

COMPLAINT PROCEDURE

It is not the intent of this section to repeat verbatim the General By-Laws. It has been noted that there are three main areas that seem to cause the most problems, frustrations, etc. among Members and Branches alike. They are the lodging, handling, and hearing of a Complaint. For these reasons, the following details are provided for the assistance of all.

Any Member of the Legion, not in arrears in payment of dues, may lodge a Complaint against another Member. The procedure and requirements for Complaints and appeals are outlined in Article III of the General By-Laws. These procedures must be followed and failure to adhere to the requirements of Article III can result in legitimate Complaints being rejected, and decisions being overturned for procedural reasons only.

Any Member lodging a Complaint or against whom a Complaint is laid should carefully read the contents of Article III of the GBL to understand their rights and the procedural obligations. A formal Complaint is a serious matter and should not be entered into lightly. Legion volunteer and paid resources are limited, and Complaints absorb these resources at the expense of other Legion work. The Complaint procedure is not intended to address personality conflicts or minor oversights and human failings. The best solution to any conflict is to attempt to resolve the matter with the parties concerned and the formal Complaint process should be reserved for matters of serious consequence which have a negative impact on the organization.

The President has the option of attempting mediation between the two parties. See Article III mediation procedures for full details.

Complaints are vulnerable to being lost through appeal if the procedures are not rigidly followed and extra care must be taken when handling Complaints to ensure that the rights of the parties involved are respected and that the time frames and procedural requirements are followed.

Always use Article III of the current General By-Laws as the absolute authoritative basis for Complaints.

FILING A COMPLAINT

- i. To properly initiate Complaint proceedings, a Member must;
 - i. **ensure that the Complaint contains a brief account of the incident or circumstances which forms the basis of the Complaint;**

This is probably the biggest reason for Complaints being declared invalid. The summary should be written with sufficient detail and content to allow an outsider to have a full understanding of what took place to support the allegation(s). The date(s) that the knowledge was gained by the Complainant to form the Complaint is also an integral component and must be included.

- ii. **specify the clause under Subsection 304. a. that applies;**
Complainants forget to put in the 'a' which does not happen when using the Complaint Form. There is also a tendency to activate multiple Clauses, although the summary fails to support same.

i. breach of clubhouse rules or privileges;

- 1. The specific Section(s) should be cited in the Complaint summary.*
- 2. A complete copy of the Branch Clubhouse Rules should be included with the Complaint.*
- 3. A failure to indicate the Sections(s) of the Branch Clubhouse Rules allegedly breached and inclusion of the document will jeopardize the pursuit of the Complaint re this matter.*

ii. profane or disorderly conduct in or about any place where any event is being carried on under Legion auspices or control;

- 1. What was the exact profanity uttered? Today's standards are changing.*
- 2. What was done to be disorderly i.e. Assault, shouting, pushing, etc.*
- 3. Where did it happen and what was the event.*
- 4. The Branch being open for business does not in itself constitute an event and thus the Complainant would have to rely upon lodging a Complaint re a Breach of Branch Clubhouse Rules if same are maintained by the Branch and include such a provision.*

iii. breach of their obligations to the Legion or of these By-Laws;

- 1. What obligation was it? Be specific and cite authority or section that creates the obligation.*
- 2. What Section etc. of the By-Laws was breached. Be specific.*
- 3. It is not the duty of the Complaint assessor to make assumptions or conclusions when the specific references are omitted.*

iv. knowingly lodging a false Complaint against a Member;

- 1. This clause can only be lodged respecting a previous Complaint lodged under Article III against the Complainant.*
- 2. It cannot be alleged and lodged until after the Complaint Hearing Committee has dismissed the original Complaint in its entirety.*

v. conduct which in any way brings or tends to bring the Legion into discredit; and/or

- 1. The conduct should be described in sufficient detail.*
- 2. The summary must include how the conduct would bring or tend to bring the Legion into discredit.*
- 3. What has been the effect, if any, on the Legion in the community?*

vi. theft or misappropriation of Poppy funds, Legion funds, or property.

1. *Theft is defined, in part, as the acquisition (take or convert) without consent, by one without title to same, of another's property with an intent to deprive.*
2. *Misappropriation is defined as - Misuse, fraud, stealing, cheating, embezzlement.*

vii. harassment or sexual harassment.

1. *Normally consists of repeated unwelcome remarks or behaviour directed at a person which may extend over a period of time.*
2. *Could include such things as unwanted touching, patting, etc., and dependent upon the situation, may have a sexual component involved in the behavior.*

iii. sign the Complaint;

1. *The Complaint must be dated and have the original signature of the complainant.*
2. *Complaints received other than by the means cited in Section 301. i. of The GBL are unacceptable.*
3. *No fax, e-mail or photocopies of any Complaint will be accepted.*

iv. enclose payment of a Complaint filing fee in the amount of \$100 payable to the Branch or Command with which the Complaint is filed. The complainant will have the \$100 returned in all but one circumstance. That circumstance is where there is a final disposition at a hearing (after all appeals, if any, are heard) and at that hearing the entire Complaint is completely dismissed. Then and only then will the \$100 filing fee be forfeited; and

1. *A failure to submit the filing fee will render the Complaint invalid.*
2. *Branch cheques cannot be used as the Complaint is between two Members and thus excludes any involvement by a Branch.*

v. address it to and lodge it with the Secretary of the appropriate Branch or Executive Director of the Command within 15 days from the date the complainant in good faith, first had knowledge of sufficient facts of the alleged offence having been committed.

1. *Excluding a complaint under Subsection 304.a.vii., calculate the 15 days by not counting the day of the occurrence, or date that sufficient facts became known. Therefore, if an incident occurred March 9, the 15 days would end at midnight on March 24.*
2. *In reference to Complaints under Section 304.a.vii., the Complaint must be lodged within ninety (90) days from the time that the alleged incident occurred.*
3. *Reference Section 601. (2) of The GBLO should the Complaint be against a Standing Committee Chair of the Command.*

HANDLING A COMPLAINT AT BRANCH LEVEL

1. The provisions of subsection 301.c. must be strictly observed.
 1. *A Conflict of Interest for **any** Member through their Office, influence, or knowledge may be deemed to exist through a real or perceived interest in, or effect on the outcome of any Complaint or appeal under Article III.*
 2. *The application of this provision is therefore not restricted to the direct involvement in a Complaint e.g. President, Secretary, etc.*
 3. *Reliance on Common Sense is the best rule. If you think there is a conflict, either real or perceived, there probably is and therefore you should recuse yourself from any involvement.*

2. In all Complaints the Secretary **shall immediately** bring it to the attention of the President and **acknowledge receipt** to the complainant as **either** being properly lodged or not as determined by the President. The Secretary shall serve (see Subsection 301.i.) a copy of the **properly lodged Complaint** on the Member against whom the Complaint was lodged **within seven days**.

The President determines if all of the criteria under 304.b. have been met including the following:

- (i) *Are the two Parties identified.*
- (ii) *Sufficient summary to create reasonable & probable grounds to support the allegation.*
- (ii) *Cite full number identifier. Must be cited as shown e.g. 304.a.iii. etc.*
- (iii) *The Complaint contains an original signature of the Complainant.*
- (iv) *The Complaint filing fee is included.*
- (v) *Lodged with the Secretary within the appropriate time limits.*

A COMPLAINT WHICH COMPLIES WITH THE REQUIREMENTS OF SECTION (304.b.) SHALL BE DEEMED TO BE PROPERLY LODGED. ANY COMPLAINT WHICH DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL BE DISMISSED BY THE PRESIDENT ON THE REPORT OF THE SECRETARY.

The President should draft a report explaining why they either did or did not dismiss the Complaint. This is not a rubber stamp process and the President may be called upon to justify their actions. This report can be retained by the President until or if required. However, if the Complaint is dismissed, the letter to the Complainant should cite the reason for dismissal e.g. It fails to provide sufficient details in the summary to support the allegation pursuant to Section 304.b.i. GBL.

Note: Where the Complaint has not been properly lodged, the President shall dismiss the Complaint and advise the Secretary to notify the complainant in writing that the Complaint has been dismissed and provide the reason corresponding to Section 304. b. for rejection of the Complaint.

3. Where a Complaint has been properly lodged in accordance with Subsection 304. b. and pending the final disposition of such Complaint, the President of the Command or Branch **may deprive** the Member against whom the Complaint is lodged, of clubhouse privileges and remove them from office or position held. **Such deprivation and/or removal is not appealable.** However, if the Complaint is withdrawn or found to be unsubstantiated upon completion of the hearing, the Member shall be immediately reinstated for all purposes and any removal from office is deemed to have never occurred.
 1. *The deprivation and removal from office/position **should only** be applied when the circumstances warrant and not a matter of course.*
 2. *Removal from Office or Position held only applies to the level at which the applicable President has jurisdiction over.*
 3. *The Member does not lose credit for time served in office if the Complaint is withdrawn or dismissed.*
4. The President of the respective Branch or Command **may** cause both parties to be contacted to determine whether mediation should be attempted to resolve the Complaint. **See mediation procedures.**
5. Within 21 days of receiving the Complaint the **President shall appoint** a Complaint Committee. (See Section 301. b. i.)
 1. *Count the days starting at the day after receipt of the Complaint by the Secretary.*
 2. *Must be voting Members in good standing. (Chair, 2 sitting and 2 waiting Members)*
 3. *Only one Executive Member at Branch level of the five can be appointed.*
 4. *Ensure that there is no real or perceived Conflict of Interest of any Member.*
 5. *Committee may be formed of voting Members from outside the Branch, but it is still the Branch or Command President's job to appoint them, **not** Zone or District.*
 6. *The President should now have no further involvement in the subject Complaint unless Mediation was optioned.*
6. 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.
 1. *Same counting method as previously noted to calculate total days.*
 2. *This is the Complaint Committee Chair's job, not the President or any other Member.*
7. **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.**
 1. *Letters can be done by Secretary or Complaint Committee Chair and must include all of the above. A Form letter ensures consistency. See samples provided within this section.*
 2. *It is the Chair's responsibility to ensure that the notices are served on the parties.*
 3. *21 clear days. Therefore, the recipient must receive the Notice 21 full days before the Complaint Hearing. It is imperative that if using another means of service other than personal service that the notice be sent out in advance of the 21 day limit to ensure*

receipt before the 21 days commences. Thus, if the Complaint Hearing is on the 30th day of a month, the recipient must receive the notice on or before the 8th day of that month.

4. *All documents under this Article are to be sent to the appropriate Parties of the Complaint rather than Agents or lawyers. Applies across the board.*

8. Each party shall have the privilege of **one peremptory** challenge of any **one** of the Members **except** for the Chair, by **servicing notice** thereof on the Chair **at least 10 days prior** to the hearing. No challenge will be allowed at the hearing.

1. *Can only challenge one of the declared Members not Members in waiting unless elevated.*

2. *Cannot challenge the Chair.*

3. *Onus is on challenging Member to ensure that notice is served as per Section 301.i. at least 10 days prior to the hearing.*

MEDIATION PROCESS (Section 306)

1. Upon the lodging of a Complaint at any level, the President of the respective Branch or Command **may** cause the parties to be contacted to determine whether mediation should be attempted to resolve the Complaint.

1. *Many factors influence - Allegation, circumstances, office, relationship, etc.*

2. *It is at the prerogative of the President to offer mediation.*

2. *Normally ask the complainant first and if they say no, that ends it right there.*

2. Where it appears that **mediation may resolve the Complaint**, the President of a Branch or Command shall appoint a mediator or a mediation team for this purpose.

1. *Choose the mediator or mediation team wisely ensuring that there is no Conflict of Interest in existence.*

2. *The Member(s) or other persons acting as Mediator(s) cannot be on the Complaint Committee.*

3. Either party, the mediator or the mediation team may terminate the mediation process at any time by **giving written notice** to the President.

1. *Must be signed, dated and addressed to the President.*

2. *The rules re: service of documents under Section 301. i. apply.*

4. Where a mediator or mediation team is appointed, the time periods set out in Article III continue to apply.

The President must continue to appoint a Complaint Committee re Time Limits and should not await the results of Mediation. Easier to cancel the Hearing Date than go beyond the time limits and open up an avenue for appeal or failure to deal with the Complaint pursuant to Section 312. GBL.

5. A mediated resolution may include **any disposition as set out in Section 311.**

1. *There is no option to apply any other disposition other than those found in Section 311.*
 2. *A Complaint that only alleges a Breach of the Clubhouse Rules limits the dispositions available.*
6. Any resolution by mediation **must be in writing and signed by both parties** and the Mediator(s). The Complaint is then deemed to be concluded for the purpose of this article and there is **no appeal** from the result.

Must be agreed to and signed by both parties with the Mediator acting as the signing witness to both parties' signatures.

HEARING PROCEDURES

Certain principles must be borne in mind by the committee at all times during the hearing:

- A Member is presumed innocent until proven otherwise.
 - The onus is upon the complaining Member to establish the probability of the allegations made in his Complaint to the satisfaction of the Committee, failing which, the Complaint must be dismissed.
 - The benefit of doubt must be given to the person against whom the Complaint is lodged.
 - The Member complained against is entitled to the full details of the Complaint.
 - The evidence, where possible, should be the best evidence available (i.e., given by the witness in person and not by written submission. If impossible to have the witness there, then a sworn declaration is desirable).
1. Where, **at any stage during the Hearing Procedure** set out in Section 308 and 309 civil or criminal proceedings are commenced, the Hearing Procedure **shall be suspended until a judgment is rendered in the civil or criminal proceedings**, at which time the Hearing Procedure will continue, upon notice being served to the parties, at the point at which it was suspended.
 - i. Do not wait to lodge Complaint till after any proceedings. The Complaint should be lodged at the time of the incident and/or when the complainant has the necessary reasonable & probable grounds.*
 - ii. Proceedings commence when actual criminal charges are laid or a civil writ is filed in a court of proper jurisdiction. i.e. A police investigation does not qualify as proceedings and therefore does not qualify as a reason to suspend the hearing.*
 - iii. The Complaint must have been declared valid and properly lodged before this section can apply and result in its suspension.*
 - iv. Wait for the thirty day appeal period after the date of the judgment and confirm that no appeal has been submitted to the judgment before recommencing the Hearing Procedures.*
 2. The **Complaint Committee** shall **hear the evidence** in support of the Complaint in the presence of the Member complained against and his 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.

- i. An Agent only has standing at the Complaint Hearing and has no authority to act on the Member's behalf either before or after the Complaint Hearing.*
 - ii. Cannot have the Member and their agent both doing the job. One or the other. Therefore if the Agent introduces evidence and questions witnesses, they must carry the duties throughout the entire hearing and the only time that the Member would be allowed to speak would be while testifying.*
- 3. Evidence should normally be given under oath/affirmation when practical to do so.**
 - i. All oral evidence should be under oath/affirmation. See GBL Section 309 for examples.*
 - ii. Documents can be used, but must be entered by someone testifying to their correctness and accuracy. Usually only business records i.e. Bar Steward Diary, etc.*
 - iii. Sworn Affidavit evidence may be used on those occasions when the witness is unavailable.*
- 4. 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 his absence.**
 - i. Notification addressed and served (Section 301. i. applies) to the Complaint Committee Chair must be in writing and must state the reason(s) for being unable to appear and seeking an adjournment. There may be occasions when a valid emergency arises and only a telephone call as notice, or some other means of communication is all that is available rather than written notice. Each situation must be assessed on its own merits. The failure to provide notification and due cause allows the Complaint Committee to proceed with the Hearing if it can be proven that Notice had been properly served pursuant to Section 308. e.*
 - ii. The Complaint Committee may hold an in-camera session to consult and advise the Complaint Committee Chair whether to proceed or not.*
 - iii. If the Complaint Committee Chair is satisfied with the notification and due cause they may postpone the Complaint Hearing. The other side has no right of appeal respecting this matter as it falls entirely within the responsibilities of the Complaint Committee Chair.*
- 5. 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.**
 - i. The Complaint Committee has no latitude in its decision if they are satisfied that the Member received proper Notice of the Hearing and failed to provide due cause and notification re their absence, they must dismiss the Complaint.*
- 6. 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.**
 - i. The Complaint Committee Chair may apply this Section should the need arise as a result of any unforeseen situation for them or the Committee Members.*
 - ii. Specifies how long hearing can be postponed and can only be requested once by either party.*
 - iii. Parties must receive a Notice with a new Hearing date as per Section 308. e.*

- iv. Request should be made in a reasonable time prior to the Complaint Hearing date to afford sufficient time to notify the other party.
- v. The decision is the Complaint Chair's alone, although they may confer with the other Committee Members.

7. 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.**

- i. The transcript of the Hearing must be drafted and should be certified as true and correct by the person having been responsible for the recording and eventual production of the document.
- ii. The record and transcript must be retained in the Complaint File for reference and Appeal Purposes.
- iii. The transcript must be supported by voice or video recording or a qualified court reporter recording.

HEARING COMMITTEE DISPOSITION/DECISION

1. The Complaint Committee **may either dismiss** the Complaint **or if proven,** impose **one or more** of the following:

i. 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.

- 1. Can dictate to who and how the letter is presented i.e. Read by the Accused at a General Meeting, etc.

ii. deprivation of clubhouse privileges for any period up to 24 months;

- 1. See Section 311 c. i. for definition of Deprivation of Clubhouse Privileges.
- 2. The use of **Time Served** (i.e. The Member was deprived and removed from Office at the time of the Complaint which amounted to three months. The Complaint Committee assesses a Disposition of 3 months Deprivation and Removal from Office and declares Time Served) **is not permitted.** The penalty only starts at the time that it is assessed by the Complaint Committee and cannot be retroactive.

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;

- 1. Examples are Office i.e. Executive Office, etc. and Position i.e. Chair of Bar Committee.
- 2. The application of this provision only applies to those Offices or Positions held at the level of the Complaint jurisdiction i.e. Branch or Command.

iv. suspension from the Branch for any period up to 12 months; and/or

- 1. See Subsection 311 c. ii. for the definition of Suspension.

v. **expulsion from the Legion.**

1. *See Section 311. c. iii. for the definition of expulsion.*
2. *Any expulsion will only become effective after all other required avenues have been exhausted e.g. such as a review by Ontario Command pursuant to Section 314. g. if no appeal is received or declared.*

The above are the only dispositions available to Complaint Committees and any deviation may jeopardize the Hearing and result in a successful appeal.

Further any failure on the part of the Complained against Member to comply with the rendered disposition may provide grounds for the lodging of a new Complaint.

2. Where a Complaint **alleges only** a breach of clubhouse rules or privileges, the committee **may dismiss** the charges, or, if proven, impose **one or more of the following:**

Only two choices if found guilty.

- 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.**
 1. *Committee can decide whether the Member must read and file his Letter of Apology at a General Meeting, or whether just direct it to a Member or Members or both.*

Note: Clubhouse rules must have a certificate of compliance by Ontario Command to be considered.

3. The decision of the Complaint Committee shall be **forwarded to the Secretary of the Branch/Command and served** (see Section 301.i.) on both parties to the Complaint, **within 30 days of the hearing.** The decision is final unless appealed under Section 314.

- i. *The decision goes to the Secretary who ensures service to the parties*
- ii. *Service again is the important factor*
- iii. *Use calculation method: 30 days, as previously noted.*
- iv. *The decision must still be served on the Parties regardless of whether expulsion is part of the decision.*

4. 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.**

Note – The decision must be sent to Provincial Headquarters ASAP following the Complaint Hearing. The decision will be reviewed by the Constitution and Laws Committee Chair unless an appeal was submitted by a subject Party. Thus, at some point all supporting

tapes, transcripts and documents may be requested to be submitted to Provincial Headquarters.

**** BRANCHES MUST KEEP GOOD RECORDS OF COMPLAINTS
WITH A COPY OF SAME IN THE MEMBER'S FILE IF FOUND GUILTY. ****

FAILURE TO DEAL WITH COMPLAINT (Section 312.)

Where a Complaint has not been proceeded with in accordance with the **time limits** required by these By-Laws, **the complainant or the Member complained against may** send a copy of the Complaint to the next superior Command which **shall** initiate the necessary action.

- 1. Any correspondence or other documents pertaining to the Complaint must also be submitted by the Member.*
- 2. An explanatory letter must also be included explaining the action, or lack thereof by the Branch.*
- 3. The matter will be reviewed to determine what action, if any, must be taken to address the matter.*

WITHDRAWAL

A Complaint made under Section 304 may be withdrawn **by the complainant** at any time by **written notice given to the appropriate Secretary.**

Same rules apply re Service (Section 301.i.) and the onus is on the Complainant to ensure receipt by the Secretary.

APPEALS (Section 314)

Appeal is available to both parties of a Complaint but only under certain conditions. It must be filed **within 30 days of the notice of decision.** Appeals shall include any evidence and documents submitted to the Complaint committee. **No new evidence shall be accepted.**

- 1. The appeal must include the original Complaint and any other documents or evidence entered at the Hearing.*
- 2. The appeal must state and explain the grounds for the appeal. Section 314. a.*
- 3. The appeal must indicate what is being appealed as appropriate under Section 314. b. or c.*
- 4. An appeal of the penalty may only be appealed on the grounds that it is too excessive in view of all of the circumstances of the Complaint.*
- 5. The Complainant may only appeal a dismissal.*

ADDITIONAL COMMENTS ON THE PROCEDURE FOR COMPLAINTS

- 1.** There is a fine line between employee and Member. The Bar Steward, while working, if a Member, should make an entry in the log book regarding an incident rather than lodging a Complaint as they are acting as an employee at the time. The President, or their designate, would then be expected to lodge the Complaint, if warranted.

2. At no time shall the Complaint procedure be used concerning matters of an employee/ employer nature. These matters must be resolved by the Branch Executive (or assigned committee) within the applicable Employment Standards Act.
3. The reasonable and probable grounds referred to in Section 304. a. may be on the basis of the **Member's personal knowledge**, or on **information supplied** to him by some other person.

Examples: Bar Steward Diary. A complainant may lodge a Complaint without being a witness to the incident nor being present when it occurred.

4. Except where otherwise noted in the GBL, a Complaint against a Branch Member **must be lodged with the Secretary of the Branch** to which the Member against whom the Complaint is made belongs.
5. Where the Complaint is lodged against a Branch President, **elected** Zone, District or Provincial Command Officer, it must be lodged with the Executive Director.

Check the Provincial By-Laws to determine who is elected in Zone & District. Normally it will be the Commander and the Deputy (s). In some areas the Sports Officer is also elected. There is no provision for any other Office to be elected at those levels in our By-Laws.

6. A group of Members cannot lodge a Complaint against a Member or a group of Members. If a Member wishes to lodge multiple Complaints, they must lodge separate Complaints against each Member. The only grounds which can be considered are the ones listed in the By-Laws. The Complaint must be specific when referring to the offence.
7. If theft or misappropriation as noted above is suspected, a report should be filed with police along with a Legion Complaint being lodged. The police investigation may or may not result in charges. Neither situation has a bearing on the Legion Complaint which does not require the same high level of proof as required in a court. If the Member is convicted of an offence under Section 419 of the Criminal Code of Canada (Stolen Valour) or theft, fraud, or misappropriation of Poppy funds, Legion funds, or Legion property, the Member shall be summarily expelled from the Legion, and any Article III will be abandoned upon a confirmed expulsion. Section 202 GBL
 - i. Further a Branch should not agree to accept repayment from a Member in this situation as this would nullify any subsequent criminal charges and force the Branch to pursue the matter through civil process if the Member defaults on payment.
 - ii. Finally, insurance companies require that criminal matters are reported to the police and that the victim (Branch) cooperate with the police investigation. This also provides an opportunity for a Restitution Order for Repayment, as part of their sentence, if the Member is found guilty.
8. In no case shall a Complaint be initiated **more than one year after the actual occurrence of the event, unless** the Complaint alleges theft or misappropriation of Poppy funds, Legion funds or property.

All Complaints, not alleging theft or misappropriation, must be lodged within one year from the date of occurrence regardless of when the Complainant became aware of same.

Complaints alleging theft or misappropriation are not restricted to the one year timeline, thus, the knowledge thereof, requires the Complaint to be lodged within 15 days.

Example: 2 years pass, and a forensic audit finds that the Treasurer had fraudulently paid themselves for expenses that they did not incur. A Member would have 15 days from the date of his knowledge of the fraud coming to light to lodge a Complaint.

9. Complaints against an L.A. Member may only be lodged by another L.A. Member. Where the Member complained against is a Member of the Branch and the L.A., any penalties imposed will apply in respect of both the Branch and the L.A.
 - i. If the Member has Dual Membership, then a Complaint can be laid by a Branch or LA Member against same.
 - ii. LA Member only - Non LA Member can forward letter of Complaint to LA President similar to the Bar Steward actions and the Branch President.

NOTE: The possibility of a Branch Member lodging a Complaint against another Member who is both a Legion Member and a Member of the Ladies' Auxiliary. The Complaint can go ahead. They are lodging a Complaint against another Member, regardless, if the actions of the lady were done while she was performing duties for the Auxiliary.

GUIDELINES FOR THE COMPLAINT COMMITTEE

These guidelines are not intended to be exhaustive and are provided to assist the Complaint Committee in carrying out its duties. All Members of the Committee should carefully study the requirements of the Complaint Procedure as outlined in Article III of the General By-Laws. The use of the Complaint Committee Worksheet (Command Website – Members Resources) is a document that will assist the Committee and its endeavors in conducting the Hearing.

INTRODUCTION OF PROCESS BY COMPLAINT COMMITTEE CHAIR

- 1) The only persons that should be in the room while the hearing is taking place are the Committee Members, the Complainant, the Complained against Member, Party agent(s), a Recording Secretary, and a Witness, if testifying.
- 2) Introduction of the Complaint Committee Chair, Committee Members, and the Recording Secretary.
- 3) The Chair shall:
 - Determine if the Parties are present, and if not, confirm that the missing Party was properly served Notice pursuant to S. 308. e. GBL. before deciding on what action to take, or whether to continue the Hearing.
 - Inform the Parties to the Complaint that the Complaint Committee shall hear the evidence in support of the Complaint first as well as the introduction of the witnesses (if applicable) and their testimony. The Complained against Member will then have the opportunity to introduce evidence and to call witnesses (if applicable).

- Inform the Parties to the Complaint that once a witness has been heard, the other side will have an opportunity to cross-examine.
- If Agent(s) are present, inform both sides that only the Member **or** the Agent has the right to introduce the evidence and cross-examine witnesses and to call witnesses. An Agent cannot be called as a witness.
- Inform the Parties to the Complaint that the evidence at the Hearing will be given under oath or affirmation (Member's choice) and this will be recorded.
- Inform the Members that once the evidence has been submitted and witnesses heard, the Hearing will close, and the Complaint Committee will make their final decision thereafter which will be served to both Parties to the Complaint within 30 days of the Hearing date.

COMPLAINT HEARING PROCESS

1) The Chair shall:

- Read the Complaint, which **shall be restricted** to identifying the involved Parties and specifying the breach(s) wording under S. 304. a., as alleged. The Complained against Member, if present, shall be asked if they understand the nature of the Complaint and whether they admit or deny the allegation(s).
- Ask the Parties to the Complaint if they are satisfied that all formalities have been complied with in accordance with Article III GBL i.e. Notices, timing, Constitution of Committee, etc. Note any objections and at this juncture the Committee may be required to decide whether to proceed, dependent upon the circumstances advanced.
- Invite the Parties to come forward and be sworn in by oath or affirmation (their choice) by the Recording Secretary. S. 309. b. GBL.

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?

Answer: I do.

OR

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?

Answer: I do.

- Invite the Complainant (or Agent) to make an opening statement including the nature of the Complaint and present their evidence including the calling of witnesses.
- Advise the Complainant, in presenting their personal testimony evidence, will be exposed to cross- examination in the same manner as other witnesses.
- Permit witnesses to be called one at a time and they must leave the room after they have completed their testimony excluding the Parties.
- Have each witness identify themselves and be sworn or affirmed by the Recording

Secretary before giving their testimony.

- Number and date any exhibits produced after they have been identified and their relevance verified.
- Rule on the relevance of testimony and avoid permitting hearsay evidence not held in the presence of the Complained against Member.
- Make personal notes of the evidence heard and ensure that the Members do likewise.
- Invite the opposing Party to exercise their right of cross-examination once the Witness has given their evidence in chief.
- Invite the Complained against Member (or Agent) to make an opening statement and present their evidence including the calling of witnesses after the Complainant has completed the presentation of evidence in support of the Complaint.
- Advise the Complained against Member, although not compelled to testify, that they may give evidence which is also open to cross-examination.
- Ask the Complainant and Complained against Member if they have anything further to add in closing statements that they feel relevant to the matter before the Committee.
- Advise the Parties that all testimony and other evidence will be reviewed including any objections, in arriving at a decision which will be served on the Parties in due course.
- Will then close the Hearing and excuse all Parties and Agents, if applicable.

CONCLUSION

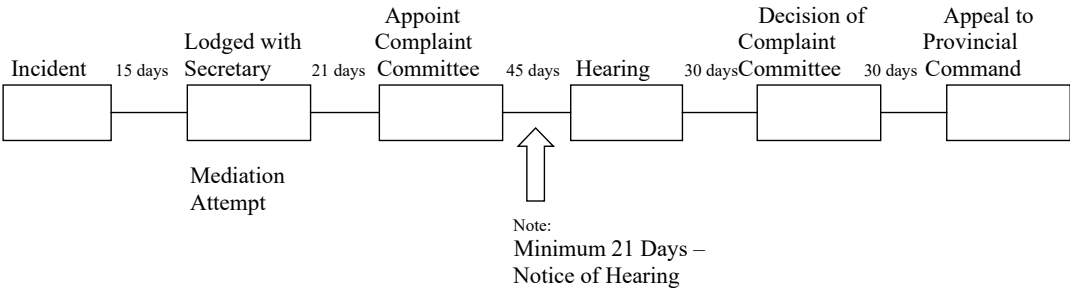
After reviewing all the material and testimony presented, the Complaint Committee must render a decision (see Hearing Committee Disposition/Decision and Article III, Section 311). The decision should be recorded for the purpose of the recording secretary as well as written and signed for the purpose of the Secretary. The use of the Complaint Committee Worksheet (available on the Provincial Website under Forms & Manuals, Constitution & Laws) assists in recording the decision and is available for use by the Secretary.

- a. The Complaint Committee decision will be forwarded to the Secretary of the Branch or Executive Director and served on both Parties within 30 days of the Hearing.
- b. The Complaint Committee Members should not discuss the decision with the parties to the Complaint, .
- c. The complete file including tapes and documents remains the property of the level at which the applicable Hearing was convened.

NOTE

Complaint Hearings are similar in structure and proceedings to those applied in a court of law respecting the presentation of testimony and evidence.

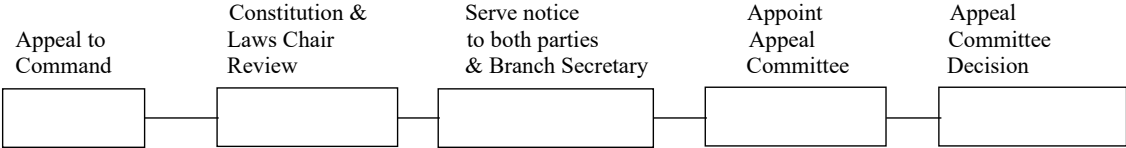
COMPLAINT PROCEDURE LINE LOGIC



Challenge
 One Challenge at least 10 days prior to the Hearing by registered mail, etc.
 The Chair cannot be challenged.

Delay of Hearing
 The Hearing may be deferred up to 60 days with just Reason and proper written notification to the Chair.

APPEAL TO COMMAND



Sample of Notification Letter of Properly Lodged Complaint

Date

WITHOUT PREJUDICE

Certified or Registered Mail or Priority Post

Delivery of the document to member personally with a witness

Name

Address

Town/City, ON Postal Code

RE: COMPLAINT LODGED AGAINST YOU BY COMRADE

BRANCH NO. _____

We enclose a duplicate copy of complaint lodged against you by Comrade _____. The President has determined that the above noted complaint was properly lodged.

Comrade _____, President has advised that effective immediately you are hereby removed from all offices and positions held by you and deprived of clubhouse privileges, pending the final disposition of the complaint as per Article III Section 304 (h) of the General By-Laws. **(Note: This is an option, not mandatory)**

Comrade _____ has also indicated that mediation will not be offered to either party and the complaint will proceed as required under Article III, of the General By-Laws. You will be notified in due time of the Complaint Hearing date, time and place.

Regards,

Secretary, Branch _____

Sample of Mediation Letter

(For Mediator)

Date

Name

Address

City, ON Postal Code

Dear Comrade _____

RE: COMPLAINT LODGED AGAINST COMRADE , BY _____
COMRADE _____ , BRANCH NO. _____

In accordance with Article III Section 306 of The Royal Canadian Legion General By-Laws, Comrade _____ President of Branch_ has requested mediation in the above noted complaint and both parties have agreed.

I have enclosed a copy of the complaint and subsequent correspondence to assist you with the mediation, please note that any agreement **must be in writing and signed by both parties and yourself** with a copy to our office.

As per the President, the mediation dealing with the complaint will take place as follows:

Date: _____

Place: The Royal Canadian Legion, Br.
Address
City, ON Postal Code

Time:

Please note: that this meeting is held with the mediator and the two parties only. There will be no calling of witnesses for either party.

Regards,

Secretary, Branch _____

Cc:

Date Sample of Hearing Notification Letter
(To a member against whom a complaint has been lodged)

Certified or Registered Mail or Priority Post

Delivery of the document to the member personally with a witness

Name

Address

Town/City, ON Postal Code

RE: COMPLAINT LODGED AGAINST YOU BY COMRADE _____, BR.# _____

Comrade _____ President of Branch # _____, has appointed a Complaint Committee to deal with the complaint. Please note, Comrade _____ has advised mediation will not be offered to either part as per Article III, section 306 (a) of the General By-Laws.

The Complaint Committee will consist:

| | |
|---------------|----------------|
| Comrade _____ | Chair |
| Comrade _____ | Member |
| Comrade _____ | Member |
| Comrade _____ | Waiting Member |
| Comrade _____ | Waiting Member |

The hearing dealing with the complaint will take place as follows:

| | |
|--------|--|
| Date: | |
| Place: | The Royal Canadian Legion, Br. Address Town / City, ON Postal Code |
| Time: | A.M./P.M |

At least ten days prior to the hearing, you may have the privilege of one peremptory challenge of any one of the members. This must be prepaid certified or registered mail or courier or documented personal service with a witness. Comrade _____ is afforded the same privilege. The Chair may not be challenged, and no challenge will be allowed at the hearing.

The Chair for due cause and with notification may postpone the hearing for a period of 60 days from the date originally scheduled.

The Complaint Committee shall hear the evidence in support of the complaint in your presence and that of your agent (if desired) and you or your agent shall have the right to introduce evidence, cross-examine witnesses and call witnesses on your behalf. Comrade _____ shall have similar rights.

If you do not appear at the hearing without due cause and notification, the Committee may proceed in your absence.

Please be advised that you have the right to be heard and to call witnesses on your behalf.

Regards,

Secretary, Branch _____

cc: Complaint Committee

Sample of the Hearing Committee Decision Letter

Date

WITHOUT PREJUDICE

Certified or Registered or Priority Post

Or Delivery of the document personally in the presence of a witness

Name

Address

City, ON Postal Code

RE: COMPLAINT LODGED AGAINST YOU BY COMRADE _____

BRANCH NO. _____

After careful deliberation and examination of all evidence in the above noted complaint, the Complaint Committee has rendered its decision as follows:

The Committee finds that you have violated Section 304 _____ and imposes the following disposition in accordance with Section 311.

Examples: Reference the Dominion By-Laws – Article III

- a. *Deprivation of the clubhouse privileges for a period of 12 months*
- a.iii *Removal from any office or position held and prohibition from running/or and holding any office, or position for a period of 12 months.*

Regards,

Secretary, Branch _____

cc: