



National
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ANNUAL REPORT

of the
Judge Advocate General



A REPORT TO THE MINISTER OF
NATIONAL DEFENCE ON THE
ADMINISTRATION OF MILITARY JUSTICE
FROM 1 APRIL 2011 TO 31 MARCH 2012



Canada

Errata

At page 23 of the JAG Annual Report 2011-2012, the charge of “Scandalous conduct by officers” under section 92 of the *National Defences Act* (NDA) was entered in error. This charge was never laid during the reporting period. The error is due to having entered a charge of “Cruel or disgraceful conduct” under section 93 of the NDA as a charge under section 92.

Accordingly, the number of charges for “Scandalous conduct by officers” under section 92 of the NDA should read as 0, instead of 1, and the number of charges for “Cruel or disgraceful conduct” under section 93 of the NDA should read as 5, instead of 4.



Office of the Judge Advocate General
National Defence Headquarters
101 Colonel By Drive
Ottawa, ON K1A 0K2
Tel: (613) 992-3019
CSN: 842-3019
Fax: (613) 995-3155
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Judge Advocate General



Juge-avocat général

National Defence
Headquarters
Constitution Building
305 Rideau Street
Ottawa, Ontario
K1A 0K2

Quartier général de la
défense nationale
Édifice Constitution
305, rue Rideau
Ottawa (Ontario)
K1A 0K2

Minister of National Defence
National Defence Headquarters
101 Colonel-By Drive
Ottawa ON K1A 0K2

Dear Minister,

It is my honour to present you the thirteenth Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Forces, made pursuant to section 9.3 of the *National Defence Act*. This report covers the period 1 April 2011 to 31 March 2012.

Yours truly,

A handwritten signature in blue ink, reading "Blaise Cathcart".

Blaise Cathcart, Q.C.
Major-General
Judge Advocate General

JAG ANNUAL REPORT | 2011-2012

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Introduction

It is with great pleasure that I report on the administration of military justice in the Canadian Armed Forces (CAF) for the period 1 April 2011 to 31 March 2012. This is my second report since my appointment as the Judge Advocate General (JAG).

During the reporting period a total of 27 legal officers were deployed in support of domestic and international operations, such as Op NANOOK, a sovereignty operation conducted annually in Canada's North, the transition from CAF combat mission in Kandahar, Afghanistan, to the training mission in Kabul, and the conduct of Op MOBILE the air and maritime missions to implement United Nations Security Council Resolutions in respect of Libya. For these and other operations, all members of the Office of the JAG contributed to the provision of responsive, operationally focussed and solution oriented legal advice to the CAF and the Department of National Defence.



The Office of the JAG also promoted responsible development of, and positive change to, Canada's military justice system by supporting the Government of Canada in two legislative initiatives. On 29 November 2011, Bill C-16, the *Security of Tenure of Military Judges Act* came into force, enhancing the institutional independence of military judges who preside at courts martial. On 7 October 2011, Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, was introduced in Parliament, and was still at first reading at the end of the reporting period. This Bill represents an attempt to further promote values of fairness and efficiency within the military justice system.

During the reporting period, the Office of the JAG demonstrated its commitment to proactive military justice oversight by

providing administrative support to the Honourable Patrick J. Lesage who, as the Second Independent Review Authority, commenced a statutorily mandated review of key provisions of the *National Defence Act*.

These efforts and other legislative and policy initiatives are described in greater detail in Chapter IV of this report.

It was a historic year for the Office of the JAG. In October 2011, we celebrated the 100th anniversary of the appointment of the first Canadian Judge Advocate General. This historic milestone is discussed in Chapter II, which highlights the last 100 years of JAG provision of legal advice in matters related to military law.

Finally, during this reporting period, Sir Graham Day, O.N.S., Q.C., LL.B., LL.D. was appointed as the Colonel Commandant of the Legal Branch. We are fortunate to have such an esteemed lawyer and business person as a member of the JAG family.

I am proud of the efforts of all members of the Office of the JAG as they continue to assist me in my role as superintendent of the administration of military justice and in the provision of legal advice and services to the Governor General, the Minister, the Department of National Defence and the CAF across the full spectrum of military law, at home and abroad.

FIAT JUSTITIA!

CHAPTER I

WHO WE ARE: THE OFFICE OF THE JAG

The Judge Advocate General (JAG)

The JAG is appointed by the Governor in Council to act as legal adviser to the Governor General, the Minister of National Defence, the Department of National Defence (DND) and the Canadian Armed Forces (CAF) in matters relating to military law. "Military law" is the broad legal discipline encompassing all international and domestic law relating to the CAF, including its governance, administration and activities. In addition, the JAG also has a statutory mandate to superintend the administration of military justice in the CAF. In this capacity, the JAG conducts regular reviews of the military justice system and submits annual reports to the Minister on the administration of military justice in the CAF.

Office of the Judge Advocate General

The Office of the JAG assists the JAG in the performance of his duties and functions. It is composed of regular and reserve force legal officers, some CAF members from other military occupations, and civilian personnel. All legal officers serving in the Office of the JAG are fully qualified lawyers, members in good standing of their respective provincial or territorial law societies, and are officers ranging in rank from Captain/Lieutenant (Navy) to Major-General/Rear-Admiral.

The *National Defence Act* (NDA) provides that the JAG is responsible to the Minister in the performance of the JAG's duties and functions. Under the *Queen's Regulations and Orders for the Canadian Forces*, every

legal officer whose duty is the provision of legal services to the CAF shall be posted to a position established within the Office of the JAG, and the JAG has command over all of these officers. The duties of these legal officers are determined by or under the authority of the JAG and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer. Thus, the requirements of the NDA and regulations ensure that legal officers are able to provide independent legal advice.

Structurally, the Office of the JAG is composed of seven sub-organizations: the Canadian Military Prosecution Service, the Defence Counsel Services, and the following five divisions, which are each headed by a Deputy Judge Advocate General (DJAG): Military Justice, Administrative Law, Operational Law, Regional Services, and Chief of Staff. The head of each of these seven sub-organizations holds the rank of Colonel/Captain (Navy).

Director of Military Prosecutions (DMP)

The Director of Military Prosecutions (DMP) is the senior military prosecutor in the CAF, responsible for the conduct of all prosecutions at courts martial, and acts as counsel for the Minister on appeals to the Court Martial Appeal Court of Canada (CMAC) and the Supreme Court of Canada. The DMP also provides legal advice in support of investigations conducted by the Canadian Forces National Investigation Service, a military police service that reports to the CF Provost Marshal.

“The JAG is appointed by the Governor in Council to act as legal adviser to the Governor General, the Minister of National Defence, the Department of National Defence (DND) and the Canadian Armed Forces (CAF) in matters relating to military law.”

The DMP acts independently from the Office of the JAG and other CAF and DND authorities when exercising his powers, duties and functions but remains under the general supervision of the JAG, who may issue written general instructions or guidelines in respect of prosecutions. Consistent with his role as superintendent of the military justice system, the JAG may also issue instructions or guidelines in respect of a particular prosecution, which must be made public unless the DMP considers that it would not be in the best interest of the administration of military justice to do so.

Defence Counsel Services (DCS)

Defence Counsel Services is headed by the Director of Defence Counsel Services (DDCS). The DDCS provides, supervises and directs the provision of legal services to persons who are liable to be charged, dealt with and tried under the Code of Service Discipline (CSD). In the past, the rank of the DDCS had been Lieutenant-Colonel. On 10 August 2010, however, the position of DDCS was established at the rank of Colonel and the incumbent

promoted to that rank. This better reflects the independence and importance of the position and the DCS.

Although the DDCS acts under the general supervision of the JAG, he is independent of the Office of the JAG and other CAF and DND authorities when carrying out a wide array of prescribed duties and functions that pertain to the defence of clients at many stages of the investigative and judicial processes. The JAG may issue written general instructions or guidelines in respect of defence counsel services. The DDCS is required to make the general instructions or guidelines available to the public. However, unlike with the DMP, the JAG has no authority to issue instructions or guidelines in respect of a particular defence case.

Administrative Law Division

In very broad and general terms, administrative law is a branch of public law focused on the legal regulation of governmental power, particularly with respect to the state's (and its institutions) relations with individual citizens.



Legal Officers settling claims in an operational theatre and dealing with administrative law matters.

Administrative decision-making pervades every aspect of the CAF, from the ministerial level to the commanding officer. The purpose of military administrative law is to ensure that the decisions affecting CAF members are made fairly by those who have the legal authority to do so and legal officers working in the Administrative Law Division are responsible for advising on legal matters pertaining to the administration of the CAF. Given the size and complexity of the CAF and the multitude of administrative decisions made each day, ensuring that these decisions are made in accordance with legislation and the rule of law is a vital task.

The Administrative Law Division is divided into three directorates namely, Director of Law /Military Personnel (DLaw/Mil Pers), Directorate of Law /Administrative Law (DLaw /Admin Law and Director of Law /Compensation Benefits Pensions and Estates (DLaw/CBP&E), all dealing with the legal aspects of such matters as compensation and benefits, pensions and estates, grievances, administrative investigations and military personnel management. The Division also assists the Chief Electoral Officer in administering federal elections between and during federal elections in particular, by providing a legal officer (the DND/CF Coordinating Officer) to assist in facilitating CAF electors to exercise their right to vote wherever they serve or are deployed in Canada or abroad.

Operational Law Division

The Operational Law Division is responsible for providing legal support to the CAF and DND in relation to operational law. Operational law is that body of domestic and international law that applies to the conduct of all phases of a CAF operation at all levels of command. This includes advising on current, and preparing for future, operations conducted in Canada and abroad. Additionally, the Operations Division oversees all legal officers



Reserve force legal officers participate in training and exercises and the Office of the JAG draws upon their knowledge and experience.

deployed on operations, and through these officers provides legal support to deployed CAF elements with regard to military law, including military justice.

Regional Services Division

Regional Services legal offices are located at CAF Bases and Wings throughout Canada, as well as in the United States and Germany. Through these offices, the Regional Services Division is responsible for providing general legal support and advice on all areas of military law, including advice on military justice, administrative law and operational law matters, to the chain of command.

Chief of Staff Division

The Chief of Staff (COS) Division is responsible for providing internal support and corporate administrative services to the Office of the JAG. This includes military personnel management, financial services, information management, library services and training, as well as overseeing all civilian staff in the Office of the JAG.

“Military law” is the broad legal discipline encompassing all international and domestic law relating to the CAF, including its governance, administration and activities.”

Military Justice Division

The Military Justice Division is charged with leading proactive change in the military justice system. It comprises two directorates: Military Justice Operations and Military Justice Strategic. Military Justice Operations is responsible for

the military justice system. Military Justice Strategic is responsible for the development and implementation of a strategic military justice vision that will allow the Office of the JAG and the CAF to anticipate and respond to external and internal challenges while bringing positive change to the military justice system.



JAG officers provide a full spectrum of legal support to HMC Ships.



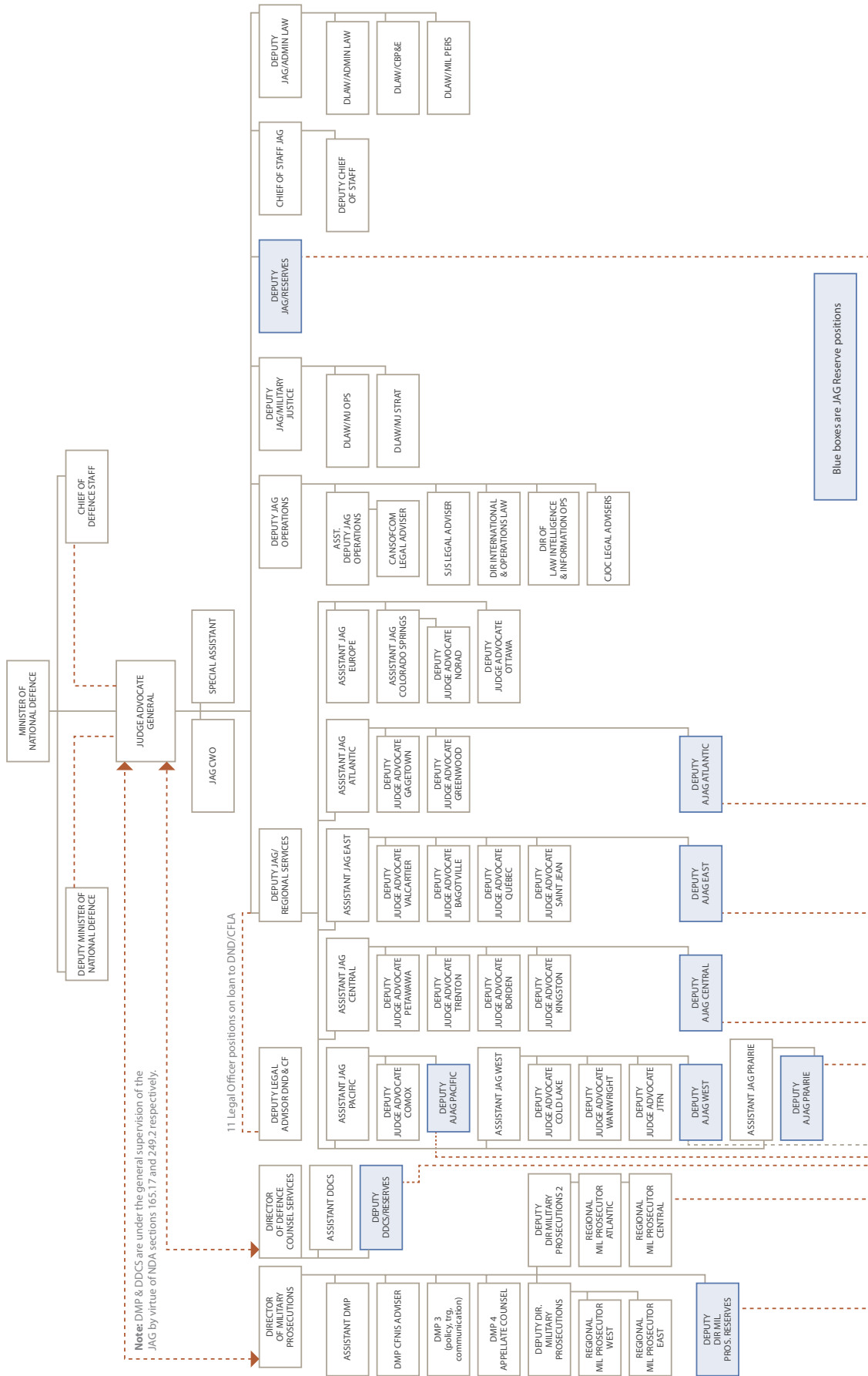
The Office of the JAG benefits from the experience of our allies. Exchange officer Major Highfill, United States JAG Corps, was posted to the Canadian Forces Military Law Centre.

supporting the JAG in key aspects of the superintendence of the administration of military justice, the provision of legal advice to the CF Military Police Group HQ and the day-to-day operation of

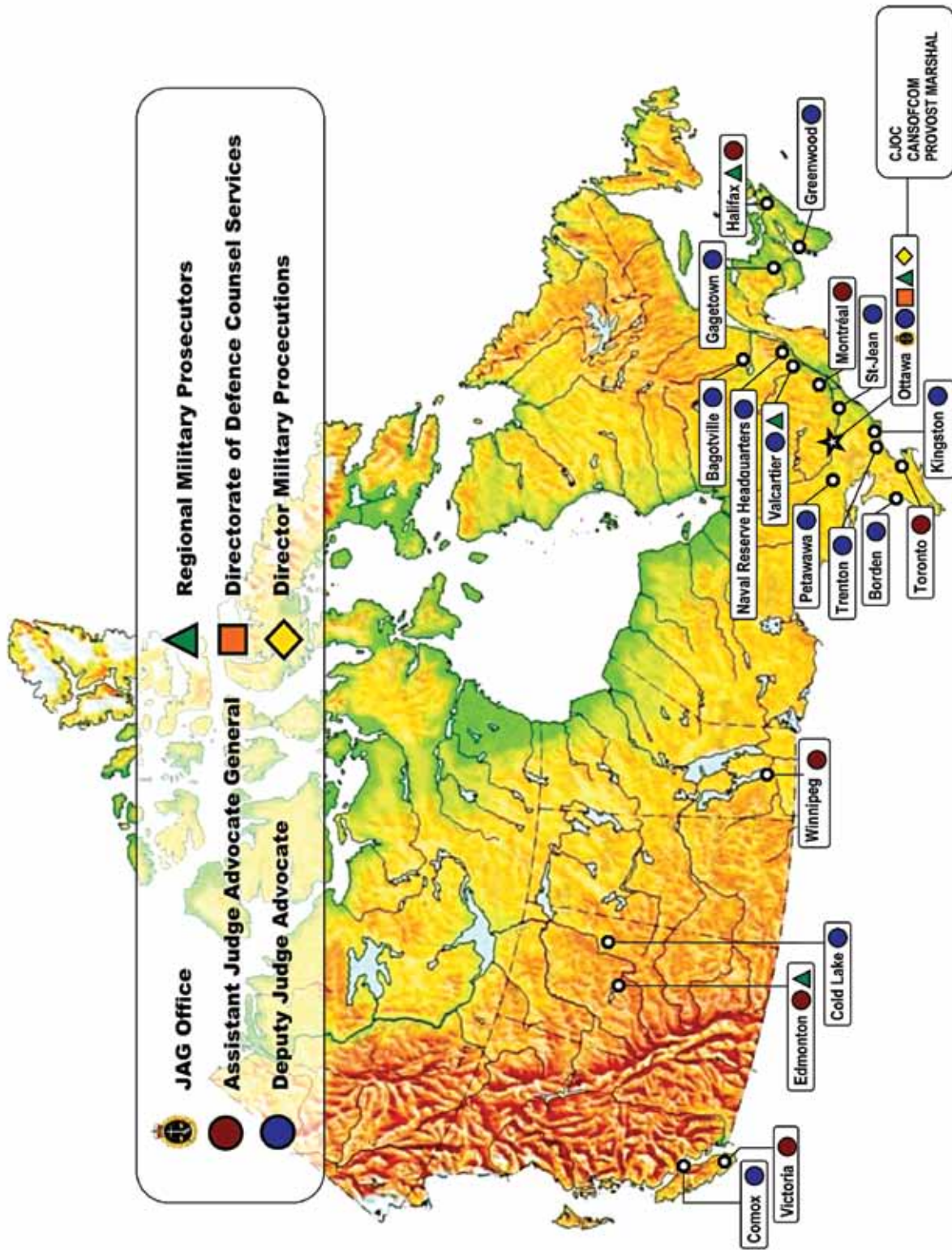
Legal Officers Serving Outside the Office of the JAG

In addition to the legal officers serving in the above-mentioned organizations, a number of legal officers serve outside the Office of the JAG. This includes those working at the Canadian Forces Military Law Centre (CFMLC) in Kingston, Ontario – the CAF's military legal education organization – the Office of the Legal Adviser to the Department of National Defence and Canadian Forces (DND/CF LA) – a Department of Justice Legal Services Unit – in Ottawa, the Privy Council Office and the Department of Foreign Affairs and International Trade.

ORGANIZATION CHART (DIRECTOR AND FIELD OFFICE LEVEL) OFFICE OF THE JUDGE ADVOCATE GENERAL



CANADIAN OFFICES OF THE JUDGE ADVOCATE GENERAL



CHAPTER II

100th ANNIVERSARY OF THE APPOINTMENT OF THE FIRST JAG

In 2011, the Office of the Judge Advocate General commemorated the 100th anniversary of the appointment of Canada's first JAG.

The history of the Judge Advocate General (JAG) and the Canadian Armed Forces (CAF) Legal Branch, in many ways, traces Canada's history over the past 100 years. In the early twentieth century, Canada was growing rapidly and seeking to assert itself as an independent nation. In military matters, the participation of so many Canadian volunteers in the Second Boer War had demonstrated that the young dominion was capable of fielding an effective fighting force. This achievement responded to a growing desire among Canadians for more control over their own armed forces. As part of this trend, the government of Wilfrid Laurier determined that Canada needed to rely on its own distinct source of military legal advice. On 1 October 1911, therefore, Colonel (Col) Henry Smith was appointed as Canada's first JAG.

Col Smith, who was 75 years old at the time of his appointment, first joined the Militia in 1862. He had served on active service during the Fenian raids and the Northwest Rebellion, and he maintained a law practice in Cobourg, Ontario. The original JAG's mandate included maintaining court martial records, advising courts martial on matters of law and procedure, advising on the revision of the Militia Law and regulations, and providing legal advice to the Militia Department. One of the JAG's principal responsibilities was conducting legal reviews of courts martial, which proved to be a daunting task with the outbreak of the First World War.

On 30 January, 1918, Henry Smith, by then Major-General, retired from his position and was replaced by Lieutenant-Colonel (LCol) Oliver Mowatt Biggar. That same year, the Legal Branch was officially established to provide the JAG with a permanent staff of military lawyers and support personnel capable of assisting him in fulfilling his duties. These duties included advising the Militia Council and Department of Militia and Defence on questions of law and procedure, advising on the amendment of regulations and orders, conducting investigations into alleged breaches of discipline, directing the distribution of the estates of deceased soldiers, and handling the negotiations for the purchase and sale of department property.

With demobilization in 1919 the size of the Legal Branch diminished considerably. In 1920, Col Biggar resigned as JAG to become Canada's elections officer, and was replaced by LCol Reginald Orde. For much of the inter-war period LCol Orde was Canada's only legal officer. Despite the limited resources initially available to him, LCol Orde was responsible for militia, naval and air force law, and providing legal services with respect to discipline, pay and pensions, revising regulations and providing legal advice on general matters pertaining to the Department of National Defence (DND). In addition, one of the JAG's principal activities was promoting legal education within the armed forces, to instil a better understanding of the nature and importance of the military justice system.

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For the commemoration of the JAG Centennial, a dinner gala was held at the Ottawa Convention Center, with the attendance of the Governor General of Canada and other distinguished guests.

“At the height of the Cold War, Canada had thousands of military personnel stationed in Europe. Maintaining such a presence abroad inevitably led to numerous and varied legal challenges ...”



A ceremony at Major-General Henry Smith's gravesite in Cobourg, Ontario for the unveiling of a commemorative marker to Major General Smith.

The outbreak of the Second World War once again saw a dramatic increase in the size of the Legal Branch and the scope of its responsibilities. Over the course of the war, membership in the Legal Branch grew from one legal officer to over two hundred at its peak. These legal officers, stationed across Canada and overseas, handled legal issues related to discipline and military justice, dealt with claims against the Crown, and provided legal aid to deployed members of the Canadian military in matters of family law, estates, real estate, and, occasionally, criminal and tort law. In the immediate aftermath of the war, legal officers were also involved in the investigation and prosecution of war crimes, both through courts martial and international tribunals.

One of the keystone events in the development of Canadian military law was the passage, in 1950, of the *National Defence Act* (NDA). Replacing the former *Militia Act*, *Naval Services Act*, and *Royal Canadian Air Force Act*, the NDA introduced new legislative provisions for the Canadian Armed Forces and, for the first time, prescribed a Code of Service Discipline common to all three services. To acknowledge many statutory duties

and functions, the NDA also enshrined in statute for the first time the position of the JAG as a Governor in Council appointment.

At the height of the Cold War, Canada had thousands of military personnel stationed in Europe. Maintaining such a presence abroad inevitably led to numerous and varied legal challenges, including issues related to the status of the posted Canadian troops and the property on which they were housed and trained, discipline and military justice, international law, and the internal administration of the Canadian Armed Forces. To deal with these issues, the Office of the Judge Advocate General maintained a sizable presence in Europe, at the major CAF base in Lahr, West Germany.

In addition to contributing to the North Atlantic Treaty Organization's efforts during the Cold War, the post-war period brought out a new kind of operation for the CAF, one for which Canada was to become internationally recognized: peacekeeping. Legal officers were involved in the first United Nations (UN) peacekeeping force ever deployed, to the Suez, and have been involved with UN missions ever since, including deployments in Cyprus, Congo, Sudan and the Former Yugoslavia.

The tragic events that occurred during the UN operation in Somalia in 1993 gave rise to an intensive process of review of the CAF's disciplinary and military justice processes. In addition to the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, which focused specifically on the incidents that took place during the operation, the late Right Honourable Brian Dickson, former Chief Justice of Canada, led a broader systematic review of military justice and military police investigations. Many of the recommendations in the Dickson report were then incorporated into Bill C-25 (S.C. 1998, c.35), which received royal assent in 1998 and represented the most extensive review of the military justice system since the enactment of the NDA in 1950.

The attacks of 11 September, 2001, and the beginning of Canada's involvement in Afghanistan brought with them a new set of legal challenges. The Office of the JAG has been closely involved with the development and execution of all Canada's military operations in the past decade. Since 2002, legal officers have been constantly deployed to Afghanistan, providing on-the-ground legal support to Canadian and NATO troops, mentoring Afghan military and police personnel on legal issues, and helping to develop Afghanistan's military justice system. Legal officers also supported Canada's contribution to the coalition Naval Task Group in the Persian Gulf and the Air Force's provision of logistical support, and reconnaissance and surveillance, in the region. In addition, in 2011 and 2012, numerous legal officers were deployed on Operation MOBILE, Canada's contribution to the NATO-led mission to protect civilians and civilian property in Libya.

For over a century, the JAG and CAF legal officers have been committed to providing Canada's armed forces with independent, operationally focused, solution oriented legal advice and services across the full spectrum of military law. The Office of the JAG is proud to carry this tradition into the future.

The chronological list for Canadian Judge Advocates General is as follows:

JUDGE AVOCATES GENERAL	DATES
1. Major-General Henry Smith	1911-1918
2. Colonel Oliver Mowat Biggar	1918-1920
3. Brigadier-General Reginald John Orde	1920-1950
4. Brigadier-General William J. Lawson, CD, Q.C.	1950-1969
5. Brigadier-General Harold A. McLearn, CD, Q.C.	1969-1973
6. Brigadier-General James M. Simpson, CD, Q.C.	1973-1976
7. Major-General John Patterson Wolfe, CD, Q.C.	1976-1982
8. Brigadier-General Frank Karwandy, CD, Q.C.	1982-1986
9. Brigadier-General Robert L. Martin, OMM, CD	1986-1990
10. Commodore Peter R. Partner, CMM, CD	1990-1993
11. Brigadier-General Pierre G. Boutet, CMM, CD	1993-1998
12. Major-General Jerry S.T. Pitzul, CMM, CD, Q.C.	1998-2006
13. Brigadier-General Ken Watkin, OMM, CD, Q.C.	2006-2010
14. Major-General B. Blaise Cathcart, OMM, CD, Q.C.	2010 – Present

The Commemoration of the 100th Anniversary of the Appointment of Canada's First JAG

A 100th Anniversary Planning Committee was struck for the planning of the commemoration of the Centennial of the appointment of Canada's First JAG. The celebrations were focussed on the position of Judge Advocate General and limited to this event in recognition of the upcoming centennial of the legal branch in 2018. A dinner gala was held on 6 October 2011 at the Ottawa Convention Center, attended by the Governor General

“On 11 May 2011, the Office of the JAG was proud to welcome its new Colonel Commandant, Sir Graham Day, O.N.S., Q.C., LL.B., LL.D.”

of Canada, His Excellency the Right Honourable David Johnston, as guest of honour and other distinguished guests. This celebratory mixed dining-in was held in conjunction with a national Continuing Legal Education Program for all legal officers. As well, a ceremony was held on 31 May 2012 at Major-General Henry Smith's gravesite in Cobourg, Ontario in presence of 150 legal officers and other guests for the unveiling of a commemorative marker to Major-General Smith.

New Colonel Commandant

On 11 May 2011, the Office of the JAG was proud to welcome its new Colonel Commandant, Sir Graham Day, O.N.S., Q.C., LL.B., LL.D.

A native of Halifax and a graduate of Dalhousie Law School, Sir Graham has had a long and remarkable career in business. He has served as chairman and/or CEO of numerous Canadian and multinational companies, including Sobeys Inc, British Aerospace (now BAE Systems plc), Scotia Investments Ltd, Cadbury Schweppes plc, PowerGen plc (a position he assumed at

the request of Lady Margaret Thatcher) and The Rover Group plc. He is also the former Lead Director and Executive Committee Chair on the Board of Directors of the Bank of Nova Scotia. He is currently counsel to the Atlantic Canada law firm, Stewart McKelvey. In 1989, he was knighted by Queen Elizabeth II in recognition of his services to British industry.

Sir Graham's involvement with the CAF is equally distinguished. Commissioned into the 14th Regiment, Royal Artillery of Canada (RCA) in 1961, Sir Graham taught military law to non-commissioned members (NCMs) and officer candidates throughout the early to mid 1960s. In 1964, he transferred to the Victoria Rifles of Canada in Montréal. In 2005, on the recommendation of the Chief of the Defence Staff, the Minister of National Defence appointed Sir Graham to be the Honorary Colonel of the West Nova Scotia Regiment, a position he held until 2011.



Colonel Sir Graham Day, Colonel Commandant of the JAG Branch, addresses an audience of military and civilian lawyers in Halifax, December 2011.

CHAPTER III

OUR MILITARY JUSTICE SYSTEM

Canada's military justice system is a separate and parallel system of justice that exists within and forms an integral part of Canadian law. It shares many of the same underlying principles with the civilian criminal justice system, and it is subject to the same constitutional framework including the *Canadian Charter of Rights and Freedoms*. Indeed, the military justice system is expressly recognized in the *Charter*. It is committed to fairness, equality before the law, and the fundamental values of justice and due process. The necessity and legitimacy of the system have, on several occasions, been affirmed by the Supreme Court of Canada (SCC).

Importantly, where the military justice system differs from its civilian counterpart is in its objectives. In addition to ensuring that justice is administered fairly and the rule of law is respected, the military justice system is also designed to promote the operational effectiveness of the Canadian Armed Forces (CAF) by contributing to the maintenance of discipline, efficiency, and morale. These dual objectives of discipline and justice give rise to many of the substantive and procedural differences that properly distinguish the military system from the civilian system.

The ability of Canada's military to operate effectively depends on the ability of its leadership to instil and maintain discipline. While training and leadership are central to the maintenance of discipline, the chain of command must also have a legal mechanism that it can employ to investigate and sanction disciplinary breaches that require a formal, fair, and prompt response. As the SCC observed in 1992, in *R. v. Généreux*, "breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. [...] There is thus a need for separate tribunals to enforce special disciplinary standards in the military." The military justice system is designed to meet those unique needs articulated by the SCC.

THE STRUCTURE OF THE MILITARY JUSTICE SYSTEM

Code of Service Discipline and Service Offences

The Code of Service Discipline (CSD), set out at Part III of the *National Defence Act* (NDA), is the foundation of the Canadian military justice system. It sets out disciplinary jurisdiction and describes service offences that are essential to the maintenance of discipline and effectiveness. It also sets out the punishments, powers of arrest, and the organization and procedures for service tribunals, appeals, and post-trial review.

The term "service offence" means "an offence under the *National Defence Act*, the *Criminal Code*, or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline." Thus, service offences include many offences that are unique to the profession of arms, such as disobedience of a lawful command, absence without leave, and conduct to the prejudice of good order and discipline, in addition to more conventional offences that are created

Before proceeding to court martial, charges are reviewed by military prosecutors to determine whether there is a reasonable prospect of conviction, and whether it is in the public interest to proceed.

“The summary trial is the most commonly used form of service tribunal. During the reporting period, there were 1423 summary trials, representing 96% of all service tribunals.”

by the *Criminal Code* and other Acts of Parliament. The diverse scope of service offences that fall within the CSD permits the military justice system to foster and promote the dual ideals of discipline and justice within the CAF.

Members of the Regular Force of the CAF are subject to the CSD at all times and in all places. Additionally, members of the Reserve Force are subject to the CSD in circumstances specified under the NDA. Civilians may also be subject to the CSD in limited circumstances.

Investigations and Charge Laying

Where there are reasons to believe that a service offence has been committed, an investigation is conducted to determine whether there may be sufficient grounds to lay a charge. If the complaint is of a serious or sensitive nature, the Canadian Forces National Investigation Service (CFNIS) will examine the complaint and investigate as appropriate. Otherwise,

investigations are conducted by Military Police or by non-Military Police CAF members at the unit level.

An officer or non-commissioned member having authority to lay a charge is required to obtain advice from a legal officer from the Office of the Judge Advocate General (JAG) before laying a charge in respect of an offence that is not authorized to be tried by summary trial under regulations, is alleged to have been committed by an officer or a non-commissioned member above the rank of Sergeant or, if a charge was laid, would give rise to a right to elect to be tried by court martial. The legal advice shall address the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge.

Summary Trials

The summary trial is the most commonly used form of service tribunal. During the reporting period, there were 1423



A simulated summary trial with Legal Officers in support of Law Day 2011 in Halifax, for the benefit of cadets and members of the public.

summary trials, representing 96% of all service tribunals. The summary trial process usually allows for more minor service offences to be tried and disposed of by the unit.

Summary trials are presided over by commanding officers, delegated officers, or superior commanders. The commanding officer who normally exercises jurisdiction is the commanding officer of the accused person. A delegated officer is an officer to whom a commanding officer has delegated powers of trial and punishment with or without limitations. Superior commanders may try officers below the rank of Lieutenant-Colonel and non-commissioned members above the rank of Sergeant. Before presiding over summary trials, these officers must be trained in the administration of the CSD and be certified as qualified to perform these duties by the JAG.

The jurisdiction of officers presiding at summary trial over accused persons is limited by the type of offences that presiding officers may try. The disposition of charges by summary trial is also meant to occur expeditiously. Accordingly, a presiding officer may not try an accused person by summary trial unless the trial commences within one year after the day on which the service offence is alleged to have been committed.

The procedures at a summary trial are straightforward and the powers of punishment are limited in scope. This restriction on the severity of punishments reflects both the often minor nature of the offences involved, and the intention that the punishments be primarily corrective in nature. As soon as possible after a charge has been laid, an assisting officer is appointed under the authority of a commanding officer to assist the accused in the preparation of his or her case and during the trial.

All offenders found guilty at summary trial have the right to request a review of a finding and/or punishment imposed. The findings and punishment may also be reviewed on the independent initiative of a review authority. The review authority is a more senior officer in the chain of command designated by regulations. Legal advice must be obtained by the review authority before making a determination in respect of the review.

Although the summary trial is the predominant type of service tribunal, there are offences which an officer presiding at summary trial has no jurisdiction to deal with, and that must therefore be tried by court martial. Some cases may also be too serious or complex to be dealt with by summary trial. In those cases, the matter will be forwarded to the Director of Military Prosecutions, who will decide whether to prefer charges for trial by court martial.

Except for cases involving a limited number of prescribed offences whose surrounding circumstances are sufficiently minor (for example, cases of insubordinate behaviour, absence without leave, and drunkenness), or those cases where there is no jurisdiction to deal with specific offences at summary trial, an accused person, by right, will be offered an election to be tried by court martial. Before exercising this right, the accused will have the opportunity to consult with legal counsel from Defence Counsel Services before making this election. During the reporting period, accused members elected trial by court martial 55 times out of the 554 cases (9.93%) in which an election was offered. The relatively low number of elections for trial by court martial is consistent with past years, and continues to be indicative of the perceived fairness of the summary trial process.

“Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts and have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of its jurisdiction.””

Courts Martial

The court martial – a formal military court presided over by a military judge – is designed to deal with more serious offences. During the reporting period, 61 courts martial were held. Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts and have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of its jurisdiction.”

At a court martial, the prosecution is conducted by a legal officer appointed by the Director of Military Prosecution. The accused is entitled to have legal counsel appointed by the Directorate of Defence Counsel Services for no cost to the accused, or, at his or her own expense, by civilian counsel; the accused can also choose not to be represented by a lawyer.

The NDA provides for two types of court martial: General Courts Martial and Standing Courts Martial. The General Court Martial is composed of a military judge and a panel of five CAF members. The panel of CAF members is selected randomly and is governed by rules that enhance the specific character of military panels. At a General Court Martial, the court martial panel makes the finding on the facts and the military judge makes all

legal rulings and imposes the sentence. Panels must reach unanimous decisions on findings of guilty. At a Standing Court Martial the military judge sits alone and makes the findings and where the person is convicted, imposes a sentence.

Appeal of a Court Martial Decision

Decisions made at courts martial may be appealed to the Court Martial Appeal Court of Canada (CMAC), a court composed of selected civilian judges from the Federal Court of Canada and the Federal Court of Appeal, as well as civilian judges of the Superior Courts and Courts of Appeal of the Provinces and Territories designated or appointed by the Governor in Council. Both an accused tried by court martial and the Minister of National Defence may appeal to the CMAC.

CMAC decisions may be appealed to the Supreme Court of Canada on any question of law on which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.

A complete overview of military justice statistics during the 2011-2012 reporting period is provided at the Annex of this report.

CHAPTER IV

MILITARY JUSTICE: THE YEAR IN REVIEW

The 2011-2012 reporting period has been an active time for Canadian military justice, with important advancements made to improve the effectiveness and fairness of the military justice system. This chapter discusses the events and initiatives that had a significant impact on the evolution of the military justice system during the reporting period, including important court martial and appeal cases, legislative and regulatory initiatives, and policy initiatives undertaken by the Office of the Judge Advocate General (JAG).

IMPORTANT JUDICIAL DECISIONS

R v. St-Onge

The case of Ex-Private (Ex-Pte) St-Onge is notable as a court martial decision that was appealed to the Supreme Court of Canada (SCC), which ultimately upheld the military judge's original finding.

At a Court Martial in March 2008, Ex-Pte St-Onge pleaded guilty to possession of marijuana, possession of property obtained through the commission of a service offence, insubordination, and two counts of conduct to the prejudice of good order and discipline. He was sentenced to 30 days of imprisonment. Ex-Pte St-Onge appealed his conviction on possession of marijuana and his sentence to the Court Martial Appeal Court (CMAC). The CMAC allowed the appeal on the sentence, substituting a new sentence of a \$3000 fine. The majority of the court found, given that Ex-Pte St-Onge was no longer a Canadian Armed Forces (CAF) member at the time of his court martial, imprisonment was not the most appropriate and least intrusive sanction available to the military judge. One appellate judge, however, dissented. Influenced by the recent judgment of the SCC in *R. v. Nasogaluak*, the dissenting judge was not satisfied that the military judge abused his discretion

or that he erred in law. The Minister appealed the CMAC decision, as of right, to the SCC. In April 2011, the SCC adopted the reasons of the dissenting CMAC judge, overturning the CMAC decision and restoring the original sentence of 30 days of imprisonment.

R v. LeBlanc

The CMAC's ruling in *R v. LeBlanc* has led to legislative amendments to the *National Defence Act* (NDA) and the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) with respect to the security of tenure of military judges.

Corporal (Cpl) LeBlanc was convicted at Standing Court Martial on 5 February 2010 of negligent performance of military duty, and was sentenced to a \$500 fine. He appealed his conviction. On 2 June 2011, the CMAC, though dismissing Cpl LeBlanc's appeal of the guilty verdict and application for a stay of proceedings, unanimously held that the applicable provisions of the NDA and QR&O dealing with the appointment and retirement of military judges did not sufficiently respect judicial independence as required by paragraph 11(d) of the *Canadian Charter of Rights and Freedoms*. Under section 165.21 of the NDA, military judges held office for renewable five-year terms and the QR&O provided discretionary powers



The Honourable Justice Thomas Cromwell of the Supreme Court of Canada with the JAG, after Justice Cromwell's lecture to the JAG Branch during the Continuing Legal Education conference in October 2011.

“... the Bill clarifies the position and delineates the responsibilities of the Canadian Forces Provost Marshal (CFPM) and allows for a more effective resolution processes for grievances and complaints involving the Military Police.”

to the Minister of National Defence to extend the retirement age for officers, including military judges. The CMAC stated that the current scheme of five-year renewable terms for military judges had the potential to undermine the freedom of an individual military judge to decide a case without influence from others, and almost assuredly, to raise a reasonable apprehension in a reasonable and right minded person that this independence may be undermined by the external interference of the Minister. The CMAC declared certain NDA and QR&O provisions constitutionally invalid and inoperative, but suspended the declaration of invalidity and its coming into force for a period of six months to allow remedial legislation to be enacted. In response to this CMAC decision, the government introduced Bill C-16, the *Security of Tenure of Military Judges Act*, was debated in Parliament and received Royal Assent on 29 November, 2011.

R v. Wilcox

The Wilcox court martial is a notable example of the military justice system's jurisdiction over CAF members who are charged for homicides committed outside Canada.

Ex-Cpl Wilcox was originally convicted at General Court Martial in July 2009 of criminal negligence causing death and negligent performance of a military duty for events taking place on 6 March, 2007 in Kandahar Airfield (Afghanistan), where he shot a fellow soldier in the chest, thus causing his death. As a result, he was sentenced to four years imprisonment and to dismissal from Her Majesty's Service. In October 2010, the CMAC set aside the convictions and ordered a new trial, based on the agreement of the parties that the trial commenced and held by a panel of only four members had at least a potentially substantial effect on the fairness of the trial and that a new trial was

warranted. A new court martial was held and in November, 2011, Ex-Cpl Wilcox was convicted of criminal negligence causing death and negligent performance of a military duty and sentenced to four years imprisonment, this being the minimum sentence prescribed by law for the offence of criminal negligence causing death, when a firearm is used.

LEGISLATIVE INITIATIVES

The Office of the JAG played a significant role in advancing legislative initiatives as well as policy and practice initiatives during the reporting period.

Bill C-15: Strengthening Military Justice in the Defence of Canada Act

Bill C-15 is the successor to Bill C-41, which died on the order paper when Parliament was dissolved in March 2011. Like its predecessor, Bill C-15 represents the most comprehensive change to Canada's military justice system since the enactment of Bill C-25 in 1998. Based on the report of the former Chief Justice of the Supreme Court of Canada, the late Right Honourable Antonio Lamer, and the report of Standing Senate Committee on Legal and Constitutional Affairs, "Equal Justice: Reforming Canada's System of Courts Martial", the Bill's proposed amendments would further enhance the fairness of the military justice system by providing for greater independence for military judges and granting them a wider range of sentencing options, including absolute discharges, intermittent sentences and restitution. The Bill also addresses the practical needs of the military justice system by allowing for the formation of

a panel of Reserve Force military judges and reducing the distinctions based on rank when determining the composition of a court martial panel. Furthermore, the Bill clarifies the position and delineates the responsibilities of the Canadian Forces Provost Marshal (CFPM) and allows for a more effective resolution processes for grievances and complaints involving the Military Police. The Bill was introduced in the House of Commons on 7 October, 2011 and the first reading of the Bill was completed at the close of the reporting period.

Bill C-16: *Security of Tenure of Military Judges Act*

Bill C-16 (now S.C. 2011, c.22), the *Security of Tenure of Military Judges Act*, was introduced on 7 October, 2011, in response to the CMAC's judgment in the case of *R. v. LeBlanc*. In its decision, the CMAC determined that existing provisions of the NDA and QR&O regarding the appointment and retirement of military judges did not sufficiently respect judicial independence as required by paragraph 11(d) of the *Charter*. In response, the Minister of National Defence (MND) introduced Bill C-16 in order to enhance security of tenure for military judges. Bill C-16 provides that a military judge hold office during good behaviour until attaining the age of 60, unless the military judge resigns from office or is released from the CAF. By establishing clear parameters for the tenure of military judges, the Bill has enhanced their independence in a way that respects *Charter* requirements. The Bill received Royal Assent on 29 November, 2011. In addition, several key QR&O amendments were made expeditiously to respond fully and give effect to the CMAC decision in *R. v. Leblanc* and Bill C-16.

POLICY AND PRACTICE INITIATIVES

Second Independent Review Authority

Bill C-25 (S.C. 1998, c.35), *An Act to amend the National Defence Act and to make consequential amendments to other Acts*, which was passed in 1998, requires the MND to conduct an independent review of the provisions and operation of the Bill every five years, and to table a report of the review in Parliament. On 25 March, 2011, the MND appointed the Honourable Patrick J. LeSage, retired Chief Justice of the Ontario Superior Court of Justice, to conduct the second independent review of Bill C-25 as well as to conduct a review of Bill C-60 (S.C. 2008, c.29). Bill C-60 was passed by Parliament in 2008 as a result of the CMAC decision in *Trépanier*. The purpose of Bill C-60 was to amend the NDA to establish a legal framework that will govern the selection of mode of trial by court martial by operation of law rather than pursuant to the direction of the Director of Military Prosecutions (DMP).

Between May and August 2011, the Second Independent Review Authority made ten visits to CAF Bases and Wings across Canada to meet with individuals who had comments about the matters under review, and to receive feedback on how the changes made by Bill C-25 and Bill C-60 are functioning. In addition, Justice LeSage met with senior officials of the Office of the JAG, the DDCCS, the DMP, military judges, and the Chief of the Defence Staff, among others. The Office of the JAG worked to ensure that Justice LeSage had unrestricted access to the information and individuals necessary to carry out his review.

“Canada is widely recognized as having one of the fairest and most effective military justice systems in the world. Many other states have looked to Canada as an example to emulate in making improvements to their own military justice systems.”

On 8 June 2012, the Minister of National Defence tabled in Parliament the independent report of Mr. Justice LeSage. The results of the Justice LeSage's review will be discussed in subsequent Annual Reports.

Military Police Command and Control

In April 2011, the Canadian Forces Provost Marshal (CFPM) assumed full command and control of all military police directly involved in policing. This important change to the command structure of Canada's military police was instituted to safeguard the independence of police investigations and to promote accountability, transparency and credibility. The Office of the JAG maintains its ongoing commitment to supporting the CFPM in this endeavour, helping to ensure that the military police remain an effective component of the military justice system.

Strategic Legal Engagement

Canada is widely recognized as having one of the fairest and most effective military justice systems in the world. Many other states have looked to Canada as an example to emulate in making improvements to their own military justice systems. Likewise, the Office of the JAG maintains a current awareness of developments and innovations in military justice in other countries in order to inform the further evolution of our own system. As part of this ongoing process of strategic legal engagement, members of the Office of the JAG participated in international military justice conferences, visited their counterparts in the United States and Australia, and hosted a visiting delegation of Vietnamese parliamentarians who were in Canada to study our military justice system. In addition, two JAG legal officers provided a three-day seminar on military justice issues to officers of Kenya and Tanzania. Two other legal officers participated in a seminar with military justice officials in Albania.



A Legal adviser and mentor assisting videographers creating a recruiting video for the evolving Afghan National Army's legal branch.

CHAPTER V

THE WAY AHEAD

As superintendent of the administration of military justice in the Canadian Armed Forces (CAF), the Judge Advocate General (JAG) is committed to the ongoing review of the fairness and effectiveness of the military justice system and leading proactive change and responsible development. In the coming year, the Office of the JAG plans to complete many of the projects it commenced in 2010-2011 and previous years, and it will embark on many more. Of particular note for the subsequent reporting period are the following projects, which are anticipated to be the Office of the JAG's main efforts to further improve the military justice system.

Legislative Amendments

The *National Defence Act* (NDA), and in particular the Code of Service Discipline (CSD), forms the legislative foundation of the military justice system. It sets out service offences and punishments, prescribes the disciplinary jurisdiction and defines the procedure for service tribunals. As discussed in Chapter IV, the important amendments contained in Bill C-15 touch upon essential aspects of military justice, such as the independence and powers of military judges and a wider range of sentencing options. The Office of the JAG is committed to assisting the Minister of National Defence and the Government of Canada in moving the legislative process of military justice reform forward, and will be prepared to provide appropriate additional policy development, instruction and advice on any regulatory amendments that may need to be made in response to new legislation.

Military Justice – Independent Review

During the reporting period, the Honourable Patrick J. LeSage, acting as the Second Independent Review Authority, visited defence establishments across the country, interviewing key stakeholders and many other individuals as well as

preparing a report and recommendations for further amendments to the military justice system. The military justice system is constantly evolving, and Justice LeSage's report will be instrumental in providing guidance and direction for that evolution. It is anticipated that some attention will be dedicated to the review and consideration of the recommendations generated within Justice LeSage's report during the upcoming reporting period.

Legal Adviser to the Court Martial Administrator

The Court Martial Administrator (CMA) holds a central position within the military justice system. Acting under the general supervision of the Chief Military Judge (CMJ), the CMA is responsible for, among other things, convening courts martial, and, in cases of General Courts Martial, appointing the panel members. In fulfilling these functions, it has become apparent that the CMA would benefit from access to independent legal advice. Accordingly, in the scope of a pilot project, an arrangement that respects the principle of judicial independence was negotiated between the Office of the JAG and the Office of the CMJ, by which a legal officer is now working under the authority of the CMJ.

5



A legal officer deployed onboard HMCS VANCOUVER on Operation MOBILE.

CONCLUSION

As the statistics, cases summaries, and initiatives outlined in this report demonstrate, the 2011-2012 reporting period was a continuation of a tradition that has been established over the past century. The legal officers in the Office of the JAG continue to prove themselves to be Canada's experts on military justice and military law.

supporting the operational effectiveness of the CAF. The military justice system has continued to foster the interests of justice and discipline in the CAF throughout the reporting period, while the JAG professionally and objectively superintends the administration of military justice, and the Office of the JAG assists him in the performance of his duties and in leading proactive military justice change. Together, the JAG and his team

“As discussed in Chapter IV, the important amendments contained in Bill C-15 touch upon essential aspects of military justice, such as the independence and powers of military judges and a wider range of sentencing options.”



Members of the JAG carrying the JAG branch flag.

For 100 years now, the JAG and the Legal Branch have been dedicated to ensuring that the military justice system supports the need for fair justice, while also

of world-class military lawyers ensure that the military justice system continues to meet the objectives of military justice and discipline, now and into the future.

ANNEX

SUMMARY TRIALS, COURTS MARTIAL AND APPEALS

Year in Review – Statistics:
1 April 2011 – 31 March 2012

Summary Trials Reporting

1 April 2011 – 31 March 2012

For statistics relating to prior years, refer to previous JAG Annual Reports.
The statistics in this annex are current as of 3 Dec 2013.

Distribution of Service Tribunals

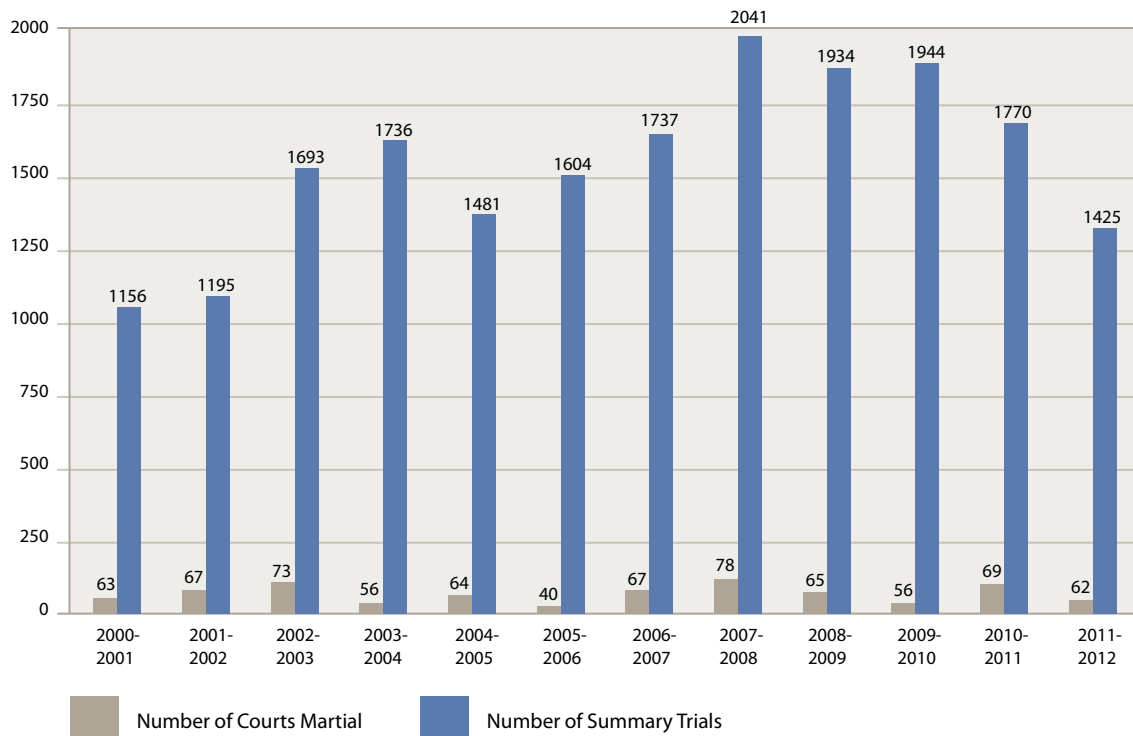
	2010-2011		2011-2012	
	#	%	#	%
Number of courts martial	69*	4	62	4
Number of summary trials	1770	96	1425	96
Total	1839	100	1487	100

* There were 69 courts martial and 70 accused (1 joint trial).

Language of Summary Trials

	2010-2011		2011-2012	
	#	%	#	%
Number in English	1319	75	1121	79
Number in French	451	25	304	21
Total	1770	100	1425	100

Distribution of Disciplinary Proceedings year to year comparison



Proportion of Cases Referred to Court Martial *

	2011-2012	
	#	%
Number of direct referrals to courts martial	108	6.77
Number of elections to be tried by courts martial by the accused	55	3.44
Number of summary trials	1425	89.23
Charges Not proceeded with	9	0.56
Total	1597	100
Number of elections offered to be tried by courts martial	551	-
Percentage of persons electing courts martial	-	9.98

* A case = a Record of Disciplinary Proceedings or a charge sheet

Elections to Court Martial offered to accused

	2010-2011		2011-2012	
	#	%	#	%
Number of elections offered to be tried by courts martial	663	7.39	551	9.98

Summary Trials by Rank

	2010-2011		2011-2012	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1542	87.12	1193	83.72
Sergeant to Chief Warrant Officer	64	3.62	68	4.77
Officer	164	9.26	164	11.51
Total	1770	100	1425	100

* Pursuant to QR&O article 3.08, master corporal is not a rank but an appointment.

Summary of Charges

NDA Article	Description	2010-2011		2011-2012	
		#	%	#	%
83	Disobedience of lawful command	66	2.80	67	3.38
84	Striking or offering violence to a superior officer	5	0.21	3	0.15
85	Insubordinate behavior	97	4.11	80	4.03
86	Quarrels and disturbances	42	1.80	65	3.28
87	Resisting or escaping from arrest or custody	7	0.30	1	0.05
90	Absence without leave	733	31.05	655	33.01
91	False statement in respect of leave	1	0.04	0	0.00
92	Scandalous conduct by officers	0	0.00	1	0.05
93	Cruel or disgraceful conduct	4	0.17	4	0.20
95	Abuse of subordinates	13	0.55	7	0.35
97	Drunkenness	130	5.51	167	8.42
98	Malingering, aggravating disease or infirmity or injuring self or another	1	0.04	2	0.10
101	Escape from custody	4	0.17	2	0.10
101.1	Failure to comply with conditions	3	0.13	4	0.20
102	Hindering Arrest or Confinement or Withholding Assistance when called on	0	0.00	2	0.10
108	Signing inaccurate certificate	0	0.00	2	0.10
111	Improper driving of vehicles	7	0.30	3	0.15
112	Improper use of vehicles	9	0.38	13	0.66
113	Causing fires	1	0.04	0	0.00
114	Stealing	33	1.40	10	0.50

NDA Article	Description	2010-2011		2011-2012	
		#	%	#	%
115	Receiving	1	0.04	0	0.00
116	Destruction, damage, loss or improper disposal	7	0.30	11	0.55
117	Miscellaneous offences	2	0.08	10	0.50
122	False answers or false information	0	0.00	1	0.05
124	Negligent performance of duties	2	0.08	1	0.05
125	Offences in relation to documents	23	0.97	26	1.31
127	Injurious or destructive handling of dangerous substances	3	0.13	0	0.00
129*	Conduct to the prejudice of good order and discipline – Negligent discharge	442	18.71	256	12.92
129*	Conduct to the prejudice of good order and discipline – Excluding negligent discharge	691	29.25	556	28.03
130	Service trial of civil offences	35	1.48	35	1.76
Total		2362	100	1984	100

*Annual reports for previous years have shown different categories of breaches for offences under section 129, including misconduct of a sexual nature, sexual offences, harassment and misconduct related to drugs and alcohol. Since 2010-2011, the report shows two categories under section 129: offences relating to the negligent discharge of a weapon, and other offences under section 129. For further information on charges under section 129, see Notes A to G of article 103.60 of the QR&O (<http://www.admfincs-smafinsm.forces.gc.ca/qro-orf/vol-02/chapter-chapitre-103-eng.asp#cha-103-60>).

Summary Trials by Command

	2010-2011		2011-2012	
	#	%	#	%
Vice Chief of the Defence Staff	4	0.22	2	0.14
Canada Command	31	1.75	26	1.83
Canada Operational Support Command	2	0.17	8	0.56
Canada Special Operations Forces Command	16	0.90	18	1.26
Canada Expeditionary Force Command	247	13.96	114	8.00
Chief of the Maritime Staff	260	14.69	226	15.86
Chief of the Land Staff	712	40.19	589	41.33
Chief of the Air Staff	88	4.97	109	7.65
Chief of Military Personnel	399	22.55	326	22.88
Assistant Deputy Minister (Information Management)	8	0.45	5	0.35
Assistant Deputy Minister (Material)	3	0.16	1	0.07
Chief of Defense Intelligence	0	0.00	1	0.07
Total	1770	100	1425	100

Findings by Charge

	2010-2011		2011-2012	
	#	%	#	%
Guilty	2195	92.92	1806	91.03
Guilty – Special Finding	15	0.64	4	0.20
Guilty of included offence	0	0.00	0	0.00
Not guilty	95	4.02	124	6.25
Charge stayed	47	1.99	41	2.07
Charge not proceeded with	10	0.42	9	0.45
Total	2362	100	1984	100

Punishments

	2010-2011		2011-2012	
	#	%	#	%
Detention (suspended)	7	0.30	8	0.43
Detention	56	2.40	51	2.76
Reduction in rank	3	0.13	5	0.27
Severe reprimand	4	0.17	5	0.27
Reprimand	50	2.14	61	3.30
Fine	1459	62.52	1099	59.50
Confinement to ship or barracks	575	24.66	436	23.61
Extra work and drill	121	5.19	128	6.93
Stoppage of leave	23	0.99	15	0.82
Caution	35	1.50	39	2.11
Total	2333	100	1847	100

Note: More than one type of punishment may be awarded in a sentence.

Requests for Review

	2010-2011		2011-2012	
	#	%	#	%
Requests for review based on finding	11	31.44	6	20.69
Requests for review based on sentence	12	34.28	12	41.38
Requests for review based on finding & sentence	12	34.28	11	37.93
Total	35	100	29	100

Note: An officer or non-commissioned member may request a review authority to set aside the finding of guilty or to alter the sentence.

Decisions of Review Authority

	2010-2011		2011-2012	
	#	%	#	%
Upholds decision	4	11.43	12	41.38
Quashes findings	22	62.86	9	31.03
Substitutes punishment	6	17.14	2	6.90
Mitigates / commutes / remits punishment	3	8.57	6	20.69
Total	35	100	29	100

COURT MARTIAL REPORTING

1 April 2011 – 31 March 2012

Courts Martial by Type

	2010-2011		2011-2012	
	#	%	#	%
Standing Courts Martial	66	96	55	89
General Courts Martial	3	4	7	11
Total	69*	100	62	100

Note 1: These figures include the number of courts martial commenced during the reporting period and include one court martial that was commenced but not completed.

Note 2: Bill C-60 (now S.C. 2008, c. 29) reduces the types of courts martial from four to two. Disciplinary Court Martial and Special General Court Martial were eliminated.

Note 3: The difference between Standing Courts Martial and General Courts Martial is explained in Chapter III of the Annual Report.

*There were 69 courts martial and 70 accused (1 joint trial).

Language of Courts Martial

	2010-2011		2011-2012	
	#	%	#	%
English	51	73	52	84
French	19	27	10	16
Total	70	100	62	100

Courts Martial by Rank

	2010-2011	2011-2012
Private to Corporal (includes Master-Corporal*)	42	41
Sergeant to Chief Warrant Officer	12	9
Officer	16**	11
Other	0	1
Total	70	62

* Pursuant to QR&O article 3.08, master corporal is not a rank but an appointment.

**This figure includes an officer who faced a re-trial on the same charges, in accordance with the decision of the Court Martial Appeal Court.

Summary of Charges

NDA Article	Description	2010-2011	2011-2012
		#	#
75	Offences related to security	1	0
83	Disobedience of lawful command	5	11
84	Striking or offering violence to a superior officer	2	0
85	Insubordinate behaviour	6	7
86	Quarrels and disturbances	3	8
87	Resisted an escort whose duty it was to have him in charge	1	1
90	Absent without leave	16	28
93	Cruel or disgraceful conduct	6	2
95	Abuse of subordinates	2	4
97	Drunkenness	5	10
101.1	Failure to comply with conditions	6	4
114	Stealing	9	1
115	Receiving	0	1
116	Destruction, damage, loss or improper disposal	5	0
117(f)	An act of a fraudulent nature	14	1
122	False answers or false information	1	0
124	Negligent performance of a military duty	9	7
125(a)	Wilfully (or negligently) made a false entry	15	2
125(c)	With intent to deceive, altered a document issued for military purpose	0	1
129	An act to the prejudice of good order and discipline	49	50
130 (4(1)CDSA)*	Possession of substance	0	13
130 (5(1) CDSA)	Trafficking in substance	4	6
130 (5(2) CDSA)	Possession for purpose of trafficking	0	1
130 (7 CCDSA)	Production of substance	0	1
130 (86(1) CC)	Careless use of a firearm	1	0
130 (87 CC)	Pointing a Firearm	2	4
130 (91(1) CC)	Unauthorized possession of a firearm	3	0
130 (95 CC)	Possession of prohibited or restricted firearm with ammunition	1	0
130 (104(1) CC)	Unauthorized importing and exporting	2	1
130 (121(1) (c) CC)	Fraud on Government	0	0

NDA Article	Description	2010-2011	2011-2012
		#	#
130 (122)	Breach of trust by public officer	0	4
130 (129 CC)	Offences relating to public or peace officer	0	1
130 (130 CC)	Personating peace officer	1	0
130 (139 CC)	Obstructing justice – Wilful attempt to obstruct, pervert or defeat the course of justice	1	1
130 (140(1) CC)	Public mischief	2	0
130 (153 CC)	Sexual exploitation	1	0
130 (163.1(4)CC)	Possession of child pornography	0	1
130 (220(a))	Criminal negligence causing death with a firearm	0	1
130 (235(1) CC)	Second degree murder	1	0
130 (236(a))	Manslaughter while handling a firearm	0	1
130 (239(1) (a.1) CC)	Attempt to commit murder using firearm	1	0
130 (253 (a) CC)	Operation while impaired	0	1
130 (264.1 CC)	Uttering threats	1	3
130 (266 CC)	Assault	5	8
130 (267 CC)	Assault with a weapon or causing bodily harm	2	3
130 (269 CC)	Unlawfully causing bodily harm	3	1
130 (271 CC)	Sexual assault	9	9
130 (272(1) CC)	Sexual assault with a weapon	1	0
130 (272(1)(b) CC)	Sexual assault with a threat to a third party	0	1
130 (334 CC)	Punishment for theft - value stolen does not exceed \$5000	0	1
130 (348 CC)	Breaking and entering	2	3
130 (349(1) CC)	Being unlawfully in dwelling-house	2	0
130(354 CC)	Possession of stolen property	0	1
130 (368 CC)	Uttering a forged document	3	2
130 (380(1) CC)	Fraud	6	0
130 (437 CC)	False alarm of fire	1	0
194 NDA	Similar Offences	0	0
Total Offences		210	206

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.

* *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

** *Criminal Code*, R.S.C., 1985, c. C-46.

Courts Martial by Command

	2010-2011		2011-2012	
Vice Chief of the Defence Staff	5	7.14	0	0.00
Canada Operational Support Command	2	2.86	2	3.22
Canada Expeditionary Force Command	2	2.86	6	9.68
Chief of the Maritime Staff	5	7.14	10	16.13
Chief of the Land Staff	35	50	30	48.39
Chief of the Air Staff	9	12.86	9	14.52
Chief of Military Personnel	11	15.71	5	8.06
Assistant Deputy Minister (Information Management)	1	1.43	0	0.00
Total	70	100	62	100

Disposition by Case

	2010-2011		2011-2012	
	#	%	#	%
Found/Plead Guilty to at least one charge	62	89	56	90.32
Not Guilty of all charges	8	11	6	9.68
Total	70	100	62	100

Sentences

	2010-2011	2011-2012
Dismissal	2	0
Imprisonment	7	11
Detention	6	4
Reduction in Rank	4	3
Severe Reprimand	18	7
Reprimand	15	17
Fine	49	45
Minor punishments: Confinement to ship or barracks	0	1
Total	101	88

Note: More than one type of punishment can be included in a sentence.

APPEALS REPORTING

1 April 2011- 31 March 2012

For statistics relating to prior years, refer to previous JAG Annual Reports

Decisions Rendered on Appeals

	2010-2011	2011-2012
Court Martial Appeal Court of Canada	7	5
Supreme Court of Canada	1	0
Total	8	5

Appeals by Party

	2010-2011	2011-2012
Appeals by Crown	2	3
Appeals by Offender	5	2
Total	7	5

Nature of Appeal

	2010-2011	2011-2012
Finding	4	1
Sentence (severity and/or legality)	0	0
Finding and sentence	3	4
Constitutional issue	0	0
Release pending appeal	0	0
Total	7	5

Disposition

	2010-2011	2011-2012
Upheld trial decision	0	0
Overturned trial decision in whole or part	2	1
Appeal Granted	4	4
Abandoned	1	0
Total	7	5