

Sexual Misconduct and Sexual Disorders

Identification

Date of Issue 2008-09-26

Application This DAOD is an order that applies to officers and non-commissioned members of the Canadian Forces (“CF members”).

Supersession CFAO 19-36, *Sexual Misconduct*

Approval Authority Chief of Military Personnel (CMP)

Enquiries

- Director Military Careers Policy and Grievances (DMCPG) (for policy)
- Director Military Careers Administration (DMCA) (for policy administration)

Table of Contents This DAOD contains the following topics:

Topic	Page
Definitions	2
General Principles	3
Process	5
Education	8
Treatment and Rehabilitation	9
Responsibilities	11
References	12

Definitions

Sexual Disorder Sexual disorder means any mental disorder of a sexual nature described in the *Diagnostic and Statistical Manual of Mental Disorders*, published by the American Psychiatric Association. (**trouble sexuel**)

**Sexual
Misconduct**

Sexual misconduct consists of one or more acts that:

- are either sexual in nature or committed with the intent to commit an act or acts that are sexual in nature; and
- constitutes an offence under the *Criminal Code* or Code of Service Discipline (CSD).

(**inconduite sexuelle**)

Note – Sexual misconduct includes offences such as sexual assault, indecent exposure, voyeurism and acts involving child pornography.

General Principles

CF Commitment Sexual misconduct destroys basic social and military values and undermines security, morale, discipline and cohesion in the CF. It also reflects discredit on the CF and is therefore not tolerated by the CF.

The CF is committed to ensuring that all incidents of sexual misconduct are reported, investigated and dealt with as soon as practicable.

Applicant for Enrolment A person who has engaged in sexual misconduct may be refused enrolment or re-enrolment in the CF.

Standard of Conduct No CF member shall engage in sexual misconduct.

Consequences A CF member who engages in sexual misconduct is liable to criminal, disciplinary and administrative action, including release.

Responsibilities of CF Members A CF member is required to report:

- any incidents of sexual misconduct, in accordance with QR&O subparagraph 4.02 (1)(e), *General Responsibilities of Officers*, or QR&O paragraph 5.01(e), *General Responsibilities of Non-Commissioned Members*, as applicable; and
- an arrest by civil authority immediately to the CF member's commanding officer (CO), in accordance with QR&O article 19.56, *Report of Arrest by Civil Authority*.

Reporting of Incidents An incident of sexual misconduct shall be reported to:

- the CF member's CO through the chain of command;
- the military police; or
- the local representative of the Judge Advocate General (JAG).

Continued on next page

General Principles, continued

Other Conduct Deficiencies of a Sexual Nature

Other conduct deficiencies of a sexual nature, dealt with at the unit level through the CSD or administrative action, or both, include, but are not limited to:

- any sexual act between consenting adults in circumstances prohibited under the authority of the CSD;
- any harassment in the form of sexual harassment that is prohibited under DAOD 5012-0, *Harassment Prevention and Resolution*;
- any fraternization or a personal relationship involving an inappropriate sexual act between consenting adults that is prohibited under DAOD 5019-1, *Personal Relationships and Fraternization*; or
- any use of DND and CF electronic networks or computers, to access or distribute any material whose focus is pornography, nudity or sexual acts involving adults over age 18, that is prohibited under DAOD 6002-2, *Acceptable Use of the Internet, Defence Intranet and Other Electronic Networks, and Computers*.

The above deficiencies are not dealt with under DAOD 5019-5, *Sexual Misconduct and Sexual Disorders*.

Process

Action by CO – Report of Incident

The following table sets out actions to be taken by a CO after a reported incident of sexual misconduct:

A CO shall ...	A CO shall consider ...
<ul style="list-style-type: none"> • conduct an initial evaluation; • consult with the local representative of the JAG to determine the required action in accordance with this DAOD or DAOD 5012-0; • contact the military police if the initial evaluation of the reported incident indicates possible sexual misconduct; <p>Note – A unit has no authority under this DAOD to investigate a reported incident of sexual misconduct.</p> <ul style="list-style-type: none"> • submit a significant incident report to DMCA, in accordance with DAOD 2008-3, <i>Issue and Crisis Management</i>, if the reported incident is of a serious nature; and • inform DMCA directly of every reported incident of sexual misconduct. 	<ul style="list-style-type: none"> • relieving from the performance of military duty, after obtaining legal advice, any CF member who has engaged in sexual misconduct (see QR&O article 101.08, <i>Relief from the Performance of Military Duty – Pre and Post Trial</i>); and • consulting a medical officer in accordance with CFAO 34-56, <i>Mental Disorders</i>.
<p>Note – Additional information on the responsibility of a CO is set out in the <i>CDS Guidance to Commanding Officers</i>.</p>	

Action by other CF Authorities

The following table describes the actions of other CF authorities when an incident of sexual misconduct concerning a CF member has been reported:

CF Authority	Action
Military police	Conducts an initial assessment and determines the requirement for the assistance of the CF National Investigation Service.
CF National Investigation Service	Conducts an investigation as required and provides all reports related to the incident to DMCA.
DMCA	Conducts an administrative review (AR) in accordance with DAOD 5019-2, <i>Administrative Review</i> .

Continued on next page

Process, continued

Disciplinary or Criminal Action If a CF member is tried for an offence, the CF member’s CO shall obtain, upon the conclusion of the service tribunal or civil court proceeding, the documents listed in the following table:

If the CF member is ...	obtain the following documents ...
found guilty	<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, <i>Certificate Of Conviction</i> and QR&O article 19.62, <i>Action Following Conviction by Civil Authority</i>.)
discharged or found not guilty	<ul style="list-style-type: none"> • the court transcript; and • the decision of the court.

The CO shall forward to DMCA:

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

No Disciplinary Action Taken If a CF member is not tried for an offence, the CF member’s CO shall forward to DMCA:

- all information concerning the reported incident;
- the CF member’s conduct sheet;
- the COs recommendation, with explanation, as to administrative action, if any, that should be taken in respect of the CF member; and
- any other relevant information to assist the AR.

Initiating an AR An AR shall be initiated and conducted under DAOD 5019-2 for all reported incidents of sexual misconduct by a CF member.

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Process, continued

Administrative Action

Administrative action may only be taken if there is clear and convincing evidence that the CF member engaged in sexual misconduct.

The following table sets out the approval authorities who may impose administrative action after the completion of an AR in respect of a CF member who has engaged in sexual misconduct:

If the CF member’s rank is ...	the approval authority is ...
brigadier-general/commodore or above,	<ul style="list-style-type: none"> • the CDS.
lieutenant-colonel/commander or colonel/captain(N),	<ul style="list-style-type: none"> • the CMP; or • the Director General Military Careers (DGMC).
private/ordinary seaman to major/lieutenant-commander,	<ul style="list-style-type: none"> • the CMP; • the DGMC; or • the DMCA.

Before determining appropriate administrative action, the approval authority shall consider all the evidence surrounding the sexual misconduct. In weighing that evidence, the approval authority is required to consider the following:

- the CF member’s entire period of service, taking into account the CF member’s rank, military occupation, experience and position;
- the facts of the case, including:
 - the victim and victim’s circumstances;
 - the CF member’s relationship to the victim;
 - the degree to which the act was intrusive or violent; and
 - the sentence imposed, if any;
- the degree to which the CF member accepted responsibility for the sexual misconduct;
- the degree of incompatibility between the sexual misconduct and the CF member’s retention in the CF;
- whether the CF member’s capacity of leadership is compromised; and
- the CF member’s history of referral for initial medical assessment for sexual disorder.

As a general principle, the appropriate administrative action is one that best reflects the degree of incompatibility between the CF member’s sexual misconduct and the CF member’s continued service in the CF.

Administrative action which may be taken is set out in the *AR Decisions* block in DAOD 5019-2.

Education

General

The CF policy on sexual misconduct shall be made known to:

- all applicants for enrolment in the CF;
 - CF members during recruit and basic officer training; and
 - CF members on leadership courses.
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Education Objectives

Information for CF members on the CF policy for sexual misconduct shall include:

- the content of this DAOD, including the meaning of sexual misconduct;
 - the CF expectation of a respectful workplace;
 - the requirement for CF members in leadership positions to take an active role in providing guidance and information on sexual misconduct; and
 - the availability of health services for assessment.
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Treatment and Rehabilitation

General

The chain of command is responsible for ensuring that a CF member who has engaged in sexual misconduct and raises suspicion that a sexual disorder may exist is sent for assessment and offered assistance from CF medical care providers as applicable. A referral is ordered using the Form DND 2828, *Medical Referral and Certification*.

The Director General Health Services (DGHS) is responsible for the assessment and treatment of medical or psycho-social conditions and treatable behaviours related to sexual disorders, and for follow-up.

Treatment and rehabilitation available for members of the Reserve Force are set out in ADM(HR-Mil) Instruction 03/04, *The Canadian Forces Spectrum of Care*. Treatment and rehabilitation procedures do not apply, generally, to:

- CF members of the Primary Reserve on Class “A” Reserve Service; and
 - CF members of the Canadian Rangers, Cadet Organizations Administration and Training Service, and Supplementary Reserve unless serving on Reserve Service in excess of 180 days.
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Responsibilities of CF Medical Care Providers

A CF medical care provider shall fully describe and explain to the CO of a CF member, by appropriate means, any medical employment limitations (MELs) assigned to the CF member in respect of a sexual disorder and any time required away from the workplace for medical reasons.

The CF member may consent to the disclosure of other information.

A CF medical care provider may be required by law in certain circumstances to disclose information about a CF member to a third party without the consent of the CF member.

Voluntary Treatment

A CF member who is concerned about medical or psycho-social conditions or behaviours related to sexual misconduct or a sexual disorder is encouraged to voluntarily seek medical services assistance.

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Treatment and Rehabilitation, continued

Treatment Refusal

Treatment for medical or psycho-social conditions or behaviours related to a sexual disorder is voluntary, i.e. a CF member is not obliged to accept treatment. However, a CF medical care provider shall document any refusal of treatment on the CF member's medical file and shall advise the CF member's CO of any continuing MELs.

Refusing treatment for a medical or psycho-social conditions or behaviours related to a sexual disorder does not preclude:

- the CF member's CO making another mandatory referral for medical assessment at a later date; or
 - the CF member volunteering for assessment or treatment at a later date.
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Treatment After Release

Medical treatment by health authorities, other than CF health services, may be provided after release.

Responsibilities

Responsibility Table

The following table identifies responsibilities under this DAOD:

The ...	is or are responsible for ...
Canadian Forces Recruiting Group	<ul style="list-style-type: none"> • informing applicants for enrolment in the CF of the CF policy on sexual misconduct.
Canadian Defence Academy	<ul style="list-style-type: none"> • ensuring that education on sexual misconduct is set out in the officer and non-commissioned member general specification.
training authorities and designated training authorities	<ul style="list-style-type: none"> • informing CF members of the CF policy on sexual misconduct, as set out in this DAOD and in any other applicable publication, during recruit and basic officer training, and at all levels of leadership training.
DGHS	<ul style="list-style-type: none"> • providing health promotion programs that includes education on healthy sexual behaviour; and • providing resources for the assessment, recommendations and treatment for sexual disorders when appropriate.
Canadian Forces Provost Marshal	<ul style="list-style-type: none"> • providing DMCA with all military police investigation reports relating to sexual misconduct.
DMCA	<ul style="list-style-type: none"> • conducting ARs in respect of sexual misconduct; and • informing COs and CF members through the chain of command of: <ul style="list-style-type: none"> – AR decisions by the approving authorities; – the reasons for the decisions; and – actions to be taken.
CO	<ul style="list-style-type: none"> • taking action as set out in the <i>Process</i> map; and • notifying the CF member and implementing any decision directed by an approving authority after an AR.
CF medical care provider	<ul style="list-style-type: none"> • assessing the CF member; • recommending treatment; • establishing a treatment schedule; • documenting refusal of treatment; • advising the CO of any MELs of the CF member; and • informing the CO: <ul style="list-style-type: none"> – of anticipated absences of the CF member from the workplace; and – that the CF member has been medically assessed.

References

Source Reference

- [DAOD 5019-0](#), *Conduct and Performance Deficiencies*
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Related References

- [Canadian Human Rights Act](#)
 - [Criminal Code](#)
 - [Code of Service Discipline](#)
 - [QR&O article 19.56](#), *Report of Arrest by Civil Authority*
 - [QR&O article 19.61](#), *Certificate of Conviction*
 - [QR&O article 19.62](#), *Action Following Conviction by Civil Authority*
 - [QR&O Chapter 34](#), *Medical Services*
 - [QR&O article 101.08](#), *Relief from the Performance of Military Duty – Pre and Post Trial*
 - [DAOD 2008-3](#), *Issue and Crisis Management*
 - [DAOD 5012-0](#), *Harassment Prevention and Resolution*
 - [DAOD 5019-1](#), *Personal Relationships and Fraternalization*
 - [DAOD 5019-2](#), *Administrative Review*
 - [DAOD 5019-4](#), *Remedial Measures*
 - [DAOD 6002-2](#), *Acceptable Use of the Internet, Defence Intranet and Other Electronic Networks, and Computers*
 - [DAOD 7002-3](#), *Investigative Matters and References*
 - [CFAO 34-56](#), *Mental Disorders*
 - [CDS Guidance to Commanding Officers](#)
 - [ADM \(HR-Mil\) Instruction 3/04](#), *The Canadian Forces Spectrum of Care*
 - *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association
 - [Form DND 2828](#), *Medical Referral and Certification*
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