BRITISH COLUMBIA

Ministry of Public Safety and Solicitor General

BC Corrections, Adult Custody Division

Disciplinary Hearing Chairperson

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General Introduction - Administrative Law

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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).

When a hearing chairperson hears and decides a matter in a disciplinary hearing he or she is exercising discretion in determining whether the alleged facts have been proven, whether the facts amount to a breach of the CAR, and if so, what is an appropriate disposition. 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

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

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 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 .

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 Inmate Must Be Given An Opportunity To Reply To The Charges

The person affected by a decision must be 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 ask reasonable questions of any witnesses. The ability to ask questions of the witnesses 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 inmate or a close association with one of the witnesses.
- 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.

*This list is not exhaustive.

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 an 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 as soon as practicable after the completion of the hearing. A CORNET client log entry must be completed.

Legal Counsel

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:

- the seriousness of the allegations and the possible penalty (see the reference to the Howard case, above)
- 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 allegations made 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 evidence will be considered and they will decide how much weight to apply to it, based on the reliability of that evidence. If counsel believes the evidence is unreliable or weak, then ask counsel to explain why.

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, you should contact Corrections Branch counsel.

Adjournments

Adjournments

An inmate 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

The chairperson may adjourn the hearing on his or her own initiative if an adjournment is necessary to ensure that the hearing can be carried out in a fair manner. For example, the chairperson may adjourn the hearing if key witnesses are unavailable or if the accused does not appear to understand the allegations made against him or her.

Evidence

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 his or her decision, must be careful to rely only upon the evidence presented at the hearing. In addition, 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 who actually made the original statement is not present at the hearing to be cross-examined. Cross-examination is used to test the accuracy or truthfulness of a person's statement. When there is no ability to "test" the evidence, this should be reflected in the amount of weight is placed on the evidence. Generally, a hearing person should not rely on hearsay evidence without some other evidence to corroborate the facts.

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:

Circumstantial Evidence: "I was standing by the building and I heard a yell and a banging noise. John came out from around the corner and he had a bloody nose. Vic had blood on his hand.

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 ask them questions about their statement.

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 evidence that witness may be able to provide and whether that evidence is important in determining whether the allegations are proven or whether there are mitigating circumstances. 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)

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, based on an assessment of relevant and reliable evidence, it is more probable than not that the allegations have or have not been proven.

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 who is to appear before a disciplinary chairperson has sufficient detail regarding the charge to enable them to respond to the allegations. If information provided to the inmate is not sufficient to allow the inmate to understand the details of the allegations made against him or her, there is no procedural fairness and it would not be fair to proceed with a hearing.

Giving Reasons for a Decision

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 inmate 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 inmate)
- what rule was breached? (i.e., what is the authority for the breach)
- what is the wording of the breach? (i.e., what facts must be proven)
- what was the evidence relied upon to support the findings of fact?
- 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 and why? (I find M's testimony more credible than N's testimony ; 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 because it is consistent with what can be viewed on the DVR footage ….)
- what is their conclusion? (Having heard and considered all of the evidence, I find, that you breached section (number) of the CAR , as alleged in the Violation Report.

The chairperson should take notes of the evidence heard 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

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 breach. 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 mitigating circumstances and 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.

Forfeiture of Earned Remission

Forfeiture of Earned Remission

Correction Act Regulation 27(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:*
>
> *(f) Forfeiture of earned remission, credited to the date of the breach, of not more than 60 days.*

Forfeiture of Earned Remission in Disciplinary Hearings

The maximum number of remission days that a disciplinary chairperson may have an inmate forfeit as a penalty in a disciplinary hearing is limited to the provisions of the CAR, and the number of days an **inmate has been credited with to the date of the offence.**

Specifically an inmate must have been credited with remission in order for it to be forfeited. The remission calculation on the Cornet System is not reliable as it automatically defaults to calculate remission on a daily basis which in turn does not accurately reflect the remission that has been credited to date.

In accordance with S.34 (1)(a) Correction Act Regulation ***"A remission awards assessor or panel of remission awards assessors must credit earned remission for each inmate, within 5 days of the end of the previous month."*** Therefore, remission for the current month cannot be forfeited as a penalty in a disciplinary hearing as it has not yet been credited.

Appropriate Use of Section 17

Appropriate use of s.17(1)(a)(iii) Correction Act Regulation

17(1) the person in charge may order that an inmate be confined separately from other inmates if:

a. the person in charge believes on reasonable grounds that the inmate

(iii) is jeopardizing the management, operation or security of the correctional centre or is likely to jeopardize the management, operation or security of the correctional centre

- This section is not intended to be utilized for punitive reasons.
  - Specifically, this section will not be utilized as the equivalent to a period of cell confinement (i.e. 23 hour lock up) as a progressive disciplinary measure.
- When an inmate has breached a rule and the breach cannot be handled informally in accordance with s.22, then they will be charged under the appropriate sub-section of s.21 CAR.
- The appropriate use of this section includes, but is not limited to:
  - Circumstances where an inmate must be confined **pending an** investigation of an incident where there is reasonable grounds that if left on the unit the management, operation or security of the correctional centre may be jeopardized, for the protection/continuity of evidence;
  - Circumstances where an inmate refuses to cease behaviour that is disruptive to a unit.

Changes to the designation matrix:

- The Correctional Supervisor has the authority to place an inmate under s.17 for up to seven hours.
- Continued confinement under s. 17 over seven hours will be determined by a manager.

Charge Approval Process

The Charge Approval Process

What to look for

- Could the situation be managed in an informal way in accordance with s. 22(1) CAR?
- Is the data entered correct? Date, time, location, inmate name, etc.
- Has the offence that the inmate is alleged to have committed been specified? (two part charges – s 21(1)(w) assault or threaten to assault another inmate)
- Has the "**Specifically**" section been completed?
  - This is intended to be a brief one line statement. (Eg. Inmate Smith assaulted inmate Jones in the kitchen area of U2D on October 24, 2016 at 1534 hrs).
  - This one line clearly identifies the specific charge, the date and location but does not detail the evidence that supports the charge.
- Has the "**Circumstances**" section been completed?
  - Any direct observations will be detailed in this section in addition to details of any available evidence (I.e. DVR, ICCS, physical object, etc.).
- Do the circumstances support the charge? (I.e. fighting vs. assault or smoking vs. possession of contraband).
- Do the circumstances answer the Who, What, Where, When How?
- Is the information detailed in the circumstances factual – not opinion?
- Does the information in the circumstances relate to the charge and not include information relating to other behaviour concerns that may bias a chairperson? (I.e. multiple warnings for the same behaviour vs. previous charges for non-related infractions).
- Does the violation report identify any/all evidence that will be presented in the hearing? (Is there DVR, ICCS, contraband items, etc.?)

What not to do

- As the charge approver **DO NOT** alter the violation report. If you find an error, the report must be amended by the creator of the report.
- As the hearing officer **DO NOT** try to save the charge. If the evidence does not support the charge the inmate cannot be found guilty.

Caution

- The supervisor involved in an incident should not be used to approve the charges whenever possible.
- Having direct involvement and/or knowledge of the circumstances may prevent you from having an objective opinion when reviewing the charges and circumstances.

Completing the Violation Report

Completing the Violation Report

Prior to completing the Violation Report consider the following:

- Could the situation be managed in an informal way in accordance with section 22(1) CAR?
- Review the inmate's client log. Is a warning appropriate? Has the inmate been warned before for the same behaviour?
- Discuss with your supervisor? Is there sufficient evidence to support a charge?

Completing the Violation Report:

- Ensure all data entered is correct: date, time, location, inmate name, etc.
- Complete the "**Specifically**" section.
  - This is intended to be a brief one line statement (e.g. Inmate Smith assaulted inmate Jones in the kitchen area of U2D on October 24, 2016 at 1534 hours).
  - This one line clearly identifies the specific charge, the date and location but does not detail the evidence that supports the charge.
- Complete the "**Circumstances**" section.
  - Your direct observations will be detailed in this section in addition to details of any available evidence (e.g. DVR, ICCS, physical object, etc.).
- Ensure the circumstances support the charge (e.g. fighting vs. assault, smoking vs. possession of contraband).
- Do the circumstances answer the Who, What, Where, When, How?
  - If not, more information is likely required.
- Ensure the information detailed in the circumstances is factual – not opinion.
- The information in the circumstances must relate to the charge and not include information relating to other behaviour that may bias a chairperson.
  - E.g. multiple warnings for the same behaviour vs. previous charges for non-related infractions.
- Ensure the violation report identifies any/all evidence that will be presented in the hearing.
  - Are there DVR, ICCS, contraband items, etc.?

What not to do

- As the Charge Approver **DO NOT** alter the violation report. If you find an error, the report must be amended by the creator of the report.
- As the Hearing Officer **DO NOT** try to save the charge. If the evidence does not support the charge the inmate cannot be found guilty.
  - o Recommended: follow up with the Charging Officer and the Charge Approval Officer if a violation report was processed to this stage when clearly it should have been rewritten.

Caution

- Whenever possible, **the Supervisor involved in an incident should not be used to approve the charges**.
- Having direct involvement and/or knowledge of the circumstances may prevent you from having an objective opinion when reviewing the charges and circumstances.

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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.