

Director of Military Prosecutions Policy Directive
Directive #: 005/99
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Subject: Communications with Service Authorities

APPLICATION OF POLICY

1. This policy shall apply to Prosecutors¹ authorized by the Director of Military Prosecutions (“DMP”) to assist or represent the DMP pursuant to section 165.15 of the *National Defence Act* (“NDA”) in preferring charges to Court Martial and in conducting prosecutions at Courts Martial.

INTRODUCTION

2. Service authorities have a legitimate interest in the military justice system since the prosecution of offences has a direct effect upon morale and discipline within the unit. Accordingly, the NDA and the *Queen’s Regulations and Orders for the Canadian Forces* (“QR&O”) define specific avenues whereby these interests are expressed by service authorities and considered by the Prosecutor. It is necessary for Prosecutors to understand the needs and requirements of the chain of command throughout the Court Martial process after a charge is referred to the DMP.

STATEMENT OF POLICY

3. Prosecutors are expected to maintain effective communication with service authorities in order to keep the chain of command engaged in Court Martial matters. Such inclusiveness is subject, however, to the necessary independence required of Prosecutors in exercising prosecutorial discretion throughout the Court Martial process.

PRACTICE/PROCEDURE

4. An application to a referral authority for disposal of a charge, pursuant to QR&O article 109.03, includes a brief summary of the circumstances surrounding the commission of the alleged offence, including the nature and prevalence of the alleged offence, the degree of premeditation, the harm caused, and any other extenuating or aggravating circumstance that may be considered relevant.² Further, the application may include a recommendation concerning the disposal of a charge. Where the charge is eventually referred to the DMP, all of this information, conveyed in this manner, is considered by the Prosecutor in the course of exercising his or her discretion.

¹ Any reference in this policy to "Prosecutor" or "Prosecutors" shall be deemed to refer to any officer or officers who are members of the Canadian Military Prosecution Service or have been authorized by the Director of Military Prosecutions to assist or represent the DMP pursuant to section 165.15 of the *National Defence Act*.

² See QR&O article 109.03 and Note C following.

5. Charges forwarded by the referral authority to the DMP, pursuant to QR&O article 109.05, may also include the recommendation of the referral authority concerning the disposal of the charge. Any recommendation conveyed in this manner should be considered by the Prosecutor in the course of exercising his or her discretion.

6. The information and recommendations described above are only a part of what a Prosecutor must consider. Any exercise of prosecutorial discretion must take into account a constellation of relevant facts and circumstances, and must at all times conform with prevailing jurisprudence, best practices and all policies issued by the DMP. However, the Prosecutor is not bound to accept or comply with any views or recommendations as described above.

Proactive Communication with Service Authorities

7. In order to ensure that service authorities maintain an awareness of those matters that are proceeding through the Court Martial process, Prosecutors shall communicate with the appropriate service authorities as set out below.

Assignment Letter

8. When a matter is referred to the DMP for disposal of a charge, the regional DDMP will assign the matter to a specific Prosecutor for post-charge review. The assignment of the file will be communicated to the Prosecutor by an assignment letter that shall be copied to the referral authority, to the Commanding Officer of the accused, the appropriate Assistant Judge Advocate General (“AJAG”), the Deputy Judge Advocate General Regional Services (“DJAG/Reg Svcs”) and to the Director of Defence Counsel Services (“DDCS”).

Further Investigation

9. For those matters investigated by the Canadian Forces National Investigation Service (“CFNIS”), the Prosecutor shall coordinate directly with the lead investigator or with the CFNIS investigator’s officer in command. Any requests for further investigation shall be made in writing to the investigator and his or her officer in command detailing what investigation is required and a deadline for completion after consultation with the investigating officer. When such request is made, the referral authority, the accused’s Commanding Officer, the applicable AJAG and the regional DDMP shall be informed that additional disclosure or investigation has been requested and that a specified deadline has been given for the completion of such request.

10. For those matters investigated by a unit or by the Military Police, any requests by the Prosecutor for further investigation shall be made directly to the investigative agency. When such request is made, the referral authority, the accused’s Commanding Officer, the applicable AJAG, the appropriate unit legal advisor and the regional DDMP shall be informed that additional disclosure or investigation has been requested and that a specified deadline has been given for the completion of such request.

Preferral/Non-preferral of Charge

11. When the Prosecutor prefers a matter he or she shall inform the referral authority, the Commanding Officer of the accused, the DDCS, the applicable AJAG, the DJAG/Reg Svcs, the Judge Advocate General through the Military Justice Policy and Research Directorate of Law as well as the regional DDMP of his or her decision.

12. If the Prosecutor determines that there is not a reasonable prospect of conviction or that the public interest does not require the referral of the charge, the Prosecutor shall inform the accused, legal counsel for the accused, the referral authority, the commanding officer of the accused, the DDCS, the applicable AJAG, the DJAG/Reg Svcs, the Judge Advocate General through the Military Justice Policy and Research Directorate of Law as well as the regional DDMP of his or her decision not to prefer the charge.³

13. Before a non-preferral decision is made the Prosecutor should first inform the appropriate AJAG of his or her intention to non-prefer. This provides an opportunity for the AJAG to inform the Prosecutor of any other matters that may require consideration before the charges are non-preferred but also serves to keep the AJAG informed of the decision of the Prosecutor. It should be emphasized that any decisions to non-prefer remain within the scope of prosecutorial discretion and ultimately rest with the Prosecutor.

Sentencing

14. Service authorities have a direct interest in the sentence that should be imposed for the offence if the accused pleads guilty or is adjudged guilty after a Court Martial. In order to ensure the appropriate enforcement of discipline in a specific case, Prosecutors may consult with the applicable service authorities regarding their position on sentencing. Although the Prosecutor is not bound by the recommendations of those service authorities, he or she should take them into consideration when making representations regarding sentencing at trial.

Withdrawal of Charges

15. Should the Prosecutor decide to withdraw charges, he or she, if providing written notice to the Court Martial Administrator before the commencement of the Court Martial, shall inform the referral authority and the Commanding Officer of the accused by correspondence.⁴ Such correspondence shall be copied to the regional DDMP, legal counsel for the accused, the DDCS, the applicable AJAG, the DJAG/Reg Svcs, the Judge Advocate General through the Military Justice Policy and Research Directorate of Law and the officer in command of the applicable CFNIS or military police detachment. The accused shall be served with a Notice of Withdrawal of a Charge unless he or she has been made aware of the withdrawal of charges in open court.

³ See QR&O article 110.04(3).

⁴ See QR&O article 110.10.

Post-Court Martial Communications

16. Following the final disposition of charges by Court Martial, the referral authority and the Commanding Officer of the accused shall be informed of the outcome of the Court Martial.⁵ Such communication shall be done by message and shall be copied to the applicable AJAG, the DJAG/Reg Svcs, the Judge Advocate General through the Military Justice Policy and Research Directorate of Law, the DMP and the DDCS.

Other Issues

17. Any other issues that, in the opinion of the Prosecutor, should be discussed with the appropriate service authorities shall be left to the discretion of the Prosecutor. Such issues may include minor procedural matters such as assistance from the unit in serving the charge sheet to the accused or assistance in coordinating meetings with witnesses.

18. For those other issues that, in the opinion of the Prosecutor, are not minor in nature, the Prosecutor is encouraged to consult with the DMP or the regional DDMP before communicating with any service authority.

19. If a Prosecutor perceives that a service authority has attempted to improperly influence his or her exercise of prosecutorial discretion, he or she shall report the incident to the regional DDMP.

AVAILABILITY OF POLICY

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

⁵ See for example, QR&O articles 112.05(23) and 112.06(5).