



National
Defence

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nationale



ANNUAL REPORT

of the Judge
Advocate General
to the Minister of
National Defence on
the administration
of military justice
in the Canadian
Forces:

A REVIEW FROM

1 APRIL 2000 TO

31 MARCH 2001

Canada



Office of the
Judge Advocate General

Cabinet du
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28 May 2001

The Honourable Art Eggleton
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National Defence Headquarters
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Dear Minister,

It is my honour to present to you the second 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*.

Yours truly,

A handwritten signature in cursive script, appearing to read "Pitzul".

Jerry S.T. Pitzul
Brigadier-General

Canada 



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CHAPTER 1

Introduction

I.1 The Statutory Requirement to Report

This is the second Annual Report submitted by the Judge Advocate General (JAG) to the Minister of National Defence on the administration of military justice in the Canadian Forces (CF).

As described in the first Annual Report submitted by the JAG (for 1999-2000), the passage of Bill C-25¹ by Parliament on 10 December 1998 was the culmination of significant reform to the military justice system. One of the innovations in Bill C-25 was the clarification of the JAG's responsibility for superintendence and review of the military justice system. *The National Defence Act* (NDA) now explicitly requires the JAG to report annually to the Minister of National Defence on the administration of military justice.² The Minister, in turn, must have copies of the JAG Annual Report laid before both Houses of Parliament.³

In passing Bill C-25, the Government of Canada took a major step toward a responsive, modern military justice system. The JAG's statutory duty of superintendence and review of the military justice system provides a mechanism for its continuous renewal.

This report demonstrates that the renewal process continued during fiscal year 2000-2001.

I.2 Overview of the 2000-2001 Annual Report

This report highlights the changes and initiatives of the last year, describing how the superintendence and review functions of the JAG have been pursued in support of the ongoing reform of the military justice system.

1 Most of the Bill C-25 amendments to the NDA deal with military justice. They are complemented by necessary changes to *Queen's Regulations and Orders* (QR&O) that also took effect on 1 September 1999. When Bill C-25 received royal assent, it officially became S.C. 1998, Chapter 35.

2 Section 9.3(2) NDA.

3 Section 9.3(3) NDA.

The implementation of a review and reporting framework that provides for the centralized collection of data on the administration of military justice has allowed for a more efficient compilation of statistical information. This improved data-collection and data-compilation process contributed significantly to the statistics presented in this report on summary trials, courts martial and appeals during 2000-2001, and to the analysis of these statistics.

Continued renewal is also fostered by the work of the Military Justice Committee structure, described in last year's report and addressed in more detail this year.

This report also describes the statutory, regulatory and policy initiatives relating to military justice that have been undertaken in the last 12 months. In addition, the issue of delay in the court-martial process is discussed, and the initiatives taken to address the concern are described briefly. Surveys conducted as part of the JAG's review function are also described, with a summary of the results.

The newly implemented evaluation and selection process used by the Government of Canada in the appointment of new military judges is described in Chapter 6. Three recent appointments, made pursuant to section 165.21(1) of the NDA, are the first judicial appointments since the Bill C-25 reforms came into force on 1 September 1999. The first report of the Military Judges' Compensation Committee, another significant development in the implementation of reforms to the military judiciary, is also discussed.

As in 1999-2000, the JAG Annual Report concludes with a series of annexes and appendices which include detailed reports from the Director of Defence Counsel Services (DDCS) and the Director of Military Prosecutions (DMP).



CHAPTER 2

The Office of the Judge Advocate General

In setting out the roles and responsibilities of the Minister of National Defence, the JAG, the DMP, the DDCS and military judges, the NDA clearly separates (on an institutional basis) the executive, investigative, prosecutorial, defence and judicial functions in the military justice system.

The Minister of National Defence, as an elected Member of Parliament and a member of the executive arm of government, is accountable to Parliament for the proper functioning of DND and the CF, including the administration of military justice. However, because of the statutory requirement to keep the executive function appropriately separated from the judicial arm of government, the NDA deliberately insulates the Minister and other members of the executive from the military judiciary.

The legislative scheme of the NDA establishes the various independent actors in the military justice system and defines their responsibilities. The NDA also creates the institutional buffers required to keep their functions separate. For instance, the superintendence of the military justice system is the sole responsibility of the JAG, whereas the exercise of prosecutorial discretion is the exclusive responsibility of the DMP. Similarly, the DDCS is independently responsible for the conduct of the defence of an accused. The duties of these key actors in the military justice system, and the nature and quality of their interrelationships, ensure the constitutionality of the system and avert allegations of improper executive interference or “command influence.”

The organization chart at Annex C indicates the JAG’s position in DND and independent status in the CF.¹ The respective reporting relationships are described in detail in Chapter 2 of last year’s report.

1 QR&O article 4.081 reinforces the independence of the JAG. Legal officers shall be posted only within the Office of the JAG, under the authority of the JAG. They shall not be “subject to the command of an officer who is not a legal officer.”

2.1 Duties and Powers of the JAG in Canadian Law

Following the example set over generations in British common law,² the NDA clearly defines the appointment, duties, powers and functions of the JAG in Canadian law, as follows:

- Except for military judges, the JAG is one of only two members of the Canadian Forces appointed by the Governor in Council.³
- The JAG is the legal adviser to the Governor General, the Minister of National Defence, the DND and the CF in matters relating to military law.⁴
- The JAG is charged explicitly and specifically with the superintendence of the administration of the military justice system in the CF.⁵

In assigning this last duty, Parliament, in effect, recognizes and continues the exercise of the Attorney-General-like function traditionally performed by the JAG in British common law.⁶ The superintendence function of the JAG includes the statutory requirement to conduct regular reviews of, and report annually to the Minister on, the administration of military justice.⁷

As part of this superintendence function (as this report will explain), Parliament has also entrusted the JAG with the general supervision of the DMP and the DDCS.⁸

2 The earliest reference to the position of Judge Advocate General is found in 1639 in the Articles of War under the authority of Charles I. The first JAG in Canada was appointed by Order in Council on 1 October 1911.

3 Section 9(1) NDA; the other appointment is that of the Chief of the Defence Staff, which is made under section 18(1) NDA.⁴ Section 9.1 NDA.

4 Section 9.1 NDA.

5 Section 9.2 NDA.

6 As noted in the *Report of the Special Advisory Group on Military Justice and Military Police Investigation Services* (the Dickson Report), released in March 1997. The Special Advisory Group was chaired by the late Right Honourable Brian Dickson.

7 Section 9.2(2) NDA.

8 Section 165.17(1) and 249.2(1) NDA.

2.2 Organization of the Office of the JAG

The Office of the JAG comprises 108 Regular Force legal officers and 61 Reserve Force legal officers. The Regular Force legal officers are employed throughout the CF, in Canada and abroad:

- at National Defence Headquarters in Ottawa;
- at seven Assistant Judge Advocate General (AJAG) offices, six in Canada and one in Germany;
- at eleven Deputy Judge Advocate (DJA) offices across Canada;
- at four Regional Military Prosecutor (RMP) offices across Canada.
- at Supreme Headquarters Allied Powers (Europe) in Belgium;
- with CF contingents deployed overseas—during 2000–2001, in Macedonia, Kosovo, Italy, Eritrea and three locations in Bosnia; and
- in training with CF formations and units participating in major national and international exercises.

Like their Regular Force colleagues, Reserve Force legal officers are employed throughout the CF. They are also integrated into the defence and prosecution functions of the military justice system.

Organization charts for the Regular and Reserve components of the Legal Branch are included at Annex A. Contact and location information for all JAG offices are included at Annex B.

STRATEGIC USE OF RESOURCES BY THE OFFICE OF THE JAG

During 2000–2001, the Office of the JAG conducted an intensive recruiting program to fill Regular and Reserve force positions in the Legal Branch with excellent lawyers capable of making the transition to military life. The lack of trained legal advisers to fill the JAG establishment has contributed, in part, to institutional delay in the military justice system. Personnel shortages were also exacerbated by a corresponding increase in the demand for legal services.

After assessing the needs of the CF client base, the Office of the JAG identified human resource deficiencies in meeting the current demand for legal services. Consequently, the JAG proposed initiatives to close these personnel gaps in his Strategic Letter,⁹ and successfully obtained support from the chain of command to fill positions where deficiencies were noted.

The Office of the JAG will continue its strategy of making the most of its limited resources. The highest priority remains the restoration of confidence in the military justice system. Personnel and funds have been allocated accordingly. The encouraging findings¹⁰ of independent surveys conducted internally and externally validate this course of action.

Areas of the Office of the JAG Involved in Military Justice

THE CANADIAN MILITARY PROSECUTION SERVICE

The Canadian Military Prosecution Service comprises the Director of Military Prosecutions (DMP), the Deputy Director of Military Prosecutions (DDMP) and the legal officers appointed to assist and represent the DMP. The DMP holds office upon appointment by the Minister¹¹ for a period not to exceed four years,¹² and may be removed from office only by the Minister, for cause and on the recommendation of the Inquiry Committee.¹³

The primary statutory functions of the DMP and of the legal officers who assist the DMP¹⁴ are the preferring of charges to be tried by court martial, and the subsequent co-ordination and conduct of prosecutions at courts martial.¹⁵ The DMP also acts as appellate

9 See "FY 01/02 Strategic Letter-Office of the Judge Advocate General", dated 1 November 2000, at www.dnd.ca/jag under the menu bar item "Office of the Judge Advocate General."

10 Specific survey results are discussed in Chapter 5 and Chapter 8.

11 The civil authority represented by the Minister (not the JAG) is the sole authority with the power to appoint and remove the DMP.

12 Section 165.1(2) NDA. On 1 Sept 1999, Colonel Kim Carter was appointed DMP. She continuously held that position until January 2001, when she accepted a Governor-in-Council appointment as a military judge. On 16 January, 2001, Captain (Navy) William Reed was appointed DMP.

13 Sections 165.1(2), 165.21(2) NDA. See also QR&O article 101.13. The Inquiry Committee was not required to sit during 2000-2001.

14 Section 165.15 NDA. The DMP may be assisted or represented by any officer who is a barrister or advocate with standing at the bar of a province.

15 Section 165.11 NDA.

counsel for the Minister in respect of appeals before the Court Martial Appeal Court of Canada (CMAC).¹⁶

In addition to the above duties, the DMP is the legal adviser to the Canadian Forces National Investigative Service (CFNIS). The DMP has officers employed in four regions across Canada.

In exercising prosecutorial discretion in relation to the preferal of charges and the conduct of prosecutions, the DMP's independence is protected by the institutional structures in both the NDA and common law. In this, the DMP's situation is precisely analogous to that of a Director of Public Prosecutions in the civilian criminal justice system.¹⁷ The legislation also explicitly empowers the DMP to withdraw charges that have been preferred.¹⁸

The NDA defines the relationship between the JAG and the DMP as follows: the DMP is under the "general supervision of the Judge Advocate General,"¹⁹ who may issue general instructions or guidelines in writing in respect of prosecutions or in respect of a particular prosecution.²⁰ Except in limited cases,²¹ the DMP must ensure that such instructions are made available to the public,²² and the JAG must give the Minister a copy of every such instruction and guideline.²³

During this reporting period, one general instruction (see Annex H) was issued to both the DMP and the DDCS in respect of delay in the court-martial process. The purpose of this general instruction was to highlight the institutional requirement for the delivery of prompt but fair justice in the military justice system generally and in courts martial in particular.

16 Section 165.11 NDA. On 1 September 1999, the DMP was instructed to act as counsel for the Minister in respect of appeals.

17 After the decision in *Balderson v R.* (1983) 8.C.C.C. (3d) 532 (Man C.A.), Canadian courts have placed significant legal restrictions on the review of the exercise of prosecutorial discretion. Courts will undertake such reviews only in the clearest cases of abuse of process.

18 Section 165.12(2) NDA. However, once a court martial has commenced, the DMP may not withdraw a charge without the consent of the court.

19 Section 165.17(1) NDA.

20 Section 165.17(2), (3) NDA.

21 Section 165.17(5) NDA. An exception is permitted only when the DMP decides that release to the public of an instruction or guideline, in whole or in part, would not be in the best interest of the administration of military justice.

22 Section 165.17(4), (5) NDA.

23 Section 165.17(6) NDA.

Appendix 2 of this report contains the Annual Report of the Canadian Military Prosecution Service, which covers the following topics:

- the organization and primary functions of the Canadian Military Prosecution Service;
- the prosecution process;
- results of courts martial and appeals;
- policies and training;
- communications; and
- JAG Instructions and Guidelines.

OFFICE OF THE DIRECTOR OF DEFENCE COUNSEL SERVICES

The Office of the Director of Defence Counsel Services comprises the Director of Defence Counsel Services (DDCS) and the legal officers appointed to assist and represent the DDCS. Like the DMP, the DDCS²⁴ is appointed by the Minister. The Annual Report of the Office of the DDCS is attached at Appendix I.

Pursuant to regulations,²⁵ the duties of the DDCS include the provision of legal advice and services²⁶ to the following individuals:

- a person arrested or detained in respect of a service offence;
- a person who is the subject of a criminal investigation or a formal administrative investigation;
- a person held in custody during a show-cause hearing;
- an assisting officer on a summary trial matter;
- an accused person with respect to making an election to be tried by court martial;
- an accused person with respect to an application to a referral authority for the disposal of a charge,
- an accused person when there are reasonable grounds to believe that he or she is unfit to stand trial;

24 Section 249.18 NDA. On 1 September 1999, Lieutenant-Colonel Denis Couture was appointed Director of Defence Counsel Services.

25 See QR&O article 101.20.

26 In the situations specified herein, a CF member may consult a military lawyer from the Office of the DDCS free of charge.

- an accused person being tried by court martial;
- a respondent on matters appealed by the Minister; and
- with the approval of the Appeal Committee, an appellant before the Court Martial Appeal Court of Canada or the Supreme Court of Canada.

Like the DMP, the DDCS is, by statute, insulated from other DND/CF authorities to protect the DDCS from potentially inappropriate influence. The DDCS performs his or her duties independent of the chain of command.²⁷

The DDCS “acts under the general supervision of the Judge Advocate General,”²⁸ who “may issue general instructions or guidelines in writing in respect of defence counsel services.” However, the JAG may not instruct the DDCS in respect of a particular defence or court martial. The DDCS must make any general instructions or guidelines available to the public.²⁹ As indicated above, during 2000–2001, the JAG issued only one general instruction to the DDCS, on court-martial delay.

OFFICE OF THE DEPUTY JUDGE ADVOCATE GENERAL / OPERATIONS

The Office of the Deputy Judge Advocate General / Operations (DJAG/Ops) is responsible for providing DND officials and CF members with legal advice on international and operational law, and for providing the Military Police and CF formations and units with legal advice on military justice issues.

Through the Directorate of Law/Training, DJAG/Ops is also responsible for developing and delivering military justice training, including the certification course for Presiding Officers.

OFFICE OF THE DEPUTY JUDGE ADVOCATE GENERAL / CHIEF OF STAFF

The Office of the Deputy Judge Advocate General/Chief of Staff (DJAG/COS) is responsible for providing legal advice on military personnel issues through the Directorate of Law/ Military Personnel. The Directorate of Law/Military Justice Policy and Research, provides legal research and policy-development services.

27 DDCS lawyers represent their clients and their clients’ interests in accordance with DDCS and JAG policies, which are designed to preserve and enhance the legal and ethical obligations to their clients’ interests. Communications with their clients are protected at law by solicitor-client privilege.

28 Section 249.2(1) NDA.

29 Section 249.2(3) NDA.

The Office of the Department of National Defence / Canadian Forces Legal Adviser

2.4

The JAG is responsible for supervising the administration of military justice in the CF and for providing the Governor General, the Minister of National Defence, DND and the CF with legal advice in all matters relating to military law.³⁰ The Office of the Department of National Defence / Canadian Forces Legal Adviser (DND/CF LA) is responsible to the Minister of Justice for providing the Governor General, the Minister of National Defence, DND and the CF with legal advice on matters falling outside the JAG's area of responsibility such as contracts, environment, real property law, claims and civil litigation.

The staff of the Office of the DND/CF LA includes civilian lawyers from the Department of Justice as well as military lawyers. The Office of the DND/CF LA and the Office of the JAG co-operate to deliver seamless legal services to their DND and CF clients.

30 Section 9.1 and 9.2 NDA



CHAPTER 3

The Canadian Military Justice System

3.1 The Purpose of a Separate Military Justice System

In 1982, the *Canadian Charter of Rights and Freedoms* directly recognized the existence and validity of the Canadian military justice system; section II(f) of the Charter states that any person charged with an offence has the right to trial by jury “except in the case of an offence under military law tried before a military tribunal.”

The Supreme Court of Canada has addressed the existence of a separate, distinct military justice system twice.¹ On both occasions, the court upheld the requirement for a separate military justice system in the CF (see sidebar).

WHY DOES THE CANADIAN FORCES HAVE ITS OWN JUSTICE SYSTEM?

In *R. v. Généreux* [1992] 1 S.C.R. 259, at 293-4, the Supreme Court of Canada stated the rationale for keeping the military justice system distinct from the civilian criminal justice system:

The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. 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. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals rather than ordinary courts have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus the need for separate tribunals to enforce special disciplinary standards in the military.

In making these comments, Lamer, C.J. agreed with the comments of Cattanach J. in *MacKay v. Rippon* [1978] 1 F.C. 233 (T.D.), at pp. 235-36:

Without a Code of Service Discipline the armed forces could not discharge the function for which they were created. In all likelihood those who join the armed forces do so in time of war from motives of patriotism and in time of peace against the eventuality of war. To function efficiently as a force there must be prompt obedience to all lawful orders of superiors, concern, support for and concerted action with their comrades and a

¹ *MacKay v. The Queen*, [1980] 2 S.C.R. 370, and *R. v. Généreux*, [1992] 1 S.C.R. 259.

reverence for and a pride in the traditions of the service. All members embark upon rigorous training to fit themselves physically and mentally for the fulfilment of the role they have chosen and paramount in that there must be rigid adherence to discipline. Many offences which are punishable under civil law take on a much more serious connotation as a service offence and as such warrant more severe punishment. Examples of such are manifold such as theft from a comrade. In the service that is more reprehensible since it detracts from the essential *esprit de corps*, mutual respect and trust in comrades and the exigencies of the barrack room life-style. Again for a citizen to strike a superior officer is much more serious detracting from discipline and in some circumstances may amount to mutiny. The converse, that is for an officer to strike a soldier is also a serious service offence. In civilian life it is the right of the citizen to refuse to work but for a soldier to do so is mutiny, a most serious offence, in some instances punishable by death. Similarly, a citizen may leave his employment at any time and the only liability he may incur is for breach of contract, but for a soldier to do so is the serious offence of absence without leave and if he does not intend to return the offence is desertion.

Such a disciplinary code would be less effective if the military did not have its own courts to enforce the code's terms.

Although this latter quotation is still highly relevant, it mentions the death penalty, a punishment that has been eliminated under Canadian Law. At the time of Confederation, the *Militia Act* included death in the scale of punishments for military offences committed by members of the Militia. The last execution of a member of the Canadian armed services for a service offence took place at the end of the Second World War.

In 1976, when Canada replaced the death penalty with life imprisonment for all applicable Criminal Code offences, the death penalty was retained in the *National Defence Act*. One of the NDA reforms introduced in 1999 with Bill C-25 was the removal of the death penalty from the scale of punishments available to service tribunals. For the most serious service offences, those involving traitorous acts, the punishment of life imprisonment with ineligibility for parole for 25 years was substituted for the death penalty.

The Constitutional and Legislative Framework

3.2 of the Canadian Military Justice System

Using its constitutional authority,² the Parliament of Canada created (and recently amended) the NDA,³ which, among its provisions, sets out the organization of DND, the CF and the Canadian mili-

- 2 *Constitution Act*, 1867, s. 91(7). Under the Canadian Constitution, the Parliament of Canada has exclusive authority to make laws relating to the "militia, military and naval service and defence". Consequently, Canadian constitutional law accords to the federal Parliament the right to make laws and regulations relating to military justice.
- 3 The NDA authorizes the Governor-in-Council and the Minister of National Defence to make regulations for the organization, training, discipline, efficiency, administration and good government of the CF and, generally, for carrying the purposes and provisions of the NDA into effect. Canadian Forces Administration Orders (CFAOs), Defence Administrative Orders and Directives (DAODs), and the Queen's Regulations and Orders (QR&Os) are made pursuant to this authority. Volume II of QR&O, which covers disciplinary matters, prescribes in greater detail the jurisdiction, organization and procedures of the Canadian military justice system.

tary justice system, and authorizes the Chief of the Defence Staff (CDS) to issue orders and instructions to give effect to the decisions and carry out the directions of the Government of Canada and the Minister of National Defence.⁴ Orders and instructions dealing with disciplinary matters may be issued at any level of the chain of command.⁵ All members of the CF have a duty to be familiar with the orders and instructions issued by their chain of command.⁶ Failure of CF members to comply with such orders and instructions can lead to charges under the NDA, which are disposed of in the military justice system.

The Canadian Constitution, which includes the *Canadian Charter of Rights and Freedoms*, is the supreme law of the land. Although the courts have supported a separate system of military justice, that system must conform to the laws of Canada. In consequence, the NDA (which contains the Code of Service Discipline) and its application are subject to the Charter and must meet its standards. As Canadian citizens, CF members are entitled to enjoy all the rights and freedoms guaranteed by the Charter.

3.3 The Military Justice System

CODE OF SERVICE DISCIPLINE

Comprising approximately 50 percent of the NDA,⁷ the Code of Service Discipline is the foundation of the Canadian military justice system. It sets out disciplinary jurisdiction and describes service offences, punishments, powers of arrest, and the organization and procedures of service tribunals, appeals, and post-trial review.

JURISDICTION

The Code of Service Discipline applies to all CF members and in certain circumstances to civilians who may become subject to Canadian military law, when, for example accompanying a CF unit on service or active service.⁸

Not all offences can be charged and tried in the military justice system.⁹ The CF has no jurisdiction to try any person charged with

4 Section 18(2) NDA.

5 QR&O articles 4.12 and 4.21.

6 QR&O articles 4.02 and 5.01.

7 Pursuant to section 2 NDA, the Code of Service Discipline consists of Part III of the NDA.

8 Section 60(1) NDA and QR&O article 102.09. The complete list of persons subject to the Code of Service Discipline appears in sections 60-65 NDA and QR&O Chapter 102.

9 Section 70 NDA.

having committed, in Canada, the offences of murder, manslaughter, or any offence under sections 280, 282 and 283 of the *Criminal Code of Canada*.¹⁰

When a person subject to the Code of Service Discipline commits an offence under the Criminal Code or other federal law, the NDA extends jurisdiction to deal with the matter in the military justice system.¹¹ Similarly, offences contrary to foreign law may also be dealt with in the military justice system.¹²

SERVICE OFFENCE

A “service offence” is an offence under the NDA, the Criminal Code or any other act of Parliament committed by a person while subject to the Code of Service Discipline. The Code of Service Discipline also includes several service offences that are peculiar to the profession of arms,¹³ such as: misconduct in the presence of the enemy, mutiny, disobedience of a lawful command, desertion, absence without leave, drunkenness, negligent performance of duty, and conduct to the prejudice of good order and discipline.

LIMITATION PERIODS

Generally, a person who is subject to the Code of Service Discipline at the time of the alleged commission of an offence continues to be liable to be charged, dealt with and tried at any time under the Code of Service Discipline.¹⁴ This rule has two exceptions. The first exception arises when the act or omission that constitutes the offence would have been subject to a limitation period had it been dealt with other than under the Code of Service Discipline; in such a case, that limitation period applies.¹⁵ For example, if the act or omission constituted an offence under the Criminal Code or other federal or foreign law, then in this circumstance, any limitation period applicable to the offence in the civilian justice

10 Sections 280-283 of the Criminal Code relate to the abduction of children from a parent or guardian.

11 Under section 130 NDA, such offences may become service offences.

12 Under section 132 NDA, an offence committed by a person subject to the Code of Service Discipline under the law of a foreign country while outside Canada in that foreign country may also be dealt with as a service offence.

13 Sections 73-129 NDA.

14 Sections 60(2) and 69 NDA.

15 Section 69(a) NDA.

system applies. The second exception relates to summary trials; a summary trial must begin before one year has elapsed after the day when the offence is alleged to have been committed.¹⁶

CHARGE

A “charge” is a formal accusation that a person subject to the Code of Service Discipline has committed a service offence. A charge is laid when it is stated in writing in a Charge Report (Part I of the Record of Disciplinary Proceedings) and signed by a person authorized to lay charges.¹⁷ The following persons may lay charges under the Code of Service Discipline:

- a commanding officer;
- an officer or non-commissioned member authorized by a commanding officer to lay charges; and
- an officer or non-commissioned member of the Military Police assigned to investigative duties with the CF National Investigation Service (CFNIS).¹⁸

A commanding officer or superior commander who decides not to proceed with a charge laid by the CFNIS must communicate that decision with reasons to the CFNIS. If, after reviewing the decision and reasons, the CFNIS considers that the charge should go forward, the CFNIS may refer the charge directly to a referral authority for disposal.¹⁹

Persons laying charges are legally required to consult a legal adviser if:

- the charge cannot be tried summarily;
- the charge would give rise to a right to elect trial by court martial; or

16 Section 69(b) NDA.

17 QR&O article 107.015.

18 QR&O article 107.02.

19 QR&O article 107.12(3).

- the offence is alleged to have been committed by an officer or non-commissioned member at or above the rank of warrant officer or petty officer first class.²⁰

TRIAL OF THE CHARGE

Charging authorities are required to forward a charge laid under the Code of Service Discipline to either the commanding officer, or an officer to whom that commanding officer has delegated powers of trial and punishment.²¹ The officer to whom such a charge is referred must deal with it in accordance with QR&O, which may result in the accused being tried either summarily or by court martial.

When circumstances warrant, investigators of the Military Police and the CFNIS may also lay charges in the civilian courts.²²

THE TWO TIERS OF THE MILITARY JUSTICE SYSTEM

The military justice system has a two-tiered tribunal structure that includes the summary trial system (where most disciplinary matters are dealt with) and the more formal court martial system. The term “service tribunal”²³ means either a summary trial or a court martial.²⁴

3.4 Summary Trials

The purposes of a summary trial are as follows:

- to provide prompt, fair justice in respect of minor service offences; and
- to contribute to the maintenance of military discipline and efficiency in Canada and abroad, in peacetime and during armed conflicts.²⁵

20 QR&O article 107.03. Generally speaking, it is the rule rather than the exception to seek legal advice before laying charges; effectively, legal advice must always be obtained, unless a person of or below the rank of sergeant or petty officer second class is to be charged with one of five minor offences listed in QR&O.

21 QR&O article 107.09.

22 The issue of concurrent jurisdiction is discussed in Chapter 5. Where concurrent jurisdiction does exist, charges may be laid by the CFNIS or the Military Police under the Code of Service Discipline or in the civilian courts.

23 Section 2 NDA.

24 For a detailed, comprehensive overview of the military justice system, see the JAG publication *Military Justice at the Summary Trial Level* (August 1999; downloadable from www.dnd.ca/jag).

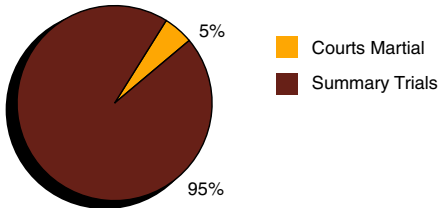
25 QR&O article 108.02.

Once jurisdiction²⁶ exists to conduct a summary trial,²⁷ it may be held wherever the unit is located, whether it is in garrison, in an exercise area or deployed abroad. During the 2000-2001 reporting period, summary trials were held across Canada, at sea in HMC ships, and in the United States, East Timor, Italy, Germany, Bosnia, Kosovo, Macedonia and Eritrea.

When a CF member is charged with an offence under the Code of Service Discipline, the summary trial process usually permits the case to be tried and disposed of in the unit, by members of the unit. Before conducting a summary trial, however, the presiding officer must (in most circumstances) be trained and certified in the administration of the Code of Service Discipline in accordance with the curriculum established and taught by the Directorate of Law/Training on behalf of the JAG.²⁸

Of the 1175 persons tried in the military justice system during 2000-2001, 1112 (95 percent) were tried summarily (see the statistics in Annex D and Annex E). Chart 1 shows the distribution of cases between the summary trial system and the court martial system. The summary trial is still the overwhelmingly predominant form of service tribunal.

Chart # 1 Disciplinary Proceedings in the CF



-
- 26 Summary trial jurisdiction over an accused is not automatic; it depends on several statutory and regulatory factors including: fitness of the accused to be tried, the status and rank of the accused and of the presiding officer; the nature of the charges; the length of time elapsed between the laying of the charges and the first day of trial; the interests of justice and discipline; the nature of the punishment that may be imposed on the accused should a guilty finding be made; and, if applicable, the election of the accused to be tried summarily.
- 27 For a detailed consideration of jurisdiction, see sections 60, 69, 70, 163 and 164 of the NDA; and QR&O articles 108.05-07, 108.09, 108.10, 108.12, 108.16, 108.17, 108.125 and 119.02.
- 28 QR&O article 101.09; effective 1 April 2000—exceptions only for “urgent operational requirements.”

However, not all service offences can be handled summarily. QR&O²⁹ lists the offences that a commanding officer may try summarily; the more serious offences, including most Criminal Code offences charged pursuant to section 130 NDA, must be tried by court martial.³⁰

A significant aspect of the recent NDA reforms was the expansion of the right of the accused to choose between summary trial and trial by court martial. Now, the accused has the right to elect trial by court martial in the vast majority of cases. In effect, the presiding officer must offer an election unless the accused is facing only a "minor disciplinary" charge.³¹ Even in these cases, the presiding officer still must offer an election if the range of penalties that could reasonably be imposed on conviction includes:

- detention;
- reduction in rank; or
- a fine in excess of 25 percent of monthly basic pay.

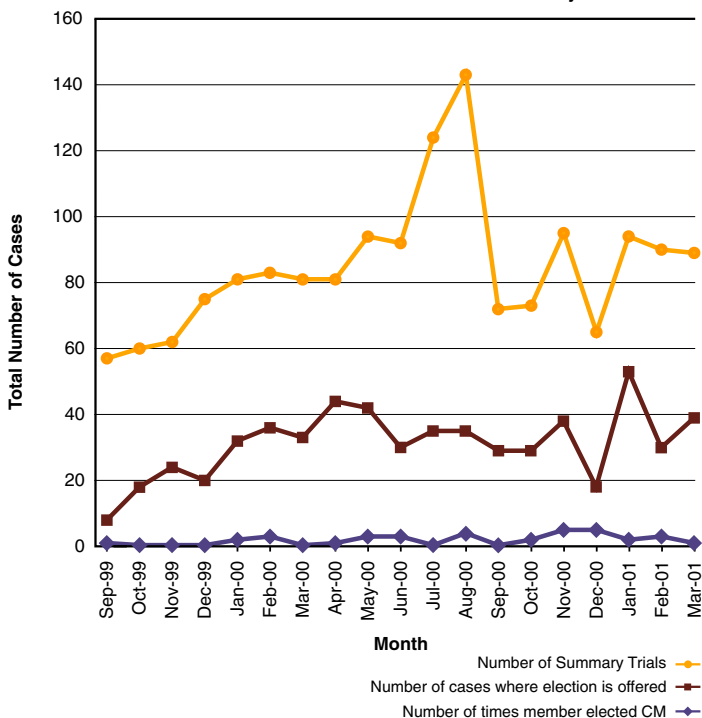
During the 2000-2001 reporting period, of the 422 accused who were offered the opportunity to elect trial by court martial, only 29 (7%) chose to be tried in the more formal court martial system. The monthly data on elections of trial by court martial indicate that most CF members facing disciplinary charges prefer to be tried summarily (see Chart 2).

29 See QR&O article 108.125 for offence jurisdiction for summary trial by superior commander, and QR&O article 108.10 for offence jurisdiction for summary trial by delegated officer.

30 For a more detailed explanation of the jurisdiction and powers of punishment in the summary trial system, please see Chapter 4 of the JAG Annual Report for 1999-2000. Also see QR&O articles 108.24, 108.25 and 108.26.

31 To qualify for denial of the right of election, "minor disciplinary" charges must be laid under NDA s. 85 (Insubordinate Behaviour); s. 86 (Quarrels and Disturbances), s. 90 (Absence Without Leave), s. 97 (Drunkenness), or s. 129 (Conduct to the Prejudice of Good Order and Discipline). When charges are laid under s. 129, the right of election may be denied only when the offence relates to military training; maintenance of personal equipment, quarters or work space; or dress and deportment.

Chart # 2 Court Martial Elections and Summary Trials



The above statistics (and the data reported in Annex D) are compiled from reviewing and recording information contained on the Records of Disciplinary Proceedings (RDPs). RDPs are used to initiate all charges in the military justice system and to record the key decisions made throughout the discipline process. Each RDP is preserved in the originating unit’s Registry of Disciplinary Proceedings.

At the end of each month in which disciplinary proceedings have taken place, the commanding officer sends a copy of each RDP to the local legal adviser for formal review. After the legal adviser’s review, RDPs are sent to National Defence Headquarters in Ottawa, where the staff of the Directorate of Law/Military Justice Policy and Research enter the details of each charge in the JAG database for statistical analysis.³²

Like documents held in the registries of civilian criminal courts, RDPs are generally available to the public from the originating unit’s Registry of Disciplinary Proceedings.³³

32 Despite follow-up by JAG field offices, data accuracy depends on the quality of unit-level RDP administration.

33 QR&O Article 107.16.

SUMMARY TRIALS IN 2000-2001

During this reporting period, 1217 disciplinary proceedings were initiated, of which 105 (9%) were not completed as summary trials for the following reasons:

- 53 cases (4%) were referred for trial by court martial;
- in 29 cases (3%), the accused elected trial by court martial; and
- in 23 cases (2%), the presiding officer exercised the discretion not to proceed.

The remaining 1112 cases were tried summarily. Of this number,

- 906 (81%) were conducted in English;
- 206 (19%) were conducted in French;
- 729 (66%) were heard by Delegated Officers;
- 349 (31%) were heard by Commanding Officers; and
- 34 (3%) were heard by Superior Commanders.

During these summary trials, a total of 1477 charges were considered, with the following results:

- the accused was found guilty on 1241 (84%) of the charges tried;
- the accused was found not guilty on 158 (11%) of the charges tried; and
- the remaining charges were stayed or not proceeded with.

The most frequently tried offences were:

- absence without leave (382 counts [26% of charges]); and
- conduct to the prejudice of good order and discipline where no election to be tried by court martial was offered (358 counts [24% of charges]).

The most frequently imposed penalties were:

- fine (720 cases [55%]); and

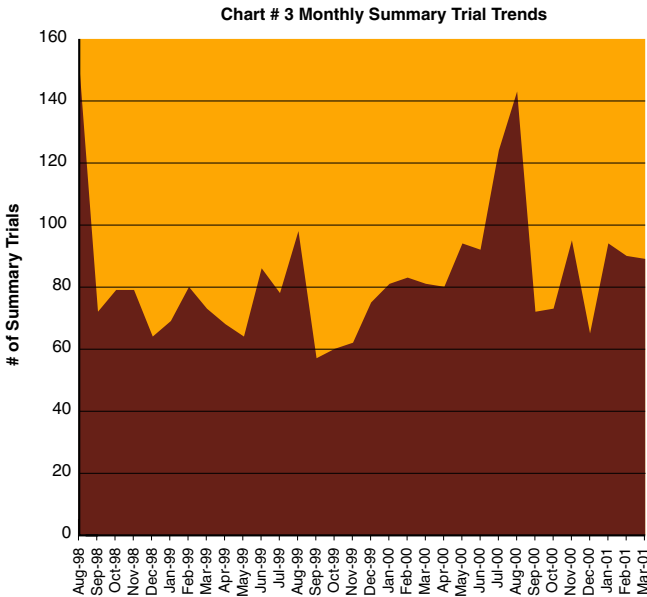
→ confinement to ship or barracks (270 cases [21%]).

A custodial sentence (i.e., detention) was imposed in 30 cases (2.3%).³⁴

ANALYSIS OF SUMMARY TRIALS

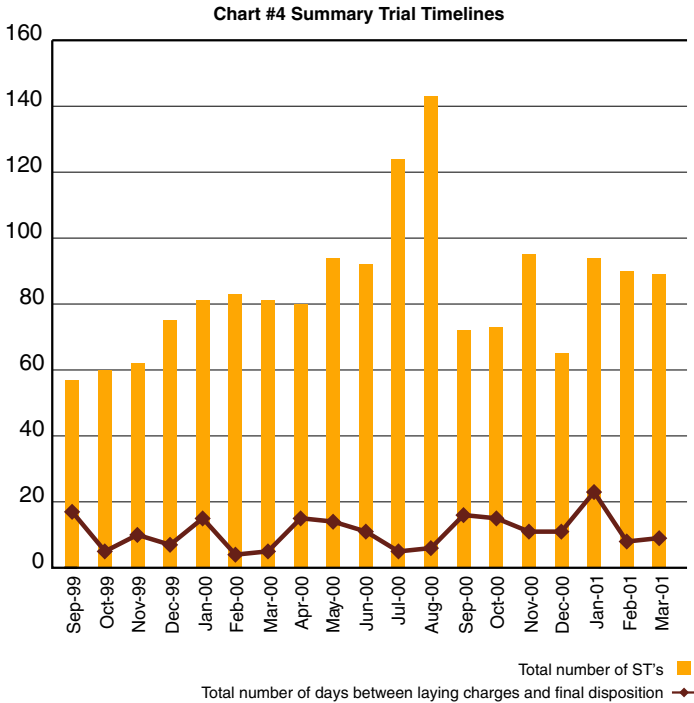
Most service offences are tried summarily, and the recent reforms to the military justice system have not changed this. The summary trial remains the service tribunal most commonly used in the administration of military justice.

Chart 3 shows the distribution of summary trials throughout the fiscal year. With less than three years' worth of data, it is still early to draw firm conclusions, but in each of those years the frequency of summary trials rose sharply in July and peaked in August, mirroring the pattern of activity in the CF training cycle. This correlation indicates that, as the intensity of activity in the CF increases, so does the unit commander's requirement to use the military justice system. This finding is consistent with the underlying rationale for a separate system of military justice, and demonstrates the system's usefulness in instilling institutional norms in a training environment.



34 In five of these cases, the sentence of detention was suspended.

Chart 4 shows the number of summary trials conducted per month between 1 September 1999 and 31 March 2001, and the average number of days required during the same period to complete a summary trial after charges are laid. During 2000-2001, CF units managed an average of 12 days from the laying of charges to hearing date. Deployed units and units training in the field conducted summary trials most quickly. The reported timelines indicate that the summary trial system allows unit commanders to deliver prompt, fair justice in respect of minor service offences.



REVIEW OF SUMMARY TRIALS

All offenders convicted at summary trial have the right to apply to the presiding officer's next superior officer in the disciplinary chain of command for a review of the findings, the punishment imposed, or both.³⁵ The findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority.³⁶ Review authorities acting under QR&O 108.45 must obtain legal advice before making any determination on requests for review.³⁷

35 QR&O articles 108.45.

36 Section 249 NDA and QR&O 116.02.

37 QR&O article 108.45(8).

During 2000-2001, CF members made 15 requests for review, of which five related to the finding, seven related to the sentence, and three related to both the finding and the sentence. Review authorities reversed or modified the initial findings, the punishment imposed, or both in eight cases.

Offenders convicted at summary trial may also request judicial review from the Federal Court or from the Superior Court in any province.³⁸ During 2000-2001, no requests for judicial review were brought before the Federal Court or a Superior Court.

3.5 Courts Martial

The court martial, a formal military court presided over by a military judge, is designed to deal with more serious offences, and is conducted in accordance with rules and procedures similar to those followed in civilian criminal courts. Like summary trials, courts martial may be held anywhere in the world. Statutorily, courts martial 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,"³⁹ including: the attendance, swearing and examination of witnesses; the production and inspection of documents; and the enforcement of its orders.

At a court martial, the prosecution is conducted by a legal officer from the Office of the Director of Military Prosecutions. The accused is entitled to be represented free of charge by a legal officer from the Directorate of Defence Counsel Services⁴⁰ or, at his or her own expense, by a civilian lawyer. CF members who meet the qualifying criteria may also take advantage of provincial Legal Aid programs.

TYPES OF COURT MARTIAL

The NDA provides four types of court martial:

- the General Court Martial;
- the Disciplinary Court Martial;
- the Standing Court Martial; and
- the Special General Court Martial.

38 *Federal Court Act*, R.S.C. 1985, c. F-7, sections 18 and 18.1.

39 Section 179 NDA.

40 QR&O article 101.20.

The General Court Martial and the Disciplinary Court Martial each comprise a military judge and a panel of CF members, who are roughly analogous to a judge and jury in a civilian criminal court. In a General Court Martial, the panel is composed of five members and, in a Disciplinary Court Martial, the panel is composed of three members.⁴¹ When the accused is an officer, the court martial panel consists entirely of officers. When the accused is a non-commissioned member, the panel at a General Court Martial must include two non-commissioned members at or above the rank of warrant officer or petty officer first class. The panel at the Disciplinary Court Martial of a non-commissioned accused must include one non-commissioned member at or above the rank of warrant officer or petty officer first class.⁴² At both the General Court Martial and the Disciplinary Court Martial, the panel makes the finding on the charges (i.e., guilty or not guilty) and the military judge makes all legal rulings and imposes the sentence.

The Standing Court Martial and the Special General Court Martial differ in name and function, but not in composition; both are conducted by a military judge sitting alone,⁴³ who makes the finding on the charges and imposes sentence if the accused is found guilty. The rank or status of the accused, the nature of the offence, and the powers of punishment available to the various types of court martial are all factors considered in determining which type of court martial is appropriate in a specific case.

COURTS MARTIAL IN 2000-2001

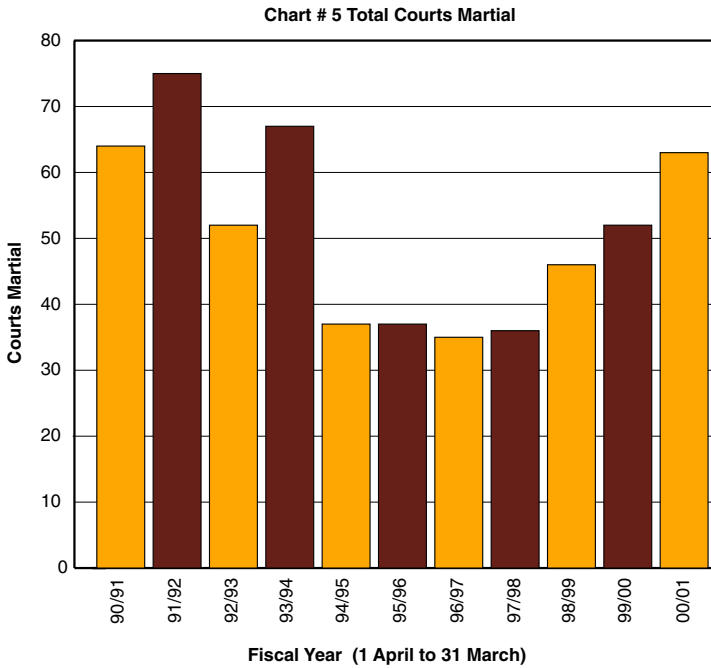
During the 2000-2001 reporting period, 63 courts martial were held across the CF (see Annex E for details). Chart 5 shows how many courts martial were convened in each year of the last decade. Information on upcoming courts martial is publicly available through the websites of both the JAG and the Office of the Chief Military Judge.⁴⁴

41 Sections 167(1) and 170(1) NDA.

42 Sections 167(7) and 170(4) NDA.

43 Sections 174 and 177 NDA.

44 The URL of the JAG website is www.dnd.ca/jag. The URL of the website of the Office of the Chief Military Judge is www.dnd.ca/cmj.



APPEAL OF A COURT MARTIAL DECISION

Generally speaking, decisions made at courts martial may be appealed to the Court Martial Appeal Court of Canada (CMAC), a civilian court composed of Federal Court and Superior Court judges.⁴⁵ Appeals from courts martial are discussed in Chapter 6.

⁴⁵ See sections 159, 234, 235, 238-243 and 248.2-248.9 NDA.



CHAPTER 4

Committee Reports

4.1 Committees on Military Justice

In 1999, to assist in the superintendence and review of the administration of military justice, the JAG (after consultation and with the support of the Minister of National Defence) created the following committees, all of which met during the 2000-2001 reporting period:

- the Military Justice Stakeholders' Committee (MJSC);
- the CF Code of Service Discipline Committee;
- the JAG Advisory Panel on Military Justice; and
- the Military Justice Round Table.

Each military justice committee operates from a unique perspective to give the JAG feedback on the general performance of the military justice system and advice on changes and new directions. As a whole, the committee structure ensures that the JAG receives the benefit of various perspectives in performing the superintendence, review and reporting tasks set by Parliament. The committee structure amounts to a forum where the policies and procedures of the military justice system can be questioned and challenged.

The introduction of advisory committees is a significant development; in the past, the military justice system was reactive, and tended to change in response to outside stimuli, usually judicial decisions. An exception to this rule was the Summary Trial Working Group, which published its report in 1994.¹

4.2 The Military Justice Stakeholders' Committee

The Military Justice Stakeholders' Committee (MJSC) is concerned with long-term strategic issues related to military justice. It reviews and considers existing policies and developing trends in the CF and in Canadian society that may affect the military justice system. Where appropriate, it can comment on specific issues, and refer issues to other military justice committees for detailed study.

1 Office of the Judge Advocate General, *Summary Trial Working Group Report*, 2 March 1994.

Its membership is structured to ensure a wide variety of perspectives for discussion of broad policy and process issues, with representation from all areas of the CF with an interest in the military justice system: the Bench at both the trial and appeal levels; the chain of command; the military bar; the Military Police; and the resource providers. The MJSC is chaired by the Chief Justice of the Court Martial Appeal Court; the other members are:

- the Minister of National Defence;
- the Judge Advocate General;
- the Chief of the Defence Staff;
- the Vice Chief of the Defence Staff;
- the Chief Military Judge;
- the Director of Military Prosecutions;
- the Director of Defence Counsel Services; and
- the Canadian Forces Provost Marshal.

The MJSC meets at least once per year and more often if required. It met in May 2000 to discuss victims' issues, particularly the availability of services to victims of offences dealt with in the military justice system. A meeting planned for late fall 2000 was postponed due to the federal election.

The MJSC met again on 30 April 2001. Members were briefed on recent military justice statistics and the results of the surveys discussed in Chapter 5 of this report. The impact of delay in the court martial system was discussed as were the unique elements of sentencing in the military justice system. The chair of the MJSC, Chief Justice Barry Strayer updated the committee on initiatives undertaken to increase public awareness of the role and functions of the CMAC.

4.3 The CF Code of Service Discipline Committee

THE ROLE OF THE CODE OF SERVICE DISCIPLINE IN THE CF HAS BEEN DESCRIBED AS FOLLOWS:

The Code of Service Discipline is used when more positive means of ensuring the habit of obedience have been unsuccessful. It is readily apparent that the authority to command, fairness and the ability to sanction behaviour inconsistent with the institutional

values of the military, all integral parts of military law, are essential to the development of the habit of obedience so necessary for the creation of an effective armed force.²

The CF Code of Service Discipline Committee is made up of senior officers and Chief Warrant Officers (the principal users of the military justice system as a tool for developing and maintaining discipline), and the other key players in the military justice system. It is co-chaired by the CDS and the JAG, in recognition of the very different but equally significant interests of these officers in the operations and functioning of the military justice system. The other committee members are:

- the Vice Chief of the Defence Staff;
- the Deputy Chief of the Defence Staff;
- the three Environmental Chiefs of Staff;
- the Associate Deputy Minister (Human Resources-Military);
- the Director of Military Prosecutions;
- the Canadian Forces Provost Marshal;
- the Canadian Forces Chief Warrant Officer;
- the Environmental Chief Warrant Officers; and
- the Chief Warrant Officer of the Associate Deputy Minister (Human Resources-Military).

The CF Code of Service Discipline Committee is a forum where users of the military justice system can discuss matters of practical concern, and those who work in the system (and make the system work) can obtain input from senior leaders on broad policy issues.

This committee met in November 2000 to discuss court martial costs and scheduling. At the same time, in response to comments in the report of the Military Judges' Compensation Committee, it considered the need for a mechanism to appoint part-time military judges, endorsing the concept. Options that will allow for part-time appointments, without encroaching on the independence or harming the impartiality of the military judiciary are being developed and considered.

2 Office of the JAG, *Military Justice at the Summary Trial Level*, available online at www.dnd.ca/jag/dlaw_training/military_justice_toc_e.html.

4.4 The JAG Advisory Panel on Military Justice

The JAG Advisory Panel on Military Justice is unique in the committee structure in that it is composed entirely of civilian lawyers and judges. It has the dual function of giving the public meaningful access to the military justice system, while giving the military justice system the benefit of the ideas and experience of those working in the civilian criminal justice system.

The mandate of this panel is to review new military justice policy initiatives before they are implemented, and to recommend appropriate changes. The result is an external perspective on the direction the military justice system may be taking on a particular issue.

The JAG Advisory Panel comprises five members representing all regions of Canada. The current chair is a sitting Superior Court Judge with broad experience in the military justice system, and the members include a senior federal Crown, a senior provincial Crown, and two prominent members of the defence bar. The panel meets at the JAG's request, and its last meeting took place in September 2000. During 2000-2001, it considered many issues, including the following:

- the JAG Professional Standards Review Policy;
- the requirement for a broad policy on the exercise of jurisdiction in cases with concurrent civil and military jurisdiction; and
- the appropriate tariff when the DDCCS engages counsel to assist temporarily under section 249.21 of the NDA.

4.5 Military Justice Round Table

The Military Justice Round Table is an internal group organized to address specific issues and integrate legal officers' views and recommendations into policy, regulation and legislation as appropriate. Because it is issue-oriented, the Round Table has a flexible membership and forms sub-groups as required.

The Military Justice Round Table is chaired by the JAG, and includes the following members:

- the Director of Military Prosecutions;
- the Director of Defence Counsel Services;
- the Director of Law/Military Justice Policy and Research; and
- the Director Legislative and Regulatory Services.

The Round Table has met regularly throughout 2000-2001 to consider issues such as the problem of delay in the court martial system, and a statutory structure to allow for part-time military judges.



CHAPTER 5

Judge Advocate General Initiatives - Superintendence and Review of the Administration of Military Justice

5.1 Introduction

The NDA makes the JAG specifically responsible for superintending the administration of military justice in the Canadian Forces,¹ and conducting (or causing to be conducted) regular reviews of the administration of military justice.² This chapter covers the following topics:

- court martial delay;
- feedback received on reforms to the military justice system;
- statutory and regulatory changes related to military justice;
- policy guidance promulgated during the reporting period; and
- other military justice superintendence and review initiatives undertaken during the 2000-2001 reporting period.

Review and Reporting Framework for the

5.2 Administration of the Military Justice System

With the “template and reporting” review framework now in place, the JAG can monitor and assess the military justice system using methods such as statistical analysis, independent professional analysis, and standardized qualitative and quantitative reports from the system’s key actors.

The template and reporting system incorporates the reporting requirements of the chain of command and gives the JAG the oversight capability needed to meet them. Another mechanism for reviewing the administration of military justice—a scheduled schema of strategic goals, broken down into initiatives and tasks—is described in the JAG’s Strategic Letter.³ Resources are allocated to each initiative, and each task has a deadline that must be met. Progress on each initiative is tracked on the JAG Performance Measurement System, a computer application.

1 Section 9.2(1) NDA.

2 Section 9.2(2) NDA.

3 “FY 01/02 Strategic Letter—Office of the Judge Advocate General,” dated 20 November 2000, found at www.dnd.ca/jag under the menu item “Office of the Judge Advocate General.”

5.3 Court Martial Delay

During 2000-2001, several indicators arose suggesting unacceptable delay in the court martial process. The indicators included court decisions relating to delay, feedback from the chain of command, and statistics gathered through the military justice review and reporting framework. The Office of the JAG developed a strategic paper on this issue and, in February 2001, briefed the Armed Forces Council (AFC),⁴ which endorsed several initiatives to address the problem.

Much of the delay is attributable to the recent extensive reforms to the military justice system. Time and resources were consumed in the establishment of the independent Canadian Military Prosecution Service and Directorate of Defence Counsel Services. In addition, new processes and procedures generated a need for training. However, to rely on change as a full explanation for the difficulties experienced in this area would do a disservice to the military justice system as a whole and evade the obligation to address other factors that appear to be contributing to the delay problem. To move forward on the assumption that the situation will simply correct itself in time would threaten not only the ability of commanders to maintain discipline, but also the credibility of the reforms implemented to date.

Just as the evidence of delay in the court martial system cannot be ignored, neither can the complexities of the system be permitted to hinder the ability of the system to support the attainment of operational objectives. The efficiency and effectiveness of the military justice system depends on the efficiency and effectiveness of all who contribute to it, including the CF legal community, the Military Police, and all commissioned and senior non-commissioned members of the CF. The delay problem does not spring from a particular point in the court martial process; rather, it has roots throughout the system.

4 Chaired by the CDS, the AFC comprises the Vice Chief of the Defence Staff, the Deputy Chief of the Defence Staff, the Assistant Deputy Minister (Human Resources-Military), the three Environmental Chiefs of Staff, the Chief of Reserves and Cadets, and the Canadian Forces Chief Warrant Officer. The AFC advises the CDS and considers broad military matters related to the command, control and administration of the CF.

CORRECTIVE INITIATIVES

In responding to the court-martial delay issue, the Office of the JAG identified several corrective initiatives that were endorsed by the AFC and are now under way. These initiatives include the following:

I. **Review of regulations.**

- a. The regulatory obligation to seek legal advice at both the charge-laying and pre-trial disposal points⁵ is being reviewed to determine whether legal advice at only one of these two points is sufficient to ensure fairness and support the chain of command.
- b. The right of an accused to elect to be tried by court martial when charged under section 129 of the NDA⁶ is also being reviewed. Under the current regulatory regime, the right to elect trial by court martial is triggered whenever a section 129 offence is alleged, except in very narrow and strictly defined circumstances. As section 129 of the NDA is used to enforce local orders and regulations, some think the circumstances in which an election need not be extended are too narrow. It has been suggested that the circumstances should be widened to ensure that commanders are in a position to deal with minor disciplinary breaches swiftly and fairly.

2. **Allocation of sufficient resources.** Human resource allocation continues to be an issue throughout the military justice system, and timeliness is affected by resource levels. The following events of the last 12 months address many of the concerns relating to human resource allocation:

- a. The Governor-in-Council appointed three new military judges, thus relieving the significant pressure on the court martial schedule.

5 QR&O article 107.03 requires an officer or non-commissioned member having the authority to lay charges to obtain legal advice before laying a charge in most circumstances. QR&O article 107.11 requires the officer to whom a charge has been referred to obtain legal advice before disposing of that charge. The requirement to obtain legal advice at both these points has been much discussed, but so far no consensus has been reached as to which point, if either, might be eliminated.

6 QR&O article 108.17 lists the offences for which an election need not be offered if the accused is not likely to receive a sentence of detention, reduction in rank, or a fine in excess of 25 percent of basic monthly pay. This list includes section 129 offences related to military training, maintenance of personal equipment, quarters or work space, or dress and deportment. Some consider this wording too narrow, as it would require (for example) an election to be offered in a case of the violation of local traffic rules.

- b. Regional Military Prosecution (RMP) offices, which are currently staffed by only one lawyer, will soon become two person offices.⁷ These new positions, to be staffed on a priority basis, will enhance support to regional CF National Investigation Service (CFNIS) detachments and improve the timeliness of prosecutions.
 - c. A new Assistant JAG (AJAG) office with three lawyers has been established in Ottawa⁸ to provide staff at National Defence Headquarters (NDHQ) with legal services comparable to services available in the field, thus enhancing the ability of referral authorities at NDHQ to review and staff discipline files.
3. **Scheduling of courts martial.** The Court Martial Administrator (CMA) has been encouraged to develop a policy on scheduling courts martial that would permit the CMA to set a matter down for trial if the prosecution and the defence cannot reach consensus on the trial date within a reasonable (but specific) period of time.
 4. **Training.** Military justice training materials are being amended to address the importance of timely staffing of disciplinary files. Certification-training materials are also being amended to emphasize the need for the chain of command to treat discipline files as a staffing priority.
 5. The Office of the JAG has recommended that Environmental Chiefs of Staff and Group Principals issue specific direction to their subordinate commanders to the effect that disciplinary matters are to be staffed and dealt with promptly. This recommendation has been endorsed.
 6. The JAG has issued written direction⁹ to the Director of Military Prosecutions (DMP) and the Director of Defense Counsel Services (DDCS) emphasizing that:
 - a. expeditious justice is expected of the military justice system;

7 This increase in staffing is a result of the approval by the CDS and the Deputy Minister of a recommendation in the JAG FY 01-02 Strategic Letter.

8 Also recommended by the JAG in the FY 01-02 Strategic Letter.

9 JAG Directive 013/01 issued 30 March 2001. Sections 165,17 and 249.2 of the NDA authorize the JAG to issue general instructions to the DMP and DDCS on their specific areas of responsibility.

- b. resource allocation and scheduling decisions must reflect this expectation, particularly in cases involving breaches of discipline on operational deployments; and
 - c. every effort shall be made to conduct courts martial in the theatre of operations where the breach of discipline occurred, recognizing the inherent limitations of semi-annual rotations.
7. The JAG has also issued written direction to all AJAGs and unit legal advisers to the effect that they must give highest priority to disciplinary files.

Initiatives to Conduct Regular Reviews

5.4 of the Administration of Military Justice

KPMG SURVEY ON THE SUMMARY TRIAL SYSTEM

In November 2000, the Office of the JAG engaged the private-sector consulting firm KPMG to conduct a CF-wide survey on the administration of summary trials. The survey was designed to:

- indicate how well CF members and units comply with the new regulations on the conduct of summary trials;
- produce baseline statistics against which the performance of the military justice system can be monitored;
- produce information for the five-year statutory review of the Bill C-25 reforms, especially indications of areas where change should be recommended; and
- determine the effect of recent enhancements to military justice training.

As well as all commanding officers, the survey questionnaire (105 questions in five parts)¹⁰ targeted everyone who has participated in a summary trial since September 1999 as one of the following primary actors:

- the accused;
- the assisting officer;

¹⁰ The survey comprised 28 questions directed to the accused, 25 to the assisting officer, 19 to the presiding officer, 19 to the commanding officer, and 14 to the review authority.

- the presiding officer (includes delegated officers, commanding officers and superior commanders); and
- the review authority.

The questionnaire was electronically accessible through D-Net (the DND/CF website), and the Defence Information Network (the DND/CF intranet); it was also downloadable from these sites in MS Word format. Paper copies were mailed to units that are frequent users of the summary trial system.

The survey drew an excellent response. The questionnaire was completed by CF members in all three Environmental Commands, all regions of Canada, and units deployed overseas. The response rate to each of the five parts of the questionnaire was significant, providing statistically meaningful data that can be used to evaluate the implementation of changes to the summary trial system.

The responses break down as follows:

Data source	Response on paper	Response by e-mail	Number of responses	Share of responses
Accused	15	58	73	9%
Assisting Officer	22	169	191	25%
Presiding Officer	31	220	251	33%
Commanding Officer	27	205	232	30%
Review Authority	4	18	22	3%
Total	99	670	769	100%

SURVEY RESULTS

This first survey was intended to produce baseline data and measure adherence to three tenets of fairness in the summary trial system.

TENET 1: COMPLIANCE WITH NEW REGULATORY REQUIREMENTS RELATING TO THE ADMINISTRATION OF MILITARY JUSTICE.

- a. Commanding officers are certified by the Office of the JAG to perform their duties in the administration of Code of Service Discipline.
- b. Each unit maintains a Registry of Disciplinary Procedures.
- c. RDPs are completed correctly, including the final disposition of all charges, and submitted for review to the local AJAG or DJA and, ultimately, to the JAG.
- d. Legal advisers and review authorities give timely feedback.

- e. Requests from the public for access to the Registry of Disciplinary Procedures are handled appropriately.

The survey found a high degree of compliance at unit level with the new regulatory requirements relating to summary trial administration. However, efforts must continue in this regard, and unit legal advisors will continue to emphasize the new obligations imposed on units.

TENET 2: EACH ACCUSED RECEIVES FAIR TREATMENT
AT SUMMARY TRIAL.

- a. Trials are held in the official language chosen by the accused.
- b. Accused persons who are entitled to elect trial by court martial are given the opportunity and legal support to do so.
- c. Accused persons receive:
 - (1) all information identified in the regulations,
 - (2) access to the evidence that will be used against them, and
 - (3) a list of witnesses who will testify against them.
- d. Accused persons are given the opportunity to exercise their right to put their case to the presiding officer before a finding is made.
- e. Accused persons are given the opportunity to exercise their right to present evidence and testimony of mitigating considerations before sentence is passed.

The survey confirms substantial compliance in all areas. However, a significant number of respondents indicated that they did not receive all the information to be provided to an accused facing summary trial. This finding suggests that further education is required, not only to ensure that all such information is provided, but also to ensure that all individuals involved in the process understand the extent of the obligations set out in QR&O relating to the provision of information.¹¹

TENET 3: THE SYSTEM FOR REVIEWING THE DECISIONS MADE AT
SUMMARY TRIAL IS FAIR AND RESPONSIVE.

- a. All accused persons are informed of their right to seek review.
- b. The review process is efficient.

11 For further clarification, see QR&O article 108.15.

The only troubling data collected in this survey relates to this tenet. Although the survey indicates satisfaction with the review process itself, the level of awareness among accused persons as to their right to request review of a summary trial was lower than expected. The obligation to make each accused individual aware of the review process is placed on assisting officers at summary trial; however, this information is available to all CF members through military justice training and in the CF booklet *The Code of Service Discipline and Me* prepared by the Office of the JAG and published in 1999.

THE ASSISTING OFFICER AT SUMMARY TRIAL

The primary functions of an assisting officer are described in *Queen's Regulations and Orders for the Canadian Forces*, article 108.14, as follows:

- (4) The assisting officer shall, to the extent desired by the accused,
 - (a) assist in the preparation of the accused's case and advise the accused regarding witnesses, evidence and any other matter relating to the charge or trial; and
 - (b) assist and speak for the accused during the trial.
- (5) Before the accused makes an election under article 108.17 (*Election To Be Tried by Court Martial*), the assisting officer shall, ensure that the accused is aware of:
 - (a) the nature and gravity of any offence with which the accused has been charged; and
 - (b) the differences between trial by court martial and trial by summary trial, including the differences between
 - (i) the powers of punishment of a court martial and a summary trial,
 - (ii) the accused's rights to representation at a court martial and assistance at a summary trial,
 - (iii) the rules governing reception of evidence at a court martial and a summary trial, and
 - (iv) the accused's right to appeal the finding and sentence of a court martial and to make a request for review of a summary trial.

ANALYSIS AND RECOMMENDATIONS BY THE JAG

The survey underscores the importance of the assisting officer in the fair administration of military justice at the summary-trial level. The assisting officers who responded to the survey stated that they relied almost entirely on the CF publication *The Election to be Tried by Summary Trial or Court Martial: Guide for Accused and Assisting Officers*. This publication will be fully updated as required to ensure that it remains a useful tool. The Office of the JAG is also considering the need for formal training on the role of assisting officers. Current military justice training will also be reviewed to ensure that the obligation to provide information during summary trial proceedings is clear to all.

Although this survey on the administration of summary trials contains significant primary information, it was designed to produce a baseline for future research; trends and directions can be identified only through comparative analysis. Furthermore, the Office of the JAG is aware that, although annual anonymous surveys are essential for monitoring trends, they cannot measure the impact of specific injustices that occurred in the 12 months preceding each study. Specific injustices can be properly identified and addressed only by use of the optional and mandatory review mechanisms already in place to deal with individual cases. The Office of the JAG will continue to monitor the fairness with which individual cases are handled, and will seek to ensure that the review process is accessible to all.

INTERVIEW SURVEY

As well as the anonymous KPMG questionnaire survey on compliance, the JAG authorized a “qualitative” survey, in which data on early reactions to the reforms of the military justice system were gathered from interviews with senior CF commanders, and Chief Warrant Officers and Chief Petty Officers. The specific objectives of this survey were as follows:

- to obtain initial impressions of the effect of the reforms to date;
- to determine the general level of satisfaction with the military justice system, especially its utility with respect to maintaining discipline;
- to identify wide-spread and local concerns relating to the military justice system and the recent reforms;
- to determine the general level of satisfaction with legal support available to commanders when they use the military justice system; and
- to assess the effectiveness of personal interviews in reviews of the administration of military justice.

A total of 28 interviews were conducted with Regular and Reserve participants from all three Environmental Commands and all regions of Canada. The sample was considerably enhanced by the respondents, who canvassed their areas of responsibility widely; as a result, the views expressed during the interviews often reflected much more than the respondents’ own assessment of the functioning of the military justice system.

The qualitative survey worked well, as the interviews were an ideal opportunity to discuss complex issues in detail. It also had the

intangible yet real benefit of establishing communication between policy-makers and the users of the military justice system. This technique will be used again, focussing on different key players in the military justice system.

All the respondents to this survey indicated that the military justice system serves the needs of the chain of command capably, and that it is both necessary and relevant as a tool for maintaining disciplined, operationally ready units. All respondents expressed positive views of the NDA reforms, noting that the reforms provided much-needed modernization, and greatly increased awareness and understanding of the military justice system in the CF and among the Canadian public. However, all the respondents indicated that the military justice system needs to continue to develop and improve.

Comments and concerns varied widely from interview to interview, but the specific issues raised fell into three main categories:

- timeliness;
- the role of the chain of command; and
- training.

Timeliness concerns were directly linked to the issue of court martial delay, which is discussed elsewhere in this chapter. The survey respondents' observations and suggestions will be useful in the development and assessment of regulatory and policy initiatives to address the delay problem.

Most respondents expressed concern about changes in the specific functions of the chain of command, particularly in relation to the referral of charges and convening of courts martial. The respondents' remarks were positive, but it was clear that referral authorities would appreciate additional guidance on their role. Respondents also indicated that a mechanism is needed to ensure that commanders in the disciplinary chain of command between the unit commanding officer and the referral authority are given an opportunity to provide timely, meaningful input on disciplinary files being referred for trial by court martial.

All respondents considered the training initiatives undertaken as part of the reforms to be of significant value. Comments in this area related to issues of scheduling training and enhancing content by encouraging units to include activities such as mock trials in discipline training.

Finally, there was significant discussion on the establishment of positions for Chief Warrant Officers and Chief Petty Officers First Class within AJAG offices. The Legal offices in Halifax, Esquimalt and Borden each have a Chief Warrant Officer to act as a local resource and to facilitate communication between unit senior non-commissioned members and unit legal advisers. These senior non-commissioned members are seen as a great enhancement to the effective delivery of legal services, particularly in support of discipline. The benefit of these positions is recognized and, with the support of the CDS and the Environmental Chiefs of Staff, similar positions will be filled in the other Assistant JAG offices during the next year.

5.5 Public Access to Charging Documents

During 2000-2001, questions were raised relating to public access to Record of Disciplinary Proceedings (RDPs), the basic charging documents of the military justice system.

During the development of Bill C-25, it was recognized that the information-access mechanism available to the public under the *Access to Information Act* is unnecessarily formal, particularly when requested documents can be precisely identified. Consequently, the CF adopted a process similar to that used by civilian criminal courts. Under the civilian court system, registries supply basic charging documents to requesters who give the registry staff sufficient information to identify the record sought.

A comprehensive regulatory scheme was developed to parallel the civilian system while accommodating the features peculiar to the military justice system, such as the fact that the CF is subject to the *Privacy Act*. The Office of the Privacy Commissioner was consulted in the development of these regulations.

Each CF unit is now required to establish and maintain a Registry of Disciplinary Proceedings. Anyone can obtain a copy of a specific RDP by sending the commanding officer of the originating unit a written request containing sufficient information to allow the RDP to be identified (e.g., a specific type of offence, or the name of an accused). Upon receipt of such a request, the commanding officer must send the requester a copy of the RDP held on the unit's Registry of Disciplinary Proceedings, unless release of the RDP is prohibited for one of the reasons set out in the regulation.¹²

This streamlined process is designed to increase public access to the basic charging documents and key decisions of the military justice

¹² see QR&O article 107.16.

system. This material is also available through the *Access to Information Act* process, which must be used when the requester lacks sufficient identifying information or the commanding officer is prohibited from releasing the RDP for a reason set out in the regulation.

The provisions described above were developed to capture unit level actions relating to the military justice system. Therefore, the scheme does not require that disposal decisions made by the DMP be placed on the Registry of Disciplinary Proceedings of the accused's unit. The scheme also does not authorize release of DMP decisions to the requester of an RDP. This arrangement presents problems only when the DMP has decided not to prefer charges; in such cases, the charging information and the decision documents are formally available only under the *Access to Information Act*. When the DMP decides to prefer charges, the charging information appears on the Court Martial Calendar, a public document available online from both the JAG website¹³ and the website of the Chief Military Judge.¹⁴

5.6 Issues of a Concurrent Jurisdiction

Under the NDA, service tribunals have jurisdiction over all offences created by Part III of the NDA. Section 130 of the NDA extends this jurisdiction to all offences punishable under any other Act of Parliament, wherever that act or omission took place, in Canada or abroad. The sole exception to this provision is described in section 70 of the NDA, which provides that a service tribunal shall not try a person charged with murder, manslaughter, or any offence under sections 280 to 283 of the *Criminal Code of Canada* (i.e., abduction of a person under the age of 16 years, abduction of a person under the age of 14 years, and abduction in contravention of a custody order), if the offence was committed in Canada. Before 1 September 1999, section 70 of the NDA also excluded sexual assault when the offence was committed in Canada.

This broad grant of jurisdiction gives rise to concurrent jurisdiction when an individual subject to the Code of Service Discipline commits an offence in Canada that is also punishable under other Acts of Parliament.

The 1999 NDA amendment that extended military jurisdiction to include sexual assaults committed in Canada identified the need for a comprehensive policy to address concurrent jurisdiction.

13 www.dnd.ca/jag under the menu item "Military Justice."

14 www.dnd.ca/cmj.

Currently, this question is settled by reference to established practice and general policy guidance.¹⁵

Preliminary policy-development work on this issue has begun, but the policy cannot be finalized and implemented until statutory authority is extended to allow data relating to serious offences under the Code of Service Discipline to be recorded and banked in the system created by the *Identification of Criminals Act*. Amendments to accomplish this have been introduced in Parliament as part of Bill C-15.¹⁶

5.7 Policy Guidance on Detention and Imprisonment

One of the objectives of the legislative and regulatory reforms undertaken between November 1997 and September 1999 was to sharpen the distinction between the military punishments of detention and imprisonment. If this objective was to be realized, the nature and purposes of each form of custodial punishment had to be communicated within the policy framework.

This task was accomplished early in 2000-2001, when the Armed Forces Council (AFC) endorsed a policy statement presenting the traditional view of detention, as a disciplinary punishment designed to reinforce respect for the law and maintenance of military discipline at two levels: with the offender, through retraining; and with other CF members, through denunciation and deterrence. As a result, detention is normally imposed on an offender who has committed either a serious breach of military discipline or a series of relatively minor service offences, especially when lesser punishments, previously imposed, have failed to correct the offender's conduct. The retraining objective is indicated by the length of the maximum term of detention-90 days, approximately the length of time it takes to train a new recruit.¹⁷

Imprisonment is the most severe sentence the state can impose on an offender and, in certain cases (violent offenders, for example), it may be the only way to protect society from the offender. A sentence of

15 For example, the commitment of DND and the CF to the well-being of military families was clearly stated on 25 March 1999 in the government response to the report on quality of life submitted to Parliament by the Standing Committee on National Defence and Veterans Affairs (SCONDVA). Also, Canadian Forces Administration Order 19-42 (*Family Violence and Abuse*) states that "appropriate action" will be taken against CF members whose conduct constitutes an offence under the NDA or any other Canadian law.

16 C-15 *An Act to Amend the Criminal Code and other Acts* introduced on 14 March 2001 by the Minister of Justice.

17 This is the maximum sentence of detention available at court martial. At summary trial, the maximum is 30 days.

imprisonment may be passed only at court martial. It is normally imposed when the sentencing tribunal wishes to emphasize denunciation and both specific and general deterrence, and is normally reserved for those convicted of serious criminal offences, including analogous offences under the Code of Service Discipline. Both officers and non-commissioned members may be sentenced to imprisonment.

This policy guidance is now reflected in the notes to QR&O articles IO4.04 and IO4.09.

5.8 Statutory Amendments

FORENSIC DNA ANALYSIS

In 1998, Parliament amended the Criminal Code with the passage of Bill C-3, the *DNA Identification Act*, which created a national DNA data bank, provided for the issuance of DNA warrants in the investigation of Criminal Code offences, and authorized judges to order offenders convicted of designated offences to provide samples of bodily substances. However, neither Bill C-3 nor Bill C-25 (in its amendments to the NDA) authorized the collection of DNA samples for data bank purposes from persons convicted of service offences under the NDA.

To ensure that the provisions of the *DNA Identification Act* were not limited to civilian offenders, and to clarify and strengthen the existing DNA regime, Parliament passed Bill S-IO, which came into force on 29 June 2000.¹⁸

Bill S-IO authorizes military judges to issue DNA warrants in the investigation of designated offences¹⁹ committed by persons subject to the Code of Service Discipline, and to order military personnel convicted of designated offences to provide samples of bodily substances for the purposes of the national DNA data bank, in much the same way as these authorities are exercised by provincial court judges under the Criminal Code.

18 Bill S-IO is now cited as S.C. 2000, c. 10.

19 Section 196.11 NDA defines "designated offences" to include all offences designated under section 487.04 of the Criminal Code and all service offences that are similar in nature to the offences designated in the Criminal Code.

5.9 Changes in Regulations

SUSPENSION FROM DUTY AND RELIEF FROM PERFORMANCE OF MILITARY DUTY

When a CF member faces charges under the Code of Service Discipline, a commanding officer must consider the consequences of leaving the accused in the workplace or relieving him or her of the obligation to perform military duties. The impact of this administrative decision must be appropriate to the specific offence, to the accused, to the unit and to the CF as a whole—that is, the rights of the individuals involved must be weighed against the public interest.

QR&O was recently amended to repeal the regulations on suspension from duty and replace them with provisions for relief from the performance of military duty. These recent amendments implement significant changes, including a requirement to give written notice (with reasons) to a CF member when relief is being considered, and to give the concerned CF member an opportunity to make representations.

A new QR&O article IOI.08 will permit certain authorities to relieve a member from the performance of military duty when:

- a. there are reasonable grounds to believe that the member has committed an offence under an Act of Parliament or a provincial legislature, and an investigation has commenced;
- b. the member has been charged with an offence; or
- c. the member has been convicted of such offences but is not serving a sentence of detention or imprisonment.

The amendments came into force on 9 January 2001.

5.10 Judge Advocate General Policies

During the 2000-2001 reporting period, the JAG has issued the following instructions and policies (see Annex H):

- General Instruction on Court-Martial Delay;
- Charge-Screening Policy;
- Professional Standards Review; and
- Ethics Plan.

5.II Military Justice Education and Training

CERTIFICATION TRAINING OF PRESIDING OFFICERS

On 1 April 2000, regulations came into effect requiring superior commanders and commanding officers throughout the CF to be trained and certified in the administration of the Code of Service Discipline, using a curriculum set by the JAG.²⁰ Accordingly, the Office of the JAG has implemented the Certification Training of Presiding Officers program, comprising 20 hours of self-directed study and a self-administered test, followed by two days of classroom instruction and a final test. The objective of the certification program is to convey a common body of military justice knowledge to all officers who may preside at a summary trial.

During the 2000-2001 reporting period, 878 commanding and delegated officers were certified by the JAG as qualified to perform their duties in the administration of the Code of Service Discipline (see Annex G). Seventy-two senior non-commissioned members also completed the program, although they are not eligible for certification.

OTHER MILITARY JUSTICE TRAINING

CF personnel now receive training on the military justice system as part of their regular professional development. To meet this requirement, the CF Recruiting Education and Training System has added enhanced military justice training modules to its courses.²¹

The CF also conducts unit-level military justice training that focuses on the purposes of military justice, and CF members' rights and entitlements under the Code of Service Discipline. Training resources used at unit level include the CF publication *The Code of Service Discipline and Me*.²²

COMMUNICATIONS AND EXTERNAL LINKS

The Office of the JAG has become very active in promoting awareness of the military justice system inside and outside DND and the CF. One of its most successful communications vehicles is the JAG website (www.dnd.ca/jag), where military justice information is publicly available, and the CF publications *Military Justice at the Summary Trial Level* and *The Code of Service Discipline and Me* can be downloaded.

20 QR&O article 101.09.

21 CANFORGEN 081/99 CDS 09 Sep 99.

22 Found at www.dnd.ca/jag under the menu item "Military Justice."

On 19 February 2001, the Office of the JAG provided specialized military justice training to 30 Public Affairs Officers from the Director General Public Affairs at National Defence Headquarters. This session included an overview of the military justice system, an explanation of its built-in procedural fairness mechanisms, the roles of the prosecutor and the defence counsel, JAG media-relations policy, as well as education on public access to cases tried under the military justice system.

In November 2000, the Canadian Bar Association magazine *The National* published “La justice militaire sous l’oeil de la Charte”, an article highlighting the significant progress made by the CF through the reforms to the military justice system. In February 2001, *Canadian Lawyer* published “Off on a New JAG”, a comprehensive article outlining the details of the new statutory regime.

In the Canadian Bar Association (CBA), the Office of the JAG leads the National Military Law Section (NMLS), a forum where lawyers (both military and civilian), legal scholars and jurists can share, exchange and develop ideas relating to military law and military justice. Now with almost 150 members and a steadily increasing list of activities, the NMLS has greatly increased interaction between the military and civilian legal communities. On 13 October 2000, the NMLS held its first Continuing Legal Education Conference, which brought 116 CBA members to Ottawa for one day to hear speakers discuss a wide range of topical, thought-provoking military law issues, such as the seizure of the merchant ship *GTS Katie*. The NMLS is looking forward to holding a Continuing Legal Education panel discussion on military justice at the CBA Annual Conference slated for Saskatoon in August 2001, and another one-day event in the fall of 2001.

A long-term goal of the NMLS is to establish formal relationships with analogous organizations in other countries. A liaison officer has been appointed and steps have been taken to develop closer ties with the Judge Advocate Association (JAA) of the United States. The JAG was a keynote speaker at the July 2000 JAA meeting in New York, and the JAA has indicated that it would like to enhance its interaction with the NMLS.

The DMP is a participant in the Federal, Provincial and Territorial Head of Prosecutions Committee, which comprises the heads of prosecutions at the Department of National Defence, the federal Department of Justice, the chiefs of the provincial prosecution services and the territorial prosecution services. All lawyers posted to the DDCS belong to and have participated in events organized by the Criminal Defence Lawyers' Association and the International Criminal Defence Lawyers' Association.



CHAPTER 6

The Office Of The Chief Military Judge

6.1 The Chief Military Judge

During the 2000-2001 reporting period, much was accomplished in implementing reforms designed to enhance the independence of military judges. This work includes the final report of the Military Judges' Compensation Committee and the appointment by the Governor-in-Council of three new military judges following a selection process developed and implemented by the Minister of National Defence.

6.2 Court Martial Administration

Military judges are independent not only from the JAG and the CF chain of command, but also from DND authorities and the executive branch of government. Courts martial are convened by the Court Martial Administrator (CMA), who acts under the supervision of the Chief Military Judge.¹ When a charge is preferred by the Director of Military Prosecutions (DMP), the CMA convenes a court martial and appoints panel members as required.² The chain of command is not involved in the decisions concerning whether a charge will proceed to court martial, what type of court martial will be held, who will sit on the panel, and where the court martial will take place.

Recent amendments to the Court Martial Appeal Rules (CMARs, see Chapter 7 for details) give the CMA a specific role in the Appeal process. For example, the CMA is now responsible for sending the court martial record to the Court Martial Appeal Court (CMAC), preparing the appeal book, and preparing the Memorandum of Particulars.

6.3 Selection of Military Judges

On 23 January 2001, the Government of Canada announced the appointment of three new military judges to fill vacancies in the Office of the Chief Military Judge.³ These appointments, made

1 Section 165.18 and 165.19 NDA.

2 Section 165.19 NDA.

3 The new military judges are Colonel Kim Carter, CD, BA, LL.B; Lieutenant-Colonel Mario Dutil, CD, LL.B, LL.M; and Commander Jim Price, CD, MPA, LL.B.

pursuant to section 165.21(1) of the NDA, were the first since the NDA reforms of September 1999. They were also the culmination of a new evaluation and selection process recently implemented by the Minister of National Defence after consultation with the Minister of Justice.

SELECTION PROCESS

Subsection 165.21(1) of the NDA provides that the Governor-in-Council may appoint any CF officer who is a barrister or advocate of at least 10 years' standing at the bar of a province to the military judiciary. To ensure that only competent, deserving officers are considered for military judicial appointments, the Minister of National Defence, on the advice of the JAG, initiated an appointment process for military judges similar to the process followed for other federal judicial appointments.

MILITARY JUDGES' SELECTION COMMITTEE

In this judicial evaluation and selection process, candidates are assessed by the Military Judges' Selection Committee (MJSC). Members of the MJSC are appointed by the Minister of National Defence to represent the Bench, the civilian bar and the military community. It is composed of:

- a lawyer or judge nominated by the JAG;
- a civilian lawyer nominated by the Canadian Bar Association;
- a civilian judge nominated by the Chief Military Judge;
- an officer holding the rank of Major-General or higher, nominated by the CDS; and
- a Chief Warrant Officer or Chief Petty Officer First Class nominated by the CDS.

ASSESSING CANDIDATES

To be considered for a military judicial appointment, qualified officers must place their names before the MJSC, which assesses them on criteria relating to:

- professional competence and experience;
- personal characteristics such as honesty and integrity;

- social awareness; and
- potential impediments to appointment, such as an inability to meet the physical fitness requirements of the CF.

All MJSC proceedings and consultations are confidential. As each candidate's assessment is completed, the MJSC is asked to rate the candidate as "recommended," "highly recommended" or "unable to recommend." The assessment is then forwarded to the Minister of National Defence, who is responsible for recommending candidates to the Governor-in-Council.

This evaluation and selection process ensures the appointment of qualified, deserving officers to the military Bench, thus strengthening the military justice system and the CF as a national institution.

6.4 Compensation of Military Judges

On September 18, 1998, in the case of *Lauzon v. the Queen*⁴, the Court Martial Appeal Court (CMAC) stated that the salary structure of military judges did not offer the requisite standard of financial security set out by the Supreme Court of Canada in the *PEI Judges* case.⁵ The CMAC also found that military judges lacked an independent, objective, effective mechanism for de-politicizing the process by which their compensation was determined.

The statutory framework relating to military judges was substantially enhanced by the September 1999 NDA amendments, and the establishment in accordance with QR&O article 204.23, of the Military Judges' Compensation Committee (MJCC).

In function and composition, the MJCC resembles the independent federal commission that reviews the compensation of superior and federal court judges. The committee is composed of three part-time members appointed by the Governor-in-Council: a chair and two members. The Minister of National Defence nominates one member and the military judges nominate the other; these two members then nominate the chair. The chair and members are each appointed for a term of four years, and may be appointed for a further term.

4 *Lauzon v. R.* (1998), 8 Admin. L.R. (3d) 33.

5 *Re Provincial Court Judges*, [1997] 3 S.C.R. 3.

The MJCC is required to conduct an inquiry once every four years, and to make recommendations to the Minister on the adequacy of the compensation of military judges. In conducting an inquiry, the MJCC may consider any relevant objective criteria; however, they must consider the following issues:

- the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
- the role of financial security in ensuring the judicial independence of military judges; and
- the need to attract outstanding officers to the military judiciary.

On 31 August 2000, the MJCC delivered its first quadrennial report, which was made public on 29 September 2000. During the course of its inquiry, the MJCC received written submissions and responses from the representative of the military judges and from DND on behalf of the Government of Canada. Public hearings were held on 7 March 2000 and 7 July 2000 to allow all interested parties to present their positions.

In accordance with QR&O article 204.27, the Minister of National Defence responded publicly to this report on 28 February 2001, acknowledging the importance of military judges in the military justice system and affirming his commitment to their continuing independence. The Minister accepted all recommendations made by the MJCC.⁶

6 To read the Minister's specific comments on the MJCC recommendations and adjustments to the pay of military judges, visit www.dnd.ca/menu/press/Reports/min_resp_feb28/min4_e.htm.



CHAPTER 7

Appeals From Courts Martial to the Court Martial Appeal Court of Canada and the Supreme Court of Canada

7.1 The Appeals Process

Under the NDA, both an accused tried by court martial and the Minister of National Defence may appeal to the Court Martial Appeal Court of Canada (CMAC). The grounds of appeal include (but are not limited to), the following:¹

- the severity of the sentence, unless the sentence is one fixed by law;
- the legality of any finding of guilty;
- the legality of the whole or any part of the sentence;
- the legality of a finding of “unfit to stand trial” or “not responsible on account of mental disorder”;
- the legality of certain dispositions made as a result of a finding of “unfit to stand trial” or “not responsible on account of mental disorder” (i.e., custody or treatment dispositions);
- the legality of a direction to retain the applicant in pre-trial custody, and;
- the legality of a direction to retain the appellant in custody pending appeal.

7.2 The Court Martial Appeal Court

The CMAC consists of federally appointed civilian judges from the Federal Court of Canada or the superior courts of the provinces who are designated by the Governor-in-Council.² The CMAC may sit and hear appeals at any place, and appeals are heard by a panel of three judges sitting together.³

1 See sections 159.9, 228-231, 238-243 and 248.2 NDA.

2 Section 234 NDA.

3 Section 235 NDA.

During the 2000-2001 reporting period, the CMAC significantly reformed the Court Martial Appeal Rules (CMARs) to bring them in line with the 1999 NDA amendments and to reflect the case-management practices of other federal courts.⁴

The amended CMARs⁵ clearly define the roles and responsibilities of the key players in the appeals process. For example:

- to facilitate the superintendence of the administration of military justice, final decisions of the CMAC, including notices of abandonment of proceedings, are sent to the JAG;
- the DDCS makes the appointment when the Chief Justice approves counsel for an accused who has no representation; and
- the Court Martial Administrator is responsible for forwarding the court martial record, preparing the appeal book, and preparing the Memorandum of Particulars.

The new CMARs will benefit both litigants and the public by establishing case-management practices, such as specific time limits for filing documents, that speed up the process and permit earlier hearing dates and decisions by the court. Other benefits include the limitation, with the agreement of the parties, of irrelevant material in the appeal documents; permission to file various documents by facsimile transmission; and the availability of new schedules of documents for use by the parties.

The Office of the Chief Justice of the CMAC now has a website⁶ providing background information about the court and about military law. The website also provides practical information on accessing the court.

7.3 The Supreme Court of Canada

CMAC decisions may be appealed to the Supreme Court of Canada. Such appeals may be made 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.⁷

4 The CMAR amendments were published in *The Canada Gazette* Part II, Vol. 135, No. 6 on 14 March 2001. The proposed changes were published in *The Canada Gazette*, Part I, on 2 December 2000.

5 The amended CMARs are published on the CMAC website www.cmac-cacm.ca.

6 See www.cmac-cacm.ca.

7 Section 245 NDA.

7.4 DDCS Representation of CF Members on Appeal

When a person has delivered a Notice of Appeal under section 230 or 245 of the NDA, he or she may apply to the Appeal Committee, recently established by the Governor-in-Council through regulation,⁸ to be represented on the appeal, free of charge, by legal officers from the Office of the DDCS. When both members of the Appeal Committee determine that the applicant's appeal has "professional merit," the committee shall approve the provision of legal counsel by the DDCS.⁹ The "professional merit" standard requires not only a reasonable chance of success on the particular legal issues raised, but also a reasonable likelihood that the court will allow the appeal and alter the court martial findings or sentence.

Before the establishment of the Appeal Committee, only accused persons who were respondents to appeals filed by the Crown were entitled to be represented by a legal officer at public expense.¹⁰ This regulatory provision now extends the same opportunity to persons initiating an appeal determined to have professional merit.

During the 2000-2001 reporting period, the Appeal Committee assessed three applications from appellants seeking representation by legal counsel at public expense. In two of the three cases, the Appeal Committee found that there was professional merit in the appeal and directed the Office of the DDCS to provide counsel to represent the applicants.

CMACa Year in Review:

7.5 1 April 2000-31 March 2001

During the 2000-2001 reporting period, the CMAC heard six appeals. The Supreme Court of Canada did not hear any appeals from the CMAC.

In four of the six cases before the CMAC, the appellant was a CF member convicted at court martial. In three of the six cases, both the legality of the guilty finding and sentence were appealed; in the other three, only the legality of findings was appealed. More details of the CMAC appeals can be found at Annex F and in the Report of the DMP at Appendix 2.

8 QR&O 101.21.

9 QR&O 101.21(6).

10 QR&O 101.20(2)(g) refers.



CHAPATER 8

Conclusion

This second Annual Report by the Judge Advocate General to the Minister of National Defence on the administration of military justice outlines the overall performance of the military justice system. It reflects the commitment of the JAG to the superintendence of the administration of military justice and, more importantly, acknowledges the commitment of the chain of command to the continued renewal and improvement of the military justice system.

Work toward achieving reform objectives continues; however, we have, as an institution, made considerable progress in enhancing the fairness, transparency and constitutionality of the military justice system. These efforts will continue in the coming year.

Both our internal reviews (see Chapter 5) and external, independent surveys have demonstrated a rising confidence in the military justice system in the CF and among the people of Canada.

Between 27 September and 15 October 2000, POLLARA¹ conducted a telephone survey for DND in which 1537 people randomly selected from voters' lists across Canada were asked about their perceptions of the CF and its activities. Among other questions, the respondents were asked their opinion of the fairness of the military justice system.

PRAXICUS Public Strategies, Inc. conducted a secondary analysis of the information and data collected in the POLLARA survey. The goals of this secondary analysis were to clarify DND's understanding of public attitudes to the reputation and evaluations of CF performance and priorities, and to monitor trends against baseline data gathered by PRAXICUS in 1999.²

After a comparative analysis,³ the findings on leadership and accountability suggest that, although overall perceptions of CF accountability have not changed since 1999, perceptions of CF

1 POLLARA is a Canadian-owned public-opinion and market-research firm located at 301-101 Yorkville Avenue, Toronto, Ontario, M5R 1C1; (416) 921-0090 (telephone) and (416) 921-3903 (fax).

2 The PRAXICUS secondary analysis of the 2000 POLLARA survey should be read in conjunction with the 1999 PRAXICUS report.

3 See pages 5 and 11 of the 2000 *Department of National Defence Canadian Forces Reputation Analysis*.

leadership have improved. Of particular note was an increase in the number of Canadians who agree that the military justice system is fair.⁴

During the 2000-2001 reporting period, the Office of the JAG has taken the initiative to identify deficiencies in the system, demonstrating its commitment to ensuring that the military justice system responds to the challenges presented in the CF today.

JUDICIAL PROCEEDINGS

Between 1 April 2000 and 31 March 2001, 1217 summary trial proceedings were initiated, producing 1112 summary trials held across Canada and in Bosnia, Italy, Macedonia, Kosovo and Eritrea. Also, 63 courts martial were conducted in Canada and abroad, and six appeals were heard by the Court Martial Appeal Court of Canada.

JAG INITIATIVES

As reported last year, the modernization process is inextricably linked to a variety of initiatives undertaken by the Office of the JAG. Efforts in support of the strategic goal of restoring the credibility of the military justice system remain the highest priority of the Office of the JAG.

The DMP and the DDCS both carried out their duties without incident or interference from the military chain of command. As the earlier discussion on court martial delay has revealed, the DDCS continues to provide zealous representation on behalf of the accused. A determined, professionally accomplished and rigorously honest defence function is essential to the credibility of the military justice system and confidence in its fairness.

New policies have been developed so that the institution can deal with important elements related to the basic administration of military justice, such as disclosure and delay. These improvements reinforce accountability and independence to ensure that military justice is administered competently and reported on transparently.

The Military Justice Stakeholders' Committee (chaired by the Chief Justice of the Court Martial Appeal Court of Canada), the CF Code of Service Discipline Committee (co-chaired by the CDS and the JAG), and the JAG Advisory Panel on Military Justice have all been active during this reporting period. Their contribution is essential to ensure that the military justice system continues to evolve with fresh, objective ideas.

4 In 2000, 51% of respondents agreed that the military justice system is fair; in 1999, only 47% of respondents agreed with that statement.

Legal officers from the Office of the JAG instructed 878 officers and 72 senior non-commissioned officers during certification training on the administration of the Code of Service Discipline. With help from the Office of the JAG, all CF members are receiving additional military justice training. On the whole, CF officers can now be said to possess a better understanding of the administration of the Code of Service Discipline and their roles in the military justice system.

To facilitate military legal training, and promote understanding and awareness of military justice, the Office of the JAG maintains a website that provides current information on activities in the military justice system. Similarly, the Chief Justice of the CMAC now maintains a website with details on appeals before the CMAC and appeal-related reference material.

Coupled with the recent legislative and regulatory changes, the many initiatives undertaken by the Office of the JAG during 2000-2001 have significantly modernized the military justice system. During the coming year, the emphasis will continue to be on building confidence in a new military justice system that is efficient, transparent and, above all, just.

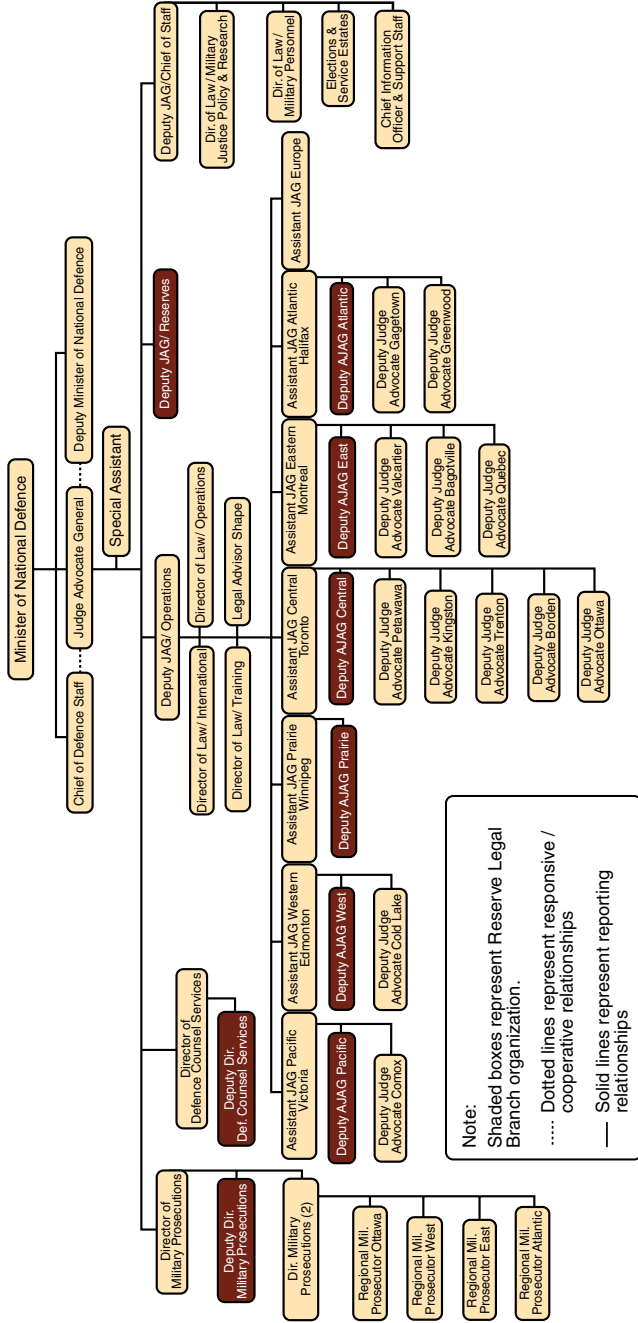


ANNEX A

ORGANIZATION CHART OF
THE RESERVE AND REGULAR
FORCE JUDGE ADVOCATE
GENERAL OFFICE



Regular and Reserve Force Offices





ANNEX B

MAPS AND ADDRESSES/
PHONE NUMBERS OF
JUDGE ADVOCATE
GENERAL OFFICES





ANNEX B

Maps and Addresses/Phone Numbers of Judge Advocate General Offices

Mailing Address

Telephone/Fax Numbers

Office of the Judge Advocate General
Constitution Building
National Defence Headquarters
101 Colonel By Drive
Ottawa ON K1A 0K2

TEL: (613) 992-3019
CSN: 842-3019
FAX: (613) 995-3155

Special Assistant
Office of the Judge Advocate General
MGen George R. Pearkes Building
101 Colonel By Drive
Ottawa ON K1A 0K2

TEL: (613) 996-8470
CSN: 846-8470
FAX: (613) 992-5678

Director of Military Prosecutions
Constitution Building
National Defence Headquarters
101 Colonel By Drive
Ottawa ON K1A 0K2

TEL: (613) 996-5723
CSN: 846-5723
FAX: (613) 995-1840

Director of Defence Counsel Services
Asticou Centre, Block 1900
National Defence Headquarters
101 Colonel By Drive
Ottawa ON K1A 0K2

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CSN: 844-9151
FAX: (819) 997-6322

Deputy Judge Advocate General/ Chief of Staff
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Ottawa ON K1A 0K2

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CSN: 842-8414
FAX: (613) 995-3155

Deputy Judge Advocate General / Operations
Constitution Building
National Defence Headquarters
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Ottawa ON K1A 0K2

TEL: (613) 996-4812
CSN: 846-4812
FAX: (613) 995-3155

Alberta

Mailing Address

Telephone/Fax Numbers

Assistant Judge Advocate General
Western Region
P.O. Box 10500 Stn Forces
Edmonton AB T5J 4J5

TEL: (780) 973-4011 EXT 4239
CSN: 528-4239
FAX: (780) 973-1409

Regional Military Prosecutor
Western Region
P.O. Box 10500 Stn Forces
Edmonton AB T5J 4J5

TEL: (780) 973-4011
EXT 4771/4779
CSN: 528-4771
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Deputy Judge Advocate
4 Wing Cold Lake
P.O. Box 6550 Stn Forces
Cold Lake AB T9M 2C6

TEL: (780) 840-8000 EXT 7027
CSN: 690-7027
FAX: (780) 840-7328

British Columbia

Mailing Address

Telephone/Fax Numbers

Assistant Judge Advocate General
Pacific Region
P.O. Box 17000 Stn Forces
Victoria BC V9A 7N2

TEL: (250) 363-4260
CSN: 255-4260
FAX: (250) 363-5619

Manitoba

Mailing Address

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Assistant Judge Advocate General
Prairie Region
1 Cdn Air Div HQ
P.O. Box 17000 Stn Forces
Winnipeg MB R3J 3Y5

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CSN: 257-5900
FAX: (204) 833-2593

New Brunswick

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Deputy Judge Advocate
3 Area Support Group Gagetown
P.O. Box 17000 Stn Forces
Oromocto NB E2V 4J5

TEL: (506) 422-2000 EXT 2310
FAX: (506) 422-1452

Nova Scotia

Mailing Address

Telephone/Fax Numbers

Assistant Judge Advocate General
Atlantic Region
P.O. Box 99000 Stn Forces
Halifax NS B3K 5X5

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CSN: 447-7300
FAX: (902) 427-7199

Regional Military Prosecutor
Atlantic Region
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Halifax NS B3K 5X5

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CSN: 447-7318
FAX: (902) 427-7317

Deputy Judge Advocate
14 Wing Greenwood
P.O. Box 5000 Stn Main
Greenwood NS B0P 1N0

TEL: (902) 765-1494 EXT 5623
CSN: 568-5623
FAX: (902) 765-1287

Ontario

Mailing Address

Telephone/Fax Numbers

Assistant Judge Advocate General
Central Region
Suite 600
5775 Yonge Street
Toronto ON M2M 4J1

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Deputy Judge Advocate
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CSN: 270-3508
FAX: (705) 423-3003

Deputy Judge Advocate
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FAX: (613) 588-6373

Deputy Judge Advocate
Canadian Forces Base Trenton
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Astra ON K0K 3W0

TEL: (613) 965-7041
CSN: 827-7041
FAX: (613) 965-7094

Québec

Mailing Address

Telephone/Fax Numbers

Assistant Judge Advocate General
Eastern Region
Pierre Le Moyne d'Iberville Building
P.O. Box 600, Stn K
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TEL: (514) 252-2777 EXT 4028
CSN: 621-4028
FAX: (514) 252-2248

Regional Military Prosecutor
Eastern Region
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CSN: 666-5732
FAX: (418) 844-6606

Deputy Judge Advocate Valcartier
Area Support Unit Valcartier
P.O. Box 1000 Stn Forces
Courcellette QC GOA 4Z0

TEL: (418) 844-5000 EXT 5297
CSN: 666-5297
FAX: (418) 844-6606

Deputy Judge Advocate 5 CMBG
Area Support Unit Valcartier
P.O. Box 1000 Stn Forces
Courcellette QC GOA 4Z0

TEL: (418) 844-5000 EXT 5602
CSN: 666-5602
FAX: (418) 844-6606

Deputy Judge Advocate
3 Wing Bagotville
P.O. Box 5000, Stn Main Office
Alouette QC GoV 1A0

TEL: (418) 677-4000 EXT 4338
CSN: 661-4338
FAX: (418) 677-4168

Deputy Judge Advocate (Naval Reserve)
Naval Reserve Headquarters
112 Dalhousie
Quebec QC G1K 4C1

TEL: (418) 694-5560 EXT 5300
CSN: unavailable
FAX: (418) 694-5591

Germany

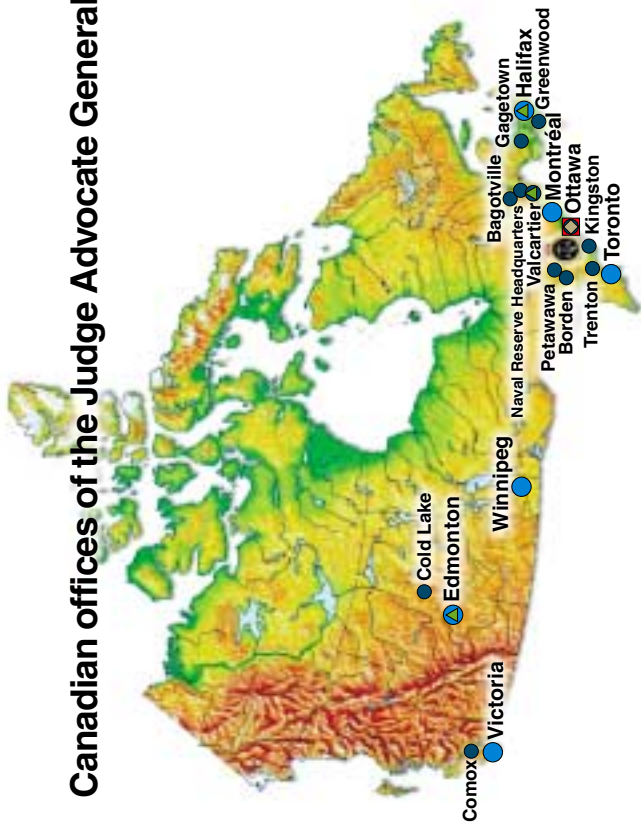
Mailing Address

Assistant Judge Advocate General
Europe
SELFKANT Kaserne
P.O. Box 5053 STN Forces
Belleville ON K8N 5W6

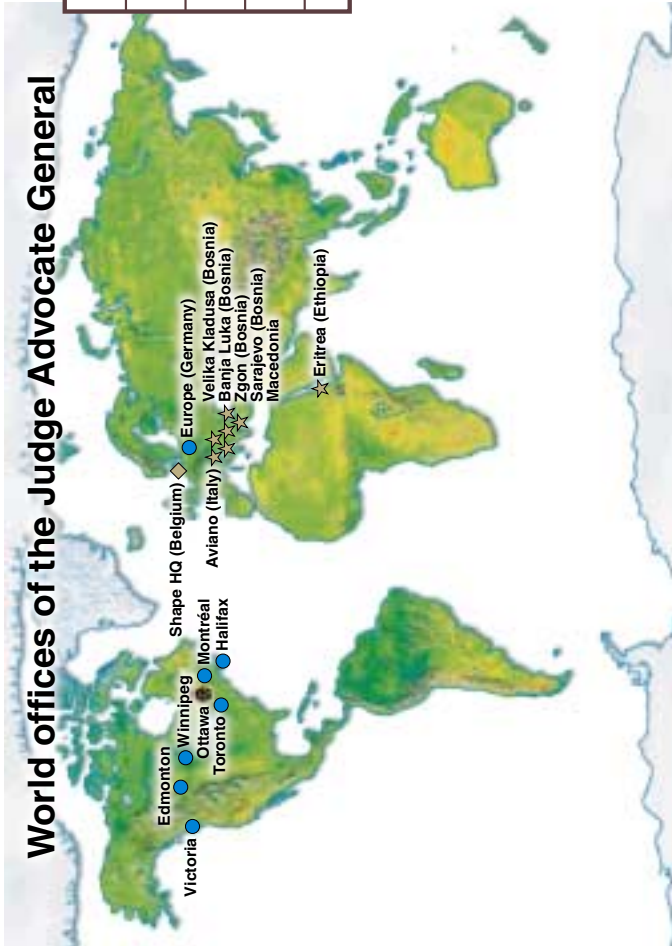
Telephone/Fax Numbers





TEL: 011-49-2451-717165/717170
FAX: 011-49-2451-717174

Canadian offices of the Judge Advocate General



World offices of the Judge Advocate General



	Office of the JAG
	Assistant Judge Advocate General
	Canadian LA to Supreme HQ Allied Powers
	Operations
April 1st, 2000 – March 31, 2001	

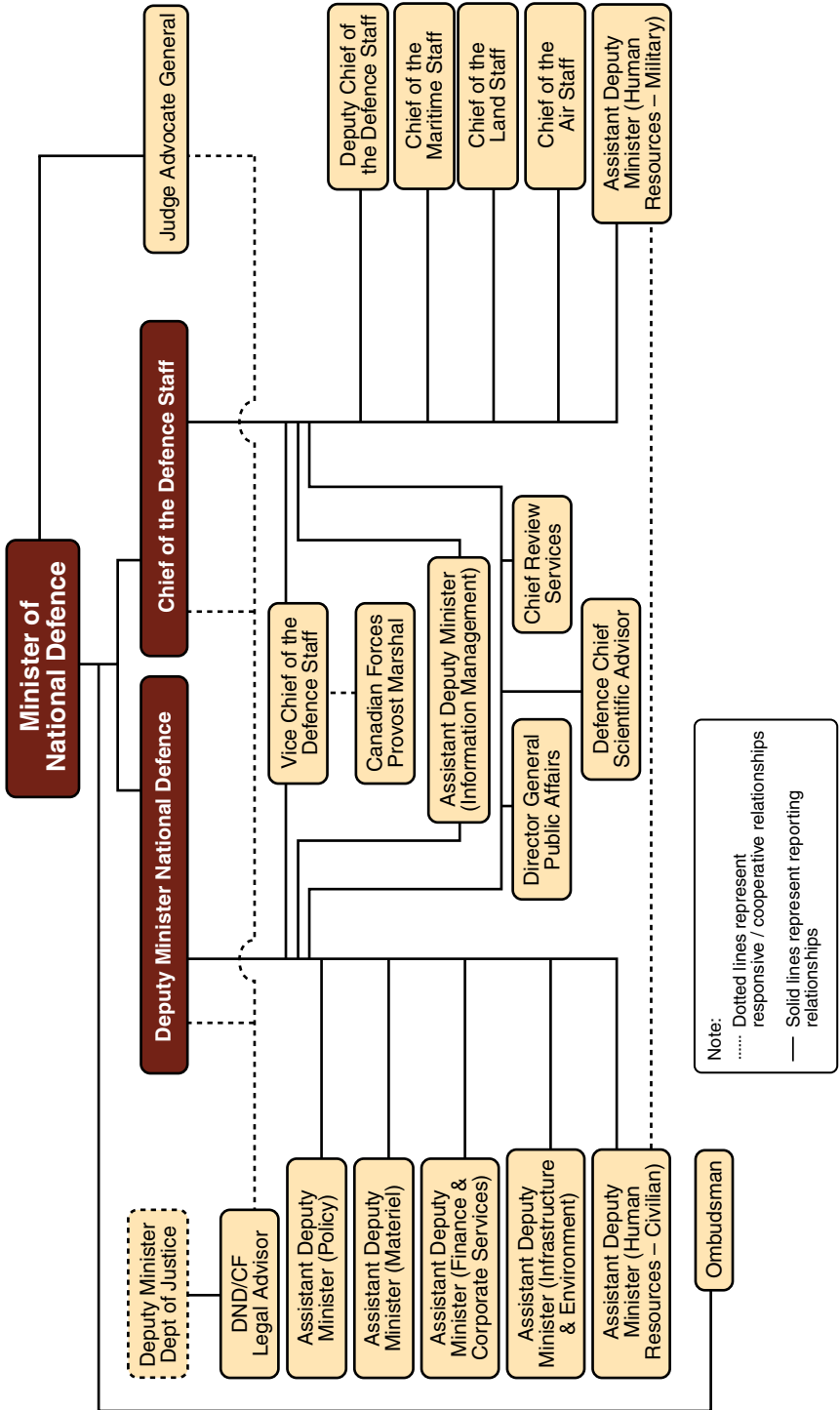


ANNEX C

ORGANIZATION CHART
DISPLAYING RELATIONSHIP
OF JUDGE ADVOCATE GENERAL
TO MINISTER AND DEPUTY
MINISTER OF NATIONAL
DEFENCE, AND THE MILITARY
CHAIN OF COMMAND



Primary Responsibilities Diagram





ANNEX D

SUMMARY TRIAL YEAR
IN REVIEW - STATISTICS:
1 April 00 to 31 March 01





ANNEX D

Summary Trials Reporting

Period 1 April 00 – 31 March 01

Distribution of Disciplinary Proceedings	Number of Cases	Percentage
Matter directly referred to Court Martial	53	4%
Accused elected to be tried by Court Martial	29	3%
Number of Summary Trials	1112	91%
Number of Summary Trials not proceeded with	23	2%
Total	1217	100%

Election to Court Martial	Number of Cases	Percentage
Number of cases where member offered the right to be tried by Court Martial	422	
Percentage of persons electing Court Martial when offered		7%

Language of Summary Trials	Number of Cases	Percentage
Number in English	906	81%
Number in French	206	19%
Total	1112	100%

Command	Number of Cases	Percentage
Vice Chief of the Defence Staff (VCDS)	1	0.1%
Deputy Chief of the Defence Staff (DCDS)	113	10.2%
Chief of Maritime Staff (CMS)	125	11.2%
Chief of Land Staff (CLS)	653	58.7%
Chief of Air Staff (CAS)	42	3.8%
Assistant Deputy Minister (Financial and Corporate Services)	1	0.1%
Assistant Deputy Minister (Human Resources-Military)	166	14.9%
Assistant Deputy Minister (Information Management)	11	1%
Total	1112	100.0%

Rank of the Accused	Number of Summary Trials	Percentage
Private and Corporal (includes Master-Corporal)	950	85%
Sergeant to Chief Warrant Officer	56	5%
Officer	106	10%
Other	0	0%
Total	1112	100%

Note: Master Corporal is not a rank; it is an appointment pursuant to art. 3.08 of the *Queen's Regulations and Orders* for the Canadian Forces.

Disposition by Case	Number of Cases	Percentage
Guilty	1046	94%
Not Guilty	66	6%
Number of cases	1112	100%

Findings by Charge	Number of charges	Percentage
Guilty	1241	84%
Not Guilty	158	11%
Charge Stayed	59	4%
Charge Not Proceeded With	19	1%
Total	1477	100%

Summary of Charges

NDA Article	Description	Number of charges	Percentage
83	Disobedience of Lawful Command	40	2.8%
84	Striking or Offering Violence to a Superior	6	0.4%
85	Insubordinate Behaviour	62	4.2%
86	Quarrels and Disturbances	29	2.0%
90	Absence Without Leave	382	25.9%
93	Cruel or Disgraceful Conduct	1	0.1%
95	Abuse of Subordinates	5	0.3%
96	Making False Accusations or Statements or Suppressing Facts	3	0.2%
97	Drunkenness	110	7.4%
101	Escape from Custody	1	0.1%
107	Wrongful Acts in Relations to Aircraft Material	3	0.2%
111	Improper Driving of Vehicles	5	0.3%
112	Improper Use of Vehicles	13	0.9%
114	Stealing	20	1.3%
115	Receiving	2	0.1%
116	Destruction, Damage, Loss or Improper Disposal	7	0.5%
117	Miscellaneous Offences	13	0.9%
124	Negligent Performance of a Military Duty	3	0.2%

Summary of Charges (Cont'd)

NDA			
Article	Description	Number of charges	Percentage
125	Willfully made a False Statement in a Document	1	0.1%
127	Negligent Handling of Dangerous Substances	2	0.1%
129	Conduct to the Prejudice of Good Order & Discipline – Offences of sexual nature	7	0.5%
129	Conduct to the Prejudice of Good Order & Discipline – Drugs/Alcohol	114	7.7%
129	Conduct to the Prejudice of Good Order & Discipline – Election to be tried by CM Given (excl. cases reported in 129-Offences of sexual nature & 129-Drugs/Alcohol)	250	16.9%
129	Conduct to the Prejudice of Good Order & Discipline – Election to be tried by CM not Given (excl. cases reported in 129-Offences of sexual nature & 129-Drugs/Alcohol)	358	24.2%
130	Service Trial of Civil Offences	40	2.7%
Number of charges		1477	100%

Authority	Number of Cases	Percentage
Delegated Officer	729	66%
Commanding Officer	349	31%
Superior Commander	34	3%
Total	1112	100%

Punishments (more than one type of punishment may be awarded in a sentence)		
	Number of Punishments	Percentage
Detention (Suspended)	5	0.4%
Detention	25	1.9%
Reduction in Rank	9	0.7%
Severe Reprimand	3	0.2%
Reprimand	68	5.3%
Fine	720	55.5%
Confinement to Ship or Barracks	270	20.8%
Extra Work and Drill	99	7.6%
Stoppage of Leave	20	1.5%
Caution	79	6.1%

Requests for Review	Number of Cases	Percentage
Requests for review based on FINDING	5	33%
Requests for review based on SENTENCE	7	47%
Requests for review based on FINDING & SENTENCE	3	20%
Total	15	100%

Decision of Review Authority	Number of Cases	Percentage
Upholds Decision	7	47%
Quashes / Substitutes Findings	3	20%
Substitutes Punishment	3	20%
Mitigates / Commutes / Remits Punishment	2	13%
Total	15	100%



ANNEX E

COURT MARTIAL YEAR
IN REVIEW - STATISTICS:
1 April 2000 to 31 March 2001





ANNEX E

Number of Courts Martial

Courts Martial Held Between 1 Apr 00 - 31 Mar 01	63
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Courts Martial By Type

Types of Courts Martial	Number of Cases	Percentage
Standing Courts Martial	62	98%
Disciplinary Courts Martial	1	2%
General Courts Martial	0	
Special General Courts Martial	0	
Total	63	100%

Summary of Charges

Offences	Description	Number of Cases
s. 83 NDA	Disobeying a Lawful Command	5
s. 84 NDA	Striking a Superior Officer	2
s. 85 NDA	Used Threatening Language to a Superior	3
s. 90 NDA	Absent Without Leave	3
s. 95 NDA	Abuse of Subordinates	4
s. 96 NDA	Knowingly Made a False Accusation	2
s. 97 NDA	Drunkenness	1
s. 109 NDA	Low Flying	2
s. 112(a) NDA	Unauthorized Use of a CF Vehicle	6
s. 114 NDA	Stealing	8
s. 114 NDA	Stealing When Entrusted	7
s. 115 NDA	Possession of Property Obtained by Commission of a Service Offence	1
s. 117(b) NDA	Improperly Accepting Compensation in Relation to a Military Duty	1
s. 117(f) NDA	An Act of a Fraudulent Nature	12
s. 118.1 NDA	Failing to Appear before a Court Martial	1
s. 124 NDA	Negligent Performance of Military Duty	6
s. 125(a) NDA	Willfully Made a False Entry	11
s. 126 NDA	Disobeyed Order to Submit to Vaccination	1
s. 129 NDA	An Act to the Prejudice	25
s. 129 NDA	Conduct to the Prejudice	26
s. 129 NDA	Neglect to the Prejudice	5
s. 130 NDA (4(t) CDSA)	Possession of substances	1

Offences	Description	Number of Cases
s. 130 NDA (5(t) CDSA)	Trafficking of substances	5
s. 130 NDA (80 CCC)	Careless Storage of a Firearm	1
s. 130 NDA (86 CCC)	Careless Storage of Ammunition	3
s. 130 NDA (86(t) CCC)	Careless Handling of a Firearm	2
s. 130 NDA (87 CCC)	Pointing a Firearm	1
s. 130 NDA (121(t)(c)CCC)	Fraud Upon the Government	1
s. 130 NDA (139(2) CCC)	Obstructing Justice	1
s. 130 NDA (140 CCC)	Public Mischief	1
s. 130 NDA (153(t) CCC)	Sexual Exploitation	3
s. 130 NDA (163.1(4) CCC)	Possession of Child Pornography	1
s. 130 NDA (220 (b) CCC)	Criminal Negligence Causing Death	2
s. 130 NDA (253 CCC)	Operating a Motor Vehicle While Impaired	1
s. 130 NDA (264.1 (t) CCC)	Uttering Threats	3
s. 130 NDA (264(3) CCC)	Criminal Harassment	1
s. 130 NDA (266 CCC)	Assault	4
s. 130 NDA (267(b) CCC)	Assault Causing Bodily Harm	2
s. 130 NDA (271 CCC)	Sexual Assault	1
s. 130 NDA (341 CCC)	Fraudulent Concealment	1
s. 130 NDA (367 CCC)	Forgery	1
s. 130 NDA (368 CCC)	Uttering a Forged Document	1
s. 130 NDA (s. 78 FA)	Fishing without a license	8
s. 130 NDA (s. 78 FA)	Possession of Undersized Lobster	4
s. 130 NDA (s. 78 FA)	Possession of Female Lobster with Eggs	4
s. 130 NDA (s. 78 FA)	Fishing During a Closed Time	8
s. 130 NDA (s. 33 FA)	Possession of Fish Caught in Contravention to the Act	4
s. 130 NDA (s. 80(d) FAA)	Willfully Signed a False Certificate	5
Total Offences		202

Disposition By Case

Disposition	Number of Cases	Percentage
Found/Plead Guilty	51	78%
Not Guilty	8	12%
Stay of Proceedings	3	5%
Withdrawal	3 **	5%
Total	65	100%

** Note: In 2 of these cases, the charges were withdrawn prior to proceeding to court martial.

Sentences

(NOTE: More than one type of punishment can be included in a sentence.)

Punishment Type	Number of Cases
Reprimand	7
Severe Reprimand	13
Fine	43
Detention	5
Imprisonment	6
Reduction in Rank	6
Confined to Barracks	1
Total	81

Language of Trial

Language	Number of Cases	Percentage
Trial in English	47	75%
Trial in French	16	25%
Bilingual Court	0	0%
Total	63	100%

Courts Martial By Geographic Location

Location	Number of Cases	Percentage
Canada	62	98%
Croatia	1	2%
Total	63	100%

Courts Martial By Command

Command	Number of Cases	Percentage
National Defence Headquarters (NDHQ)	3	5%
Deputy Chief of Defence Staff	3	5%
Chief Maritime Staff	14	22%
Chief Land Staff	29	46%
Chief Air Staff	9	14%
CF Recruiting Education Training Systems	5	8%
Total	63	100%

Courts Martial By Rank

RANK	NUMBER
Private and Corporal (includes Master-Corporal)	36
Sergeant to Chief Warrant Officer	11
Officer	18
Other	0
Total	65

Note: Master Corporal is not a rank; it is an appointment pursuant to art. 3.08 of the *Queen's Regulations and Orders* for the Canadian Forces.



ANNEX F

COURT MARTIAL
APPEAL COURT YEAR
IN REVIEW - STATISTICS:
1 April 2000 to 31 March 2001





ANNEX F

Appeals

Court	Number of Cases
CMAC Appeals	6
Supreme Court of Canada Appeals	0
Total	6

Appeals By Party

Status of Appellant	Number of Cases
Appeals by Crown	4
Appeals by Offender	2
Total	6

Nature Of Appeal

Grounds	Number of Cases
Finding	3
Sentence (Severity or Legality)	0
Finding and Sentence	3
Total	6

Disposition

Disposition	Number of Cases
Upheld Trial Decision	4*
Overturned Trial Decision in whole or part	2
Total	6

*In 2 of these cases, the appellants' applications for appeal were dismissed for non-compliance with the CMAC rules.



ANNEX G

CERTIFICATION
TRAINING YEAR IN
REVIEW - STATISTICS:
1 April 2000 to 31 March 2001





ANNEX G

Certification Training

Total Number of Officers Certified -	878
---	------------

Number of Members Trained By Rank Grouping

Grouping	Number	Percentage
Officers	878	92%
Non-Commissioned Officers	72	8%
Total	950	100%



ANNEX H

JUDGE ADVOCATE GENERAL
DIRECTIONS AND POLICIES





ANNEX H



Judge Advocate General Policy Directive

Directive # : 013/01	Original Date //: 30 Mar 01	Update :
Subject : General instructions in respect of delay in the court martial process		
Cross reference : Sections 165.17 (2) and 249.2 (2) of the NDA		

30 Mar 01

DISTRIBUTION LIST

APPLICATION

1. This General instruction is issued to both the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS) pursuant to my authority under sections 165.17 (2) and 249.2 (2) of the *National Defence Act*.

PURPOSE

2. The purpose of this General instruction is to highlight the institutional requirement for the delivery of prompt but fair justice within the military justice system generally and in the court martial process in particular.

BACKGROUND

3. Institutionally, the requirement for prompt justice is directly related to a commander's obligation to maintain morale, efficiency and discipline within the units, formations and elements under command. The military justice system is one of the key tools available to commanders in satisfying this obligation.
4. The unique role of the military justice system was expressly recognized by the Supreme Court of Canada in the 1992 *Généreux* decision where it was stated:

"To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce discipline effectively and efficiently. Breaches of discipline must be dealt with speedily and, frequently, punished more severely than what would be the case if a civilian engaged in such conduct."¹

5. Parliament has also recognized the importance of the military justice system dealing with breaches of discipline promptly through the enactment of section 162 of the *National Defence Act*, which states:

"Charges under the Code of Service Discipline shall be dealt with as expeditiously as the circumstances permit".

6. In addition to the institutional requirements for expeditious justice, the *Canadian Charter of Rights and Freedoms* (Charter) imposes constitutional obligations on the military justice system to dispose of charges in a reasonable time. Section II (b) clearly states that:

"Any person charged with an offence has the right ... (b) to be tried within a reasonable time"

7. The *Charter* also guarantees the more general right under section 7 that:

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

GENERAL INSTRUCTION

8. Recognizing that expeditious justice is an expectation within the military justice system, both DMP and DDCCS must exercise their authorities and discretion in a manner that is consistent with the military expectation of expeditious justice.

1 *R. v. Généreux* (1992), 70 C.C.C. (3d) 1 (S.C.C.)

9. To this end, DMP and DDCS must ensure that the allocation of resources and court scheduling, particularly in cases involving breaches of discipline in an operational setting, reflects the military requirement for expeditious justice.
10. Specifically, and due to the particular need for discipline to be seen to be enforced within operationally deployed units, particular emphasis must be placed on the conduct of courts martial in theatre where the breach of discipline occurs in theatre. This instruction is made recognizing that the current Canadian Forces policy of six month rotations, coupled with factors outside the control of either DMP or DDCS, will make in-theatre courts martial difficult in certain cases.



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Distribution List
Action
DMP
DDCS
Information
All Legal Officers



Judge Advocate General Policy Directive

Directive # : 010/00	Original Date : 10 Jul 00	Update :
Subject : Charge Screening Policy		
Cross Reference : JAG Policy Directive 006/00 Professional Standards Review		

1920-20-010/00 (DJAG/COS)

10 Jul 00

Distribution List

APPLICATION

- I. This policy applies to legal officers when called upon to provide advice:
 - a. at the pre-charge stage, to a commanding officer or an officer or non-commissioned member having authority to lay charges,¹ in the circumstances described in QR&O article 107.03 (*Requirement to Obtain Advice From Legal Officer - Charges to be Laid*);
 - b. at the post-charge stage, to a delegated officer, commanding officer or superior commander to whom a charge has been referred, in the circumstances described in QR&O article 107.11 (*Requirement to Obtain Advice From Unit Legal Advisor - Disposal of Charges*); and

¹ See QR&O article 107.015 (*Meaning of Charge*) for a definition of what is meant in this policy by a "charge", and the "laying" of a charge.

- c. at the referral stage, to a referral authority to whom an application for disposal of a charge has been referred, where the referral authority is taking action pursuant to QR&O article 109.05 (*Action By Referral Authority*).
2. This policy applies to all legal officers posted to a position established within the Office of the Judge Advocate General with the exception of legal officers assisting or representing the Director of Military Prosecutions (DMP),² the Director of Defence Counsel Services (DDCS) or the Office of the DND/CF Legal Advisor (DND/CF LA).
3. When legal officers are providing the legal services referred to in this policy they are considered to be under the command of the Judge Advocate General and not subject to the command of any officer who is not a legal officer.³

PURPOSE

4. The purpose of this policy is to provide objective criteria that will serve as a structure for the legal analysis which legal officers are expected to undertake when advising service authorities in the circumstances described in paragraph 1. This policy is intended to ensure that, as a minimum, the advice that is provided completely addresses the range of factors that service authorities must take into account when discharging the particular roles and responsibilities referred to in paragraph 1. It is not intended to in any way fetter or limit the ability of legal officers to provide appropriate professional legal advice to such service authorities.

2 The DMP is, pursuant to section 165.11 of the *National Defence Act*, responsible for the preferring of all charges to be tried by court martial, for the conduct of all prosecutions at courts martial, and, acts as counsel for the Minister of National Defence in respect of appeals, when instructed to do so. The DMP is also responsible for providing advice at the pre-charge stage, to officers or non-commissioned members of the military police assigned to investigative duties with the National Investigation Service (NIS), in the circumstances described in QR&O article 107.03.

3 See QR&O article 4.081 (Command of the Office of the Judge Advocate General). Also see the guidance contained in paragraphs 8 and 9 of JAG Policy Directive 006/00 "Professional Standards Review" regarding the responsibilities of legal officers in situations where the direct intervention of the JAG or other appropriate authority in the office of the JAG may be warranted.

STATEMENT OF POLICY

GENERAL

5. Legal officers fulfil an essential role when advising service authorities concerning the discharge of their roles and responsibilities in the administration of the Code of Service Discipline. The importance of the legal officer's role is highlighted by regulatory requirements that oblige service authorities to obtain legal advice before exercising their discretion with respect to the laying or disposal of charges.
6. The nature of the discretion being exercised by the service authority at the pre and post-charge stages is a further indication of the importance of the legal officer's role. Deciding whether to proceed with disciplinary action is one of the most important steps in the disciplinary process. Considerable care must be taken at each step to ensure that the right decision is made. A wrong decision to lay or proceed with charges that have been laid, and, conversely, a wrong decision not to lay or proceed with charges, tends to undermine confidence in the administration of the military justice system.
7. Fairness and consistency are important objectives in the process leading to the institution of disciplinary proceedings. However, fairness does not preclude firmness, and consistency does not mean rigidity in decision-making.
8. Unit authorities, and in particular the commanding officer, will normally be in the best position to assess what the interests of unit discipline require when discharging their roles and responsibilities under the Code of Service Discipline. Referral authorities will also have views on such matters although the focus of their concern may well be broader.⁴
9. In the course of discharging their advisory responsibilities, legal officers must be sensitive to the requirements of discipline and cognizant of the views of the service authorities they advise in the circumstances dealt with in this policy.
10. While the professional advice legal officers bring to the decision making process is an extremely important feature of the charging process, legal officers must be conscious of the fact that the

4 A referral authority's concerns might be expected to be centered on the disciplinary interests of the command or the CF as a whole.

various discretions associated with the decision to lay, proceed with and refer charges to the Director of Military Prosecutions reside with the service authorities referred to in paragraph I, rather than the legal officers who advise them. Therefore, when providing the advice referred to in this policy the legal officer must ensure that the decision maker understands that the legal officer's advice is not binding.

- II. When providing the advice referred to in this policy, a legal officer must clearly not be influenced by any of the following:
 - a. the rank of the accused;⁵
 - b. any personal characteristic of the accused, or any other person involved in the investigation, which constitutes a prohibited ground of discrimination under section 3 of the *Canadian Human Rights Act*;
 - c. the legal officer's personal feelings about the accused or the victim;
 - d. possible political advantage or disadvantage to the CF, the government or any political group or party; and
 - e. the possible effect of the decision on the personal or professional circumstances of those responsible for the investigation or prosecution or any other member of the CF or DND.
12. Legal officers must ensure that all reasonable steps have been taken to obtain all current information relating to a matter before providing legal advice to a service authority exercising a discretion at the pre and post-charge stages. While the legal officer may find it necessary to speak to the investigator to clarify certain issues, the legal officer should abstain from personally conducting any further investigation that may be warranted or from interviewing witnesses. If the investigation report does not meet the basic standards set out in the *Military Police Policies Manual*,⁶ or is deficient in any respect, the legal officer should recommend to the officer or non-commissioned officer to whom the report has been referred that it be returned to the investigator with a request for further investigation and

5 For example, it would be improper to give preferential treatment to a particular accused simply because of his or her rank. See the related guidance contained in Note B to QR&O article 107.015.

6 See Chapter 4 of the *Military Police Policies Manual*, Volume 4 (A-SJ-100-004/AG-000).

a summary of the particular deficiencies noted. Where this has occurred, the unit legal officer should refrain from providing further advice concerning the manner in which the particular discretion ought to be exercised until the investigating agency has had an opportunity to complete the investigation. Legal officers should also monitor the status of such investigations to ensure that any resulting delay in proceeding does not become excessive.

13. It is important to provide the legal advice referred to in this policy in a timely fashion. Where there is a delay in doing so for reasons that are not readily apparent on the face of the record, then it is incumbent on the legal officer to document that delay.⁷
14. As a general rule, the legal advice that must be provided in the situations referred to in this policy should be reduced to writing, unless it is not practical to do so, having regard to all the circumstances.⁸ However, where a legal officer provides advice that, if followed, would terminate or bring closure to a matter investigated by a service authority, that advice shall be reduced to writing in the manner specified in paragraph 7 of JAG Policy Directive 006/00, "Professional Standards Review".

THE PROVISION OF ADVICE UNDER QR&O ARTICLE 107.03

15. Prior to the charge being laid, the role of the legal officer is advisory in nature as the authority to lay a charge under the Code of Service Discipline is completely within the duty and discretion of the officers and non-commissioned members (charge laying authorities) referred to in QR&O article 107.02 (*Authority to Lay Charges*).

7 Such information will later prove of assistance in the event that an application is subsequently made under section 11(b) of the *Canadian Charter of Rights and Freedoms*.

8 It may not be practical to do so where, for example, there is a compelling requirement to communicate the legal advice immediately or where the operational posture of the unit would make it difficult to do so effectively. In such cases the requirement to provide advice may be satisfied through the provision of verbal advice, using a telephone or other suitable telecommunications device. Where the legal advice is communicated orally, a written synopsis of that advice should be maintained by the legal officer in the manner prescribed in paragraph 6 of JAG Policy Directive 006/00, "Professional Standards Review". To avoid the danger of having the legal officer's verbal advice misconstrued in such circumstances, the legal officer should also consider providing a copy of that written summary to the client at the earliest possible opportunity.

16. Before a charge laying authority will be in a position to lay a charge there must be an actual belief, on the part of that person, that the accused has committed the alleged offence and that belief must be reasonable. A “reasonable belief” is a belief that would lead any ordinary prudent and cautious person to the conclusion that the accused is probably guilty of the offence alleged.⁹
17. The charge laying authority is required to obtain advice from a legal officer **before** laying a charge in respect of all but the most minor of alleged breaches of the Code of Service Discipline.¹⁰ At this pre-charge stage, the legal officer will be called upon to provide an opinion that will assist the charge laying authority in determining how the charge layer’s discretion ought to be exercised and to assist the service authority in properly launching any charge that authority sees fit to lay. The legal officer will be called upon to advise the charge laying authority concerning “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”.¹¹ In doing so, the legal officer will be expected to direct his or her mind to:
- a. the substantive elements of the offence alleged;
 - b. whether there is at least an evidentiary basis for the service authority to form a “reasonable belief” that a charge should be laid;
 - c. whether, in the circumstances, the jurisdiction to lay a charge ought to be exercised; and
 - d. the formal requirements of the appropriate charge.
18. In this context, a consideration of the “evidentiary basis” amounts to a assessment as to whether the facts disclosed in the report of investigation, conducted pursuant to QR&O Chapter IO6 (*Investigation of Service Offences*), could give rise to a **reasonable** belief that the accused person committed the alleged offence.

9 See the Note to QR&O article IO7.02.

IO An officer or non-commissioned officer having authority to lay charges is only obliged to seek advice in respect of the offences referred to in paragraph (I) of QR&O article IO7.03.

II QR&O article IO7.03(2).

19. Advice that jurisdiction ought to be exercised can only be made in circumstances where the legal officer is of the view that there is sufficient evidence on all the essential elements of the offence for the charge layer to form a reasonable belief that the subject committed the alleged offence. However, notwithstanding that there may be evidence of all essential elements of an offence, it may be appropriate to recommend that a charge not be laid where:
- a. it would be more appropriate for the matter to be dealt with by another authority having jurisdiction to so act;¹² or
 - b. there is brought to the attention of the legal officer some legitimate and compelling reason why jurisdiction ought not to be exercised in a particular case.¹³ Such a reason might relate to public interest concerns, including, for example:
 - (i) the triviality of the alleged offence;
 - (ii) significant mitigating circumstances;
 - (iii) the age or physical or mental infirmity of the accused;
 - (iv) the staleness of the alleged offence; and
 - (v) the attitude of the victim of the alleged offence to the laying of a charge.

THE PROVISION OF ADVICE UNDER QR&O ARTICLE 107.11

20. Once a charge has been laid, it will be referred to a delegated officer, a commanding officer or a superior commander. The officer to whom the charge is referred must then decide whether or not it ought to be proceeded with in accordance

12 In some cases, where jurisdiction is concurrent, it may be more appropriate for the matter to be dealt with by the civil authorities. Among other considerations bearing on such a determination, it should be borne in mind that, under the NDA, "Parliament has sought to delimit the scope of military justice to that which is reasonably necessary to the exercise of its powers over defence and the armed forces" (The Queen v. Reddick, (1996) CMAc 393).

13 The reason for not proceeding should be demonstrably clear and convincing, i.e. of a nature and quality that would be patently obvious, clearly understood and accepted by a reasonable observer apprised of the facts. In determining whether a compelling public interest factor is in play, it may be useful to ask oneself whether a decision to lay a charge in such circumstances would tend to undermine confidence in the administration of the military justice system. When in doubt it may be appropriate for the legal officer to seek clarification through further investigation conducted by the appropriate investigative authority.

with QR&O Chapter 108 (*Summary Proceedings*).¹⁴ Prior to making that decision the unit legal advisor will be asked by the officer to whom the matter has been referred to provide advice in the circumstances described in QR&O article 107.11(1).

21. Advice should already have been provided to the charge laying authority with respect to the matters discussed at paragraph 17 to 19, above. While it would be prudent for the unit legal advisor to revisit some of these matters when providing advice to an authority to whom the charge has been referred, it must be recognized that the nature and scope of the advice provided by the unit legal advisor pursuant to QR&O article 107.11 will be broader than that provided under QR&O article 107.03. The distinction arises in consequence of the nature of the discretion that is being exercised in each case as well as the particular legal standard that must be applied by the service authority when doing so. In this respect, it must be borne in mind that the charge layer need only form an actual, albeit reasonable, belief that the subject committed the alleged offence in order to exercise his or her charge laying discretion. However, before deciding that such a charge ought to be proceeded with in accordance with Chapter 108, a delegated officer, commanding officer or superior commander must be satisfied that there is sufficient evidence to put the accused on trial.
22. At this stage the unit legal advisor will be called upon to advise the delegated officer, commanding officer or superior commander whether there exists **admissible** evidence upon which a service tribunal, **acting reasonably**, could convict the accused. This will necessarily involve an assessment of the evidence having regard to the substantive elements of each charge.¹⁵ The unit legal advisor's advice should be based on a sound, logical and objective appreciation of **all** the available facts and the **applicable** standard of admissibility.

14 Paragraphs (2) and (3) of QR&O article 107.09 refer. A decision by an delegated officer, commanding officer or superior commander to "cause a charge to be proceeded with in accordance with Chapter 108" is a decision to proceed to deal with the charge, either by trying the accused summarily, after complying with QR&O article 108.16(1), or by referring it to an officer named in QR&O article 108.16(3).

15 In order to meet this test, there must be admissible evidence related to each element of the charge. Where there is more than one charge, the test is applied to each charge.

23. No election will have been given at this stage in the proceedings. Unless it is apparent that a commanding officer or superior commander would be precluded from trying the accused on that charge,¹⁶ it should be presumed that if the charge proceeds it will be dealt with at summary trial. Therefore, in most cases, the relevant standard of admissibility that will be applied by the unit legal advisor when assessing the evidence will be the one contained in QR&O article 108.21 (*Reception of Evidence*)¹⁷ rather than the one used at court martial and reflected in the *Military Rules of Evidence*.¹⁸ However, in some cases the unit legal advisor may consider it necessary and appropriate to consider the evidence having regard to both standards of admissibility and to address the differences in the advice provided to the service authority.¹⁹
24. Assessments of the strength of a case may be difficult to make, and of course there can never be an assurance that a charge will result in a guilty finding. Where a matter ultimately proceeds to court martial, the Director of Military Prosecutions will be obliged to take into account and weigh the evidence of prospective witnesses in determining whether there is a reasonable prospect of conviction. The unit legal advisor, on the other hand, should refrain from advising on a course of action that is based on his or her assessment of the likely strength of the case at trial.
25. Where the unit legal advisor concludes that there exists admissible evidence upon which a service tribunal, acting reasonably, could convict the accused, the legal advisor will ordinarily recommend that the service authority proceed in accordance with QR&O Chapter 108. However, in almost any case there can be

16 This can be readily determined by considering the accused's rank or status, the type of offence, the gravity of the offence, the date of the alleged offence (insofar as the one-year limitation period referred to in s. 69(b) of the *National Defence Act* is concerned), or whether there exist reasonable grounds to believe that the accused is unfit to stand trial or was suffering from a mental disorder at the time of the alleged offence.

17 In this respect it should be borne in mind that evidence may be received at summary trial where the presiding officer considers it to be of assistance and relevant provided it is sufficient to establish any relevant fact, either taken alone or considered with other evidence.

18 Before being asked whether he or she elects to be tried by court martial, an accused will have been informed of the differences between the rules governing the reception of evidence at a court martial and at summary trial (QR&O article 108.14(5)(b)(iii) refers).

19 While the differences may well be factored into the advice provided by the unit legal officer under QR&O article 107.11, it would be inappropriate for an officer exercising summary trial jurisdiction to be influenced by those differences when determining whether the accused must be offered the right to elect to be tried by court martial under QR&O article 108.17 (*Election to be Tried by Court Martial*), once it has been decided that a particular charge ought to be proceeded with.

factors which, in the public interest, militate against the propriety of proceeding. Again, where a matter ultimately proceeds by court martial, the Director of Military Prosecutions will be obliged to consider and weigh these factors. Nevertheless, it may be appropriate for the unit legal advisor to recommend that a charge not be proceeded with where some legitimate and compelling reason for not doing so is brought to his or her attention. In addition to the public interest concerns referred to in subparagraph 19(b), such a reason might relate to:

- a. the likely effect on the maintenance of good order and discipline within the unit or command and public confidence in the administration of the military justice system;
- b. the prevalence of the alleged offence in the unit or command and the need for general and specific deterrence;
- c. a factor suggesting that the consequences of proceeding or conviction would be disproportionately harsh or oppressive, especially considering how other persons implicated in the offence or previous similar cases have been or likely will be dealt with and the likely sentence in the event of conviction;
- d. the availability and appropriateness of an alternative course of action, such as for example, prosecution by civilian authorities or administrative action by service authorities,²⁰ and administrative or quasi-criminal action initiated by a jurisdiction other than the CF; or
- e. the disclosure of information that would be injurious to international relations, national defence, or national security.

THE PROVISION OF ADVICE IN RELATION TO QR&O ARTICLE 109.05

26. Unlike the other provisions of QR&O considered above, QR&O article 109.05 does **not** require that advice be obtained from a legal officer. However, a referral authority may well seek legal advice when taking action pursuant to that article, in the following circumstances:

- a. when deciding what if any recommendation will be made concerning the disposal of a charge when an application prepared in accordance with QR&O article 109.03 (*Application to Referral Authority for Disposal of a Charge*) is being forwarded to the Director of Military Prosecutions; or

²⁰ Administrative action should not be taken solely to avoid the procedural protections afforded to accused persons under the *Code of Service Discipline*.

- b. when considering whether to direct that a commanding officer or superior commander try an accused by summary trial in respect of a charge that has been referred to that referral authority in accordance with QR&O article 109.03.²¹

Where such a request is made, it is expected that the legal officer will respond by providing timely, appropriate legal advice.

27. The legal officer must provide consistent and fair advice. In this respect, at this stage in the proceedings, one would ordinarily expect the legal officer to conclude that the charge is appropriate and that it should proceed since the underlying legal issue is the same: whether there exists admissible evidence upon which a service tribunal, **acting reasonably**, could convict the accused. Nevertheless, it is recognized that, with the passage of time, new evidence can occasionally come to light and the underlying assumptions and legal advice may change as the situation and circumstances evolve. As well, the legal officer who advises the referral authority will not necessarily be the same person who provided the advice pursuant to QR&O article 107.11 and sometimes reasonable professionals will view matters differently or disagree on a recommended course of action.
28. There may be one further and important reason why the conclusion could well be different. As indicated in paragraph 22, the legal advisor called upon to provide advice in the circumstances described in QR&O article 107.11(1) will have assessed the evidence in light of the **applicable** standard of admissibility. Where the summary trial standard has been used, and where the accused subsequently elects to be tried by court martial or the matter is referred to a referral authority pursuant to QR&O article 108.34 (*Referral to Another Authority During Summary Trial*), the legal officer who advises the referral authority will be required to consider the issue having regard to the standard of admissibility that is applicable at court martial.²² In some cases there will still be sufficient **admissible** evidence upon which a court martial, acting

21 This is not an option in every case. See QR&O 109.05(2).

22 The court martial standard of admissibility may already have been considered and factored into the recommendation that must be included in the application for disposal of a charge that is forwarded from the commanding officer or superior commander to the referral authority (see QR&O article 109.03(3)). In other words, some preliminary legal analysis of the issue may already have been done.

reasonably, could convict the accused on all or some of the charges. In other cases there will not be, and this will have to be addressed in the legal advice provided to the referral authority.

29. Where the referral authority believes that there is some overriding consideration or matter that clearly outweighs the interest in the charge proceeding, or would make it inappropriate to do so, then the legal officer should be respectful of the right and duty of the referral authority to express those views.²³ The legal officer should assist the referral authority in formulating any recommendation to the DMP that the referral authority wishes to make. In this respect, it must be borne in mind that, while the provision of legal advice to a referral authority taking action under QR&O article 109.05 is primarily **meant to inform** any recommendation that the referral authority should choose to make, the legal officer also plays an important role in ensuring that the valuable input of the chain of command is *effectively* communicated to the DMP.
30. When advising a referral authority at this stage in the proceedings, the legal officer must also be cognizant of the role that will be played by the military prosecutor to whom the application for disposal of a charge will ultimately be sent if the referral authority does not take action in accordance with QR&O article 109.05(2). While the views of service authorities are entitled to and will be accorded their appropriate weight, the ultimate decision to proceed with a prosecution will be made, on the basis of an assessment of the relevant criteria, by a military prosecutor fully apprised of the facts and circumstances of the case. This will necessarily entail a consideration of the evidence in forming a view as to whether there is a reasonable prospect of conviction, and where there is, a balancing of **all** the relevant public interest factors.

CONSULTATION

31. Legal officers who are called upon to provide advice in the circumstances outlined in this policy are encouraged to consult with their immediate supervisors or other experienced legal officer colleagues.

23 In this respect, it is important to appreciate that the perspective that a referral authority, situated at a higher level in the chain of command, will have on a particular case when taking action under QR&O article 109.05, may well be different than that of a delegated officer, commanding officer or superior commander taking action pursuant to QR&O article 107.09(2) or (3) (see paragraph 8, above).

32. Legal officers may also wish to consult with the office of the Director of Military Prosecutions or the nearest regional military prosecutor when providing advice on any matter that has been forwarded to a referral authority, for action in accordance with QR&O article 109.05.

AVAILABILITY OF THIS POLICY STATEMENT

33. This policy statement is a public document. It is to be made available, on request, to any member of the civilian or military public.

REPEAL OF INTERIM POLICY

34. The interim JAG Charge Screening Policy of 17 October 1996 (I456-2 (D Law/ MJ)) is hereby repealed.



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Distribution List
All Legal Officers (Reserve and Regular Force)



Judge Advocate General Policy Directive

Directive # : 006/00	Original Date : 1 Aug 2000	Update :
Subject : Professional Standards Review		
Cross Reference : Policy Directive 010/00 - Charge Screening Policy		

1920-20-006/00 (DJAG/COS)

Jul 00

DISTRIBUTION LIST

1. This policy directive applies to all legal officers posted to a position established within the Office of the Judge Advocate General, except legal officers assigned to DMP or DDCS.

STATEMENT OF POLICY

2. This policy examines the public accountability of legal officers as members of a profession. This engages consideration of applicable law society standards as well as other ethical and professional standards specifically imposed upon legal officers.

APPLICABLE STANDARDS

3. As lawyers, legal officers are required to comply with the rules and regulations imposed by any and all law societies of which they are members. They are also expected to maintain a high standard of professional conduct, having regard to the principles of professional conduct set out in the Code of Professional Conduct of the Canadian Bar Association.

4. As officers in the CF, legal officers also have general responsibilities pertaining to the enforcement of the National Defence Act, and other rules that pertain to the performance of officers' duties¹.
5. Legal officers must exercise judgment and discretion, and must pursue fairness and truth. Fairness, moderation and dignity characterize the conduct of the legal officer. Accordingly, the legal officer is bound by a duty :
 - a. to act with integrity and dignity; and
 - b. to respect and promote values protected by the *Canadian Charter of Rights and Freedoms*.
6. Where a legal officer provides oral legal opinions that he/she knows or intends for the client to rely upon in evaluating a potentially significant or contentious decision, he/she should maintain a written synopsis of the advice given including, where appropriate:
 - a. the matter upon which advice was given;
 - b. the person or persons to whom advice was given;
 - c. the date upon which advice was given;
 - d. the significant facts upon which advice was given;
 - e. the nature of the advice provided; and
 - f. an indication whether further advice on the same matter is anticipated or required.

The format at Annex "A" is provided as guidance.

7. Where a legal officer provides advice that, if followed, would terminate or bring closure to a potentially significant or contentious matter investigated by a service authority, the advice shall be reduced to writing and shall include :
 - a. details as described in paragraph 6 of this policy;
 - b. if appropriate, an analysis of the question, including any research, consideration of factors or exercise of discretion; and
 - c. a clear statement of the legal officer's advice or opinion and any limitations or provisos that the circumstances may require.

¹ See QR&O Art 4.02.

8. Where legal advice is provided in respect of a matter investigated by personnel other than the CF/NIS and the legal officer :
 - a. considers any aspect of the matter sufficiently serious or sensitive to warrant the involvement of the CF/NIS; and
 - b. is unable to secure such involvement;
he/she shall notify his/her supervisor in the Office of the JAG.
9. Where a legal officer has reason to believe that advice given in respect of a serious or sensitive matter is not being followed or the matter is being dealt with inappropriately and the matter cannot be resolved without direct intervention by the JAG, he/she is authorized to bring it to the attention of the appropriate authority within the Office of the JAG.

CONFLICTS OF INTEREST

10. A legal officer may be asked to provide advice in respect of a matter wherein the legal officer perceives that the person requesting advice may have infringed a statute, regulation, rule, order or instruction governing the conduct of that person². In appropriate cases, the legal officer shall consider advising, in writing, his/her supervisor in the Office of the JAG of the nature and circumstances of his/her concerns.

COMPLAINTS PROCEDURE

11. Any complaint regarding the professional conduct of a legal officer, including the nature or quality of advice he/she has given, will be directed to the JAG, and the complaint reduced to writing. A copy of the letter of complaint will be forwarded to the officer concerned for his/her response to the complaint.
12. In respect of all complaints dealt with within the Office of the JAG, all parties to any fact or allegation in issue will be given a reasonable opportunity to make representations and the matter will be determined in a manner that is fair and impartial. All complaints shall be responded to in writing.
13. A complaint received pursuant to paragraph II above may be dealt with:

² This provision does not in any way mitigate an officer's duty, pursuant to QR&O Art 4.02(e), to report any such matter when he or she cannot deal with it adequately.

- a. by referring it to an appropriate authority, including the legal officer's law society, depending on the nature of the complaint; and/or
 - b. in accordance with the complaints procedure outlined in this policy.
14. A Legal Standards Review Team (LSRT) may be created by the JAG to look into the professional conduct of a legal officer, including any complaint concerning the professional conduct of a legal officer. The terms of reference of a LSRT will normally include the following:
- a. the composition of the team;
 - b. the questions to be addressed by the team;
 - c. the scope of any review or investigation to be undertaken by the team; and
 - d. the date by which the work of the team shall be completed.

However, a LRST should not be convened/ordered where the primary purpose of the review or investigation is of a criminal or a disciplinary nature.

15. Upon receipt of a report from a Legal Standards Review Team, the JAG shall take such action as may be appropriate.
16. Any legal officer who is the subject of adverse findings in the report will be informed of such findings, any action taken by the JAG, and the reasons therefor.

17. In respect of any complaint received pursuant to this policy, the JAG shall consider whether notice ought to be given to any law society having apparent jurisdiction over the matter³.
18. Nothing in this policy is to be interpreted to be in derogation of current CF policies, regulations and orders.



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Attachment:
Annex "A"
DISTRIBUTION LIST
Legal Officers of the Office of the JAG

- 3

While the governance of the legal officer is a military concern there is also a broader public interest in the control and discipline of all lawyers, including legal officers. *Krieger v. Law Society of Alberta*, 1997 A.J. No. 689 (Alta. Q.B.) dealt with the question of whether a Law Society had jurisdiction to conduct disciplinary hearings against a civilian Crown Counsel with respect to an allegation of non-disclosure of information in a criminal case. Some comments from the Queen's Bench decision in that case are worthy of consideration (through it should be noted that the matter has been taken on appeal to the Alberta Court of Appeal):

Every lawyer because of her or his status as an officer of the court is a public officer of the administration of justice... The control of that office is very much an interest that belongs to the public.

The honesty and integrity of lawyers must be preserved. From a policy point of view no institution is better equipped to safely do that than the Law Society itself.

The public is entitled to have lawyers who seriously breach the ethics of good faith or honesty to be removed from the rolls of the Law Society in proper cases. The Law Society is the only body equipped to ensure that such questions of ethics are dealt with honestly and competently. In such matters, it is a huge safeguard to both the public and the member that they are dealt with by the member's peers.

The Legislature has entrusted the disciplining of lawyers for professional misconduct to the Benchers. Only the Benchers have the power to decide who should or should not practice law or what conditions should be attached to the right to practice law by a specific number.

On the question of whether to notify a Law Society, one must bear in mind that the *CBA Code of Professional Conduct* provides (at Commentary I to Rule XV) that it is proper (unless it be privileged or otherwise unlawful) for a lawyer to report to a governing body any occurrences involving a breach of this Code. Where, however, there is a reasonable likelihood that someone will suffer serious damage as a consequence of an apparent breach... the lawyer has an obligation to the profession to report the matter unless it is privileged or otherwise unlawful to do so.

SOLICITOR/CLIENT PRIVILEGE (WHEN COMPLETED)

ANNEX A

TO JAG POLICY DIRECTIVE

006.00

WRITTEN SYNOPSIS OF ORAL LEGAL ADVICE (PARA 6 REFERS)

Subject :

Date advice provided :

Matter upon which advice provided to :

Issue :

Significant facts provided/known :

Nature of advice provided :

Further advice anticipated/required :

BF date :



Judge Advocate General Plan

Plan # : 002/00	Original Date :	Update :
Subject : Ethics Plan.	Cross Reference :	

6 Oct 00

DISTRIBUTION LIST

ETHICS PLAN

PURPOSE

1. To implement the requirements of the Defence Ethics Program and assist all members of the Office of the Judge Advocate General (JAG) in carrying out their responsibilities in an ethical fashion.

POLICY STATEMENT

2. In order to satisfy the need for legal services adequately and to ensure that justice is done in the defence of Canada, the Office of the JAG must command the confidence and respect of Canadians. This can only be achieved if Legal Officers and their staff establish and maintain a reputation for integrity, competence, diligence and ethics. The JAG endorses and supports the Defence Ethics Program and the Statement of Defence Ethics, which have been approved by the CDS and the DM. All members of the Office of the JAG are expected to act in accordance with the following ethical obligations: loyalty, honesty, courage, diligence, fairness and responsibility. In addition, the JAG has published a directive entitled

“Professional Standards Review” policy (JAG Directive 006/00) which requires all Legal Officers to comply with the rules and regulations imposed by their Law Society and the principles of professional conduct set out in the code of professional conduct of the Canadian Bar Association. The directive provides, in part, that Legal Officers “must exercise judgement and discretion and must pursue fairness and truth”. They are duty bound to act with integrity and dignity.

COORDINATOR

3. The Ethics Coordinator is the Deputy Judge Advocate General/Chief of Staff.

REQUIREMENTS OF THE PLAN

4. Awareness: The ethics coordinator will maintain an ongoing program of ethics awareness, including circulation of ethics material and articles, posters, pocket cards and training information
5. Training: Training opportunities, such as attendance at courses, seminars, lectures, ethics days and others, will be facilitated on an ongoing basis. Interested members will be made available to attend. A training plan will be provided for ethics training.
6. Risk Management: This will entail ongoing measurements of compliance expectations with respect to the ethical obligations of the Defence Ethics Program. The Business Planner will coordinate the collection and compilation of relevant data. In particular, the following will be measured:
 - a. the number of alleged breaches of the Code of Service Discipline and the Criminal Code;
 - b. the number of harassment/abuse of authority complaints; and
 - c. the number of allegations of unprofessional conduct.
7. Dialogue opportunities: Discussions and dialogue on ethical issues will be encouraged on an individual and collective basis. Dialogue on ethics will be promoted at workshops or professional development sessions.

8. Casework and advice: The JAG, the JAG Ethics Coordinator and the Deputies will be available to provide advice regarding ethical concerns. This may include referral to more suitable persons, such as a unit harassment advisor or other personnel support professional.
9. New personnel orientation: All new personnel will be provided a brief orientation to the Defence Ethics program. They will be made aware of expectations, how to exercise moral voice and how to seek advice. New arrivals will be given access to a copy of the JAG Orientation Manual and of the statement of ethics. The pocket card on ethical "decision-making, expectations and responsibilities" will be made available through the JAG Orderly Room.
10. Personal development and recognition: To reinforce the importance of ethics and character, references will be made in performance evaluation reports to ethical or character qualities.



Jerry S.T. Pitzul
BGen
JAG
992-3019/996-8470

DISTRIBUTION LIST

All military and civilian members of the Office of the JAG

APPENDIX I

REPORT OF THE DIRECTOR
OF DEFENCE COUNSEL
SERVICES FOR THE PERIOD OF
01 APRIL 2000 TO
31 MARCH 2001

Appendix I

REPORT OF THE DIRECTOR OF DEFENCE COUNSEL SERVICES

Prepared by Lieutenant-Colonel Denis Couture

Introduction

1. This is the second report presented by the Director of Defence Counsel Services (DDCS) pursuant to Queen's Regulations and Orders for the Canadian Forces (QR&Os) article 101.20; it covers the period 1 April 2000 – 31 March 2001 and contains:
 - An overview of DDCS organization;
 - A review of DDCS duties and responsibilities;
 - A review of the relationship between DDCS counsel and the chain of command;
 - Services provided during the reporting period.

DDCS Organization

2. There have been no changes to the DDCS establishment which remains as follows:
 - The Director
 - Four regular force legal officers
 - Seven reserve force legal officers
 - One legal research analyst
 - One secretary

The present Director of the rank of Lieutenant-Colonel remains in office by virtue of his four year appointment effective 1

September 1999. Four defence counsel, three in the rank of major and one in the rank of captain complete the Directorate Regular Force establishment. One Lieutenant-Colonel and three Captains are Reserve Force legal officers. While it had been anticipated to fill the remaining three reserve positions by the end of the summer 2000, this has not as yet happened. This, did not, however, result in any adverse consequences. Recruiting or posting for these positions will take place in the coming year and will take into account the specific needs of DDCS with respect to expertise in criminal law as well as geographical and linguistic requirements.

Duties and Responsibilities

3. DDCS provides the following principal services to persons who are subject to the *Code of Service Discipline*:

Legal Counsel Services:

- To persons held in pre-trial custody, at hearings by a military judge under ss. 159(1) of the NDA to determine retention in custody [QR&Os 101.20 (2) (e)]
- To accused persons:
 - at courts martial [QR&Os 101.20 (2) (f)]
 - where there are reasonable grounds to believe that the accused person is unfit to stand trial, at hearings to determine fitness to stand trial [QR&Os 101.20 (2) (b)]
 - in cases where a finding of unfit to stand trial has been made, at hearings as to the sufficiency of admissible evidence to put the accused person on trial [QR&Os 101.20 (3) (c)]
- To persons sentenced by court martial to detention or imprisonment, at hearings for:
 - release pending appeal [QR&Os 101.20 (3) (b)]
 - review of undertakings for release pending appeal [QR&Os 101.20 (3) (b) and 118.23]
 - cancellation of release pending appeal [QR&Os 118.23]
- To the Respondent (offender), at Court Martial Appeal Court of Canada or Supreme Court of Canada hearings where prosecution authorities appeal the legality of a finding or the severity of a sentence awarded by court martial [QR&Os 101.20 (2) (g)]

- To a person on an appeal or an application for leave to appeal to the Court Martial Appeal Court of Canada or the Supreme Court of Canada, with the approval of the Appeal Committee [QR&Os 101.20 (2) (h)]

Advisory Services:

- To persons arrested or detained in respect of a service offence pursuant to s. 10(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*), on a 7 days a week/24 hours a day basis [QR&Os 101.20 (2) (a)]
- To assisting officers and accused persons with respect to the making of an election to be tried by court martial pursuant to QR&Os 108.17 and 108.18 [QR&Os 101.20 (2) (d)]
- To assisting officers or accused persons on matters of a general nature relating to summary trials [QR&Os 101.20 (2) (c)]
- To persons subject of an investigation under the *Code of Service Discipline*, a summary investigation or a board of inquiry [QR&Os 101.20 (2) (i)]

Relationship DDCS/Chain of Command

4. The status of DDCS lawyers as the “defence bar” of the CF and the importance of their ability to perform, and be perceived to perform, their duties free from influences by the chain of command was discussed in our first report. DDCS counsel have continued to perform their duties and advance the position of their clients free from interference from the chain of command. Furthermore, it is fair to say that the vast majority of commanders, and their subordinates alike, have demonstrated a genuine interest in CF members’ individual rights.
5. DDCS counsel continued to enjoy direct dealings with their clients, including assisting officers, irrespective of rank, status, unit or physical location. In particular, they dealt with their clients’ chain of command, military and civilian prosecution and enforcement authorities, and all other persons involved in disciplinary proceedings respecting their clients. They also had dealings with their provincial bars and other professional associations.

6. With respect to the JAG's general supervision of the military justice system and his authority to issue, pursuant to s. 249(2) of the NDA, general instructions or guidelines to DDCS, the JAG has issued on 30 March 2001, a general instruction on the matter of prompt administration of military justice. That instruction which is also addressed to the Director of Military Prosecutions is attached at Annex H to the JAG's Report.

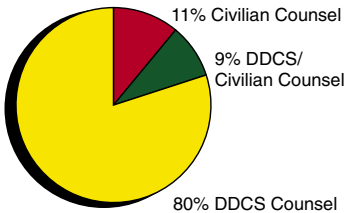
Services Provided

COUNSEL SERVICES

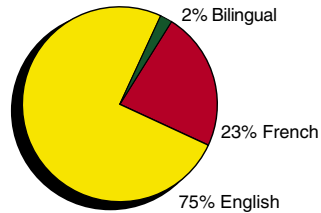
→ Courts martial

7. When facing a court martial, an accused person has the right to be represented by a DDCS counsel at public expense, may retain legal counsel at his or her own expense or choose not to be represented.
8. During the reporting period, a total of 63 courts martial were completed; three others have commenced, but have been adjourned to a later date. Representation at courts martial and language of trial were as shown below.

Representation at Courts Martial



Courts Martial — Language



9. Pursuant to the authority granted to him under s. 249.21 (2) NDA, the Director deemed it appropriate to hire, at public expense, civilian counsel in a number of cases where, having received a request for representation by DDCS counsel, no member of DDCS office could represent the particular individual by reason of a conflict of interest. *DDCS/Civilian counsel* on the above chart refers to those cases.

10. This leaves DDCS counsel with some seventy-four active court martial files that have been opened throughout this fiscal year and that are at various stages of preparation. Conceivably, some of those files may be resolved by way of charge withdrawal and the others by court martial to be held at a later date.

→ **Appeals**

11. Seven requests for representation before the Court Martial Appeal Court were received. In accordance with QR&Os IOI.20(2)(h), four of those required approval of the Appeal Committee. The Appeal Committee approved the provision of legal counsel by DDCS in three of the four cases.

12. One of the above six appeals has been completed, the other five are at various stages of preparation and should be set for hearing during the next reporting period.

→ **Advisory Services**

13. The advisory services provided by DDCS counsel remain an important aspect of the overall operation of DDCS. Indeed, the situations giving rise to the need for legal advice are numerous and occur on a daily basis. Furthermore, this service contributes largely to the protection of CF members' fundamental rights under the *Charter* from the moment they get involved with the justice system.

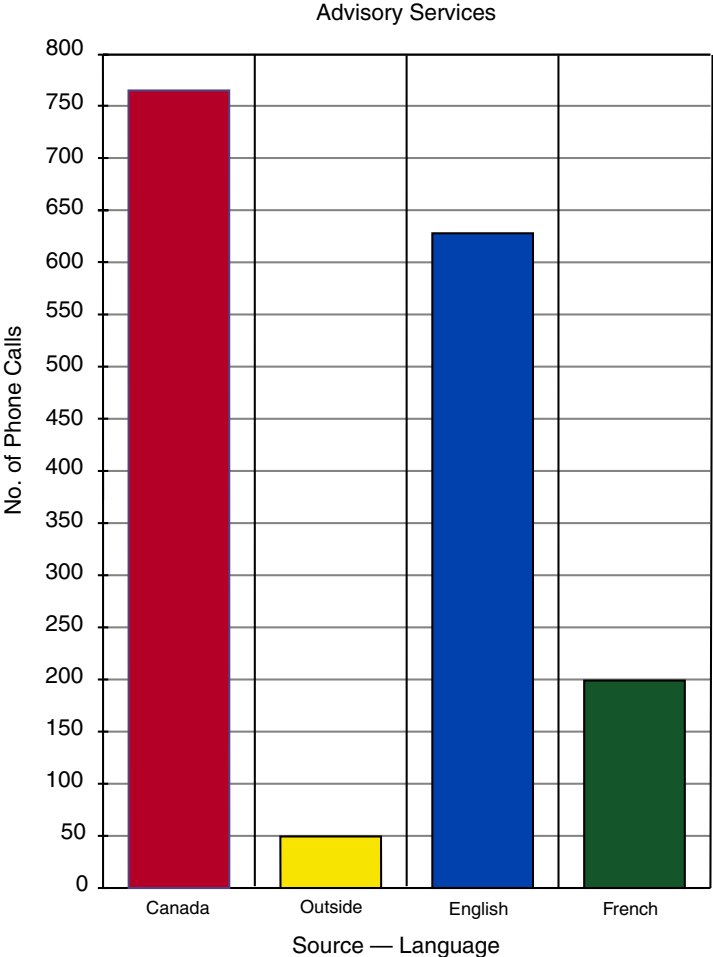
14. Advisory services are available on a 7 day a week/24 hour a day basis. In addition, the service is available in both official languages and is accessible by all CF members whether they are posted in Canada or abroad. In order to facilitate the contact with DDCS counsel, two toll-free numbers have been widely disseminated:

→ One, relating to the right to seek legal advice upon arrest or detention, to military police and other CF authorities likely to be involved in investigations of a disciplinary or criminal nature

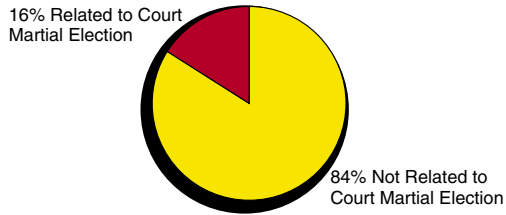
→ The other, relating to election between court martial and summary trial and advice on other disciplinary matters, to all CF personnel.

Contrary to the initial purpose which was to have one line exclusively dedicated to arrest or detention scenarios, experience tends to demonstrate that both numbers are now used interchangeably. What really matters, however, is that the means of communication are there and that DDCS counsel are responsive. The numbers below clearly demonstrate that the system works well and that advice is available to CF members around the clock.

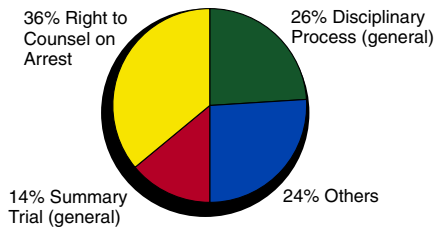
15. During the reporting period, DDCS counsel handled a total of 812 calls. Origin and language of calls are as follow:



16. The graph below shows the proportion of calls related to advice given to an accused regarding an election between court martial or summary trial to calls that were not related to this subject.



The second graph shows the nature of calls that were not related to the election of an accused between court martial or summary trial.



The Others portion of the above graph refers to subjects such as the court martial process in general, redresses of grievance and release from the CF. While DDCS is not mandated to advise on administrative matters, the duty counsel numbers which are widely distributed are also used for seeking advice on those subjects. In such situations, DDCS counsel provide advice as to the mechanics of the process, but does not get involved in the merits of the matter.

Conclusions

17. In this first full year of operation since the amendments of September 1999, DDCS counsel have, in their way, continued to contribute to a fair and Charter compliant administration of the military justice system. Through the professionalism and dedication of DDCS counsel, I believe we have continued to advance both the visibility and credibility of the CF defence bar.



APPENDIX 2

REPORT OF THE DIRECTOR
OF MILITARY PROSECUTIONS
FOR THE PERIOD OF
01 APRIL 2000 TO
31 MARCH 2001





DMP ANNUAL REPORT

01 April 2000 - 31 March 2001

Section I- Introduction

REGULATORY REQUIREMENT FOR AN ANNUAL REPORT

The position of the Director of Military Prosecutions (DMP) was established when the amendments to the *National Defence Act* in Chapter 35 of the Statutes of Canada 1998 came into force on 1 September 1999. The Queen's Regulations and Orders (QR&O) for the Canadian Forces were also amended effective 1 September 1999 and provide at Volume II, article 110.11 that:

"The Director of Military Prosecutions shall report annually to the Judge Advocate General on the execution of his or her duties and functions."

The Judge Advocate General (JAG) Annual Report covers the reporting period 1 April 2000 to 31 March 2001. The JAG has requested the DMP Annual Report be prepared for the same time frame. The JAG request is attached as Annex A to this Report.

The present DMP annual report is nearly identical to last year's report in respect of its description of the prosecution process and procedures. This report will address new and ongoing issues that have been identified during our first full year of operation as a distinct military prosecution service. It is, however, somewhat premature to provide any meaningful trend lines at this time.

Section 2 - The Director of Military Prosecutions and the Canadian Military Prosecution Service

STATUTORY BASIS FOR DMP

The amendments to the *National Defence Act*, in sections 165.1 - 165.17, provide that:

- The Minister of National Defence (MND) is authorized to appoint an officer who is a barrister or advocate with at least ten years standing at the bar of a province to be Director of Military Prosecutions for a term not exceeding four years;
- DMP is responsible for the conduct of all prosecutions at courts martial;
- DMP is authorized to act as counsel for the MND in respect of appeals when instructed to do so;
- DMP has the exclusive authority and discretion with respect to the preferral of charges for court martial;
- DMP has the authority to withdraw any charge before the commencement of a trial by court martial, and if a trial by court martial has commenced, DMP may do so with leave of the court martial;
- DMP, upon the preferral of a charge, has, within regulatory boundaries, the authority to determine the type of court martial that is to try the accused person; and
- The JAG has the authority to provide both general and case-specific instructions, in writing, to DMP, who shall make general instructions public and, unless it would not be in the best interests of the administration of military justice, shall make case specific instructions public.

ESTABLISHMENT OF CANADIAN MILITARY PROSECUTION SERVICE

CMPS remains the collective identifier of the DMP, the Deputy Director of Military Prosecutions (DDMP) and those Regular and Reserve Force legal officers appointed to assist and represent the DMP pursuant to section 165.15 of the *National Defence Act*. One of the JAG's strategic goals is to build confidence in the restructured

military justice system. In direct support of this objective, the CMPS mission is to provide competent, fair, swift and deployable prosecution services in Canada and overseas in support of discipline.

Military discipline has been defined as the prompt obedience to lawful orders whenever, wherever and however given no matter how unpleasant or dangerous the task. Its critical importance has been recognized by Canadian civilian courts at trial and on appeal:

“To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Discipline must be dealt with speedily, and, frequently punished more severely than would be the case if a civilian engaged in such conduct. As a result the military has its own Code of Service Discipline to allow it to meet its particular military needs.”

Mackay v Rippon [1978] 1 FCTD at 235

“Recourse to ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military...The existence of a parallel system of military law and tribunals, for the purpose of enforcing discipline in the military is deeply entrenched in our history.”

R v Genereux [1992] 1 SCR at 293 and 295

CMPS is a key institution in the Canadian military justice system which promotes discipline, good order, high morale, esprit de corps, group cohesion and operational efficiency and capability.

PRIMARY FUNCTIONS OF THE CMPS

The primary functions and activities of DMP and the CMPS are all related to JAG's military justice role. They are:

- Represent the Canadian Forces (CF) at pre-trial custody hearings under the *National Defence Act*;
- Respond to requests for advice from Canadian Forces National Investigation Service (CFNIS) on specific cases;
- Review and advise CFNIS on case specific charges;
- Conduct post charge review of all charges referred for court martial;
- Prefer charges for trial by court martial;
- Prepare cases for prosecution before courts martial;
- Prosecute at courts martial;
- Represent the CF in applications before other courts relating to specific cases;

- Represent the CF on appeal before Court Martial Appeal Court (CMAC); and,
- Assist in representation of the Crown on appeals from CMAC decisions.

ORGANIZATION OF CMPS

The CMPS is organized with a “headquarters” located in Ottawa and four field offices located throughout Canada. CMPS was originally established for ten Regular Force legal officer positions, and nine Reserve Force legal officer positions. On 02 Mar 01, in response to JAG’s 2001/2002 Strategic Letter approval, CDS/DM authorized funding, on a priority basis, of three further regional prosecutors. The Regular Force component is presently staffed at the original ten and the current strength of Reserve Force members is seven. Recruiting is still underway to fill the other reserve positions. The current combined Regular and Reserve Force establishment calls for one Colonel; two Lieutenant-Colonels; and sixteen (soon to be nineteen) Majors/Captains. Currently the establishment has eight civilian support staff comprising of two paralegals, one administrative assistant and five secretaries.

THE CMPS IS GEOGRAPHICALLY DEPLOYED AS FOLLOWS:

- DMP is based in Ottawa with five Regular Force and four Reserve Force legal officer positions, one administrative assistant, two paralegals and one secretary;
- Regional Military Prosecutor (RMP) (Atlantic) is based in Halifax with one Regular Force, (plus a further one in FY 01/02), one Reserve Force legal officer position and one secretary;
- RMP (Eastern Region) is based in Valcartier with one Regular Force, (plus a further one in FY 01/02) one Reserve Force legal officer position and one secretary;
- RMP (Central Region) is based in Ottawa with two Regular Force, two Reserve Force legal officer positions and one secretary; and
- RMP (Western Region) is based in Edmonton with one Regular Force, (plus a further one in FY 01/02), one Reserve Force legal officer position and one secretary.

Section 3 - The Canadian Military Prosecution Service in the Military Justice System

Generally, the role of CMPS within the Canadian military justice system can be categorized as falling under one of the following headings; consultation; the provision of case-specific legal advice; the conduct of prosecutions; and, the conduct of appeals.

The CMPS consultation role usually arises in three contexts. First, CMPS members are consulted by CFNIS members as well as other legal branch colleagues in areas such as identification of offences, requirements for judicial authorizations (such as search warrants and intercepts) or jurisdiction over offences or offenders. Second, CMPS is consulted by a number of agencies with respect to military prosecution input to regulatory and statutory developments in the fields of military and general criminal law both within and outside the Canadian Forces. Third, the CMPS has conducted a series of presentations and lectures for CFNIS and MP personnel on subjects such as evidentiary issues, search and seizure, subject interviews, and the constituent elements of offences.

CMPS provides case-specific legal advice to CFNIS investigators throughout the investigative process. This includes advice on:

- the sufficiency of evidence on pre-investigative assessments;
- specific investigative techniques;
- authorizations under Part VI of the *Criminal Code of Canada*;
- search warrants;
- the sufficiency of evidence as it relates to the elements of specific offences;
- *Privacy Act* issues;
- documentary evidence; and
- pre-charge screening pursuant to article 107.03 of QR&O.

The CMPS provides this case specific advice 24 hours a day, 7 days a week, 365 days a year.

Military prosecutors often provide legal advice to NIS investigators seeking to obtain search warrants during an investigation. The vast majority of these search warrants are obtained from a civilian

justice of the peace or judge in accordance with the applicable provisions of the *Criminal Code of Canada*. Search warrants may also be issued under the *National Defence Act*.

Section 4 - Prosecutions

THE PROSECUTION PROCESS

In order to clearly identify the role of the CMPS, the military justice process can be broken down into seven phases: investigation; pre-charge screening; charging; referral of charges; pre-referral of charges; trial; and, appeal.

During the investigation phase, an incident takes place, is reported and the appropriate investigative agency commences its action. At this point CMPS may be consulted and/or legal advice may be sought if the investigation is being conducted by the CFNIS. If the investigation is being conducted by local military police or by way of unit investigation, this consultation and advice is provided by the local unit legal advisor (Assistant Judge Advocate General (AJAG) or Deputy Judge Advocate (DJA)). CMPS is frequently consulted by AJAGs and DJAs during this phase as a legal resource.

QR&O 107.03 requires that a person having authority to lay charges obtain legal advice from a legal officer in respect of certain types of offences. Pre-charge screening is conducted by CMPS only in regard to CFNIS investigated cases. Pre-charge screening consists of a review of the investigatory materials provided by the CFNIS investigator in order to provide a legal opinion as to whether there are reasonable grounds for a person having authority to lay charges to form the belief that an offence has been committed. Generally, a pre-charge screening produces one of three results: an opinion that specific charges are supported by the evidence; an opinion that specific charges are not supported by the evidence; or the matter is returned to the CFNIS with a recommendation for further investigation. In those cases where another agency has conducted the investigation, such screening is performed by the unit legal advisor. The CMPS produced 159 pre-charge legal opinions during the reporting period.

In the third phase, the charging is done by a person authorized to lay charges (in the military justice system, the chain of command or a CFNIS member). Where the accused is offered an election as to mode of trial (summary trial or court martial) provision of information is made in a timely manner by unit authorities to that

accused so that he or she can make an informed decision. An assisting officer is appointed as a matter of right and the accused is entitled and afforded the opportunity to consult with military legal counsel in order to make such a decision.

If a summary trial is not held and the commanding officer (CO) has decided the matter should proceed further, the referral phase begins. The chain of command, starting with the CO of the accused, initiates a series of procedures to bring the matter forward to DMP. The CO applies to a referral authority for disposal of the charge. A referral authority is defined in QR&O as the Chief of the Defence Staff (CDS) and any officer having the powers of an officer commanding a command (OCC). In his or her application, the CO sets out the reasons for the application, a brief summary of the circumstances surrounding the alleged offence together with a summary of the evidence supporting the charge(s) and any recommendation concerning the disposal of the charge that the CO considers appropriate. In those situations where a CO has made a determination not to proceed, the CFNIS (in regard to charges laid by one of its members) has the independent authority to make such an application to a referral authority. A referral authority must forward an application he or she receives, together with his or her recommendation concerning the disposal of the charge, to DMP. The only situation where a referral authority may not forward an application to the DMP is where the charge was sent forward by the CO solely because he or she felt his or her powers of punishment were inadequate at summary trial and the referral authority, of the opinion they were adequate, sends the matter back to the CO for summary trial. It is during this phase that the referral authority, as a representative of the chain of command can identify in writing, what he or she believes the service interest to be in proceeding with a given case. This recommendation is always considered by the CMPS in deciding whether or not to prefer charges.

Upon receipt of the application, DMP must make a decision on preferal of charges. A charge is "preferred" when the charge sheet in respect of a charge is drafted and signed by the DMP, or an officer authorized by the DMP to do so and is referred to the Court Martial Administrator (CMA). All members of the CMPS have been authorized by DMP to prefer charges in accordance with publicly available DMP Policy Directives. On receipt of an application from a referral authority, a CMPS prosecutor is assigned the file for a comprehensive legal analysis, called post charge screening, upon which the exercise

of prosecutorial discretion is based. Post charge screening is more comprehensive than the pre-charge assessment and includes a consideration of the strength and quality of the evidence. The post charge screening usually includes witness interviews, consultation with subject matter specialists and a review of the documentary evidence. It may also include drafting or re-drafting of particular charges.

Prosecutors must consider two main issues when deciding whether to proceed with a court martial:

- firstly, is the evidence sufficient to justify the continuation of charges as laid or the preferral of other charges as disclosed by the evidence? The evidential standard upon which this assessment is based is that there is a sufficiency of admissible evidence on all of the essential elements of the offence(s) such that there exists a reasonable prospect of conviction; and
- secondly, if there is a sufficiency of evidence, does the public interest (which specifically includes the service interest) require a prosecution to be pursued?

Details regarding the exercise of prosecutorial discretion are set out in DMP Policy Directive 003/00, "Prosecutorial Discretion and Post-Charge Screening" which can, together with all other DMP Policy Directives, be found at www.dnd.ca/jag/military_justice. A post charge screening has one of four possible results: a charge sheet is prepared, signed and referred to the CMA to have the matter set down for court martial; the charge is referred back for summary trial; further investigation is requested under QR&O 110.05; or, the charge is withdrawn. Upon receipt of the signed charge sheet, the CMA convenes the court martial and begins the pre-court martial administration

During the reporting period, the CMPS received 117 applications for disposal of a charge from the different referral authorities. Fifty applications resulted in charges being preferred by a prosecutor. The decision not to prefer any charges was made in twenty cases. In all twenty cases, the decision not to prefer charges was made either on the basis of a lack of reasonable prospect of conviction based upon the evidence or the public interest (disciplinary interest) factor for proceeding with a prosecution at court martial was not present. The remaining forty-seven applications are presently in the hands of the military prosecutors and are being post-charge screened.

The sixth phase is trial by court martial. There are four types of courts martial; Standing Court Martial; General Court Martial; Disciplinary Court Martial; and, Special General Court Martial. The type of court martial to be held is determined by regulation, based on the status or rank of the accused and the potential punishment for the offence and, where there is a choice of the type of court martial, this is made by DMP. A court martial is a formal military court, presided over by a legally qualified military judge and has the same powers, rights and privileges as a superior court of criminal jurisdiction with respect to

- a) the attendance, swearing and examination of witnesses;
- b) the production and inspection of documents;
- c) the enforcement of its orders; and
- d) all other matters necessary or proper for the due exercise of its jurisdiction, including the power to punish for contempt.

The procedures followed by a court martial are similar to those followed by civilian criminal courts. All prosecutions are conducted by a CMPS legal officer. CF members facing courts martial are entitled to a legally qualified defending officer or defence counsel free of charge from DDCS. An accused may also retain a civilian lawyer at his or her own expense or where qualifying criteria are met, funded by a provincial legal aid plan.

DMP was served with three motions for prerogative relief in the Federal Court Trial Division during the reporting period. The first motion sought prohibition in relation to a court martial from taking place on constitutional grounds. It was abandoned following the defence's successful application for a stay at the court-martial itself. The second motion sought to prohibit a court martial on jurisdictional grounds. It has yet to be heard, but an interim stay in relation to the court martial was imposed by the Federal Court pending a full hearing of the judicial review application. The third matter was also a request for prohibition in relation to three accused soldiers, alleging a reasonable apprehension of bias in the assigned military judges. The Federal Court denied the defence an interim stay on two occasions, pending a full judicial review application.

[Note: On 09 April 2001, the motion was withdrawn.]

A post-trial review of fitness by a Provincial Review Board pursuant to s. 672.38 of the *Criminal Code of Canada* and the mandatory two year inquiry of fitness pursuant to s. 202.12 of the *National Defence Act* were conducted with respect to a former soldier charged under the Code of Service Discipline. He remains unfit to stand trial. A prosecutor from the CMPS represented the Canadian Forces at the inquiry hearing. A Reserve Force military lawyer, with directions from DMP, represented the Canadian Forces at the Provincial Review Board hearing.

COURTS MARTIAL

Annexes B and C to this report, are a summary of those courts martial commenced and completed during the period 1 April 2000 - 31 March 2001.

Sixty-two of the sixty-three courts martial held during this period were Standing Courts Martial. A Standing Court Martial is a court composed of a military judge only. One Disciplinary Court Martial was convened during this period. Another Disciplinary Court Martial would have been convened but the charges in this particular matter were withdrawn before the court was convened. A Disciplinary Court Martial is composed of a panel of three members and a military judge. A number of factors are considered when determining the type of court martial to try the accused. In addition to statutory and regulatory provisions relating to jurisdiction and powers of punishment, other factors which affect a determination in this matter include the nature and character of the offences and any recommendations made by the referral authority. Although sixty-three courts were convened, sixty-five members of the Canadian Forces were tried by court martial. Two joint trials were held, that is to say a court martial was convened to try two co-accused on two occasions.

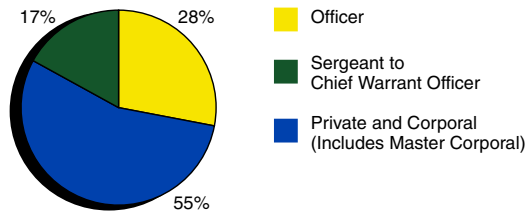
Fifty-one of the sixty-three courts martial held during the reporting period resulted in a guilty finding by the court. While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The fifty-one sentences pronounced by the courts martial involved eighty-one punishments. Of note, six punishments of imprisonment and five punishments of detention were imposed by the court. A suspended sentence, where the accused is not actually required to be incarcerated, was imposed in ten of the eleven cases. A fine was the most common punishment and forty-three of the eighty-one punishments were fines.

Also of note, fifty-six of the 202 charges preferred were s.129 NDA charges alleging an act, conduct or neglect prejudicial to good order and discipline.

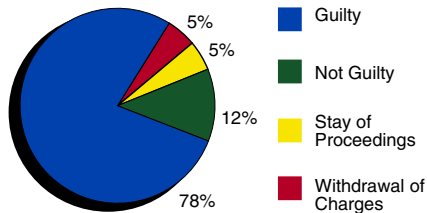
The previous reporting period covered six months from 01 Sep 99 to 31 Mar 00. Twenty-seven courts martial were heard by three military judges during that period. During the present reporting period, sixty-three courts martial have been held. Only two military judges were available during the greater part of this period, May 00 to Feb 01, to sit on these courts.

The following pie charts, prepared from the information contained in annexes to this report, will provide a statistical representation of the rank of the accused, the findings, the punishments, the number of courts martial by Commands and the language of trial.

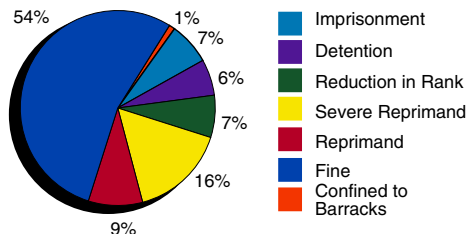
Rank of Accused



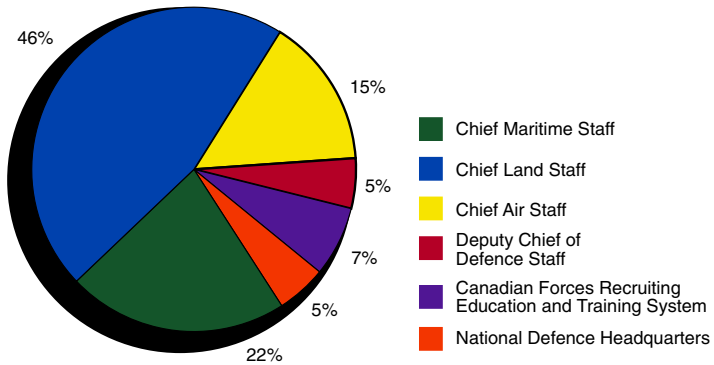
Findings



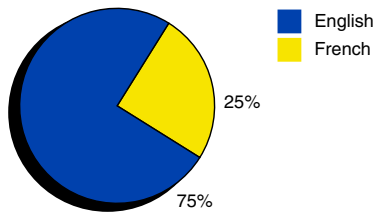
Punishments



Courts Martial By Command



Language of Trial



Section 5 - Appeals

APPEAL PROCESS

The Minister may appeal to the Court Martial Appeal Court (CMAC) certain decisions by courts-martial relating to findings, sentence and termination of proceedings pursuant to s. 230.1 of the NDA. Effective 1 September 1999, the Minister by order delegated the authority to bring such appeals to the DMP. As well, DMP is authorized to respond to any appeals brought by a member seeking to contest the decision of a court martial. Within DMP two appellate counsel positions (one Regular and one Reserve Force) have been established. These counsel report directly to DMP on all matters relating to appeals. DMP advises the Minister whenever the authority to appeal is exercised and informs JAG of steps taken in relation to appeals.

The decision to appeal is ultimately exercised by DMP. The DMP Appeals Committee (DAC) was formed to help review and assist DMP in the appeal decision process. The DAC consists of DMP, DDMP, and the appellate counsel positions, both Regular and Reserve Force. There are two criteria for deciding to appeal. First, is there a reasonable prospect of success on appeal? Second, is it in the interests of the public, including the CF, to bring such an appeal? The DAC considers materials such as the military judge's reasons, the prosecuting officer's recommendation, legal research and prosecutorial policies in considering the issue of whether to appeal.

Appeals from the CMAC to the Supreme Court of Canada (SCC) follow the same process, with one difference. The Federal Department of Justice is involved in co-ordinating and assisting in any matter that proceeds from the CMAC to the stage of an appeal to the SCC, or the seeking of leave to appeal to that court.

The mechanics of appeal to the CMAC are as set out in the NDA and the *Court Martial Appeal Rules*. On filing or receiving service of a Notice of Appeal, counsel is appointed. Under the new system, the CMAC requests from the CMA copies of the trial transcripts and exhibits for creation of an appeal book. Thirty days after receipt of the appeal book the appellant must file and serve a factum, and thirty days after receiving that document the respondent must reply with its own factum. Once the appeal is perfected the matter is set down for hearing.

The *Court Martial Appeal Rules* have been revised during the reporting period, to align more closely with Federal Court practice relating to service, formats, timings and extensions. DMP's appellate counsel sat on the rules revision committee and secured a change in the rules that would limit the costs recoverable by a successful appellant to those in relation to the appeal only. Time limits have also been tightened. It remains DMP policy not to seek extensions of time to take required steps in the appeal process, save in exceptional circumstances.

APPEALS

Attached at Annex D to this Report are charts showing those appeals commenced and completed during the period 1 April 2000 - 31 March 2001.

Section 6 - DMP Policy, Training and Communications

DMP POLICIES

In JAG General Instruction 001/DMP/00 dated 21 February 2000, DMP was instructed, in writing, to develop and make publicly available prosecution policies in thirteen areas which were to come into effect no later than 31 March 2000. A copy of this JAG General Instruction to DMP can be found in the CMPS section of the JAG Website at www.dnd.ca/jag/military_justice. In response to this direction, DMP has promulgated the following policies:

- DMP Policy #1 Relationship with Canadian Forces National Investigation Service (CFNIS)
- DMP Policy #2 Pre-Charge Screening
- DMP Policy #3 Prosecutorial Discretion and Post-Charge Screening
- DMP Policy #4 Sexual Offences
- DMP Policy #5 Relationship with Service Authorities
- DMP Policy #6 Courts martial disclosure
- DMP Policy #7 Responding to Victims' Needs
- DMP Policy #8 Plea, Trial and Sentence Resolution Discussions
- DMP Policy #9 Relationship with Unit Legal Advisors
- DMP Policy #10 Accountability, Independence and Consultation
- DMP Policy #11 Withdrawal of Charges
- DMP Policy #12 Witness Interviews
- DMP Policy #13 Immunity from Prosecution

PROSECUTION TRAINING

Improving and increasing the professional abilities and capabilities of military prosecutors through training with civilian prosecution services has remained a major goal of the CMPS. This objective was achieved by the attendance of military prosecutors at continuing legal education courses and seminars offered by the different Canadian prosecution services, the different provincial bar associations and the Canadian Bar Association. Military prosecutors have also been assigned as prosecutors for specific periods of time with the Federal Department of Justice. A list of courses taken by military prosecutors from 1 April 2000 to 31 March 2001 is found at Annex F. In addition to these

courses, DMP conducted a Prosecution Workshop during the week of 28 August 2000, attended by both Regular and Reserve Force prosecutors. A copy of the schedule for that workshop is attached at Annex E.

As part of extra-jurisdictional training, two military prosecutors were assigned to the Prosecution Service of the Federal Department of Justice. One military prosecutor gained practical experience in the Yellowknife Federal Prosecution office and the other was assigned to the Hull office during the period May to July 2000.

Military prosecutors are legal officers who must retain their military skills so that DMP can meet the deployment capability set out in its Mission Statement. Military prosecutors participated in military training activities such as pistol and rifle ranges as well as Law of Armed Conflict courses.

An initial draft of the Elements of the Offence Aide-Memoire has been completed during the reporting period. This aide-memoire, a work instrument, will assist prosecutors and every person involved in the military justice system in identifying the elements of an offence which are required to be proved in respect of offences contained in the Code of Service Discipline. It also provides, in most instances, a summary of the law and cases decided under a particular offence section. This first version of the aide-memoire covers the most commonly occurring offences.

CMPS COMMUNICATIONS

In September 1999, CMPS opened its portion of the JAG Website as part of its communications strategy and to facilitate openness and transparency in the military justice system. The website address is www.dnd.ca/jag/military_justice.

The CMPS Website provides DMP a mechanism to make publicly available JAG General Guidelines and Instructions, JAG Case Specific Instructions and DMP Policy Directives. The CMPS Website, located in the Military Justice portion of the JAG Website, currently includes the following subjects:

- Background to DMP
- Role
- Vision
- Mission

- Working Relationships
- Primary Functions
- DMP Policy Directives

DMP is also responsible for updating the “Court Martial Results”, the “Appeals Results” and the “Upcoming Appeals” sites of the JAG webpage. The Court Martial Results site is updated every month. It contains all the relevant information of the courts martial held in the previous three months. The Appeals Results site identifies the parties, Appellant or Defendant, the date and location of the court, the reason for the appeal and the results of the appeal. The Upcoming Appeals site informs the public of the identities of the parties, the reason for the appeal and the date and place of hearing of the appeal.

In order to enhance both the professionalism of military prosecutors and to increase the awareness of the military justice system amongst its civilian counterparts, the DMP was invited to join the Federal/Provincial/Territorial Heads of Prosecution Committee whose membership includes the heads of all civilian prosecution systems in Canada. The DMP co-hosted the October 2000 meeting in Kingston with a military theme. In addition, the CMPS has become an institutional member of the International Association of Prosecutors, an organization dedicated to improving the standards of prosecution services around the world.

The CMPS is preparing a short pamphlet that describes the role and function of the military prosecution system. The pamphlet’s purpose is to educate Canadian Forces members about this aspect of military justice, as well as attract civilian lawyers who might wish to practice in this interesting and unique area of the law.

Section 7 - Jag Instructions and Guidelines

JAG GENERAL INSTRUCTIONS AND GUIDELINES

S.165.17(2) of the *National Defence Act* authorizes the JAG to issue general instructions or guidelines in writing in respect of prosecution and directs that the DMP shall ensure they are available to the public. To date two such general instructions have been issued. The first one, “JAG General Instruction 001/DMP/00”, was issued on 21 February 2000. The second general instruction entitled “General Instructions in respect of delay in the court martial process”, was issued on 30

March 2001. Both general instructions can be found on the JAG Website at www.dnd.ca/jag/military_justice.

JAG CASE SPECIFIC INSTRUCTIONS OR GUIDELINES

No case specific instructions or guidelines have been issued to the DMP by JAG pursuant to s.165.17(3) of the *National Defence Act*.

Section 8- Director's Comments

As indicated in last year's report, it has been a challenge for the regional field offices, staffed with only one Regular Force Legal Officer, to provide effective, timely, prosecutorial advisory services, court martial preparation as well as engage in the prosecution of a court martial either within or outside the region. JAG's FY 01/02 Strategic Letter indicated the structure of the CMPS was under review with a view to increasing the number of prosecutors in the Halifax, Valcartier and Edmonton field offices from one to two. As a consequence of DMP representations to JAG, JAG advanced this case before CDS/DM with strong support for the proposition and the recommendation that if the positions were to be established, they be filled on a priority basis. On 02 Mar 01, CDS and DM informed JAG of their funding support, on a priority basis in FY 01/02, for three regional prosecutors. The successful integration of three new prosecutors into CMPS will take some time; however, it is a clear demonstration of the commitment to resource one of the constituent parts of the new military justice system.

There has been an increase in the number of courts martial over the last year notwithstanding there have generally only been two, instead of four military judges as set out in the establishment for the Office of the Chief Military Judge. As well, there has been a steady demand for pre-charge legal opinions, advice regarding investigation practices generally, training sessions along with case specific advice. As indicated earlier, it is premature to think in terms of trends; however, base lines are being created from which trend lines may be identified in the future.

One area of important service delivery, of three identified by DMP in her last report, which remains a concern is the issue of timeliness. Lack of timeliness translates into delay which has a broad institutional concern from a commander's perspective, particularly in the operational context, and an adverse legal impact. While the funding and

staffing of further prosecutors will go some distance in ensuring promptness is effectively addressed, the existing procedure and process areas for and over which DMP has control, must also be reviewed to determine where improvement can be made.

The three primary goals identified in DMP's last annual report to JAG (1999 - 2000) and action taken to achieve these goals were:

- To fully staff the Reserve Force positions and to effectively integrate them into CMPS operations. A major effort was made to staff the CMPS reserve force positions during the reporting period. Three new Reserve Force prosecutors were recruited during this period. Their integration within the CMPS has been initiated by their attendance at the CMPS annual workshop and the annual JAG Continuing Legal Education workshop. Regional military prosecutors have also conducted training sessions with Reserve Force prosecutors to introduce them to the daily reality of prosecutions in a military context. One Reserve Force prosecutor attended the 10 week Basic Officer Training Course. The Reserve Force prosecutors broaden the pool of criminal law expertise and increase the professional contacts between military and civilian prosecution systems. A Reserve Force prosecutor was assigned to a regional military prosecutor's office for a period of six months. This assignment increased greatly the effectiveness of that office and demonstrated clearly that an additional prosecutor in a regional office would improve the effectiveness of the prosecution process which should translate in more timely prosecutions.
- To identify suitable prosecution candidates for military prosecution positions and initiate a comprehensive introductory training program. The CMPS annual workshop continues to be the perfect occasion to bring together the Regular and Reserve members of CMPS to discuss emerging legal issues within both the military justice environment and Canadian criminal law environment. It also represents the ideal forum to discuss present CMPS policies and proposed amendments to these policies as well as the relevant NDA provisions and regulations pertaining to the military justice system. This annual workshop increases the efficiency of and proficiency in military prosecutions. We continue to identify and recruit Reserve Force prosecutors from the civilian sector.

We are also in the process of identifying Regular Force lawyers with a prosecutorial background or those who have an interest in prosecuting within the military justice system.

- To increase the understanding of the military justice system within local, national and international prosecution organizations. DMP is a member of and has also actively participated in two meetings of the Heads of Federal, Provincial and Territorial Prosecution Committee. The CMPS co-hosted the Oct 00 meeting in Kingston with a military theme. This participation increases the profile of the CMPS among senior Canadian prosecutors. DMP has recently become a member of the International Association of Prosecutors. This membership represents an ideal opportunity to educate international prosecutors on the Canadian Forces military justice system and permits us to obtain information from colleagues in prosecution services around the world.

DMP's goals for 2001/2002 are to staff the additional Regular Force prosecutor positions as quickly as possible in the circumstances; to continue recruiting Reserve Force prosecutors as a priority; to reduce significantly delay issues from the prosecutorial/institutional perspective; and to continue to educate the military, the general public and our civilian legal/prosecutorial colleagues (nationally and internationally) on the Canadian Forces military justice system.



Judge Advocate General

Juge-Avocat général

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

Quartier général de
la Défense nationale
Édifice Constitution
305, rue Rideau
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K1A 0K2

1000-8-3 (JAG)

04 Jan 01

Dist List

JAG ANNUAL REPORT

1. As you are aware, D Law/MJP&R is currently preparing the next JAG Annual Report on the administration of military justice. This year's report will cover the period from 1 Apr 00 to 31 Mar 01.
2. Consequently, I request that each of you prepare a report, in bilingual format, covering the activities of your respective offices. The contents of your submissions are to incorporate the items identified in the *July 2000 Paper on JAG Review and Reporting Framework for the Administration of Military Justice*. Your reports will be included as appendices to the JAG Annual Report.
3. You are requested to submit an interim report to D Law/MJP&R by 16 Feb 01 to allow D Law/MJP&R to format the layout of your respective appendices. Your final report should be forwarded to D Law/MJP&R no later than 3 Apr 01.

Jerry S.T. Pitzul
BGen
992-3019/996-8470

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COURT MARTIAL STATISTICS

01 APR 00 TO 31 MAR 01 (COMMENCED AND COMPLETED)

Type	Rank	Offences	Description	Dispositions		Sentence	Geographic Location of	Geographic Location of	Command	Language of Trial
				CM	Offence					
1	SCM	Lt	130 (153(i) CCC) 129 Sexual Exploitation An Act to the Prejudice Sexual Exploitation An Act to the Prejudice	Guilty	30 days imprisonment (suspended) \$2,000 fine	St. Jean, Quebec	St. Jean, Quebec	CFRETS	French	
				Stayed						
				Guilty						
2	SCM	LCol	129 Conduct to the Prejudice Conduct to the Prejudice Conduct to the Prejudice Conduct to the Prejudice	Guilty	Severe Reprimand	Hull, Quebec	Ottawa, Ontario	CLS	English	
				Not Guilty						
				Not Guilty						
				Not Guilty	\$1,500.00 fine					
				Not Guilty						
3	SCM	Cpl	114 Stealing	Guilty	\$350.00 fine	Trenton, Ontario	Trenton, Ontario	CAS	English	
4	SCM	MS	124 Negligent Performance of Military Duty Neglect to the Prejudice Willfully made a false entry An Act to the Prejudice	Stayed	\$500.00 fine	Victoria, British Columbia	HMGCS Saskatoon	CMS	French	
				Guilty						
				Stayed						
				Guilty						
5	SCM	LS	130 (5(i) GDSA) 130 (5(i) GDSA) 130 (5(i) GDSA) 130 (5(i) GDSA) Trafficking Trafficking Trafficking	Guilty	3 months imprisonment (suspended) Severe reprimand	Halifax, Nova Scotia	Halifax, Nova Scotia	CMS	English	
				Not Guilty						
				Not Guilty						
				Guilty						
6	SCM	Ex-MCpl	130 (5(i) GDSA) 129 Trafficking An Act to the Prejudice Careless Storage of a Firearm Careless Storage of Ammunition	Guilty	30 days imprisonment \$1500.00 fine	Cagetown New Brunswick	Oromocto New Brunswick	CLS	English	
				Guilty						
				Withdrawn						
7	SCM	Capt	130 (220(b) CCC) 124 Criminal Negligence Causing Death Negligent Performance of Military Duty	Not Guilty	Reduction in rank Severe Reprimand \$3,000 fine	Petawawa Ontario	Bosnia	CLS	English	
				Guilty						

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

Type	Rank	Offences	Description	Dispositions	Sentence	Geographic Location of CM	Geographic Location of Offence	Command	Language of Trial
8	SCM Sgt	126	Disobeyed Order to Submit to Vaccination	Stayed	N/A	Winnipeg, Manitoba	Kuwait City, Kuwait	CAS	English
9	SCM Maj	124	Negligent Performance of Military Duty	Guilty	Reduction in rank Severe Reprimand	Hull, Quebec	Bosnia	CLS	English
10	SCM MCpl	112(a) 117(f) 130 (367 CCC) 114 117(f) 114 117(f) 114 117(f) 130 (693.1(4)CCC) 114 129	Unauthorized Use of a CF Vehicle An Act of a Fraudulent Nature Forgery Stealing While Entrusted An Act of a Fraudulent Nature Stealing While Entrusted An Act of a Fraudulent Nature Stealing While Entrusted An Act of a Fraudulent Nature Possession of Child Pornography Stealing An Act to the Prejudice	Guilty Guilty Withdrawn Withdrawn Withdrawn Withdrawn Withdrawn Withdrawn Withdrawn Guilty Guilty	Reduction in rank \$2,000.00 fine	Toronto, Ontario	Toronto, Ontario	NDHQ	English
11	SCM Pte	115	Possession of Property Obtained by Commission of a Service Offence	Not Guilty	N/A	Petawawa, Ontario	Petawawa, Ontario	CLS	English
12	SCM MCpl	130 (153(f) CCC) 129	Sexual Exploitation An Act to the Prejudice	Guilty Stayed	15 days detention (suspended) \$1,000.00 fine	Montreal, Quebec	Montreal, Quebec	CLS	French
13	SCM Cpl	112(a) 129 129	Unauthorized Use of a CF Vehicle An Act to the Prejudice An Act to the Prejudice	Not Guilty Not Guilty Not Guilty	N/A	Greenwood Nova Scotia	Greenwood Nova Scotia	CAS	English
14	SCM MCpl	112(a) 129 129	Unauthorized Use of a CF Vehicle An Act to the Prejudice An Act to the Prejudice	Not Guilty Not Guilty Not Guilty	N/A	Greenwood Nova Scotia	Greenwood Nova Scotia	CAS	English

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued))

Type	Rank	Offences	Description	Dispositions	Sentence	Geographic Location of CM	Geographic Location of Offence	Command	Language of Trial
15	SCM	Sgt 130 (87 CCC) 130 (86(i) CCC)	Pointing a Firearm Careless Handling of a Firearm	Guilty Stayed	30 days detention (suspended) \$2,000.00 fine	Hull, Quebec	Richmond Ontario	DCDS	English
16	SCM	LCol 129	Neglect to the Prejudice	Guilty	\$5,000.00 fine	Petawawa Ontario	Kosovo FRY	CLS	English
17	SCM	LS 130 (78 FA) 130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (33 FA)	Fishing Without a License Possession of Undersized Lobster Possession of Female Lobster with Eggs An Act to the Prejudice Fishing During a Closed Period Possession of Fish Caught in Contravention to the Act	Guilty Guilty Guilty Not Guilty Not Guilty Not Guilty	\$3,000.00 fine	Esquimalt British Columbia	Shearwater Nova Scotia	CMS	French
18	SCM	MCpl 130 (253 CCC)	Operating a Motor Vehicle While Impaired	Guilty	\$1,250.00 fine	Greenwood Nova Scotia	Germany	CAS	English
19	SCM	LS 130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (33 FA)	Fishing Without a License Fishing During a Closed Time An Act to the Prejudice Fishing Without a License Possession of Undersized Lobsters Possession of Female Lobster with Eggs An Act to the Prejudice Fishing During a Closed Time Possession of Fish Caught in Contravention to the Act	Not Guilty Guilty Not Guilty Not Guilty Guilty Guilty Guilty Guilty Not Guilty	\$4000.00 fine	Halifax Nova Scotia	Shearwater, Nova Scotia	CMS	English

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

20	SCM	PO1	130 (78 FA) 130 (78 FA) 129	Fishing Without a License Fishing During a Closed Time An Act to the Prejudice	Not Guilty Guilty Guilty	\$2,000.00 fine	Halifax, Nova Scotia	Shearwater Nova Scotia	CMS	English
21	SCM	Cpl	130 (264.1f)(CCC) 130 (266 CCC) 97	Uttering Threats Assault Drunkness	Withdrawn Withdrawn Guilty	\$750.00 fine	Montreal, Quebec	Montreal, Quebec	CLS	English
22	SCM	CPO2	112(a)	Unauthorized Use of a CF Vehicle	Guilty	Reprimand \$500.00 fine	Esquimalt British Columbia	Esquimalt British Columbia	CMS	English
23	SCM	PO1	130 (78 FA) 130 (78 FA) 129	Fishing Without a License Fishing During a Closed Time An Act to the Prejudice	Not Guilty Guilty Guilty	\$2,000.00 fine	Halifax, Nova Scotia	Shearwater Nova Scotia	CMS	English
24	SCM	Lt(N)	117(f) 114	An Act of a Fraudulent Nature Stealing	Guilty Stayed	Reduction in Rank \$5,000.00 fine	Halifax Nova Scotia	Dartmouth Nova Scotia	CMS	English
25	SCM	LCol	83 129	Disobeyed a Lawful Command Conduct to the Prejudice	Stayed Guilty	Reprimand \$2,800.00 fine	Toronto, Ontario	Toronto, Ontario	CLS	English
26	SCM	MS	130 (78 FA) 130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (33 FA)	Fishing Without a License Possession of Undersized Lobster Possession of Female Lobster with Eggs An Act to the Prejudice Fishing During a Closed Time Possession of Fish Caught in Contravention to the Act	Guilty Guilty Guilty Not Guilty Not Guilty Not Guilty	\$3,000.00 fine	Halifax Nova Scotia	Shearwater Nova Scotia	CMS	French

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

Type	Rank	Offences	Description	Dispositions	Sentence	Geographic Location of Offence		Command	Language of Trial
						CM	Location of Offence		
27	SCM	Cpl 130 (264(i) CCC) 85	Uttering Threats Used Threatening Language to Superior	Stayed Guilty	14 days detention (suspended)	Trenton Ontario	Trenton Ontario	CAS	English
28	SCM	MS 130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (33 FA)	Fishing Without a License Fishing During a Closed Time An Act to the Prejudice Fishing Without a License Possession of Undersized Lobster Possession of Female Lobster with Eggs An Act to the Prejudice Fishing During a Closed Time Possession of Fish Caught in Contravention to the Act	Not Guilty Guilty Not Guilty Not Guilty Guilty Guilty Guilty Guilty Not Guilty	\$4,000.00 fine	Halifax, Nova Scotia	Shearwater Nova Scotia	CMS	French
29	SCM	OCdt 129 129	Conduct to the Prejudice Conduct to the Prejudice	Guilty Not Guilty	\$500.00 fine	Kingston Ontario	Kingston Ontario	CFRETS	English
30	SCM	WO 130 (220(b) CCC) 124	Criminal Negligence Causing Death Negligent Performance of Military Duty	Withdrawn Guilty	Reduction in rank \$3,000.00 fine	Peawawa Ontario	Bosnia	CFRETS	English
31	SCM	Sgt 129 129	Conduct to the Prejudice Conduct to the Prejudice	Guilty Guilty	Severe reprimand \$500.00 fine	Hamilton Ontario	Meaford, Ontario	CLS	English
32	SCM	Lt 129 129 129 129 129	Conduct to the Prejudice Conduct to the Prejudice Conduct to the Prejudice Conduct to the Prejudice Neglect to the Prejudice Neglect to the Prejudice	Guilty Stayed Guilty Stayed Not Guilty Not Guilty	Severe reprimand \$900.00 fine	Hamilton Ontario	Meaford, Ontario	CLS	English

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

33	SCM	WO	83 90	Disobeyed a Lawful Command Absent Without Leave	Guilty Guilty	Severe reprimand \$5,000 fine	Gagetown New Brunswick	Gagetown New Brunswick	CFRETS	English
34	SCM	Cpl	129	Conduct to the Prejudice	Stayed	N/A	Valcartier Quebec	Valcartier Quebec	CLS	French
35	SCM	LCdr	130 (139(2) CCC) 112(a) 90 129	Obstruction of Justice Unauthorized Use of a CF Vehicle Absent Without Leave Conduct to the Prejudice	Withdrawn Guilty Guilty Guilty	Severe reprimand \$1,000.00 fine	Regina Saskatchewan	Halifax Nova Scotia	CMS	English
36	SCM	Sgt	95 130 (266 CCC) 95 130 (266 CCC) 95 130 (266 CCC)	Ill- treatment of a Subordinate Assault Ill-treatment of a Subordinate Assault Ill-treatment of a Subordinate Assault	Guilty Stayed Guilty Stayed Guilty Stayed	Reduction in Rank	Toronto Ontario	Meaford Ontario	CLS	English
37	SCM	Cpl	130 (368 CCC) 117(f)	Uttering a Forged Document An Act of a Fraudulent Nature	Guilty Guilty	Severe reprimand \$5,000 fine	Halifax Nova Scotia	Halifax Nova Scotia	NDDHQ	English
38	SCM	MCpl	130 (264(3) CCC) 83 83 112(a) 118.1 90	Criminal Harassment Disobeyed a Lawful Command Disobeyed a Lawful Command Unauthorized Use of a CF Vehicle Not Appearing before a CM Absent Without Leave	Guilty Guilty Guilty Guilty Guilty Guilty	60 days detention (suspended)	St-Jean Quebec	St-Jean Quebec	CLS	French
39	SCM	Cpl	125(a)	Willfully Made a False Entry	Withdrawn	N/A	Valcartier Quebec	Valcartier Quebec	CLS	French

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

	Type	Rank	Offences	Description	Dispositions	Sentence	Geographic Location of		Command	Language of Trial
							CM	Offence		
40	SCM	Cpl	125(a) 125(a)	Willfully Made a False Entry Willfully Made a False Entry	Not Guilty Not Guilty	N/A	Valcartier Quebec	Valcartier Quebec	CLS	French
41	SCM	Cpl	125(a)	Willfully Made a False Entry	Withdrawn	N/A	Valcartier Quebec	Valcartier Quebec	CLS	French
42	SCM	Pte	30 (140 CCC) 96 96	Public Mischief Knowingly Made a False Accusation Knowingly Made a False Accusation	Guilty Guilty Guilty	90 days detention (suspended)	Edmonton Alberta	Edmonton Alberta	CLS	English
43	SCM	Maj	129	Conduct to the Prejudice	Guilty	\$200.00 fine	Toronto Ontario	Toronto Ontario	CFRETS	English
44	SCM	MCpl	130 (86 CCC) 124 130 (86 CCC) 124	Careless Storage of Ammunition Negligent Performance of Military Duty Careless Storage of Ammunition Negligent Performance of Military Duty	Stayed Guilty Stayed Stayed	Reprimand \$500.00 fine	Cander Newfoundland	Cander Newfoundland	CAS	English
45	SCM	LCol	125(a) 125(a) 125(a) 125(a)	Willfully Made a False Entry Willfully Made a False Entry Willfully Made a False Entry Willfully Made a False Entry	Guilty Guilty Guilty Guilty	Reprimand	Winnipeg Manitoba	Winnipeg Manitoba	CAS	English
46	SCM	Capt	1130 (86(d) EAA) 130 (80(d) EAA) 130 (80(d) EAA) 130 (80(d) EAA) 130 (80(d) EAA) 129	Willfully Signed a False Certificate Willfully Signed a False Certificate Willfully Signed a False Certificate Willfully Signed a False Certificate Willfully Signed a False Certificate Conduct to the Prejudice	Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty	N/A	Valcartier Quebec	Valcartier Quebec	CLS	French
47	SCM	LS	114 129	Stealing Conduct to the Prejudice	Guilty Stayed	\$750.00 fine	Valcartier Quebec	Esquimalt British Columbia	CMS	English

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

Case No.	Type	Rank	Offences	Description	Dispositions			Sentence	Geographic Location of Offence		Command	Language of Trial
					Guilty	Stayed	Not Guilty		CM	Geographic Location of Offence		
48	SCM	Cpl	114 114 114	Stealing While Entrusted Stealing While Entrusted Stealing While Entrusted	Guilty Guilty Guilty			Severe Reprimand \$5,000.00 fine	Gagetown New Brunswick	Gagetown New Brunswick	CLS	English
49	DCM	Capt	129 129	An Act to the Prejudice An Act to the Prejudice	Stayed Stayed			N/A	Valcartier Quebec	Haiti	CLS	French
50	SCM	PO2	130 (4(t) CDSA) 129	Possession Conduct to the Prejudice	Guilty Stayed			Severe Reprimand \$2,500.00 fine	Esquimalt British Columbia	British Columbia	CMS	English
51	SCM	Ex-Pte	114 114	Stealing Stealing	Guilty Guilty			\$1,000.00 fine	Hull Quebec	Halifax, Nova Scotia	CMS	English
52	SCM	Pte	83 85	Disobeyed a Lawful Command Used Insulting Language	Guilty Guilty			14 days Confined to barracks	Valcartier Quebec	Valcartier Quebec	CLS	French
53	SCM	MCpl	129 129 129 95 129 130 (86(t) CCC) 129	An Act to the Prejudice Conduct to the Prejudice Conduct to the Prejudice Ill-treatment of a Subordinate An Act to the Prejudice Negligent Handling of a Firearm An Act to the Prejudice	Guilty Not Guilty Guilty Not Guilty Not Guilty Not Guilty Not Guilty			Reprimand \$500.00 fine	Valcartier Quebec	Valcartier Quebec	CLS	French
54	SCM	WO	129 97	An Act to the Prejudice Drunkennes	Not Guilty Not Guilty			N/A	Valcartier Quebec	Lac St-Charles Quebec	CLS	French

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

	Type	Rank	Offences	Description	Dispositions	Sentence	Geographic Location of		Command	Language of Trial	
							CM	Offence			
55	SCM	Cpl	129	Conduct to the Prejudice	Not Guilty	N/A	Edmonton Alberta	Bosnia	DGDS	English	
56	SCM	Cpl	117(f)	An Act of a Fraudulent Nature	Guilty	\$2,000 fine	Edmonton Alberta	Medicine Hat, Alberta	CLS	English	
			114	Stealing	Not Guilty						
			117(f)	An Act of a Fraudulent Nature	Not Guilty						
			114	Stealing	Not Guilty						
57	SCM	Lt	117(f)	An Act of a Fraudulent Nature	Guilty	60 days imprisonment (suspended)	St-John's, Newfoundland	St-John's, Newfoundland	NDHQ	English	
			117(f)	An Act of a Fraudulent Nature	Guilty	Severe Reprimand					
			117(f)	An Act of a Fraudulent Nature	Guilty	Severe Reprimand					
			130 (341 CCC) 125(a)	Fraudulent Concealment Willfully Made a False Statement	Guilty	\$5,000 fine					
58	SCM	Capt	109	Low Flying	Guilty	Severe Reprimand	Valcartier Quebec	Montreal Quebec	CAS	French	
			109	Low Flying	Guilty	\$2,000 fine					
			129	An Act to the Prejudice	Not Guilty						
59	SCM	Capt	129	Neglect to the Prejudice	Not Guilty	Reprimand	Kingston, Ontario	Kingston, Ontario	CLS	English	
			129	Conduct to the Prejudice	Guilty	\$9,500 fine					
			129	Conduct to the Prejudice	Stayed						
60	SCM	MCpl	130 (271 CCC)	Sexual Assault	Not Guilty	N/A	Dubrovnik Croatia,	Dubrovnik Croatia,	DGDS	English	
61	SCM	Pte	130 (264.1) CCC	Uttering Threats	Guilty	\$1,000 fine	Edmonton Alberta	Edmonton Alberta	CLS	English	
			85	Used Threatening Language	Not Guilty						

COURT MARTIAL STATISTICS
 01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)
 (continued)

Type	Rank	Offences	Description	Dispositions	Sentence	Geographic Location of CM	Geographic Location of Offence	Command	Language of Trial
62	SCM	Pte	Struck a Superior Officer Assault Causing Bodily Harm	Not Guilty Guilty	21 days imprisonment (suspended) \$6,000 fine	Edmonton Alberta	Edmonton, Alberta	CLS	English
63	SCM	Pte	Struck a Superior Officer Assault Causing Bodily Harm	Not Guilty Guilty	21 days imprisonment (suspended) \$6,000 fine	Edmonton Alberta	Edmonton Alberta	CLS	English
64	SCM	OCdt	Negligently Made a False Statement	Guilty	Reprimand and \$400.00 fine	Gagetown New Brunswick	Gagetown New Brunswick	CLS	English
65	SCM	MCpl	Fraud Upon the Government Improperly Accepted Compensation in Relation to a Military Duty	Withdrawn Withdrawn	N/A	Greenwood Nova Scotia	Kosovo FRY	CAS	English

COURT MARTIAL STATISTICAL SUMMARY

01 APR 00 – 31 MAR 01 (COMMENCED AND COMPLETED)

1. Type of Court Martial:

Type	Number
Standing Courts Martial	62
Disciplinary Courts Martial	1
General Courts Martial	0
Special General Courts Martial	0
TOTAL	63

2. Rank Of Accused Person:

Rank	Number
Private and Corporal (includes Master-Corporal)	36
Sergeant to Chief Warrant Officer	11
Officer	18
Other	0
TOTAL	65

Note: Master Corporal is not a rank; it is an appointment pursuant to art. 3.08 of the *Queen's Regulations and Orders* for the Canadian Forces.

3. Offences:

Offences	Description of Offences	Number
s. 83 NDA	Disobeying a Lawful Command	5
s. 84 NDA	Striking a Superior Officer	2
s. 85 NDA	Used Threatening Language to a Superior	3
s. 90 NDA	Absent Without Leave	3
s. 95 NDA	Abuse of Subordinates	4
s. 96 NDA	Knowingly Made a False Accusation	2
s. 97 NDA	Drunkenness	1
s. 109 NDA	Low Flying	2
s. 112(a) NDA	Unauthorised Use of a CF Vehicle	6
s. 114 NDA	Stealing	8
s. 114 NDA	Stealing When Entrusted	7
s. 115 NDA	Possession of Property Obtained by the Commission of a Service Offence	1

Offences	Description of Offences	Number
s. 117(b) NDA	Improperly Accepted Compensation in Relation to Military Duty	1
s. 117(f) NDA	An Act of a Fraudulent Nature	12
s. 118.1 NDA	Failing to Appear before a Court Martial	1
s. 124 NDA	Negligent Performance of Military Duty	6
s. 125(a) NDA	Willfully Made a False Entry	11
s. 126 NDA	Disobeyed Order to Submit to Vaccination	1
s. 129 NDA	An Act to the Prejudice	25
s. 129 NDA	Conduct to the Prejudice	26
s. 129 NDA	Neglect to the Prejudice	5
s. 130 NDA (4(i) CDSA)	Possession of substances	1
s. 130 NDA (5(i) CDSA)	Trafficking of substances	5
s. 130 NDA (80 CCC)	Careless Storage of a Firearm	1
s. 130 NDA (86 CCC)	Careless Storage of Ammunition	3
s. 130 NDA (86(i) CCC)	Careless Handling of a Firearm	2
s. 130 NDA (87 CCC)	Pointing a Firearm	1
s. 130 NDA 121(i)(c) CCC	Fraud Upon the Government	1
s. 130 NDA (139(2) CCC)	Obstructing Justice	1
s. 130 NDA (140 CCC)	Public Mischief	1
s. 130 NDA (153(i) CCC)	Sexual Exploitation	3
s. 130 NDA (163.1(4) CCC)	Possession of Child Pornography	1
s. 130 NDA (220(b) CCC)	Criminal Negligence Causing Death	2
s. 130 NDA (253 CCC)	Operating a Motor Vehicle While Impaired	1
s. 130 NDA (264.1(i) CCC)	Uttering Threats	3
s. 130 NDA (264(3) CCC)	Criminal Harassment	1
s. 130 NDA (266 CCC)	Assault	4

Offences	Commission of a Service Offence Description of Offences	Number
s. 130 NDA (267(b) CCC)	Assault Causing Bodily Harm	2
s. 130 NDA (271 CCC)	Sexual Assault	1
s. 130 NDA (341 CCC)	Fraudulent Concealment	1
s. 130 NDA (367 CCC)	Forgery	1
s. 130 NDA (368 CCC)	Uttering a Forged Document	1
s. 130 NDA (78 FA)	Fishing Without a License	8
s. 130 NDA (78 FA)	Possession of Undersized Lobster	4
s. 130 NDA (78 FA)	Possession of Female Lobster With Eggs	4
s. 130 NDA (78 FA)	Fishing During a Closed Time	8
s. 130 NDA (33 FA)	Possession of Fish Caught in Contravention to the Act	4
s. 130 NDA (80(d) FAA)	Willfully Signed a False Certificate	5
Total Offences		202

4. DISPOSITION BY ACCUSED:

DISPOSITION	NUMBER
Guilty	51
Not Guilty	8
Stay of Proceedings	3
Withdrawal	3
TOTAL	65

5. PUNISHMENTS: *(NOTE: More than one type of punishment can be included in a sentence.)*

TYPE	NUMBER
Imprisonment	6
Detention	5
Reduction in Rank	6
Severe Reprimand	13
Reprimand	7
Fine	43
Confined to Barracks	1
TOTAL	81

6. GEOGRAPHIC LOCATION OF COURT MARTIAL:

LOCATION	NUMBER
Gander, Newfoundland	1
St.-John's, Newfoundland	1
Greenwood, Nova Scotia	2
Halifax, Nova Scotia	8
Gagetown, New Brunswick	4
Valcartier, Quebec	11
Montreal, Quebec	2
St-Jean, Quebec	2
Hull, Quebec	5
Trenton, Ontario	2
Petawawa, Ontario	4
Toronto, Ontario	4
Kingston, Ontario	2
Hamilton, Ontario	2
Winnipeg, Manitoba	2
Regina, Saskatchewan	1
Edmonton, Alberta	5
Victoria, British Columbia	4
Dubrovnik, Croatia	1
TOTAL	63

7. COURTS MARTIAL BY COMMAND:

Command	Number of Cases
Chief Maritime Staff	14
Chief Land Staff	29
Chief Air Staff	9
Deputy Chief of Defence Staff	3
CF Recruiting Education Training Systems	5
NDHQ	3
Total	63

8. LANGUAGE OF TRIAL:

LANGUAGE	NUMBER
English	47
French	16
Bilingual	0
Total	63

APPEALS HEARD FROM 1 APR 00 - 31 MAR 01

CMAC #	APPELLANT	RESPONDENT	OFFENCE	TYPE OF APPEAL	HEARING DATE AND PLACE	JUDGEMENT
431	H.M. the Queen	Maj Latouche	NDA s. 129	Legality of Findings	27.04.00	Allowed, new trial ordered
432	Ex-PO2 Campbell	H.M. the Queen	CDSA s. 4	Legality of Findings	n/a	Allowed, new trial ordered
433	Gnr Card	H.M. the Queen	NDA ss. 83, 111(1)a; 130(266 CCC)	Legality of Findings Severity of Sentence	n/a	Dismissed for non-compliance with the CMAC rules
434	H.M. the Queen	MWO Ferrier	NDA ss. 114, 117(f)	Legality of Findings	24.11.00	Dismissed
435	A/Slt Lechmann	H.M. the Queen	NDA ss. 117(f)	Legality of Sentence Severity of Sentence	19.01.01	Dismissed
436	Cpl Laliberte	H.M. the Queen	CDSA s. 5	Legality of Sentence Severity of Sentence	n/a	Dismissed for non-compliance with the CMAC rules

PROFESSIONAL DEVELOPMENT OF MILITARY PROSECUTORS

Host Organization	Name of Course	Number of Attendees
Ontario Crown Attorney Summer School	Trial Advocacy	1
	Experts Course	1
	Search and Seizure	1
	Sexual Assault Crimes	1
Federal Department of Justice	Prosecutors' Course	1
Alberta Attorney General	Motor Vehicle Offences	1
CFSU(O) SAMP Coy	C7 Weapons Training	4
	9mm Weapons Training	3
Canadian Bar Association	CBA Conference	1
ELFC	English Writing Course	1
US Judge Advocate's Association	Appellate Advocacy Seminar	1
USA Office of the Judge Advocate General	US Army Criminal Law Developments Course	1
Ontario Centre for Advocacy Training	Appellate Advocacy Course	1
Office of the Judge Advocate General	Presiding Officer Training	4
	JAG Workshop	11
	Law of Armed Conflict	2
Directorate of Military Prosecutions	DMP Annual Workshop	17
Federation of Canadian Law Societies	Criminal Law Evidence Course	1
Federal Department of Justice	Federal Prosecution Service Annual Conference	1
Canadian Forces	Basic Officer Training Course	1

MILITARY PROSECUTORS' WORKSHOP
 NAVCAN CORNWALL 27 AUG - 31 AUG 00

Day /Time	Activity
SUNDAY, 27 AUG 00 1600 - 1630 1630 - 1730 1900 - 2030	Workshop Overview and Objectives Issues and Solutions: Round table discussion of emerging issues from the field Issues and Solutions (continued)
MONDAY, 28 AUG 00 0800 - 0900 0900 - 1015 1015 - 1030 1030 - 1200 1200 - 1315 1315 - 1445 1445 - 1500 1500 - 1630 1930	CMPS Sitrep The Updated Blue File Coffee Military Sentencing Lunch CLE course updates Coffee Firearms Act Meet and Greet at the "Banquet Room"
TUESDAY, 29 AUG 00 0800 - 0845 0845 - 1015 1015 - 1030 1030 - 1200 1200 - 1315 1315 - 1415 1415 - 1430 1430 - 1530 1530 - 1630	The new NDA DNA Regime, CPIC and MRE developments Records Under ATI Coffee Victim Assistance Lunch CFNIS Presentation Coffee Appeals Performance Assessment/Business Plan

**MILITARY PROSECUTORS' WORKSHOP
 NAVCAN CORNWALL 27 AUG - 31 AUG 00**

(continued)

Day /Time	Activity
WEDNESDAY, 30 AUG 00 0800 - 0845 0845 - 1000 1000 - 1015 1015 - 1100 1100 - 1200 1200 - 1315 1315 - 1445 1445 - 1500 1500 - 1545 1545 - 1700 1900	DMP Interface with the Summary Trial System Proving S 129 Offences "It can be done!" Coffee Recent Military Jurisprudence Recent Developments in Criminal Law Lunch Technology and Prosecutions Coffee Introduction to "Elements of the Offence" Handbook JAG Address Workshop BBQ Dinner - "Banquet Room"
THURSDAY, 31 AUG 00 0930 - 1030 1030 - 1045 1045 - 1215 1215 - 1315	Media relations with the prosecution Coffee Court Martial Administrative Process Round Table Lunch and Out Clearance