

Sexual Offences

Director of Military Prosecutions
Policy Directive

Directive #: 004/00
Original Date: 1 Mar 00
Subject: Sexual Offences
Cross Reference: Witness Interviews

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 and have been authorized by the 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.

2. Any reference in this policy to "sexual offence case" shall be deemed to refer to any case where actual, attempted or threatened violation of the sexual integrity of another person is alleged.

3. In sexual offence cases alleged to have occurred in Canada, either before or after a charge is laid, the Prosecutor may communicate directly with civilian authorities having concurrent jurisdiction, in order to determine whether charges should proceed in the military or civilian justice system. The Prosecutor shall consult with the Deputy Director of Military Prosecutions (D/DMP) prior to any such communication.

4. Determining who should prosecute a sexual offence case will require careful consideration of all relevant factors including:

a) the degree of military interest in the case, as reflected by factors such as the place where the offence was alleged to occur, or whether the accused was on duty at the time of the alleged offence

b) the degree of civilian community interest in the case

c) whether the accused, the complainant, or both are members of the CF

d) whether the matter was investigated by military or civilian personnel

e) the views of the investigative agency

f) geographic considerations such as the current location of necessary witnesses

g) jurisdictional considerations where, for example, the offence was allegedly committed outside Canada

h) the views of the complainant

i) post-conviction consequences

j) the views of the CO, as expressed through the Unit Legal Advisor, with respect to unit

disciplinary interests

5. The Prosecutor shall advise the D/DMP before a final decision is taken in any case.

6. Where consensus is not achieved by consultation, the Prosecutor shall refer the matter to the D/DMP. The D/DMP will continue consultation to resolve the matter.

7. Any determination pursuant to paragraph 3 shall be communicated by the RMP to the AJAG/DJA as soon as practical.

8. The complainant in a sexual offence case may well be concerned for her or his own emotional and physical safety and understandably, distrusting of others. Accordingly, sensitivity for the unique and perplexing dilemma of the complainant is required throughout the investigation and court martial of these matters. Discretion requires a balanced and thoughtful approach.

9. In accordance with this policy, the Prosecutor shall

- a) expect investigators to conduct thorough and timely investigations with sensitivity for the complainant
- b) ensure timely information is provided to the complainant throughout the court martial process
- c) maximize the safety and comfort of the complainant throughout the court martial process (by keeping the complainant informed and by taking any other measures appropriate in all of the circumstances)
- d) consider the attitude of the complainant to a prosecution, and any evident impact a decision to prosecute (or not prosecute) may have on her or him;
- e) seek sentences which reflect the prevalence, seriousness and repugnance of these crimes

10. Witness preparation is a pivotal function of the Prosecutor with carriage of a sexual offence for court martial. The Prosecutor should attempt to provide support, encouragement and understanding; a non-judgmental attitude where the complainant/witness is reluctant, but assurance that it is wise and prudent for a fearful complainant to seek justice. Early in preparation for court martial, the Prosecutor should, where possible, meet with the complainant in private and comfortable surroundings and:

- a) explain the role of prosecution and defence counsel in court martial proceedings;
- b) explain the role of a witness in court;
- c) assess the complainant's reliability as a witness;
- d) encourage the complainant to testify truthfully to what occurred;
- e) inform the complainant of any release conditions imposed on the accused and determine if the complainant has any concerns with the accused's compliance with those conditions;

- f) confirm that the complainant has been made aware of available community services; and
- g) attempt to answer any questions the complainant might have¹.

11. The Prosecutor shall make every reasonable effort to conduct the prosecution expeditiously.

Availability of this Policy Statement

12. This policy statement is a public document. It is to be made available on request to defending officers/defence counsel, accused persons or members of the Canadian Forces and the public.

Footnotes

¹ Remember, however, that a Prosecutor must not answer a complainant's questions so as to reveal the nature of another witness's expected evidence, or to defeat an order of the court excluding witnesses during the court martial. See in this regard the policy entitled *Witness Interviews*.