



GUIDELINES FOR HEARING PROCEDURE

These guidelines are not intended to be exhaustive, but it is hoped will be of some assistance to the Complaint Committee.

The hearing is conducted as per **Sections 309 (a) through (d)**

- 308(d)** The Committee Chair shall decide on a date and place of a hearing to be held not later than **45 days** after the appointment of the Chair.
- 308(e)** At least **21 days** before the hearing the Committee Chair or their designate shall serve (see Subsection 301.i.) notice on the parties advising them of the date, time and place of the hearing, their right to be heard, to call witnesses and the names of the Committee members including the members in waiting.
- 308(f)** Each party shall have the privilege of one peremptory challenge of any one of the members except for the Chair, by serving notice thereof on the Chair at least 10 days prior to the hearing. No challenge will be allowed at the hearing.
- 308(g)** The provisions of Subsection 301.c. must be strictly observed.
- 309(a)** The Complaint Committee shall hear the evidence in support of the complaint in the presence of the member complained against and their agent if the member desires. Both parties or their agents (but not both), shall have the right to introduce evidence, cross-examine witnesses and to call witnesses on their behalf.
- 309(b)** Evidence should normally be given under oath/affirmation when practical to do so. Examples of an oath and an affirmation follow.
- Oath:** Do you swear that the evidence you shall give to this Committee will be the truth, the whole truth and nothing but the truth so help you God?
- Affirmation:** Do you solemnly affirm that the evidence you shall give to this Committee will be the truth, the whole truth and nothing but the truth?
- 309(c)(i)** If the member complained against does not appear, without due cause and notification, the committee, upon proof of service to that member, may proceed in their absence.
- 309(c)(ii)** If the complainant does not appear, without due cause and notification, the Committee upon proof of service on the complainant, shall dismiss the complaint and may assess costs.
- 309(c)(iii)** The Chair for due cause and with notification may postpone the hearing for a period not to exceed 60 days from the date originally scheduled.
- 309(d)** A record of the proceedings shall be prepared and supported by either a voice or video recording or, where feasible, by a qualified court reporter.

(The complaint file is to be sent to BC/Yukon Command Office).

310(a) The decision of the Complaint Committee shall be forwarded to the Secretary of the branch or Executive Director of the Command, and served (see Subsection 301.i.) on both parties to the complaint, within 30 days of the hearing. The decision is final unless appealed under Section 314.

310(b) Where the decision provides for expulsion from the Legion, the decision shall be served (see Subsection 301.i.) immediately on the next superior Command and shall not become effective until it has been considered under Subsection 314.g.

Certain principles should be borne in mind by the Committee at all times during the conduct of the Hearing and are implicit in **Article III** to ensure a **FAIR HEARING**.

- I. A person is presumed to be innocent until the breach complained of has been proven.
- II. The onus is upon the complaining member to prove the complaint.
- III. The member complained against is entitled to the full details of the complaint against them, **during the hearing proceedings**. It has not been a practice, nor is it a requirement for the member complained against to be provided with any additional documentation prior to the hearing. The member complained against received a copy of the complaint prior to the hearing, which briefly outlines the allegations of the complaint. All evidence and witness testimony is provided during the hearing.
- IV. The evidence, where possible, should be the "best evidence" available (i.e. given by the witness in person and not by statement. If impossible to have witness there then a sworn declaration is desirable.)
- V. The member complained against is entitled to the benefit of any reasonable doubt.

HEARING - Note: At the Hearing the complaining member or the member complained against may be represented by an agent.

1. At the opening of the Hearing, the complaint shall be read aloud to those present. The member complained against, if present, shall be asked if they understand the nature of the complaint and shall be asked to admit or deny the complaint.
2. Both parties shall be asked if they are satisfied that "all formalities have been complied with". (i.e.: notices, time, constitution of committee re challenges, etc.) **Note any objections**. The Committee may decide to proceed, notwithstanding any objections.
3. The complaining member or his agent shall state the nature of the complaint.
4. **(a)** Swear all witnesses (upon Bible) – **Optional Oath**; Do you solemnly swear to tell the truth, so help you God. (Answer - I do).
(b) The complaining member or his agent shall call witnesses in support of the complaint, in logical order.
(c) Have witnesses identify and verify any documents, show to member complained against, or his agent for perusal, and have them marked.

Note: Chair should mark, date and initial.

(d) Keep testimony **relevant**, but do not curtail if justice demands. Avoid hearsay evidence, that is, evidence of conversation, etc., not held in presence of the member complained against.

(e) Make written notes of each witness's evidence and thereafter **have witness sign as follows:** "I hereby certify that the above is a correct summary of my evidence. (signed)".

5. After each witness has given testimony, the member complained against and the complaining member (or their agents), have the **Right of cross-examination**. The Chair is to advise them of this right and invite them to exercise it with each witness in turn.
6. After all witnesses in support of the complaint have been heard, advise the member complained against or their agent that they **have the right to call witnesses and give evidence** on their own behalf.
[(4)(e) The above also applies here].
7. Always note **in writing**, any objections taken by either party to the complaint or their agent.
8. It might also be worthwhile just before the conclusion of the Hearing to ask the member complained against if there is anything else he wishes to say relevant to the Hearing or matter under investigation.
9. **Article III** should be read and digested by all members of the Complaint Committee prior to the hearing.

Note: These guidelines are only a practical guide indicating how to proceed at a Hearing under Article III of The General By-laws. Where any doubt arises as to proper procedure, Article III is the final authority.

1. A motion adopted at the May, 1993 Council Meeting states that when a Chair and the Committee is approved by the Command President under **Section 301** of The General By-laws, the Decision handed down by that committee need carry only the signature of the Chair. However, the Decision must make reference to the names of the committee members. If there is a hand-written report prepared at the time of the hearing and all committee members are in attendance, the hand-written Decision is to carry the signatures of all committee members.

However, if the hand-written statement is sent to Command for retyping and distribution, it need carry the signature of the chairman only.

2. Witnesses should not be in the same room where the hearing is being conducted. They should only enter the room when asked to testify. Once they have testified they should be invited out, but asked to remain in the premises until completion of the investigation in case they need to be called upon a second time.

No observers are allowed at the hearing.

IF THE DECISION IS TO DISMISS THE COMPLAINT – YOU MUST DESCRIBE THE GROUNDS FOR DISMISSAL i.e. not properly lodged; not enough evidence; the complaint was false

**THE ROYAL CANADIAN LEGION
DECISION OF COMPLAINT COMMITTEE
VS
NAME OF BRANCH AND NUMBER**

Date

The Hearing was held at _____ on (date)

The complaint was lodged under section 304 a. quote the sections

The Decision is to issue the following penalty in accordance with section 311 a. of The General By-laws as follows: -

NOTE: YOUR DECISION MUST INCLUDE THE SPECIFIC WORDING OF ONE OR MORE OF THE FOLLOWING. IF YOUR DECISION INCLUDES A SUSPENSION PERIOD YOU MUST STATE THE PERIOD OF SUSPENSION.

- a. The Complaint Committee may either dismiss the complaint or if proven, impose one or more of the following:
 - i. reprimand (may require a letter of apology.);
 - ii deprivation of clubhouse privileges for any period up to 24 months;
 - iii removal from any office or position held and prohibition from running for and holding any office for a period of up to 24 months;
 - iv. suspension for a period up to 12 months and/or
 - v. expulsion from the Legion

- b. Where a complaint alleges only a breach of clubhouse rules or privileges, the committee may dismiss the charges, or, if proven, impose one of ore of the following:
 - i. deprivation of clubroom privileges for a period not to exceed 12 months; and/or
 - ii. issue a reprimand that may also require a letter of apology to the Branch and/or if applicable, to the individual or individuals that may have been aggrieved.

Name (signed)
Chairman, Hearing Committee

Committee Members:
List the names of the members

NOTE: This Decision has been sent in accordance with section 310 a of The General By-laws to:

List the names of the people who require the Decision. Note the manner in which "service" must be handled as per section 301.i "Service."