BC CORRECTIONS
ADULT CUSTODY DIVISION

DISCIPLINARY CHAIRPERSON TRAINING MATERIALS

May 2010

TABLE OF CONTENTS

Adult Custody Policy
Disciplinary Hearing Procedures

GENERAL INTRODUCTION – ADMINISTRATIVE LAW

Administrative law is the body of law that has developed over time to deal with the actions of public officials in relation to members of the public. In this area of law, the process and procedures followed by a public official in the conduct of his or her work, or in the making of a decision can be subject to scrutiny based on standards set out in the law.

All public actions are guided by legislation. When the hearing chairperson makes a decision in a disciplinary hearing, he/she is making a decision that involves the imposition of the *Correction Act Regulation* (CAR). This is an administrative decision, which is quasi judicial in nature. It is quasi judicial because they are hearing the facts that relate to a possible breach of the CAR and determining whether the person committed the disciplinary infraction and if so, what type if disposition should be imposed.

When they hear and decide a matter in a disciplinary hearing they are exercising their own discretion in determining guilt or innocence. As such they must exercise that discretion in accordance with the principles of law that ensure the inmate has a fair hearing and that all decisions they make during the hearing are fair.

If the chairperson's conduct of a hearing or deciding a matter is questioned by an inmate, there are two avenues open to the inmate to have their conduct scrutinized. The first avenue is for the inmate to request a review of the matter by Investigation and Standards Office (ISO). At this level, the matter can be reviewed and ISO can substitute its decision for that of the hearing chairperson based on a review of the facts. ISO may do any of the things set out in section 29(4) of the CAR which are:

- Confirm the decision and the penalty;
- Confirm the decision but substitute another penalty;
- Rescind the decision and penalty; or
- Order a new hearing.

The second avenue is to ask the Supreme Court of British Columbia to review the decision. The Supreme Court of British Columbia does not examine the merits of the decision on the facts, although if the errors of fact are extreme, this will be seen as an error of law. The Court will examine the conduct of the hearing to determine if the hearing was conducted in accordance with the various principles of administrative law. In other words, the court will examine the chairperson's authority to make that decision and the manner in which they made their decision

- Did they act within their jurisdiction; in other words did they act within the provisions of the CAR?
- Did they correctly apply and adhere to the relevant laws?
- Did they follow the rules of administrative fairness?

ROLE OF THE CHAIRPERSON

The purpose of this course is to prepare you to conduct disciplinary hearings under the CAR. When you conduct these hearings, your task is to conduct as fair a hearing as possible and to decide, based on evidence, in an impartial manner.

An effective chairperson will:

- Be in control of the procedure at the hearing.
- Keep the hearing focused on the issues.
- Ensure that all evidence given and arguments made are considered and are on record.
- Keep notes of the evidence and arguments to assist in decision making.
- Maintain a sense of decorum and be respectful of all persons appearing at the hearing.

FAIRNESS

The most important thing to remember about a disciplinary hearing is that, above all else, it must be fair. This is required by section 7 of the *Canadian Charter of Rights and Freedoms* (the *Charter*) which provides:

> "7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

When an inmate is charged under the CAR, his or her liberty and security of the person are at stake. This is because the result of a finding of guilt could be a segregation term, the loss of earned remission or the loss of certain privileges. An inmate cannot be deprived of "liberty or security of the person" unless it is done "in accordance with principles of fundamental justice". The courts have found this to mean that a disciplinary hearing must be carried out in accordance with principles of administrative fairness.

At a minimum, the principles of administrative fairness require that a person who may be affected by a decision is given active participation in the decision making process.
In the context of a disciplinary hearing, administrative fairness (or "fairness", as we will call it), can be broken down into four elements:

A. An inmate must know and understand the charges against him or her and must be given an opportunity to reply to those charges,
B. An inmate has the right to be heard by a neutral (unbiased) hearing chairperson, and
C. The chairperson who hears the matter must make the decision on guilt or innocence and must determine an appropriate disposition.
D. Written reasons

AN INMATE MUST KNOW AND UNDERSTAND THE CHARGES AGAINST THEM

In order to know and understand the case against him or her, the inmate must be given a copy of the violation report and of any reports or other documentation that will be considered at the hearing. The inmate must also be given sufficient time to review and consider these documents so that he or she can prepare a reply and contact counsel[1] if they wish.

If an inmate has not been provided with sufficient time to review the materials, he or she should be given an opportunity at the hearing to do so. If the inmate requires an adjournment in order to properly review the materials and contact counsel, an adjournment should be granted[2].

[1] The right to counsel and dealing with legal counsel are dealt with later in these materials.
[2] Adjournments are dealt with later in the materials.

In addition, the charge should be read out to the inmate at the commencement of the hearing. If the inmate does not understand the nature of the charge it must be explained in plain language. If the inmate does not have a good understanding of English, an interpreter or translator may be required.

Specifying the Charge

If there are a number of possible charges under one sub section of s. 21 of the CAR, the specific behavior with which the inmate is being charged should be described. For example, section 21(1)(e) of the CAR states,

> "An inmate must not steal or possess stolen property."

A charge under 21(1)(e) should specify whether the inmate (a) stole something, or (b) was in possession of stolen property. Further, the violation report should identify the stolen property. The circumstances of the breach must be clearly described so that the inmate knows the "who, what, where, when and how" of the allegations.

The purpose of providing the inmate with all of the information described above is to give him or her notice of the "case to be met". An inmate may wish to respond by giving evidence on his or her own behalf or by requesting witnesses to respond to the allegations and to the evidence presented at the hearing. The right to give evidence on your own behalf is meaningless unless you know what facts you need to prove or disprove with that evidence.

AN IMATE MUST BE GIVEN AN OPPORTUNITY TO REPLY TO THE CHARGES

The person affected by a decision must given the opportunity to tell his or her side of the story. This should include the opportunity to present evidence and argument to the hearing officer.

Fairness requires that a person have the opportunity to present evidence at a hearing and conduct reasonable cross examination of any witnesses. The ability to cross examination is particularly important where there are discrepancies in information being presented.

The chairperson may reasonably limit the number of witnesses or the extent of the cross examination. However, the over riding issue will always be whether an inmate has been given full opportunity to present his or her case and to rebut the case against him or her. An inmate is entitled to make submissions both on the question of "guilt or innocence" and on disposition.

Subject to section 26(2) and (3) of the CAR, an inmate is entitled to be present throughout the entire hearing to hear the evidence against him or her. An inmate should be permitted to respond and call witnesses in his or her own defence.

NEUTRAL DECISION MAKER

The inmate is entitled to a neutral unbiased decision maker. Bias is a lack of neutrality. Bias can occur because;

- The chairperson has a previous association with the person they are 'judging'
- The chairperson has something to gain from the outcome.
- The chairperson has an interest in a particular outcome.
- The chairperson's conduct shows that they are biased.
- The chairperson has completed the initial section 24 placement

If prior to the hearing or during the course of the hearing, it becomes evident that a chairperson may not be neutral, a "reasonable apprehension of bias" exists and the chairperson must disqualify himself or herself from the hearing. If a chairperson does not disqualify themselves from the hearing, the inmate will be presumed not to have received a fair hearing.

The "test" for determining if there exists a "reasonable apprehension of bias" is an objective one. This means that it does not matter that they believe they can act in a neutral manner, it is what a reasonable observer who is aware of the facts would conclude.

> For example, if at a hearing, the following exchange took place between the hearing officer and inmate, a reasonable apprehension of bias" would be found.
>
> **Inmate:** I'm clean. I quit drugs. I don't use them anymore. It wasn't mine. There were 3 of us at the table!
>
> **Chairperson:** I know the cocaine was yours. I know all you guys and you are the only one with the cocaine problem.

HE OR SHE WHO HEARS THE CASE MUST DECIDE IT

The chairperson, who has conducted the hearing and heard the evidence, must decide the case. The decision given must be based on the evidence presented at the hearing.

The chairperson cannot be pressured or directed into making a decision on the case in a particular way because their supervisor or their co worker tells them that they must find the person guilty or not guilty. If they follow their supervisor's or co worker's 'order' they have not exercised their own discretion and it is **not** permitted.

WRITTEN REASONS

The inmate must be provided with written reasons within 24 hours of the completion of the hearing. A CORNET client log entry must be completed.

LEGAL COUNSEL

THE RIGHT TO COUNSEL

In virtually all cases, an inmate is entitled to consult with legal representation, if requested.

It has been the law for quite some time that inmates are entitled to legal representation in cases where their liberty is at stake (*Howard* v. *Stoney Mountain Institution* [1984] 2 F.C. 642). Under the CAR, there is always the possibility that an inmate will either lose remission, be given a segregation term, or both. Given that an inmate's liberty is always at stake, they will almost always be entitled to legal representation.

In the unusual event when a chairperson is considering denying an inmate's right to legal counsel; he/she must consider the following before making a decision:

- whether there are intricate or difficult issues of law which may arise
- the seriousness of the allegations and the possible penalty (see the reference to the *Howard* case, above)
- whether procedural issues will arise
- the inmate's ability to understand the proceedings and to present his or her defence
- the effect of an adjournment to involve legal counsel on the proceedings and on security issues for the institution.

If the chairperson decides not to permit counsel, they will provide reasons for that decision.

DEALING WITH LEGAL COUNSEL

It is important to remember that the chairperson has control over the proceedings and the same rules apply whether counsel is present or not. To ensure it is clear that the chairperson is in control, they may want to make some introductory statements to counsel.

The job of legal counsel is to represent the inmate with respect to the charges laid against him or her. Some lawyers may simply observe the proceedings and ask only the occasional question or make one or two points for the chairperson's consideration. Others may take a more active role during the hearing. Depending on the situation, the chairperson may want to consider the following:

- If counsel indicates they will be requesting witnesses, the chairperson may ask them how many witnesses they are requesting?
- The chairperson may ask what type of evidence the witnesses will be able to give. For example, they can ask, "What will this witness be able to tell me?"
- If counsel seems to be dwelling on a point too long, the chairperson can advise counsel that the point has been noted, and ask them to continue on to their next point.

- If counsel seems to be wandering into an irrelevant area the chairperson can ask about the relevance to the case and if not relevant, ask counsel to move to their next question
- If they are trying to raise issues around admissibility of evidence, the chairperson should remind counsel that this is an administrative hearing and that the strict rules of evidence do not apply. The chairperson should advise legal counsel that only relevant and reliable evidence will be considered and they will decide how much weight to apply to it.

Contacting Corrections Branch Counsel

From time to time, the chairperson may require procedural advice when conducting a hearing. The chairperson may contact a headquarters policy analyst. The chairperson should never contact Corrections Branch counsel directly.

If an inmate or counsel raises a Charter issue, the chairperson can advise that they do not have jurisdiction to decide Charter issues. Further, they should advise counsel or the inmate that if he or she wishes to raise a constitutional issue, they must serve the Attorney General of British Columbia with notice pursuant to the *Constitutional Questions Act*.

ADJOURNMENTS

An inmate or the chairperson may require an adjournment of the hearing. The chairperson, will decide when an adjournment will be granted. When the chairperson decides whether or not to grant an adjournment, the chairperson **will give reasons for his or her decision**.

When a chairperson properly balances the reasons for the requested adjournment against the rights and concerns of the inmate, and does not act arbitrarily, the test of fairness has been met.

The factors to take into account in considering an adjournment include:

- **the reasons for the adjournment**
- **the number of prior adjournments granted**
- **the length of time for which the adjournment is sought**
- **whether the adjournment would needlessly delay, impede or paralyze the conduct of the hearing**

EVIDENCE

WHAT IS EVIDENCE?

Evidence is the information presented at a disciplinary hearing that the hearing chairperson uses to make his or her decision.

TYPES OF EVIDENCE

Evidence can take different forms, such as:

- **oral testimony of a witness** (a charging officer, an investigating officer, an inmate, another person called by either the institution or the inmate);
- **real evidence**
- an object i.e., a broken chair
- a document – i.e., a photograph; a record
- **expert evidence** (this can be the testimony of an expert, or a written opinion) i.e., evidence of a qualified technician regarding laboratory results

RULES OF EVIDENCE

The rules of evidence are very complex. Administrative hearings are not bound by the strict rules of evidence that are applicable to a court of law. However, a chairperson, in coming to a decision of guilt or innocence, must rely upon the evidence presented at the hearing. As the evidence heard by the chairperson determines findings of guilt or innocence, it is important for the chairperson to have an understanding of some basic principles of evidence. While the strict rules of evidence do not apply in administrative hearings, the chairperson cannot ignore the basic rules of evidence. They need to be cautious about relying on evidence that may not be reliable, or taking into consideration in their decision evidence which is not relevant.

Relevance and Reliability

When evidence is presented, the evidence that is used for a decision must be:

- relevant and logically connected to the matter to be proven
- reliable

Evidence is relevant and logically connected when it relates to the who, what, where, when and how a rule was allegedly breached

Issues surrounding reliability essentially come down to the question “Can the chairperson rely upon the testimony?”

Hearsay Evidence

Hearsay evidence is a written or oral statement made by a person, who is not present at the hearing, which is offered to prove the truth of a matter asserted in the statement. Hearsay evidence is admissible into evidence, but the chairperson must be careful about the degree to which they rely upon it. This is because the person is not present at the hearing to be cross examined. Cross examination is used to test the truthfulness of a person's statement. When there is no ability to "test" the evidence, the weight given to such evidence must reflect its trustworthiness.

The question to be asked by the chairperson with regard to hearsay evidence is: **"Can the chairperson rely on the hearsay statement at all to make their decision, or if they rely on it, to what degree should they rely upon it?"**

Direct and Circumstantial Evidence

Direct evidence is evidence where a person has seen an event happen and can speak to the fact of its occurrence. Circumstantial evidence is where a number of people provide information (what they saw, heard, what they found) which taken together tends to prove or disprove that an event happened. Both types of evidence are admissible at hearings.

Examples:

Hearsay Evidence: "Sam told me that Vic punched John in the head." (*Sam isn't at the hearing, someone is speaking on his behalf…)*

Direct Evidence: "I was standing by the building minding my own business when Vic walked up to John and I saw him punch John in the head."

Witnesses

Calling witnesses to present their account of an event might be considered unnecessary when an event has been well documented and there are other forms of evidence available; but the fact is that often nothing can compare to the direct testimony of a witness in the pursuit of administrative fairness. As stated above, the true test of a person's statement is by having the opportunity to cross examine statements.

Not all hearings require witnesses but in the event a witness is requested by the inmate or if the chairperson requires more information in order to decide a hearing, witnesses should be called to present their account events.

It is up to the chairperson to decide whether or not a witness will be called into a hearing. The chairperson must consider what impact, if any, that witness would have on the conclusion of a hearing. In hearings when the chairperson decides not to call a witness to present statements, the chairperson must articulate why the decision was made.

Assessing Evidence (the weight to be applied)

There are no absolutes that govern the assessment of evidence**.** While the same fact may be proved by various means, it does not mean that each method of proving a fact will be treated the same. In other words, the chairperson will rely more heavily on certain evidence than on other evidence. There are no fixed rules, but the weight must reflect the reliability of the relevant evidence.

Test for Guilt or Innocence

Unlike a criminal trial where a person must be found guilty beyond a reasonable doubt, the test in a disciplinary hearing is **on a balance of probabilities**. In other words, it is more probable than not that the person is innocent or guilty. A determination of guilt or innocence, based on a balance of probabilities, will rely significantly upon the weight the hearing officer has applied to the relevant evidence heard by him or her at the disciplinary hearing.

CONFIDENTIAL INFORMATION

Fairness is the overriding principle in disciplinary hearings. The purpose of disclosure is to ensure that an inmate knows the case against him or her so that they can respond to it. There is a duty upon the institution to ensure that every inmate charged with a breach that is to appear before a disciplinary chairperson has sufficient detail regarding the charge to enable them to respond to the allegations. There is a duty upon the institution to disclosure information that will be used as evidence in the hearing. If information which the institution is relying upon to prove its case cannot be provided to the inmate, there is no procedural fairness and it would not be fair to proceed with a hearing.

GIVING REASONS FOR A DECISION

Section 28 of the CAR requires that written reasons be provided for both the decision and the penalty.

PURPOSE

The purpose for giving reasons for every decision made during the disciplinary hearing process is to ensure that the offender and, if necessary, anyone reviewing the hearing understands how the hearing chairperson, came to their decision. In addition to the requirements imposed by s. 28 of the CAR, the principles of procedural fairness require that they give reasons for major decisions made during the course of the hearing. For example, the chairperson must provide reasons if they refuse to grant an adjournment or if they refuse to hear a witness.

Reasons for the decision reinforce confidence that the decision was not arbitrary, impulsive, or unfair. If there are no reasons to justify how the chairperson came to their decision, the decision can only be seen (by either ISO or by the Courts) as an arbitrary one.

ELEMENTS IN REASONS FOR A DECISION OF GUILT OR INNOCENCE

- who is the person alleged to have breached the rules? (i.e., identifying the offender)
- what rule was breached? (i.e., what is the authority for the breach)
- what is the wording of the breach? (i.e., what elements must be proven)
- what was the evidence relied upon to support the r conclusion?
- identify who gave the evidence and summarize it
- identify 'real' evidence (i.e. the brew)
- identify 'expert' evidence (i.e. a drug analysis)
- what weight did the chairperson apply to the evidence? (I prefer the evidence of M over N; or I am persuaded by the drug analysis performed by Z Company that ….; I accept the description of the "assault" given by A and B, that ….)
- what is their conclusion? (Having heard and considered all of the evidence, I find, on a balance of probabilities, you are guilty/not guilty)?

The chairperson should take notes during the hearing to assist them in formulating their reasons.

Remember that only evidence heard by the chairperson during the disciplinary hearing can be used to assist them in determining guilt or innocence.

APPLICATION OF PENALTIES

DISPOSITIONS

Section 27 of the CAR sets out the dispositions available to the hearing chairperson.

1. If an inmate is found to have breached a rule referred to in section 21 (1) or (2) *[rules governing conduct of inmates]*, the person presiding over the disciplinary hearing may impose one or more of the following penalties:

    a. A warning or reprimand;

    b. A temporary or permanent restriction on activities or programs, other than a visit program, unless the breach is directly related to a visit program;

    c. Intermittent confinement in a cell, other than a cell in the segregation unit, for a period not longer than 192 hours;

    d. Subject to subsections (2) and (3), confinement in a cell in the segregation unit for a period not longer than 30 days;

    e. Assignment of extra duties for a period not longer than 12 hours;

    f. Forfeiture of earned remission, credited to the date of the breach, of not more than 60 days.

2. A penalty under subsection (1) (d) for the breach of a rule or for assisting or attempting to assist a breach of a rule

    a. Referred to in section 21 (1) (a) to (v) must not exceed 15 days, and

    b. Referred to in section 21 (1) (w) to (z.2) must not exceed 30 days.

3. If an inmate is ordered to be confined in a cell in the segregation unit under subsection (1) (d),

    a. while the inmate is confined to a cell in the segregation unit under subsection (1)(d) for one or more previous breaches, the order must specify whether the penalties are to be served concurrently or consecutively and if the penalties are to be served consecutively, the total period of segregation imposed must not exceed 45 days, or

    b. while the inmate is confined to a cell in the segregation unit under section 24, the number of days served by the inmate in the cell in the segregation unit under section 24 must be subtracted from the number of days the inmate is ordered to be confined in a cell in the segregation unit under subsection (1) (d).

4. On application or on his or her own motion, the person presiding over a disciplinary hearing may reduce or suspend all or part of a penalty imposed under subsection (1), with or without conditions, for a period not longer than 90 days.

5. If an inmate applies to the person who presided over a disciplinary hearing for a reduction or suspension of the penalty imposed, the person who presided over the disciplinary hearing or, if that person is not available, the person in charge must make a decision within 14 days of the receipt of the application and advise the inmate of the decision, the reasons and any conditions in writing.

6. If an inmate does not comply with a condition imposed under subsection (4) or (5),

    a. The person in charge may order that a disciplinary hearing about the failure to comply with the condition be convened, and

    b. If the person presiding over the disciplinary hearing referred to in paragraph (a) determines at the conclusion of the hearing that the inmate did not comply with a condition, the person presiding over the hearing must re impose the previously reduced or suspended penalty.

PRINCIPLES

When imposing a disposition upon an inmate, the chairperson should ensure that the disposition (penalty) is suitable to the gravity of the offence. The chairperson must act in good faith and without bias in imposing a disposition. The chairperson is to impose a disposition that he or she believes is appropriate in all of the circumstances of the breach. The chairperson should consider any special needs of the inmate, including but not limited to a diagnosis of a mental disorder.

Note that the maximum term of segregation that can be imposed is 15 days for breaches of section 21(1)(a) to (v), and 30 days for breaches of s. 21(a)(w) – (z.2). If an inmate has been held in segregation pending the hearing, he or she must be credited with that time (see s. 21(3)).

When imposing a disposition, the hearing chairperson should consider:

- the seriousness of the breach
- the degree of responsibility the inmate had for the breach
- all relevant circumstances in the inmate's Client Log which either tend to mitigate the disposition (reduce it), or tend to aggravate the disposition (increase it)
- the submissions made by the inmate or his or her counsel

In each case, the disposition should be proportionate with the gravity of the breach. A chairperson should not impose excessively restrictive measures when they are not warranted by the facts of the case.

As discussed earlier in these materials, when a disposition is imposed, **reasons for that disposition must be given**. This enables the inmate and anyone reviewing the matter to understand how the chairperson came to their disposition.

CHARGES FROM RELATED ACTIONS

Where the conduct of an inmate involves one action, simultaneous actions or a number of uninterrupted actions, the question arises whether there should be one or more disciplinary charges against the inmate and what penalties should accompany such events.

If there is a single event, simultaneous actions or a chain of uninterrupted actions, this should result in a single charge.

Where the events are substantially different, more than one charge may be laid. All charges should be heard at the same hearing.

CONSECUTIVE OR CONCURRENT DISPOSITIONS

With multiple charges and subsequent findings of guilt, the chairperson must consider whether the disposition imposed should be consecutive or concurrent. (See section 27(1)(3))

Consecutive dispositions mean that the inmate will serve one disposition followed by another disposition. For example, five days segregation for one charge plus three days segregation for another charge served consecutively totals eight days segregation to be served by the inmate.

Concurrent dispositions mean two or more dispositions will run at the same time; and where segregation is imposed, the inmate will be released after the longest term has expired. For example five days segregation on one charge and three days segregation for a second charge served concurrently totals five days segregation to be served by the inmate.

DISCIPLINARY HEARING PROCEDURES

OPENING:

1. **Test recording equipment** to ensure it is functioning properly.
2. **Record time/date and location.**
3. **Identify yourself** and all other persons in the room.
4. **Identify the inmate** by name and CS number – have the inmate verbally confirm their identity.
5. **Confirm** that the inmate has received **a copy of the violation report.**
6. **Ask if** the inmate wishes to or has already **consulted with counsel.**
   If the inmate:
   - Does not wish to have counsel or has spoken with counsel but is ready to proceed without counsel, continue with step 7; or
   - Requests to speak to counsel before proceeding, adjourn * the hearing to give the inmate time to speak with counsel: or
   - Requests to have counsel present for the hearing, determine when counsel can be present, if reasonable adjourn * the hearing to that time, if not reasonable adjourn * the hearing to a specific time and advise the inmate to advise counsel accordingly.

CHARGE:

7. **Read** the charge/s to the inmate.
8. **Ask if inmate understands** the charge – if not, have it explained in plain language.
9. **Ask the inmate to plead** to the charge "How do you plead, guilty or not guilty?"
10. **Record the plea** and proceed to step 11 if the plea is "guilty" or to step 12 if the plea is "not guilty" or the inmate refuses to enter a plea.

GUILTY PLEA:

11. **Have the facts/circumstances** presented and confirm the "finding of guilt" based on the plea and the facts presented. **Proceed to step 15.**

NOT GUILTY PLEA:

12. **Not guilty plea or a refusal to plea:**
    - Call upon the charging officer (if not available call the assigned investigating officer) to read the circumstances and present available evidence.
    - Call other witnesses if appropriate.
    - Allow inmate to ask questions.
    - Ask questions of the officer to clarify information provided in testimony and charge circumstances.

13. **Hear the inmate's account** and allow inmate witnesses if it appears they will be able to provide relevant evidence. Ask the inmate what information the witness will be able to provide.
14. **Based on the evidence presented determine** if the charge is supported (guilty) or should be dismissed (not guilty). Advise the inmate of your finding and **provide the reasons** for it. If the charge is dismissed, conclude the hearing and document the findings.

DISPOSITION:

15. **If the inmate is found "guilty"** on the evidence, advise the inmate you are going to impose a disposition and ask if the inmate has anything he wishes to be considered prior to a disposition being imposed.
16. **Access the inmate's cornet records** to review relevant information.
17. **Impose** disposition and **provide the reasons for that disposition.**

CLOSING:

18. **Respond** to any application by the inmate to reduce or suspend all or part of the penalty imposed pursuant to s.27(4). Advise of s.27(5)
19. **Advise** the inmate of the provisions of section 29 and ensure they understand what that means.
20. **Sign** off the violation report.
21. **Provide written reasons** for determination and disposition**.**
22. **Record on Cornet** (client log) that inmate was provided with written reasons

May 2010

1.20. Disciplinary Hearing Guidelines (revised: Nov-11)

1.20.1. General

1. The establishment of a disciplinary process at correctional centres is outlined in section 33(2)(k-r) of the *Correction Act* and section 21-29 of the *Correction Act Regulation*.
2. Although some basic rights are suspended or restricted by incarceration, administrative and procedural fairness apply to disciplinary hearings.
3. Inmates are entitled to examine, hear and understand the case against them and present their case.
4. A disciplinary hearing is not a criminal trial. It is an administrative hearing with procedural rules to ensure a fair presentation of evidence, a hearing of both sides, and a just determination of facts.
5. The guidelines outlined in this section assist employees through the procedural steps in disciplinary hearings, and ensure that staff responsibilities are discharged according to the *Correction Act Regulation*.

1.20.2. Initiation of disciplinary proceedings (section 23, *CAR*)

1. When an inmate breaches a rule in section 21 of the *Correction Act Regulation*, and circumstances permit the breach to be settled informally, correctional officers settle the breach, subject to limitations established by section 22 of the *Correction Act Regulation*. If the breach cannot be settled informally, correctional officers deal with the incident formally and in writing.
2. The reporting officer files a written report in the designated format by recording the:
    - Identity of the inmate;
    - Location, date and time of the breach;
    - Specific violation of section 21 of the *Correction Act Regulation*;
    - Circumstances of the breach;
    - Immediate action taken; and
    - Statements made by the inmate, including reasons for the behaviour.
3. The violation report is brief, clear and specific. It cites the breached regulation, how it was breached, and names of others involved, including witnesses.

4. When witnesses and physical evidence are present, the reporting officer completes the top portion of part II of the report.
5. The reporting officer presents the completed violation report to the designated supervisor for review.
6. Charge approval occurs once it has been satisfied that:
    - The charge cannot be handled informally;
    - There is sufficient evidence to support a charge; and
    - The proper charge is being applied.
7. Upon charge approval, the hearing takes place within 72 hours in accordance with section 26 of the *Correction Act Regulation*.
8. Following charge approval, the inmate is provided with a copy of the violation report in accordance with section 23 of the *Correction Act Regulation*.
9. The inmate is provided an opportunity to consult with a lawyer or seek legal representation.
10. The violation report is submitted as evidence at the hearing.

1.20.3. Investigating correctional officer—appointment

1. An investigating officer may be appointed by the warden or designate, when the:
    - Severity of the allegation warrants further investigation;
    - Circumstances appear complex; or
    - Reporting officer is not available.
2. The investigating officer or reporting officer may give oral evidence at the hearing.

1.20.4. Investigating officer—responsibilities

The appointed investigating officer completes the investigation section of the violation report and records/ collects:

- Accounts of witnesses, staff and inmates (excluding the offending inmate) who can give direct evidence;
- A synopsis of the incident; and
- Other information or evidence directly related to the charge.

1.20.5. Warden—responsibilities

1. The warden or designate, based upon case complexities or operational needs, determines whether the charge should be heard by:
    - A deputy warden;
    - An officer of supervisory rank; or
    - A person appointed according to section 25(1)(b) of the *Correction Act Regulation*.
2. A person appointed to conduct a hearing must have successfully completed training approved by the Corrections Branch.

1.20.6. Individuals who are disqualified from hearing charges

1. A staff member, who has direct personal knowledge of the facts or involvement in the incident that resulted in the charge, is disqualified from hearing the charge. Refer to section 25(2) of the *Correction Act Regulation*.
2. The person, who completes the initial review to determine if segregation pending disciplinary hearing is required (section 24, *CAR*), is disqualified from hearing the charge.

1.20.7. Criminal offence

1. When an inmate is alleged to have committed an act that constitutes a criminal offence, the warden or designate may contact the local police detachment to investigate.
2. The police may recommend criminal charges to Crown counsel.
3. Disciplinary action against an inmate for a violation of the *Correction Act Regulation* may proceed while police are investigating the same incident for criminal charges.

1.20.8. Conduct of hearing

1. Refer to section 26, *Correction Act Regulation*.
2. Disciplinary hearings take place as soon as practicable and no later than 72 hours from the time the charges are approved.
3. A hearing may begin without the inmate present if the inmate:
    - Is at court;
    - Is absent for medical reasons;
    - Is authorized or required by an act of Canada or the province to be somewhere else;

- Has escaped custody; or
- Is unlawfully at large.

4. The inmate attends throughout the hearing, unless the:
   - Inmate refuses or chooses not to attend;
   - Person conducting the hearing believes that the inmate would jeopardize the safety of a person at the hearing; or
   - Inmate seriously disrupts the hearing.
5. If the inmate has no counsel, the inmate is provided reasonable assistance to present a defence, and understand procedures and consequences of the hearing.
6. The inmate may be dismissed while the disciplinary chairperson deliberates the decision and/or disposition.
7. When the inmate requests a lawyer to assist in the defence of an allegation, an inmate is provided an opportunity to consult with a lawyer or seek legal representation. In the unusual event that the disciplinary chairperson considers denying an inmate's request for legal representation, the disciplinary chairperson reviews the reasons for the request and is guided by the following:
   - Seriousness of the allegation and potential penalty;
   - Case is likely to be complicated, or raise legal or procedural issues;
   - Capacity of the inmate to understand the proceedings and present a defence; and
   - Need for reasonable speed in completing the disciplinary process.

   The disciplinary chairperson provides reasons if a request for legal representation is denied.
8. A recording of the hearing is compiled and includes the violation report and other reports considered during the hearing. The recording is retained, according to schedules in the *Document Disposal Act* and *Freedom of Information and Protection of Privacy Act*.

1.20.9. Procedural steps for the hearing

Opening:

1. Test recording equipment to ensure it is functioning properly.
2. Record time/ date and location.

3. Identify the disciplinary chairperson and have other individuals in the room identify themselves.
4. Identify the inmate by name and number have the inmate confirm it for the record.
5. Confirm that the inmate has received a copy of the violation report.
6. Ask if the inmate has had an opportunity to consult with a lawyer. If the inmate:
    - Does not wish to have a lawyer, or has spoken with a lawyer but is ready to proceed without a lawyer, continue to step 7;
    - Requests to speak to a lawyer before proceeding, adjourn* the hearing to give the inmate time to speak with a lawyer; or
    - Requests to have a lawyer present for the hearing, determine when the lawyer can be present; if reasonable, adjourn* the hearing to that time; if not reasonable, adjourn* the hearing to a specific time and advise the inmate to advise the lawyer accordingly.

Charge:

7. Read the charge to the inmate.
8. Ensure the inmate understands the charge; if not, explain it in plain language.
9. Ask the inmate to plead to the charge: "How do you plead, guilty or not guilty?"
10. Record the plea and proceed to step 11 if the plea is "guilty," or to step 12 if the plea is "not guilty" or the inmate refuses to enter a plea.

Guilty plea:

11. Have the facts and other relevant reports presented, and confirm the "finding of guilt" based on the plea and the facts presented. Proceed to step 15.

Not guilty plea:

12. Not guilty plea or a refusal to plea:
    - Call the charging officer to give evidence;
    - Call the investigating officer (who is the charging officer if an investigating officer was not appointed) to give evidence;
    - Allow the inmate to ask questions; or
    - Call other witnesses if appropriate.

13. Hear the inmate's account and allow witnesses if it appears they can provide relevant evidence. When assessing whether to call a witness requested by the inmate or counsel, ask what information the witness can provide. Give reasons for a decision.
14. Based on the evidence presented, determine if the allegation is supported (guilty) or should be dismissed (not guilty). Advise the inmate of the finding and provide the reasons for it. If the allegation is dismissed, conclude the hearing and document the findings (step 20).

Disposition:

15. If the inmate pleads guilty or is found guilty on the evidence, advise the inmate that a disposition will be imposed. Ask if the inmate has anything to say in relation to the disposition prior to imposing.
16. Access CORNET records to review relevant information.
17. Impose a disposition and give reasons.

Closing:

18. Advise the inmate of the provisions of sections 27(4) and 29(1), and ensure they understand what they mean.
19. Respond to any unsolicited request by the inmate to reduce or suspend a portion of the disposition according to section 27(4). Confirm and record the disposition, with reasons.
20. Sign off the violation report.
21. As soon as practicable, provide written reasons to the inmate for the decision and the penalty imposed.

*Any time the hearing is adjourned, including each time the recording is paused, indicate on the recording the time and the reason for the adjournment, and the time and date when the hearing recommences. If individuals in the room have left or others have entered the room, ensure they are identified for the record.

1.20.10. Adjournments

1. Once the hearing starts and the disciplinary chairperson determines that the hearing cannot continue (due to the absence of the inmate or critical witnesses, the inmate's request to consult with a lawyer, lack of pertinent evidence, or need for the inmate to prepare a defence), the disciplinary chairperson may adjourn the hearing until it may reasonably be completed. An adjournment must not be unduly prejudicial to the inmate.
2. Reasons for the adjournment are recorded.
3. The person who has conducted the hearing and heard the evidence must decide the case. Evidence of the case that is heard by the chairperson is seized.

1.20.11. Finding

1. The disciplinary chairperson fairly and impartially considers all of the evidence at the hearing, and determines, on the balance of probabilities, whether the charge might be substantiated.
2. The disciplinary chairperson considers any special needs of the inmate, including but not limited to a diagnosis of a mental illness disorder.
3. It is not necessary to find the accused guilty "beyond a reasonable doubt." However, the evidence weighed by the disciplinary chairperson should be relevant, trustworthy and credible.
4. When determining that the charge is not substantiated, the disciplinary chairperson dismisses the charge.
5. The disciplinary chairperson advises the inmate of the finding and records the reasons for its determination.
6. Written reasons are provided to the inmate as soon as practicable and recorded in the client log.

1.20.12. Disposition

1. When the charge is substantiated by evidence or the inmate admits the offence, and before determining the disposition, the disciplinary chairperson:
    - Accesses CORNET records to review relevant file information;
    - Takes into consideration any special needs of the inmate, including but not limited to a diagnosis of a mental illness disorder; and
    - Asks if the inmate has anything to say before disposition is imposed.
2. After considering paragraph 1 above, the seriousness of the offence and effect the disposition may have on the inmate and inmate population, the disciplinary chairperson imposes a penalty consistent with section 27 of the *Correction Act Regulation*. Any time spent in segregation pending the hearing must be included in the disposition.
3. Section 27(2) and (3) of the *Correction Act Regulation* set out the maximum penalties for offences and the maximum consecutive time that can be served in segregation.
4. The disciplinary chairperson may suspend all or part of a disposition with or without a request from the inmate in accordance with section 27(4) of the *Correction Act Regulation*.
5. A CORNET Client Log entry is made to confirm that the inmate was provided with a copy of the disposition.
6. The inmate is advised in writing of the disposition.

7. If the disposition is suspended with conditions, the conditions must be recorded in the violation report and a copy provided to the inmate.

1.20.13. Reduction/suspension of penalties

1. The disciplinary chairperson responds to any requests for a reduction or suspension of the disposition made prior to the end of the hearing, and confirms or adjusts the penalty in accordance with section 27(4)
2. If the disposition is suspended with conditions, the conditions must be recorded in the violation report and a copy provided to the inmate.
3. The disciplinary chairperson must review requests that are made according to section 27(5) after the hearing has been concluded. If the disciplinary chairperson is not available, the warden or designate must make a decision within 14 days of receipt of the application. The inmate must be notified in writing of the decision with reasons and any conditions attached.

1.20.14. Failure to comply—section 27(6)

1. When an inmate fails to comply with a term or condition imposed as the result of reduction or suspension of a disposition and action is considered appropriate, the officer in charge must convene a hearing about the failure to comply with the conditions. To reimpose any previously reduced or suspended time, a hearing must be held. Rules governing the conduct of a hearing apply.
2. When it is determined that the inmate did not comply with the conditions, the previously reduced or suspended disposition must be imposed.
3. The review of decision procedures that are outlined in section 29(1) of the *Correction Act Regulation* apply to this hearing.

1.20.15. Review of decision

The inmate is advised about review of decision procedures that are outlined in section 29(1) of the *Correction Act Regulation*.

1.20.16. Conclusion

The disciplinary chairperson ensures the violation report is complete and accurate, and certifies it by signing in the space provided.

1.20.17. Appointments by the assistant deputy minister

1. The assistant deputy minister, Corrections Branch may appoint in writing, a person other than an officer to convene a disciplinary hearing in a correctional centre, according to section 25(1)(b) of the *Correction Act Regulation*.

2. A warden, wishing to appoint a person who is not a correctional employee, follows these procedures:
    - Obtains concurrence from the provincial director, Adult Custody Division;
    - Conveys details of the plan in writing to the assistant deputy minister, once concurrence is obtained from the provincial director; and
    - Conveys in writing the name, address, telephone number and a resumé of the person to be appointed, to the assistant deputy minister. Such person must possess qualifications established by the provincial director.
3. The assistant deputy minister, once in receipt of this information, advises the warden of the decision.
4. Appointments of a person other than a correctional employee to disciplinary hearings are for one year, unless the assistant deputy minister terminates the appointment earlier.

1.20.18. Statement of penalties imposed

Form #7602, statement of penalties imposed, is completed monthly. A summary is forwarded on a quarterly basis to the provincial director, Adult Custody Division.