIAL SITUATIONS

4. While the needs and circumstances of each victim will be as unique as each individual and case, there are some general considerations the Prosecutor should bear in mind in certain instances.
5. Where the victim of a crime is a child, communication and protection take on special importance. The Prosecutor must consider what measures ought to be invoked to ensure the victim appreciates what information is conveyed. For example, the Prosecutor may want to adopt language appropriate to the maturity of the child and may want to conduct interviews of the child in a place and manner more likely to achieve the victim's comfort and security. Children tend to be more dependent than adults and, accordingly, they tend to be more vulnerable. The Prosecutor should always adopt practices that maximize not only the safety of a child victim but also the child's perception of safety.
6. Regarding serious sexual misconduct offences, a specially trained Prosecutor will be assigned by the regional Deputy director of Military Prosecutions (DDMP), after coordination with DDMP – Sexual Misconduct Action Response Team (SMART). The Prosecutor must expect that the victim's involvement in the proceedings will be particularly difficult, and that the impact of the crime on the victim may be severe and pervasive. The Prosecutor must anticipate and respond to victims' needs accordingly, in accordance with the measures and principles relevant to these cases as set out in the Sexual Misconduct Offences policy.
7. In all crimes of violence, victims often harbour a legitimate sense of violation more pronounced than is commonly found in cases of property offences for example. The Prosecutor should be sensitive to a victim's sense of vulnerability in these cases, and should consider appropriate measures to enhance security and comfort. Victims of crimes of violence may well wish to seek retribution. This is a legitimate reaction to the offence. The Prosecutor should identify these perceptions and deal with them patiently and appropriately.
8. The Prosecutor may deal with victims who have special physical or psychological needs. Similarly, in some cases, the first language of a victim is not the same as that of the Prosecutor or the language in which proceedings are conducted. These situations require special consideration and planning by the Prosecutor to eliminate barriers that might impede involvement of victims in military justice proceedings.
9. Individuals may experience disadvantage in court martial proceedings because of race, ethnic origin, gender or sexual orientation. Some disadvantages may be precipitated by subtle biases latent within Canadian society. In respect of such victims, the Prosecutor shall endeavour to identify and alleviate any such disadvantages.

## JURISDICTION

10. In providing legal advice on whether or not a charge should be laid and the jurisdiction in which any charge should heard, it is important for the Prosecutor to take into account the views of the victim of the alleged offence, particularly in cases where the alleged offence involves the violation of the victim's personal integrity (e.g. physical, sexual, emotional). Certain concerns expressed by the victim may be better addressed by proceeding in the military justice system but others may be better addressed by asking civilian authorities to exercise jurisdiction. DDMP SMART shall be consulted for cases involving serious sexual misconduct offences.
11. The Prosecutor must take into account the victim's views on issues such as:
  - a. urgency of resolution;
  - b. safety concerns about possible reprisals from the suspect or others;

- c. concerns relating to conditions imposed on the suspect following release from custody;<sup>2</sup>
  - d. access to victim support services;
  - e. physical or mental trauma resulting from the alleged offence;
  - f. physical or mental trauma resulting from participation in court proceedings; and
  - g. the needs of any children or other dependants affected by the alleged offence.
12. If the Prosecutor determines that the information in the investigation report does not adequately indicate the views of the victim as described above, the Prosecutor shall follow up with the investigator and request additional information.
13. The Prosecutor shall consult the appropriate DDMP before a final decision is taken in any case.

### AIDS TO TRIAL TESTIMONY

14. In some court martial cases victims are obliged to testify at court as part of the prosecution's case. Often it is in this context that a victim first comes into contact with the Prosecutor. Where possible, the Prosecutor should speak with any victim prior to his or her court martial testimony, in order to:
15. explain relevant prosecution policies (for example in cases of serious sexual misconduct offences, the involvement of DDMP SMART and his/her team);
- a. explain the role of prosecution and defence counsel in such proceedings;
  - b. explain the role of a witness in a court martial;
  - c. assess the victim's reliability as a witness;
  - d. encourage the victim to testify truthfully to what occurred telling the whole truth and being explicit; and
  - e. inform the victim of any release conditions imposed on the accused, and determine if the victim has any concerns with the accused's compliance with those conditions.
16. Generally, a victim requires more than the information required by other witnesses in court martial proceedings. For example, a victim of crime may feel aggrieved by decisions not to prosecute, or decisions to prosecute when they do not favour prosecution. Counsel should keep the victim appropriately informed throughout the process.<sup>3</sup> This is further discussed under the heading "Interviewing the Victim" in the policy entitled **witness interviews**.

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<sup>2</sup> See sections 158.2 to 159.9 of the NDA which address conditions of release following pre-trial custody.

<sup>3</sup> See *Decision to Prosecute*, Public Prosecution Service of Canada Deskbook, section 2.3.

17. The *National Defence Act* and the *Queen's Regulations and Orders (QR&O)* provide a number of measures that can be invoked in particular cases to increase the comfort and security of victims obliged to testify in a court martial. It is the responsibility of the Prosecutor to consider if any of these measures are available and appropriate in a given case, and to apply for implementation accordingly. These measures include:
- a. the use of a screen or closed circuit television;<sup>4</sup>
  - b. the services of a support person;
  - c. the use of affidavit evidence;<sup>5</sup>
  - d. in camera proceedings;<sup>6</sup>
  - e. an order banning publication that might identify the victim;<sup>7</sup>
  - f. a prohibition against production to the accused of the victim's personal records; and
  - g. a prohibition against evidence of the victim's prior sexual conduct.
18. The *Criminal Code* provides additional measures to accommodate a victim's comfort and security. Upon request, a military judge could use discretion under section 179(1)(d) of the *National Defence Act* to order:
- a. exclusion of the public or witness out of public view (section 486(1), *Criminal Code*);
  - b. cross-examination by appointed counsel (where the accused is unrepresented) (section 486.3, *Criminal Code*); and
  - c. an order that the court determines is necessary to protect the security of a witness and is otherwise in the interest of the proper administration of justice (section 486.7, *Criminal Code*).

4 See QR&O art. 112.33. See also *Criminal Code*, RSC 1985, c C-46, s.486.2.

5 See QR&O art. 112.72.

6 See QR&O art. 112.10. See also section 180(2) of the NDA.

7 See also *Criminal Code*, RSC 1985, c C-46, s 486.31.

## INVOLVMENT IN THE JUDICIAL PROCESS

19. There are ways other than testimony whereby a victim can participate in court martial proceedings. The Prosecutor shall consider the victim in respect of the following:
- a. at any time that an accused is released from custody pending the completion of proceedings, the Prosecutor shall take reasonable steps to ensure the victim is aware of the release, the terms of release, and any amendment to terms of release;
  - b. where the Prosecutor causes a final disposition of a matter by the exercise of prosecutorial discretion,<sup>8</sup> he or she should ensure that victims of offences alleged are informed of the decision and the reasons;
  - c. where the Prosecutor discloses to defence counsel information of a sensitive nature pertaining to the victim, he or she shall consider such steps as might be prudent to protect against inappropriate use or dissemination of the materials;<sup>9</sup>
  - d. the right of the victim to timely information pertaining to plea and sentence discussions;<sup>10</sup> and
  - e. participation of the victim in sentencing hearings, by means of *viva voce* testimony or otherwise.

## AVAILABILITY OF THIS POLICY STATEMENT

20. This policy statement is a public document and is available to members of the CAF and to the public.

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8 See DMP Policy Directive 003/00 *Post-Charge Screening*.

9 See DMP Policy Directive 006/99 *Disclosure*.

10 See DMP Policy Directive 008/99 *Plea, Trial and Sentence Resolution Discussions*.