

**Canadian Military
Prosecution Service**



**Service canadien des
poursuites militaires**

DIRECTOR OF MILITARY PROSECUTIONS

ANNUAL REPORT

2011 - 2012

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Director of Military Prosecutions' Perspective

I am pleased to present the Director of Military Prosecutions' (DMP) Annual Report for 2011-2012. Throughout this challenging year, the prosecutors and supporting staff of the Canadian Military Prosecution Service (CMPS), from across Canada, have performed extremely well in the fulfilment of the DMP's mandate. On behalf of this entire team, I detail our accomplishments and preview the way ahead for the organization.

Throughout the last year, the CMPS has undertaken the prosecution of all courts martial and represented the Canadian Forces (CF) for all custody review hearings. The CMPS also conducted appeals in the Court Martial Appeal Court (CMAC) and provided advice and training to the Canadian Forces National Investigation Service (CFNIS). Both Regular Force and Reserve Force prosecutors have conducted sensitive and high profile prosecutions in different parts of the country. Two senior prosecutors deployed overseas assisted in the Office of the Judge Advocate General's mission to support CF military operations. While the impact on the organization with the loss of two key players was not insignificant, the members of the CMPS through hard work and dedication, continued to perform admirably.

The concern highlighted in the previous report regarding the timelines from charge laying to referral to DMP remains a concern. The trial scheduling process is also less than optimal. We will continue to strive to improve the situation on both of these fronts. We have achieved positive results in the training and general development of our prosecutors but this is an ongoing task as we still have a relatively junior core of officers.

The CMPS has adapted well to its minor leadership reorganization that took place during the previous reporting period. I believe that in the medium term, this reorganization will improve the supervision of and support to prosecutors, resulting in higher quality prosecution services. I am hopeful that we will be able to establish a new Regional Military Prosecutor's office in Esquimalt, British Columbia, in the next fiscal year to better address prosecutorial needs in the Pacific region.

This has once again been a busy and productive year and I wish to thank all military and civilian staff for their hard work and constant dedication.

Colonel J.A.M. Léveillé, CD
Director of Military Prosecutions

This report, covering the period of 1 April 2011 to 31 March 2012, is prepared in accordance with article 110.11 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), which requires the DMP¹ to report annually to the Judge Advocate General (JAG) on the execution of his duties and functions.² This report is organized into sections that will discuss the following:

- ❑ Mission and Vision
- ❑ Duties and Functions of the DMP
- ❑ Organizational Structure
- ❑ Training and Policy Development
- ❑ Military Justice Proceedings: Trials, Appeals and Other Hearings

Mission and Vision

Our Mission

To provide competent, fair, swift and deployable prosecution services to the Canadian Forces in Canada and overseas.

Our Vision

“*ORDO PER JUSTITIA*” or “*DISCIPLINE THROUGH JUSTICE*”. The DMP is a key player in the Canadian military justice system helping to promote respect for the law, as well as discipline, good order, high morale, esprit de corps, group cohesion and operational efficiency and capability.

Duties and Functions of the DMP

The DMP is appointed by the Minister of National Defence. Although the DMP acts under the general supervision of the JAG, he exercises his duties and functions independently. Those duties and functions, which are set out in the *National Defence Act* (NDA), the QR&O, ministerial orders and other agreements, include:

¹ The DMP at the start of the reporting period was Captain(N) J.C. Maguire, who was appointed to a four year term on 19 September 2009. Captain(N) Maguire resigned his appointment effective 7 February 2012. He was immediately replaced on an interim basis by Colonel J.A.M. Léveillé who was then appointed by the Minister of National Defence on 7 March 2012 to be the DMP for a four year term.

² Previous DMP Annual Reports, along with copies of DMP Policy Directives and other information can be found at the DMP website: <http://www.forces.gc.ca/jag/dmp-dpm/index-eng.asp>

- ❑ Reviewing all *Code of Service Discipline* charges referred to him through the CF chain of command and determining whether:
 - The charges or other charges founded on the evidence should be tried by court martial; or
 - The charges should be dealt with by an officer who has jurisdiction to try the accused by summary trial.
- ❑ Conducting – within Canada or at deployed locations overseas – the prosecution of all charges tried by court martial.
- ❑ Acting as appellate counsel for the Minister of National Defence on all appeals from courts martial.
- ❑ Acting as the representative of the CF at all custody review hearings conducted before a military judge.
- ❑ Acting as the representative of the CF before other boards and tribunals whose jurisdiction touches upon matters relevant to the military justice system.
- ❑ Providing legal advice to military police personnel assigned to the CFNIS.

Organizational Structure

The DMP is assisted in his duties and functions by Regular Force and Reserve Force legal officers appointed to act as military prosecutors, along with civilian paralegals and support staff. This organization is known as the CMPS. It is organized regionally, and consists of:

- ❑ DMP headquarters at National Defence Headquarters in Ottawa consisting of the DMP, the Assistant Director of Military Prosecutions (ADMP), two Deputy Directors of Military Prosecutions (DDMP (East) and DDMP (West)), an appellate counsel, a military prosecutor responsible for communications, training and policy development and a legal advisor working directly with the CFNIS;
- ❑ Regional Military Prosecutors' (RMP) offices, each with an establishment of two regular force military prosecutors, located at:
 - ❑ Halifax, Nova Scotia (Atlantic Region),
 - ❑ Valcartier, Quebec (Eastern Region),
 - ❑ Ottawa, Ontario (Central Region), and

- ❑ Edmonton, Alberta (Western Region); and
- ❑ Reserve force military prosecutors located individually across Canada.

CMPS Personnel

During this reporting period, CMPS experienced a lower number of personnel and position changes at DMP headquarters than in previous years. For the fourth consecutive year, however, the position of military prosecutor responsible for communications, training and policy development remained vacant, creating a void in an important position within the organization. The office provided two experienced members for overseas deployments. The DDMP (West) was deployed to the Democratic Republic of Congo from April to October 2011. The appellate counsel was deployed to Israel from August 2011 to February 2012.

The Regional Military Prosecution office for the Western region in Edmonton was affected by significant personnel changes as two experienced military prosecutors left the CMPS, one for another posting within the Office of the JAG, and one for a new career with the Public Prosecution Service of Canada. These two prosecutors were replaced by a new military prosecutor, inherently requiring training, mentoring and supervision.

A new, additional prosecutor joined the Regional Military Prosecution office for the Central region in Ottawa as of January 2012.

During the period, significant progress was made for the establishment of a new Regional Military Prosecution office for the Pacific region. This office will be located in Esquimalt, British Columbia.

Training and Policy Development

Training

Regular force military prosecutors, not unlike other legal officers, are posted to their positions for a limited period of time – usually three to five years. As such, the training that they receive must support both their current employment as military prosecutors as well as their professional development as officers and military lawyers. The relative brevity of a military prosecutor's posting with the CMPS requires a significant and ongoing organizational commitment to provide him or her with the formal training and practical experience necessary to develop the skills, knowledge and judgment essential in an effective military prosecutor.

Given the small size of the CMPS, much of the required training is provided by organizations external to the CF. During the present reporting period, military prosecutors participated in conferences and continuing legal education programs organized by federal, provincial and territorial Heads of Prosecution, the Canadian Bar Association and

its provincial affiliates, the Federation of Law Societies of Canada, the Ontario Crown Attorneys' Association and various provincial law societies. These programs benefited the CF not only through the knowledge imparted and skills developed but also through the professional bonds forged by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

CMPS holds an annual workshop for its regular and reserve force military prosecutors. The one day workshop, held in the fall, is part of the annual JAG Continuing Legal Education workshop.

Military prosecutors also took part in a variety of professional development activities, including the legal officer intermediate and advanced training programs, and the officer professional military education program. Finally, in order to maintain their readiness to deploy into a theatre of operations in support of DMP's mandate, military prosecutors conducted individual military skills training such as weapons familiarization and first aid training.

CMPS also provides support to the training activities of other CF entities. During the present reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior military lawyers from the Office of the JAG, who completed a portion of their "on the job training" program by assisting in prosecutions at courts martial. Military prosecutors also provided presentations to JAG legal officers, military justice training to members of the CFNIS, and served as supervisors for law students articling with the Office of the JAG.

Annex D provides additional information regarding the legal training received by the members of the CMPS.

JAGNet

JAGNet continues to be used as the main electronic filing tool for electronic records of the office. JAGNet does not provide prosecution case management software. Such software would improve the capabilities of the CMPS for efficient and standardized case management.

Policy Development

DMP publishes all policy directives governing prosecutions by the CMPS. These policies are reviewed regularly. This has been a challenge during this reporting period as the position of the officer assigned to this task remained vacant.

Military prosecutors also play a role in the development of Canadian military justice and criminal justice policy. The DMP continues to play a role in such efforts through his participation on a committee made up of the heads of all federal, provincial and territorial prosecution services.

Military Justice Proceedings

The nature of the operational tasks entrusted to the CF requires the maintenance of a high degree of discipline among CF members. Parliament and the courts have long recognized the importance of a separate military *Code of Service Discipline* to govern the conduct of individual soldiers, sailors and air force personnel and prescribe punishment for disciplinary breaches.

The *Code of Service Discipline* is designed to assist commanders in the promotion and maintenance of good order, high morale, efficiency, discipline and operational effectiveness. To these ends, the NDA creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are courts martial and the CMAC.

During the present reporting period, military prosecutors represented the interests of the CF and the general public in a number of different types of judicial proceedings related to the military justice system. These proceedings included courts martial, appeals from courts martial and reviews of pre-trial custody.

Courts Martial

During the reporting period, the DMP received 111 applications for disposal of a charge or charges from referral authorities. When an application for disposal is received, a military prosecutor is designated to perform a review of the case. Following this review, charges are preferred to court martial. During the period, a decision not to prefer any charges to court martial was made in respect of 42 applications.

For the period, 62 members of the CF faced a total of 206 charges. Sixty-two courts martial were held. All courts martial were held in Canada.

Out of the 62 courts martial held, 55 trials were held before a Standing Court Martial (SCM), composed of a military judge sitting alone. In addition, there were seven trials held before a General Court Martial, composed of five CF members as triers of fact and a military judge as the trier of law.

At the conclusion of 56 of the trials, the trier of fact made a finding of guilty in respect of at least one charge. The remaining six trials had not guilty findings on all charges. There were no instances where there was either a stay or a withdrawal of all charges.

Annex A provides additional information regarding the charges tried and the results of each court martial.

While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 56 sentences pronounced by courts martial during the reporting period involved 88 punishments. A fine was the most common

punishment, with 45 fines being imposed. Eleven punishments of imprisonment and four punishments of detention were also imposed by the courts. Of those 15, four were suspended sentences, which means, in the context of the *Code of Service Discipline*, that the sentence is suspended and that the offender does not have to serve out the sentence of imprisonment or detention.

We would like to highlight the following courts martial:

*R. v. Corporal Wilcox*³

In March 2007, Corporal Wilcox and Corporal Megeney were working with other members of their section on opposite shifts at Entry Control Point 3 in Kandahar, Afghanistan. At the end of their shift, they were transported to their tent. Shortly after being dropped off, a shot was heard and a number of personnel nearby heard screaming and attended at the tent. On arrival, members of the platoon saw or smelled gun smoke in the tent. Corporal Wilcox was seen lowering Corporal Megeney to the ground. Members began first aid on Corporal Megeney and had Corporal Wilcox wait outside. Witnesses speaking with Corporal Wilcox shortly after arriving on scene stated he had made various utterances and statements to them. He stated/implied he had shot Corporal Megeney when they were playing quick draw. Corporal Megeney succumbed to the single gunshot wound to the chest.

A charge under section 130 of the NDA for criminal negligence causing death by using a firearm contrary to subsection 220(a) of the Criminal Code and a charge for negligently performing a military duty contrary to section 124 of the NDA were preferred by the DMP against Corporal Wilcox.

On 16 November 2011, at an SCM, Corporal Wilcox was found guilty of both charges. On 18 November 2011, he was sentenced to imprisonment for a period of three years and two hundred and eighty-nine days.

*R. v. Brigadier-General (Ret'd) Ménard*⁴

Brigadier-General Ménard was the Commander of Joint Task Force Afghanistan. He was deployed to Kandahar Airfield (KAF) between 5 November 2009 and 27 April 2010. During his deployment, he maintained an inappropriate personal relationship with a subordinate of the rank of Master Corporal. In theatre, this relationship was contrary to Standing Orders.

Two charges of conduct to the prejudice of good order and discipline pursuant to section 129 of the NDA were preferred by the DMP against Brigadier-General Ménard.

³ *R v Wilcox*, 2011 CM 3012.

⁴ *R. v. Ménard*, 2011 CM 3007.

On 21 July 2011, at a SCM, Brigadier-General Ménard pleaded guilty to the charges. He was sentenced to a reduction in rank to Colonel and a fine in the amount of \$7000.00.

*R. v. Petty Officer 2nd Class Wilks*⁵

Petty Officer 2nd Class Wilks was a medical technician. At the time of the offences, he had to conduct enrolment medical examinations as part of his duties. He conducted examinations in a manner contrary to the CF policy in that he had patients remove clothing, performed breast exams, and performed exams of females without a chaperone.

Two charges of sexual assault and four charges of breach of trust by a public officer, all pursuant to section 130 of the NDA, were preferred by the DMP against Petty Officer 2nd Class Wilks.

On 17 October 2011, at an SCM, Petty Officer 2nd Class Wilks was found guilty of one count of sexual assault and four counts of breach of trust by a public officer. On 12 December 2011 he was sentenced to imprisonment for a period of nine months.

*R. v. Corporal Lough*⁶

Corporal Lough was an aviation technician with 1 Air Maintenance Squadron at Canadian Forces Base Cold Lake. In the early morning hours of 1 August 2010, he entered the cadet quarters on base where cadets were sleeping. He got into one bed and straddled a female cadet who struggled with him. He then entered a second room and gripped the throat of a second female cadet. He fled when another occupant of the room awoke. He entered a third room and threatened to harm other cadets unless the lone female present did not comply with his demands. He began to sexually assault her.

Three charges of breaking, entering and committing, two charges of sexual assault and one charge of sexual assault with threat to third party, all pursuant to section 130 of the NDA, were preferred by the DMP against Corporal Lough.

In October 2011, at an SCM, Corporal Lough pleaded guilty to one count of breaking, entering and committing, to a lesser count of assault, and to the charge of sexual assault with threat to third party. On 25 November 2011, he was sentenced to imprisonment for a period of 34 months.

Appeals to the Court Martial Appeal Court

During the reporting period the CMAC rendered a decision on four appeals. One appeal was abandoned by the appellant. Out of these five appeals, three appeals had been initiated by members of the CF who had been convicted and sentenced by court martial; two were initiated by the Crown.

⁵ *R. v. Wilks*, 2011 CM 4029.

⁶ *R. v. Lough*, 2011 CM 2022.

The following appeal case is of particular interest:

*Corporal Leblanc v. R.*⁷

From 1 to 5 February 2010, Corporal Leblanc was tried by SCM on one count of negligently performing a military duty contrary to section 124 of the NDA.

In a pre-trial application, Corporal Leblanc unsuccessfully challenged the competence of the SCM, alleging that it was not an independent and impartial tribunal within the meaning of subsection 11(d) of the *Canadian Charter of Rights and Freedoms*. Corporal Leblanc appealed the legality of his conviction to the CMAC on this and other grounds.

The CMAC allowed the appeal in part. The CMAC found that Military Judges exercise similar functions and have essentially the same powers as judges of superior and provincial courts of criminal jurisdiction and should not be subject to the uncertainty and anxiety of having their positions come up for renewal every five years. The Court also took the view that the age of retirement should be the same for all military judges, regardless of their rank. The Court declared subsections 165.21 (2), (3) and (4) of the NDA and articles 111.15, 111.16 and 111.17 of the QR&O, pertaining to the appointment of military judges, constitutionally invalid and inoperative.

After noting that the government had already shown that it is sensitive to the need to provide better guarantees of security of tenure for Military Judges, the Court suspended the declaration of constitutional invalidity for a period of six months to allow for the necessary legislative amendments to be made. Those amendments were made in Bill C-16, which received Royal Assent on 29 November 2011.⁸

Annex B provides additional information regarding the appeals to the CMAC.

Appeal to the Supreme Court of Canada

The Supreme Court of Canada (SCC) rendered a decision in the appeal of Private St-Onge that had been argued in the previous reporting period.⁹ In that case, the decision of the CMAC in *R. v. St-Onge*¹⁰ was appealed to the SCC.

On 26 May 2008, Private St-Onge pleaded guilty at an SCM to five charges including possession of cannabis, use of cannabis, use of methamphetamines, possession of military munitions and verbal threats to a superior. The Military Judge imposed a sentence of imprisonment for a period of 30 days.

⁷ *Leblanc v. R.*, 2011 CMAC 2.

⁸ *An Act to amend the National Defence Act (military judges)*, S.C. 2011, c. 22.

⁹ *R. v. St-Onge*, [2011] 1 S.C.R. 625.

¹⁰ 2010 CMAC 7.

Private St-Onge appealed to the CMAC on two grounds: first, that he should not have been found guilty of one charge of possession of cannabis as the infraction was time-barred and, second, that the military judge erred in imposing a sentence of imprisonment for 30 days. In its decision the CMAC unanimously rejected the first ground of appeal. However, the majority granted the appeal on the severity of sentence and reduced it to a fine of \$3000.00. The majority ruled that the military judge had not established that a term of imprisonment was the most appropriate and least restrictive sanction, having regard to the fact that the appellant had previously been administratively released from the CF. The dissenting judge would have dismissed the appeal as to sentence on the grounds that the applicable standard of review did not allow a court of appeal to intervene.

The SCC heard the appeal on 24 March 2011 and rendered its decision on 1 April 2011. Justice Fish, for a unanimous seven member bench of the SCC, granted the Crown appeal for the reasons expressed by the dissenting judge at the CMAC, essentially that the military judge made no errors that would allow the review of the sentence imposed. Consequently, the sentence of imprisonment was restored.

Appendix C provides information regarding appeals to the SCC.

Custody Reviews

Military Judges are, in certain circumstances, required to review orders made to retain a CF member in service custody. DMP has been representing the CF at such hearings. During the reporting period, military prosecutors appeared at two pre-trial custody review hearings, one of which was held for three CF members.

Annex A - Director of Military Prosecutions - Annual Report - 2011/2012

Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
1.	SCM	LS Zinck	s. 97 NDA	Drunkenness	Guilty	Reprimand and \$500 fine	N/A	Halifax,, NS	Florida, USA	CMS	English
			s. 97 NDA	Drunkenness	Guilty						
2.	SCM	Spr Perras	s. 130 (s. 269 Cr. Code)	Unlawfully causing bodily harm	Not guilty	N/A	N/A	Petawawa, ON	California, USA	CLS	English
			s. 124 NDA	Negligent performance of a military duty	Not guilty						
3.	SCM	MCpl Williams	s. 130 (s. 266 Cr. Code)	Assault	Not guilty	N/A	N/A	Halifax, NS	Aldershot, NS	CMS	English
			s. 86 NDA	Fought with a person subject to the Code of Service Discipline	Not guilty						
4.	SCM	Sgt Lambert	s. 130 (s. 266 Cr. Code)	Assault	Not guilty	Severe reprimand and \$2000 fine	N/A	Greenwood, NS	Greenwood, NS	CAS	English
			s. 95 NDA	Striking a subordinate	Not guilty						
			s. 83 NDA	Disobeyed a lawful command	Guilty						
			s. 129 NDA	Conduct to the prejudice	Stayed						
5.	SCM	Sgt Olive	s. 129 NDA	An act to the prejudice	Guilty	Reprimand and \$1500 fine	N/A	Sault Ste Marie, ON	Kandahar, Afg	CEFCOM	English
6.	GCM	Cpl Rivas	s. 130 (s. 271 Cr. Code)	Sexual assault	Guilty	9 months imprisonment	DNA SOIRA RPA	Borden, ON	Borden, ON	CAS	English
			s. 93 NDA	Behaved in a disgraceful manner	Stayed						
			s. 97 NDA	Drunkenness	Guilty						
7.	SCM	OS Boivin	s. 130 (s. 5(1) CDSA)	Trafficking	Guilty	30 days imprisonment	N/A	Halifax, NS	St-Jean-sur-Richelieu	CMS	French
			s. 130 (5(2) CDSA)	Possession for the purpose of trafficking	Withdrawn						

Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
8.	SCM	Ex-Pte Dolcetti	s. 86 NDA	Used provoking speech to a person subject to the Code of Service Discipline	Guilty	30 days imprisonment (suspended) and \$2700 fine	N/A	Gagetown, NB	Gagetown, NB	CLS	English
			s. 130 (s. 264.1(1) Cr. Code)	Uttering threats	Withdrawn						
			s. 86 NDA	Used provoking speech to a person subject to the Code of Service Discipline	Withdrawn						
			s. 130 (s. 264.1(1) Cr. Code)	Uttering threats	Withdrawn						
			s. 86 NDA	Fought with a person subject to the Code of Service Discipline	Guilty						
			s. 130 (s. 266 Cr. Code)	Assault	Withdrawn						
			s. 86 NDA	Used provoking speech to a person subject to the Code of Service Discipline	Withdrawn						
			s. 130 (s. 264.1(1) Cr. Code)	Uttering threats	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Guilty						
			s. 90 NDA	Absent without leave	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Guilty						
9.	SCM	Bdr Parent	s. 90 NDA	Absent without leave	Stayed	\$2500 fine	N/A	Petawawa,	Petawawa, ON	CLS	English

Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 90 NDA	Absent without leave	Stayed			ON			
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Withdrawn						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Withdrawn						
			s. 90 NDA	Absent without leave	Withdrawn						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Stayed						
			s. 90 NDA	Absent without leave	Stayed						
			s. 129 NDA	Neglect to the prejudice	Guilty						
10.	SCM	Ex-Cpl Robinson	s. 129 NDA	Conduct to the prejudice	Withdrawn	Reprimand and \$1000 fine	N/A	Oromocto, NB	Gagetown, NB	CMS	English
			s. 117(f) NDA	An act of a fraudulent nature	Withdrawn						
			s. s. 90 NDA	Absent without leave	Guilty						
11.	SCM	Cpl Nadeau	s. 115 NDA	Received property obtained in the commission of a service offence	Guilty	Reprimand and \$1500 fine	N/A	Sherbrooke, QC	Sherbrooke, QC	CLS	French
			s. 130 (s. 355 Cr. Code)	Receiving property obtained by crime	Stayed						
12.	SCM	OS Coombs	s. 90 NDA	Absent without leave	Guilty	23 days detention and \$2000 fine	N/A	Halifax, NS	Halifax, NS	CMS	English
			s. 83 NDA	Disobeyed a lawful command	Withdrawn						
			s. 101.1 NDA	Failed to comply with conditions	Guilty						
			s. 90 NDA	Absent without leave	Guilty						

Annex A - Director of Military Prosecutions - Annual Report - 2011/2012

Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 101.1 NDA	Failed to comply with condition of an undertaking	Guilty						
			S. 90 NDA	Absent without leave	Guilty						
			s. 101.1	Failed to comply with condition of an undertaking	Guilty						
			s. 90 NDA	Absent without leave	Guilty						
13.	SCM	Ex-Pte Bean	s. 129 NDA	An act to the prejudice	Guilty	Reprimand and \$800 fine	N/A	Oromocto, NB	Oromocto, NB	CLS	English
			s. 129 NDA	An act to the prejudice	Withdrawn						
			s. 125(c) NDA	With intent to deceive, altered a document issued for a military purpose	Guilty						
14.	SCM	Ex-OS Weldam-Lemire	s. 90 NDA	Absent without leave	Guilty	10 days imprisonment (suspended) and \$1000 fine	N/A	Victoria, BC	Esquimalt, BC	CMS	English
			s. 90 NDA	Absent without leave	Guilty						
			s. 83 NDA	Disobeyed a lawful command	Guilty						
15.	SCM	BGen Menard (Ret'd)	s. 129 NDA	Conduct to the prejudice	Guilty	Reduction to the rank of Colonel and \$7000 fine	N/A	Montreal, QC	Kandahar, Afg	CEFCOM	French
			s. 129 NDA	Conduct to the prejudice	Guilty						
16.	SCM	Pte Gregory	s. 97 NDA	Drunkenness	Guilty	Severe reprimand and \$2000 fine	N/A	Borden, ON	Borden, ON	CLS	English
17.	SCM	Pte Miller	s. 85 NDA	Used insulting language to a superior officer	Guilty	14 days imprisonment (suspended) and \$1500 fine	N/A	Petawawa, ON	Petawawa, ON	CLS	English
			s. 90 NDA	Absent without leave	Guilty						
18.	SCM	SLt Nguyen	s. 85 NDA	Behaved with contempt to a superior officer	Withdrawn	\$3500 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
			s. 130 (s. 266 Cr. Code)	Assault	Guilty						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
19.	SCM	MCpl Lamoureux	s. 83 NDA	Disobeyed a lawful command	Stay	14 days detention	N/A	Valcartier, QC	Valcartier, QC	CEFCOM	French
			s. 129 NDA	Conduct to the prejudice	Guilty						
			s. 83 NDA	Disobeyed a lawful command	Guilty						
			s. 129 NDA	An act to the prejudice	Stay						
			s. 129 NDA	An act to the prejudice	Not guilty						
20.	SCM	Capt (ret'd) Amirault	s. 130 (s. 271 Cr. Code)	Sexual assault	Guilty	Severe reprimand and \$8000 fine	DNA SOIRA /20 yrs	Pembroke, ON	Petawawa, ON	CLS	English
			s. 95 NDA	Ill-treatment of a subordinate	Stay						
21.	SCM	Pte Monette	s. 83 NDA	Disobeyed a lawful command	Stay	7 days detention	N/A	Valcartier, QC	Valcartier, QC	CEFCOM	French
			s. 129 NDA	An act to the prejudice	Guilty						
			s. 90 NDA	Absent without leave	Guilty						
			s. 90 NDA	Absent without leave	Guilty						
			s. 90 NDA	Absent without leave	Guilty						
			s. 90 NDA	Absent without leave	Guilty						
			s. 85 NDA	Behaved with contempt toward a superior officer	Stay						
			s. 129 NDA	Conduct to the prejudice	Guilty						
22.	GCM	Bdr Tomczyk	s. 83 NDA	Disobeyed a lawful command	Not guilty	Reprimand and \$1500 fine	N/A	Petawawa, ON	Petawawa, ON	CLS	English
			s. 129 NDA	Conduct to the prejudice	Guilty						
23	SCM	LS Narynski	S. 129 NDA	Conduct to the prejudice	Guilty	Reprimand and \$1500 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
24	SCM	MWO Ferguson	s. 125 NDA	Wilfully made a false statement	Guilty	\$900 fine	N/A	Halifax, NS	Halifax, NS	CANOSC OM	English
			s. 129 NDA	Conduct to the prejudice	Stay						
25	SCM	Ex-Pte Humphrey	s. 130 (s. 4(1) CDSA)	Possession	Withdrawn	\$1500 fine	N/A	Wainwright, AB	Wainwright, AB	CLS	English

Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 130 (s. 4(1) CDSA)	Possession	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 130 (s. 4(1) CDSA)	Possession	Guilty plea						
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 130 (s. 4(1) CDSA	Possession	Guilty plea						
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 130 (s. 4(1) CDSA	Possession	Withdrawn						
26	SCM	Pte Vilca-Cevallos	s. 125 NDA	Wilfully made a false statement in a document	Guilty	\$750 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
27	SCM	Capt Babineau	s. 130 (s. 104(1)(a) Cr. Code)	Unauthorized importing	Stay	Reprimand and \$2000 fine	N/A	St-Jean-sur-Richelieu, QC	Trenton, ON Kandahar, AFG	CEFCOM	French
			s. 129 NDA	An act to the prejudice	Guilty						
28	SCM	Ex-Capt Frizell	S. 130 (s. 266 Cr. Code)	Assault	Withdrawn	Severe reprimand and \$3000 fine	N/A	Petawawa, On	Petawawa, ON	CLS	English
			s. 130 (s. 266 Cr. Code)	Assault	Withdrawn						
			s. 86 NDA	Fought with a person subject to the Code of Service Discipline	Withdrawn						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 86 NDA	Used provoking speech with a person subject to the Code of Service Discipline	Guilty						
			s. 97 NDA	Drunkenness	Guilty						
29	SCM	MCpl Boudreault	s. 130 (s. 267(b) Cr. Code)	Assault causing bodily harm	Guilty of s. 266 Cr. Code	Reprimand and \$2000 fine	N/A	Alouette, QC	Alouette, QC	CAS	French
30	SCM	LCol Hirji	s. 124 NDA	Negligent performance of a military duty	Stay	Reprimand and \$2000 fine	N/A	Toronto, ON	Toronto, ON	CMP	English
			s. 129 NDA	An act to the prejudice	Guilty						
31	SCM	Cpl Desrochers	s. 130 (s. 163.1(4) Cr. Code)	Possession of child pornography	Stay	Reduction to the rank of Private and \$2000 fine	N/A	Astra, ON	Astra, ON	CAS	English
			s. 93 NDA	Behaved in a disgraceful manner	Guilty						
32	SCM	OCdt Balint	s. 83 NDA	Disobeyed a lawful command	Stay	12 days confined to barracks	N/A	Kingston, ON	Kingston, ON	CLS	English
			s. 90 NDA	Absent without leave	Guilty						
33.	SCM	Pte Ouellet	s. 130 (s.266 Cr. Code)	Assault	Guilty	14 days detention and \$2000 fine	N/A	Courcelette, QC	Courcelette, QC	CLS	French
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 130 (s.267(b) Cr. Code)	Assault causing bodily harm	Guilty of s. 266 Cr. Code						
34.	SCM	Ex-Cpl Wilcox	s. 130 (s. 236(a) Cr. Code)	Manslaughter while handling a firearm	No jurisdiction	Imprisonment for 3 years and 289 days	N/A	Halifax, NS	Halifax, NS	CLS	English
			s. 130 (s 220(a) Cr. Code)	Criminal negligence causing death with a firearm	Guilty						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 124 NDA	Negligent performance of a military duty	Guilty						
35.	SCM	Cpl Tofflemire	s. 130 (s.334 Cr. Code)	Theft	Withdrawn	Reprimand and \$700 fine	N/A	Kingston, ON	Kingston, ON	CANOSC OM	English
			s. 114 NDA	Stealing	Guilty						
			s. 129 NDA	An act to the prejudice	Guilty						
36	SCM	Cpl Lough	s. 130 (s. 348(1)(b) Cr. Code)	Breaking and entering an committing an indictable offence	Guilty	34 months imprisonment	N/A	Cold Lake, AB	Cold Lake, AB	CAS	English
			s. 130 (s. 348(1)(b) Cr. Code)	Breaking and entering and committing an indictable offence	Withdrawn						
			s. 130 (s. 348(1)(b) Cr. Code)	Breaking and entering and committing an indictable offence	Withdrawn						
			s. 130 (s. 271 Cr. Code)	Sexual assault	Withdrawn						
			s. 130 (s. 271 Cr. Code)	Sexual assault	Withdrawn						
			s. 130 (s. 272(1)(b)	Sexual assault and threat to a third party	Guilty						
37	SCM	Capt Day	s. 124 NDA	Negligent performance of a military duty	Stay	Reprimand and \$5000 fine	N/A	Oromocto, NB	Oromocto, NB	CEFCOM	English
			s. 124 NDA	Negligent performance of a military duty	Guilty						
			s. 129 NDA	Neglect to the prejudice	Not guilty						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 129 NDA	Neglect to the prejudice	Stay						
38	GCM	Cpl Souka	s. 130 (s. 267(b) Cr. Code)	Assault causing bodily harm	Guilty of s. 266 Cr. Code	Severe reprimand and \$2000 fine	N/A	Winnipeg, MB	Winnipeg, MB	CAS	English
			s. 97 NDA	Drunkenness	Guilty						
39	SCM	Cpl Pavlyuk	s. 129 NDA	Conduct to the prejudice	Not guilty	N/A	N/A	Montreal, QC	Montreal, QC	CLS	French
40	SCM	Cpl Patterson	s. 129 NDA	Neglect to the prejudice	Guilty	\$1600 fine	N/A	Toronto, ON	Toronto, ON	CEFCOM	English
41	SCM	Col Scagnetti	s. 129 NDA	Neglect to the prejudice	Guilty	\$2000 fine	N/A	London, ON	London, ON	CEFCOM	English
42	SCM	MCpl Ziade	s. 83 NDA	Disobeyed a lawful command	Withdrawn	\$1500 fine	N/A	Toronto, ON	Toronto, ON	CLS	English
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 83 NDA	Disobeyed a lawful command	Stay						
			s. 129 NDA	Conduct to the prejudice	Guilty						
43	SCM	Sgt Beaulieu	s. 97 NDA	Drunkenness	Not guilty	N/A	N/A	Oromocto, NB	Oromocto, NB	VCDS	English
			s. 129 NDA	Conduct to the prejudice	Not guilty						
			s. 129 NDA	Conduct to the prejudice	Not guilty						
44	SCM	Ex-PO2 Wilks	s. 130 (s.271 Cr. Code)	Sexual assault	Guilty	9 months imprisonment	N/A	London, ON	London, ON	CAS	English
			s. 130(s.271 Cr. Code)	Sexual assault	Guilty						
			s. 130 (s. 122 Cr. Code)	Breach of trust by a public officer	Guilty						
			s. 130 (s. 122 Cr. Code)	Breach of trust by a public officer	Guilty						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 130 (s. 122 Cr. Code)	Breach of trust by a public officer	Guilty						
			s. 130 (s. 122 Cr. Code)	Breach of trust by a public officer	Not guilty						
45	GCM	Capt(ret'd) MacLellan	s. 85 NDA	Used insulting language to a superior officer	Not guilty	N/A	N/A	Halifax, NS	Halifax, NS	CMS	English
			s. 85 NDA	Used insulting language to a superior officer	Not guilty						
			s. 85 NDA	Used insulting language to a superior officer	Not guilty						
46	GCM	MCpl Pinnegar	s. 130 (s. 87 Cr. Code)	Pointing a firearm	Guilty	Reprimand and \$1500 fine	N/A	Suffield, AB	Suffield, AB	CLS	English
			s. 130 (s. 87 Cr. Code)	Pointing a firearm	Guilty						
			s. 130 (s. 87 Cr. Code)	Pointing a firearm	Not guilty						
			s. 130 (s. 87 Cr. Code)	Pointing a firearm	Guilty						
47	SCM	Cpl Hunter	s. 129 NDA	Conduct to the prejudice	Not guilty	\$200 fine	N/A	Gagetown, NB	Gagetown, NB	CLS	English
			s. 129 NDA	Conduct to the prejudice	Guilty						
48	SCM	Sgt Foulds	s. 130 (s. 139(2) Cr. Code)	Obstructing justice	Not guilty	N/A	N/A	Petawawa, ON	Kandahar province	CLS	English
			s. 124 NDA	Negligent performance of a military duty	Not guilty						
			s. 85 NDA	Behaved with contempt toward a superior officer	Not guilty						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
49	GCM	PO2 Adams	s. 130 (s. 271 Cr. Code)	Sexual assault	Guilty	12 months imprisonment and reduction in rank to LS	DNA order, SOIRA order for 20 years	Victoria, BC	Hawaii, USA	CMS	English
			s. 130 (s. 271 Cr. Code)	Sexual assault	Guilty						
			s. 97 NDA	Drunkenness	Guilty						
50	GCM	Sgt Collins	s. 130 (s. 368(1)(a) Cr. Code)	Uttering a forged document	Guilty	Severe reprimand and \$1000 fine	N/A	Edmonton, AB	Edmonton, AB	CLS	English
			s. 130 (s. 368(1)(a) Cr. Code)	Uttering a forged document	Withdrawn						
51	SCM	Cpl Major	s. 130 (s. 129 Cr. Code)	Resisting arrest	Guilty	Reprimand and \$500 fine	N/A	Cold Lake, AB	Cold Lake, AB	CAS	English
52	SCM	Ex-MS Whitten	s. 95 NDA	Ill-treatment of a subordinate	Guilty	Severe reprimand and \$3000 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
			s. 95 NDA	Ill-treatment of a subordinate	Guilty						
53	SCM	Ex-AB Richard	s. 130 (s. 266 Cr. Code)	Assault	Withdrawn	Reprimand and \$2000 fine	N/A	Esquimalt, BC	Esquimalt, BC	CMS	English
			s. 97 NDA	Drunkenness	Guilty						
			s. 130 (s. 253(1)(a) Cr. Code)	Impaired operation of a motor vehicle	Withdrawn						
			s. 101.1 NDA	Failure to comply with conditions	Withdrawn						
54	SCM	Ex-Pte Morgan	s. 130 (s. 4(1) CDSA)	Possession	Guilty	\$500 fine	N/A	Wainwright, AB	Wainwright, AB	CLS	English
			s. 130 (s. 4(1) CDSA)	Possession	Withdrawn						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
55	SCM	Ex-Pte Masserey	s. 129 NDA	Conduct to the prejudice	Withdrawn	30 days imprisonment (suspended)	N/A	Wainwright, AB	Wainwright, AB	CLS	English
			s. 130 (s. 5 CDSA)	Trafficking	Withdrawn						
			s. 130 (s. 4(1) CDSA)	Possession	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Withdrawn						
			s. 130 (s. 5(1) CDSA)	Trafficking	Withdrawn						
			s. 130 (s. 5(1) CDSA)	Trafficking	Guilty						
			s. 130 (s. 4(1) CDSA)	Possession	Guilty						
56	SCM	LCol Fortin	s. 129 NDA	Neglect to the prejudice	Guilty	\$1500 fine	N/A	Gatineau, QC	Kabul, Afghanistan	VCDS	English
57	SCM	Ex-Pte McKinnell	s. 130 (s. 4(1) CDSA)	Possession	Not guilty	60 days imprisonment	Weapon s prohibiti on for life	Wainwright, AB	Wainwright, AB	CLS	English
			s. 129 NDA	Conduct to the prejudice	Not guilty						
			s. 129 NDA	Conduct to the prejudice	Guilty						
			s. 130 (s. 5(1) CDSA)	Trafficking	Not guilty						
			s. 130 (s. 4(1) CDSA)	Possession	Not guilty						
			s. 130 (s. 5(1) CDSA)	Trafficking	Guilty						

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Courts Martial Statistics

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 130 (s. 4(1) CDSA)	Possession	Not guilty						
			s. 130 (s. 87 Cr. Code)	Pointing a firearm	Guilty						
			s. 130 (s. 7 CDSA)	Production of a substance	Not guilty						
			s. 130 (s. 4(1) CDSA)	Possession	Not guilty						
			s. 129 NDA	Conduct to the prejudice	Not guilty						
			s. 129 NDA	Conduct to the prejudice	Not guilty						
58	SCM	MCpl Agnew	s. 124 NDA	Negligent performance of a military duty	Stay	\$500 fine	N/A	North Bay, ON	Rabat, Morocco	VCDS	English
			s. 129 NDA	Neglect to the prejudice	Guilty						
59	SCM	Ex-Gnr Bernales-Solari	s. 129 NDA	Conduct to the prejudice	Withdrawn	Reprimand and \$1000 fine	N/A	Petawawa, ON	Petawawa, ON	CLS	English
			s. 86 NDA	Quarrelled with a person subject to the CSD	Guilty						
			s. 97 NDA	Drunkenness	Guilty						
60	SCM	PO2 Rayment	s. 129 NDA	Conduct to the prejudice	Guilty	Reprimand and \$1000 fine	N/A	Esquimalt, BC	Esquimalt, BC	CEFCOM	English
			s. 129 NDA	Conduct to the prejudice	Guilty						
61	SCM	Cpl MacDonald	s. 83 NDA	Disobeyed a lawful command	Guilty	\$500 fine	N/A	Trenton, ON	Trenton, ON	CLS	English
62	SCM	Murga, Pte	s. 130 (s. 271 CCC)	Sexual assault	Stayed	\$1000 fine	N/A	Kingston, ON	St-Jean, QC	VCDS	English
			s. 129 NDA	Conduct to the prejudice	Guilty						

Annex B - Director of Military Prosecutions - Annual Report - 2011/2012

CMAC Statistics

CMAC #	Appellant	Respondent	Type of Appeal	Result
538	Cpl T. Leblanc	Her Majesty the Queen	Legality of Finding/Severity of Sentence	Appeal Granted
539	Cpl A. Leblanc	Her Majesty the Queen	Legality of Finding	Appeal Granted in part
543	Her Majesty the Queen	Captain Day	Legality of Finding	Appeal Granted
545	Captain Clark	Her Majesty the Queen	Legality of Finding	Ongoing
546	Her Majesty the Queen	Capt MacLellan	Legality of Finding	Appeal Granted
547	Sgt Olive	Her Majesty the Queen	Legality of Finding	Abandoned
548	Cpl Rivas	Her Majesty the Queen	Legality of Finding	Ongoing
549	Bdr Tomczyk	Her Majesty the Queen	Legality of Finding	Ongoing
550	Cpl Souka	Her Majesty the Queen	Legality of Finding	Ongoing
551	Capt Day	Her Majesty the Queen	Legality of Finding	Ongoing

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SCC Statistics

SCC #	Appellant	Respondent	Type of Appeal	Result
33864	Her Majesty the Queen	Ex-Pte St-Onge	Severity of sentence	Appeal Granted

Annex D - Director of Military Prosecutions - Annual Report - 2011/2012

Legal Training Statistics

Host Organization	Name of Course	Number of attendees
Federation of Law Societies of Canada	National Criminal Law Program – Criminal Procedure, Ethics and the Charter	13
Canadian Bar Association	2011 National Military Law Conference	4
Canadian Bar Association	Canadian Legal Conference	2
International Association of Prosecutors	16th Annual Conference & General Meeting	2
Justice Canada	Interest-Based Negotiation Training	1
The Canadian Institute	The Law of Policing	1
Ontario Crown Attorneys' Association	Search & Seizure	1
Ontario Crown Attorneys' Association	Sentencing	2
Ontario Crown Attorneys' Association	Nuts and Bolts	2
Ontario Crown Attorneys' Association	Homicide	1
Ontario Crown Attorneys' Association	Trial Advocacy	1
Barreau du Québec	Séminaire – Les techniques de plaidoiries (Advocacy)	1
Barreau de l'Outaouais	Recent Supreme Court Decisions in Criminal Cases	2
Barreau de l'Outaouais	Warrantless Search and Seizure and Section 8 of the Charter	1
Barreau de l'Outaouais	Sentencing (Recent Cases)	1
International Canadian Red Cross & Dalhousie Law School	7th Annual IHL Conference: International Humanitarian Law & Multi-national Corporations	2
Canadian Bar Association's Nova Scotia Military Law Section	Canada's Military-Citizens: the Intersection of Military and Civilian Laws	2
Canadian Bar Association's Nova Scotia Military Law Section	International Criminal Law Conference	2
Office of the Judge Advocate General	JAG Continuing Legal Education Seminar	17
Office of the Judge Advocate General	Boards of Inquiry	3
Office of the Judge Advocate General	C2 Arrangements: Command and Control of the Military Police	2
Office of the Judge Advocate General	Sgt Dunsmuir: The Crown-Soldier Relationship in Canada	2
Office of the Judge Advocate General	Shooting Down a Rogue Civil Airliner as an Act of Law	2

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Legal Training Statistics

	Enforcement, an Analysis in International Human Rights Law	
Office of the Judge Advocate General	Legal Officer Intermediate Training - Military Justice / Military Administrative Law	2
Office of the Judge Advocate General	Legal Officer Intermediate Training - Operations Law	1
Office of the Judge Advocate General	Westlaw Training Session	1
Office of the Judge Advocate General	Operation Noble Eagle Training	1
Office of the Judge Advocate General	Legal Officer Basic Training - Administrative Law Study Package	1