



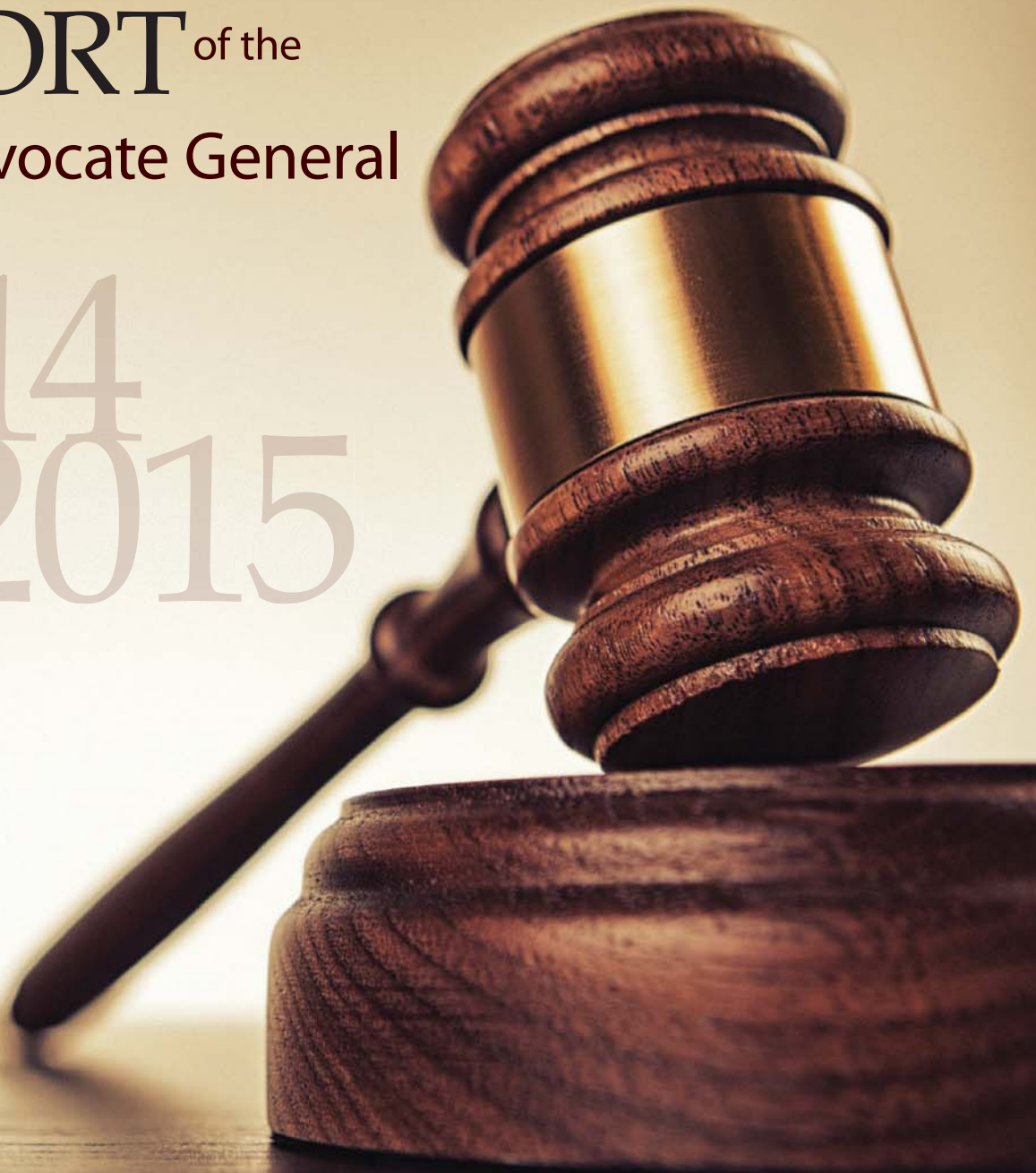
National  
Defence

Défense  
nationale



# ANNUAL REPORT<sup>of the</sup> Judge Advocate General

2014  
2015



A Report to the Minister of National Defence on the Administration  
of Military Justice from 1 April 2014 to 31 March 2015

Canada 



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Dear Minister,

It is my honour to present you the sixteenth Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Armed Forces, made pursuant to section 9.3 of the *National Defence Act*. This report covers the period 1 April 2014 to 31 March 2015.

Yours truly,

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

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





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# Communiqué

I am pleased to present my report on the administration of military justice in the Canadian Armed Forces (CAF) for the period from 1 April 2014 to 31 March 2015.

The aim of Canada's military justice system is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale, and to contribute to respect for the law and the maintenance of a just, peaceful and safe society in a manner that is consistent with Canadian law, including the *Canadian Charter of Rights and Freedoms*. Achieving this aim is critical to the CAF's success, as discipline is the foundation of a professional armed force. Discipline has been well described by Mr. Justice Michael Gibson of the Ontario Superior Court of Justice, who (as a military judge) stated: "discipline is that quality that every Canadian Forces member must have that allows him or her to put the interests of Canada and of the Canadian Forces before personal interests." The Supreme Court of Canada noted this unique need for discipline when it stated that "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 ... As a result, the military has its own *Code of Service Discipline* to allow it to meet its particular disciplinary needs."<sup>1</sup>

As the superintendent of the administration of military justice in the CAF, I am committed to ensuring that Canada's military justice system reflects Canadian values and the rule of law, and continues to serve Canada's interests. To this end, I am pleased to report on the dedication of my team within the Office of



the Judge Advocate General (JAG) which has worked tirelessly to help bring about positive results for the military justice system over the reporting period. For example, significant progress was made in developing the complex regulatory amendments required to implement the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*. Additionally, significant efforts have been made to validate the accuracy of our existing summary trial data, which forms a critical part of the information used in my ongoing reviews of the administration of military justice. Improvements to the manner in which data will be collected and maintained in the future are also being implemented.

<sup>1</sup> *R. v. Généreux*, [1992] 1 S.C.R. 259 at 293.

In April 2014, the Chief of the Defence Staff (CDS) commissioned an independent external review into sexual misconduct and sexual harassment in the CAF, including definitions, policies, procedures, training, and incident reporting. Madame Marie Deschamps, a former Justice of the Supreme Court of Canada, conducted this review as the External Review Authority (ERA). On 27 March 2015, the ERA submitted her final report to the CDS. As a senior leader in the CAF, I strongly echo the comments of the CDS that all allegations of inappropriate sexual behavior must be treated seriously at all levels of the CAF. While the ERA's mandate excluded issues related to the military justice system, as superintendent of the administration of military justice in the CAF, I am committed to ensuring that those findings and recommendations that touch upon the military justice system are carefully reviewed. I will work closely with the CAF Strategic Response Team on Sexual Misconduct to ensure that any changes to military justice legislation, policies and practices are consistent with the approaches being developed by that team.

While the focus of this report is on the administration of military justice, I am proud to also recognize the work that has been done by all members of the Office of the JAG to support the CAF, by delivering operationally focused, solution oriented legal advice and services across the full spectrum of military law. By way of example, during this reporting period the Office of the JAG provided support to numerous operations, including operations IMPACT and REASSURANCE, to more than 35 operational exercises in Canada and abroad, and to more than a dozen Boards of Inquiry.

The Office of the JAG was also extremely fortunate during this reporting period to have expanded our family. Indeed, we and the Colonel Commandant of the Legal Branch, Sir Graham Day, had the pleasure of welcoming Mr John Hoyles, Chief Executive Officer of the Canadian Bar Association, into the JAG family as the new Honorary Colonel of the Legal Branch. Mr Hoyles brings invaluable knowledge and insight to our organization, and we are fortunate to have the services of such an esteemed lawyer and respected Canadian figure. In conjunction with the ceremony formalizing this appointment, the Office of the JAG also marked Her Majesty Queen Elizabeth II's gracious consent to serve as the first Colonel-in-Chief of the CAF Legal Branch with the presentation of a new portrait photograph from Her Majesty by Mr Kevin Stewart MacLeod, the Canadian Secretary to the Queen of Canada.

As I reflect on the administration of military justice during the reporting period, I am reminded of the observations of the late Chief Justice of Canada, the Right Honourable Antonio Lamer and of the Honourable Patrick LeSage, retired Chief Justice of the Superior Court of Ontario, who respectively found in 2003 and 2011 that Canada's military justice system is sound and one in which Canadians can have trust and confidence. Canada's military justice system has continued to evolve, exemplifying virtues of fairness and effectiveness in its important contributions to Canadian military success and security. I, and all Canadians, have every reason to be proud of this system, and of the Office of the JAG's efforts to support the principled development and operation of the military justice system.



# Chapter 1:

## Who We Are: The Office of the JAG

### The Judge Advocate General

The Judge Advocate General (JAG) is appointed by the Governor in Council and acts as legal adviser to the Governor General, the Minister of National Defence (the Minister), the Department of National Defence (DND) and the Canadian Armed Forces (CAF) in matters relating to military law. The term “military law” describes the broad legal discipline encompassing all international and domestic law relating to the CAF, including its governance, administration and activities. In addition, the JAG also has a statutory mandate to superintend the administration of military justice in the CAF. In this capacity, the JAG conducts regular reviews of the military justice system, and provides regular updates to the Minister on the administration of military justice in the CAF, including through the submission of an annual report.

### Office of the Judge Advocate General

The Office of the JAG is composed of CAF Regular and Reserve Force legal officers, civilian members of the Public Service, and a small number of CAF members from other military occupations. All qualified legal officers serving in the Office of the JAG are members in good standing of their respective provincial or territorial law societies, and are officers ranging in rank from Captain/Lieutenant (Navy) to Major-General.



The JAG is responsible to the Minister in the performance of his duties and functions. The JAG has command over all officers and non-commissioned members posted to a position established within the Office of the JAG. Therefore, the duties of a legal officer are determined by or under the authority of the JAG and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer. This structure reinforces the obligations of the legal profession and ensures that legal officers are able to provide independent legal advice.

The Office of the JAG is composed of the Directorate of Military Prosecutions, the Directorate of Defence Counsel Services, and the following five Divisions: Military Justice, Administrative Law, Operational Law, Regional Services, and Chief of Staff.

### Director of Military Prosecutions

The Director of Military Prosecutions (DMP) is the senior military prosecutor in the CAF. The DMP is responsible for preferring all charges to be tried by court martial, for the conduct of all prosecutions at court martial and for

acting as counsel for the Minister in respect of appeals to the Court Martial Appeal Court of Canada and the Supreme Court of Canada. The DMP also provides legal advice in support of investigations conducted by the Canadian Forces National Investigation Service, a military police service that reports to the Canadian Forces Provost Marshal.

The DMP is appointed by the Minister for a fixed term and acts independently from CAF and DND authorities when exercising his prosecutorial powers, duties and functions. The DMP is under the general supervision of the JAG and, in this regard, the JAG may issue general instructions or guidelines in writing in respect of prosecutions, which the DMP must ensure are made available to the public. The JAG may also issue instructions or guidelines in writing in respect of a particular prosecution. The DMP must ensure that these instructions or guidelines are also available to the public, unless the DMP considers that doing so would not be in the best interest of the administration of military justice. During the reporting period, no general or specific instructions were issued to the DMP.

In accordance with the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) 110.11 the DMP reported to the JAG on the execution of his duties and functions during this reporting period. This report was received by the JAG on 11 May 2015.

## Director of Defence Counsel Services

The Director of Defence Counsel Services (DDCS) supervises and directs the provision of legal services to persons who are liable to be charged, dealt with or tried under the *Code of Service Discipline* (CSD). These legal services, including full legal representation at trial, are provided at no cost to the individual.

The DDCS is appointed by the Minister for a fixed term. Although under the general supervision of the JAG, the DDCS is independent of the JAG and other CAF and DND authorities when carrying out the wide array of prescribed duties and functions that pertain to providing defence counsel services to persons subject to the CSD at each stage of the investigative and judicial processes. The JAG may issue written general instructions or guidelines in respect of defence counsel services. The DDCS is required to make these general instructions or guidelines available to the public. However, unlike with the DMP, the JAG has no authority to issue instructions or guidelines in respect of a particular defence case. During the reporting period, no general instruction was issued to the DDCS.

In accordance with QR&O 101.11(4) the DDCS is required to report to the JAG on the provision of legal services prescribed by regulations and the performance of any other duties that are not incompatible with the duties as defence counsel. In a letter dated 30 March 2015, the DDCS advised the JAG that the submission of his (DDCS) report would be delayed. This report had not been received by the JAG at the time of writing.

## Military Justice Division

The Military Justice Division assists the JAG in superintending the administration of military justice and ensuring its responsible development within the Canadian justice system. It was previously divided into two directorates: Military Justice Strategic and Military Justice Operations. During the reporting period, several competing strategic priorities and resource challenges led the Deputy JAG for Military Justice to reorganize the Division on a "task force" basis, forming three directorates, each of which is focused on accomplishing one or more priority tasks. The JAG reallocated a director position to fill the newly formed directorate. This

reorganization ensures that the JAG is fully supported in relation to his statutory responsibilities. One of the teams assists with key aspects of the superintendence of the administration of military justice, provides legal advice to the Canadian Forces Military Police Group Headquarters and supports the JAG with the day-to-day operation of the military justice system. Another team is responsible for the development and implementation of a strategic military justice vision that allows the Office of the JAG and the CAF to anticipate and respond to external and internal challenges while bringing positive change to the military justice system. The third team is focused entirely on the development of military justice regulations, including but not limited to amendments to the QR&O required to bring the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, into force.

## Administrative Law Division

The Administrative Law Division advises on legal matters pertaining to the administration of the CAF. DND officials and CAF authorities derive their appointments and powers from statutory authorities largely contained in the *National Defence Act (NDA)*. Given the size and complexity of the CAF and the multitude of administrative decisions made each day, one of the objectives of providing legal advice in the administrative law realm is to ensure that these decisions are made in accordance with the applicable legislation, the rule of law and procedural fairness requirements. The Division is composed of three directorates: Military Personnel; Administrative Law; and, Compensation, Benefits, Pensions and Estates. The Division provides legal services on specific matters, such as military personnel policies, administrative investigations, compensation, benefits, pensions and estates, and advice on grievances.

## Operational Law Division

The Operational Law Division provides legal support to the CAF and DND in matters related to operational law. Operational law is the body of domestic and international law that applies to the conduct of all phases of CAF international or domestic operations at each level of command. Additionally, the Operational Law Division oversees all legal officers deployed on operations. These legal officers provide legal support to deployed CAF elements in all aspects of military law, including the military justice system.

## Regional Services Division

The Regional Services Division delivers legal services to CAF units in Canada, Europe and the United States. Its legal offices are divided into various regions, led by an Assistant Judge Advocate General (AJAG), and provide general legal support and advice to Regular and Reserve Force component commands, formations and units, on all areas of military law, including advice on military justice, administrative law and operational law matters.

## Chief of Staff Division

The Chief of Staff Division is composed of legal officers, other CAF officers and non-commissioned members along with civilian staff. This Division is responsible for providing internal support and administrative services to the Office of the JAG. This includes military personnel management, financial services, information management, library services and training, as well as overseeing all civilian staff in the Office of the JAG. The non-legal military personnel are an essential part of this Division and key contributors to our success in administrative and financial tasks.

## Civilian Personnel of the Office of the Judge Advocate General

Civilian personnel form an integral and essential part of the Office of the JAG and contribute greatly to its continued success. They occupy positions located throughout CAF Bases and Wings in Canada and abroad, and provide key support to legal officers and non-legal military personnel, such as through their work in administrative, analytical and technical tasks.

### JAG Chief Warrant Officer (CWO) and Office of the JAG's CWOs and Chief Petty Officers 1<sup>st</sup> Class (CPO1s)

The JAG CWO serves as the senior non-commissioned member (NCM) advisor to the JAG. Based on the command team concept, the JAG CWO provides perspective to the JAG and his leadership team on strategic issues related to the JAG's statutory roles, the CAF and the Office of the JAG. Other experienced CWOs and CPO1s are posted to positions in the AJAG offices within Canada and in some Deputy Judge

Advocate offices. The AJAG and DJA CWOs/CPO1s provide an invaluable link between senior NCMs and disciplinarians at the unit, base and formation levels and the local legal office in addressing disciplinary matters. With the assistance of Office of the JAG legal officers, they also provide military justice training and assist legal officers in the fulfillment of their responsibilities to provide solution oriented and operationally focused legal advice.

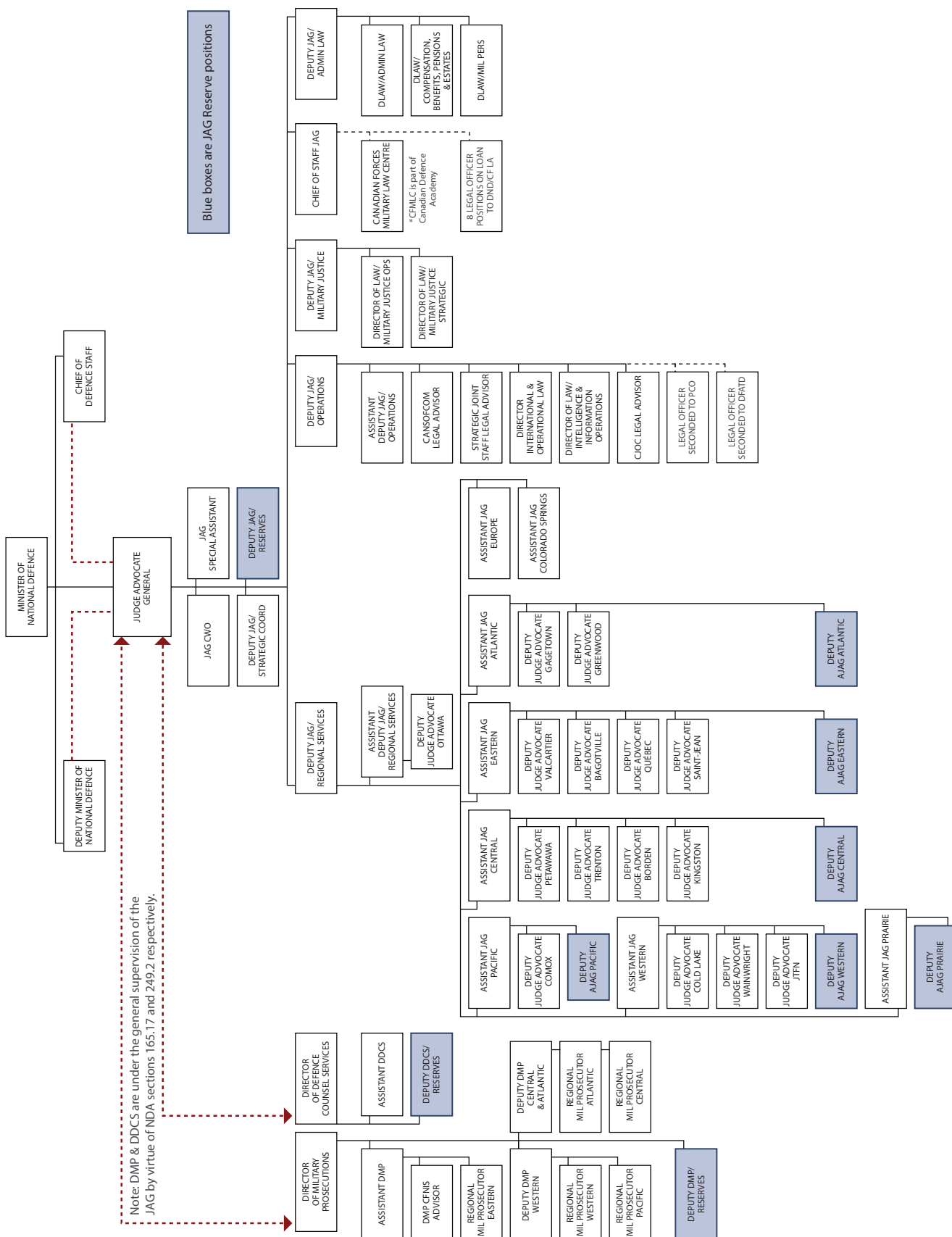
### Legal Officers Serving Outside the Office of the JAG

In addition to the legal officers serving in the above-mentioned organizations, a number of legal officers serve outside the Office of the JAG. They include those working at the Privy Council Office, the Department of Foreign Affairs, Trade and Development, the Office of the Department of National Defence and the Canadian Forces Legal Advisor, the Canadian Forces Military Law Centre, and the Court Martial Administrator.<sup>2</sup>

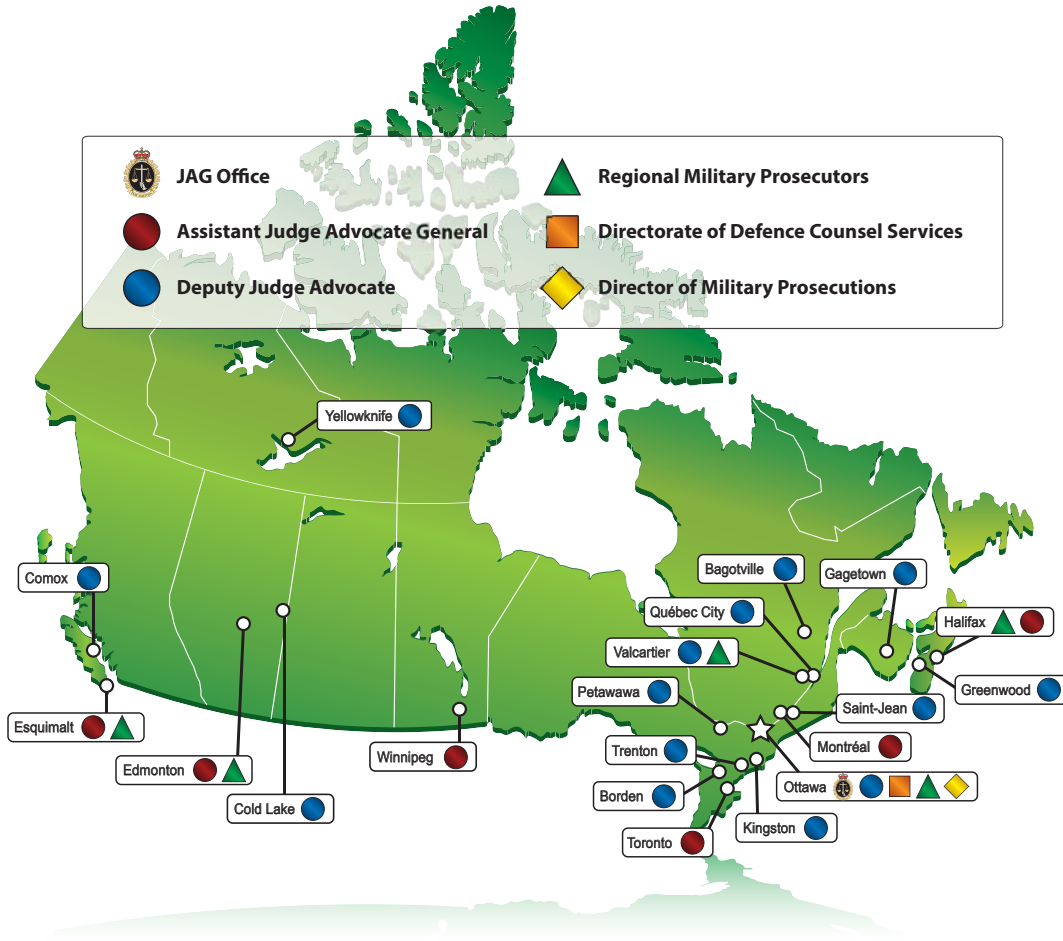
<sup>2</sup> The legal advisor to the Court Martial Administrator provides legal advice independent of the Office of the JAG.



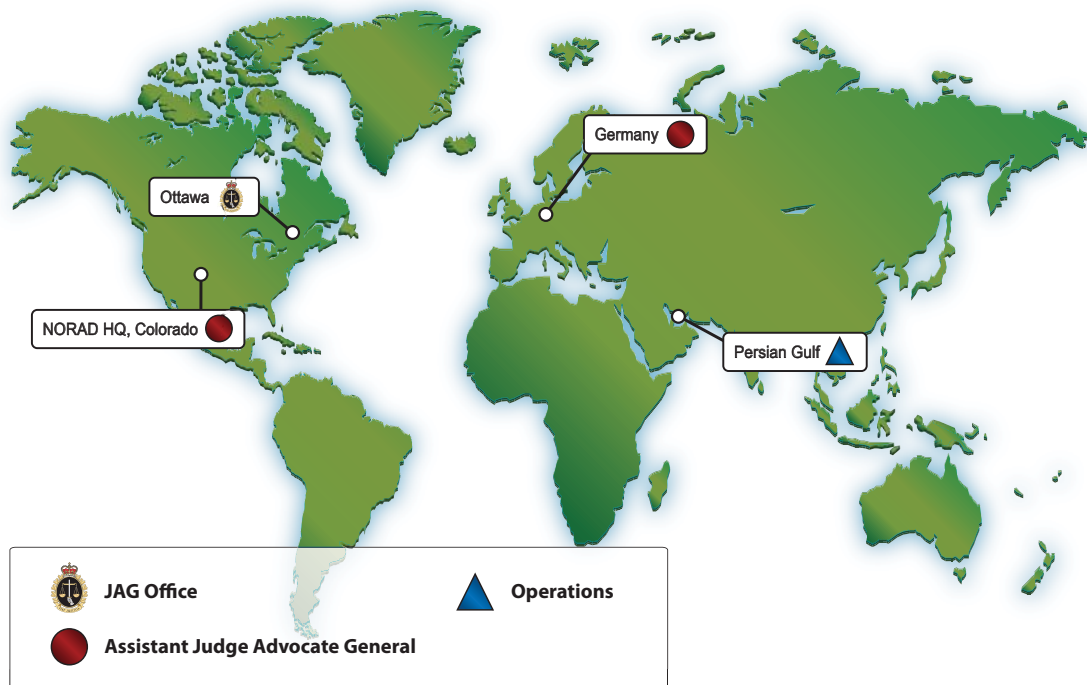
# OFFICE OF THE JUDGE ADVOCATE GENERAL ORGANIZATION CHART



## CANADIAN OFFICES OF THE JUDGE ADVOCATE GENERAL



## OFFICES OF THE JUDGE ADVOCATE GENERAL OUTSIDE OF CANADA



# Chapter 2:

## Superintendence of the Administration of Military Justice: Proactive Oversight, Responsible Development and Positive Change

In the 2010-2011 Annual Report to the Minister of National Defence, the Judge Advocate General (JAG) and his senior leadership team unveiled a strategic guidance document to all civilian and military members of the Office of the JAG: the JAG Mission and Vision. This document outlined the JAG's intent to achieve the Mission and Vision through a focus on four strategic goals, and thirteen strategic objectives, and it has been highly successful in orienting the Office of the JAG in a common direction.

The JAG's Strategic Goal #2 is to "lead proactive military justice oversight, responsible development and positive change." This goal is clearly linked to the JAG's statutory mandate to superintend the administration of military justice. The goal has been advanced during the reporting period in several important ways, some of which are described below.

### Victims Rights

In terms of responsible development and positive change, the Office of the JAG made considerable efforts during the reporting period in determining how



victims rights could be incorporated into the military justice system. Initial policy analysis on victims rights began prior to the start of the reporting period, but the Government's tabling of Bill C-32 (the *Victims Bill of Rights Act*) on April 3, 2014, reinforced the important need for continued enhancements to the role of victims within Canada's justice systems. The Minister of Justice noted during debate on Bill C-32 in the House of Commons that the *Victims Bill of Rights Act* would not apply in respect of service offences investigated or proceeded with under the *Code of Service Discipline* because of the particular challenges with extending this bill of rights into the military culture and into the military justice system, particularly for summary trials (disciplinary tribunals that are administered by the chain of command). However, the Minister of Justice indicated that the government was working to ensure that victims rights would be mirrored to the greatest extent possible within the military justice system. The Minister of National Defence confirmed the government's intention to strengthen victims rights within the military justice system during a speech at the swearing-in ceremony for the new Chief Justice of the Court Martial Appeal Court, the Honourable B. Richard Bell.

The Office of the JAG continues to provide the legal and policy support to the Minister of National Defence in order to achieve the Government's intent with respect to victims. As the superintendent of the administration of military justice, the JAG fully supports the implementation of additional victims' rights in the military justice system. Such a change would clearly advance the JAG's strategic goal of leading proactive military justice oversight, responsible development and positive change.

## Accidental and Negligent Discharges

As reported in the last annual report, an important court martial decision (*R. v. Brideau*, 2014 CM 1005) clarified the law with respect to accidental and negligent discharges of weapons by individuals who are subject to the *Code of Service Discipline*. Specifically, the *Brideau* decision stressed that a mental fault element of criminal negligence (involving a marked departure from the expected standard of care) is the minimum mental fault element that must be established before an individual can be found guilty of any offence under section 129 of the *National Defence Act* (NDA). The court martial stated that offences under section 129 are not absolute liability offences, and that purely accidental discharges of weapons (i.e.: discharges that do not involve any criminal negligence) cannot amount to offences under that section.

As a matter of proactive military justice oversight, and in order to ensure that the law surrounding accidental and negligent discharges is being applied correctly, unit legal advisors were briefed on the impact of the *Brideau* decision by subject matter experts from the Office of the JAG's Military Justice Division as part of the Office of the JAG's annual Continuing Legal Education Conference in October 2014.

## Strategic Legal Engagement

Strategic legal engagement (SLE) involves the establishment of links, alliances and partnerships with key stakeholders in order to shape and facilitate the development and understanding of the role of the Office of the JAG in providing solution-oriented legal advice and services across the full spectrum of military law to better achieve CAF, departmental and Government of Canada objectives. SLE represents one of the ways in which the JAG's strategic goal of "responsible development and positive change" in the field of military justice can be advanced. During the reporting period, a number of important SLE initiatives were undertaken.

First, the Office of the JAG's Military Justice Division maintained a productive and ongoing dialogue with the Department of Justice's Criminal Law Policy Section in order to ensure that, where appropriate, the military justice system develops in harmony with Canada's civilian criminal justice system. The results of this dialogue can be seen in various bills that involve amendments or proposed amendments to both the *Criminal Code* and the *NDA*, such as Bill C-14 (the *Not Criminally Responsible Reform Act*, assented to on April 11, 2014), and Bill C-53 (the *Life Means Life Act*, introduced in the House of Commons on March 11, 2015). These bills demonstrate how the military justice system continues to evolve in parallel with the civilian criminal justice system.

Second, legal officers from the Office of the JAG were active at various international and academic forums involving military justice study, debate, and discussion. For instance, in November 2014, the Deputy JAG for Military Justice participated in an expert consultation process, convened in Geneva by the United Nations' Office of the High Commissioner for Human Rights, on the administration of justice through military



tribunals. Also in November 2014, another legal officer participated in the Global Military Justice Reform Seminar at Yale Law School, where leading military justice commentators, policy-makers, and practitioners were gathered to discuss global developments and trends in the law. Participation in these forums has helped to broadly promote a better understanding of the fundamental purposes of professional and sophisticated military justice systems, like the Canadian system, and provides the Office of the JAG with valuable opportunities to both learn and teach about best practices in the domain of military justice.

Third, the Office of the JAG provided support to the National Defence Global Engagement Strategy through participation in multilateral and bilateral engagements with key defence partners such as Brazil, Jordan, Israel and Peru. Participation in these engagements provided quality information on military justice, advanced significant international partnerships, and offered constructive opportunities to share the policies and principles entrenched in Canada's military justice system.

Fourth, the Office of the JAG was fully engaged with the senior leadership of the CAF, and the Military Justice Division was specifically engaged for the purposes of exchanging information about future military justice initiatives. These interactions provided critical perspectives on the military justice system from one of the system's most important groups of stakeholders: the users of the system who depend on its fair and effective functioning as a means of maintaining discipline, efficiency, and morale within the CAF.

Fifth, the Office of the JAG hosted a very successful one-day international military justice conference in October 2014, as part of the Office of the JAG's annual Continuing Legal Education Conference. The Office of the JAG was fortunate to benefit from the participation of a wide array of esteemed individuals, including the senior military legal advisors to the United States and British armies, senior military prosecutors from Australia and the United Kingdom, and law professors with renowned expertise in military justice from both Canada and the United States. The building of relationships and the exchange of ideas that took place among the participants was remarkable, and has already produced a valuable benefit to the Office of the JAG by facilitating access to key subject matter experts for legal officers engaged in the comparative study of military justice systems.

## Conclusion

Proactive military justice oversight, responsible development and positive change all remain a top priority for the JAG. However, this strategic goal can only be achieved through active and concerted effort, including through the kinds of initiatives undertaken over the last reporting period. The JAG continues to advance these and other new initiatives as a means of furthering his strategic goal, and of ultimately fulfilling his statutory responsibility to superintend the administration of military justice. This, in turn, ensures that Canada's military justice system is one of which all Canadians can be proud and reaffirms Canada's role as a leader in military justice in the international arena.

# Chapter 3:

## The Canadian Military Justice System: Structure and Year in Review

This chapter describes the structure of the Canadian military justice system and focuses on key aspects and statistics of the administration of military justice at summary trial and court martial.<sup>3</sup>

### Canada's Military Justice System

Canada's military justice system is a separate and parallel system of justice that forms an integral part of the Canadian legal mosaic. It shares many of the same underlying principles as the civilian criminal justice system and it is subject to the same constitutional framework, including the *Canadian Charter of Rights and Freedoms (Charter)*. Indeed, the military justice system is expressly recognized in the *Charter*. On more than one occasion, the Supreme Court of Canada has directly addressed the requirement for a separate, distinct military justice system to meet the specific needs of the Canadian Armed Forces (CAF).<sup>4</sup>

While the military justice system is equal and not subservient to the civilian justice system, it differs from its civilian counterpart in respect of some of



its objectives. In addition to ensuring that justice is administered fairly and with respect for the rule of law, the military justice system is also designed to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale. These objectives give rise to many of the substantive and procedural differences that properly distinguish the military justice system from the civilian system.

The ability of the CAF to operate effectively depends on the ability of its leadership to instill and maintain discipline. This particular need for discipline in the CAF is the *raison d'être* of the military justice system. Indeed, while training and leadership are central to the maintenance of discipline, the chain of command must also have a legal mechanism that it can employ to investigate and sanction disciplinary breaches that require a formal, fair, and prompt response. As the Supreme Court of Canada observed in *R. v. Généreux*, "breaches of military discipline must be dealt with

<sup>3</sup> The statistics reported at annex A and discussed in this report are the statistics as of 20 May 2015. Statistics from the 2013-2014 reporting period found at annex A have been updated, compared to those reported in last year's annual report, in order to reflect new data received as a result of late reporting. A manual review of all Records of Disciplinary Proceedings for the 2014-2015, 2013-2014, 2012-2013 and 2011-2012 reporting periods was conducted and the updated statistics for these respective years can be found at annexes A and B.

<sup>4</sup> *R. v. Généreux*, [1992] 1 S.C.R. 259; *Mackay v. R.*, [1980] 2 S.C.R. 370 at 399.

speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. [...] There is thus a need for separate tribunals to enforce special disciplinary standards in the military.” The military justice system is designed to meet those unique requirements articulated by Canada’s highest court.

## The *Code of Service Discipline* and Service Offences

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

The term “service offence” is defined in the NDA as “an offence under this Act, the *Criminal Code*, or any other Act of Parliament, committed by a person while subject to the *Code of Service Discipline*.” Thus, service offences include disciplinary offences that are unique to the profession of arms, such as disobedience of a lawful command, absence without leave, and conduct to the prejudice of good order and discipline, in addition to more conventional offences that are created by the *Criminal Code* and other Acts of Parliament. The diverse scope of service offences that fall within the CSD permits the military justice system to foster discipline, efficiency and morale, while ensuring fair justice within the CAF.

Members of the Regular Force of the CAF are subject to the CSD everywhere and at all times, whereas members of the Reserve Force are subject to the CSD only in the

circumstances specified in the NDA. Civilians may be subject to the CSD in limited circumstances, such as when accompanying a unit or other element of the CAF during an operation.

## Investigations and Charge Laying Process

If there are reasons to believe that a service offence has been committed, then an investigation is conducted to determine whether there may be sufficient grounds to lay a charge. If the complaint is of a serious or sensitive nature, then the Canadian Forces National Investigation Service (CFNIS) will examine the complaint and investigate as appropriate. Otherwise, investigations are conducted either by Military Police or, where the matter is minor in nature, at the unit level.

The authorities and powers vested in Military Police members, such as peace officer status, are conferred by the NDA, the *Criminal Code* and the *Queen’s Regulations and Orders for the Canadian Forces* (QR&O). Amongst other duties, Military Police members conduct investigations and report on service offences that were committed, or alleged to have been committed, by persons subject to the CSD. Military Police members maintain their professional independence in carrying out policing duties and, as such, are not influenced by the chain of command in order to preserve and ensure the integrity of all investigations.

If a charge is to be laid, an officer or non-commissioned member having authority to lay a charge, which includes members of the CFNIS, is required to obtain legal advice before laying a charge in respect of an offence that: is not authorized to be tried by summary trial, is alleged to have been committed by an officer or a non-commissioned member above the rank of sergeant or, if a charge were laid, would give rise to

a right to elect to be tried by court martial. The legal advice must address the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge.

## The Two Tiers of the Military Justice System

The military justice system has a tiered tribunal structure comprised of two types of service tribunal: summary trials and courts martial. The QR&O outline procedures for the disposal of a charge by each type of service tribunal.

### Summary Trials

The summary trial is the most common form of service tribunal. It allows for less serious service offences to be tried and disposed of quickly and at the unit level. Summary trials are presided over by members of the chain of command, who are trained and certified by the JAG as qualified to perform their duties as presiding officers in the administration of the CSD. All accused members are entitled to an assisting officer, who is appointed under the authority of a commanding officer to assist the accused in the preparation of his or her case and during the summary trial.

During the reporting period, 827 summary trials were held, representing 92.20% of all military justice proceedings (See Annex A for detailed statistics); this is a decrease in comparison to the last reporting period and the lowest number of summary trials reported since the 2000-01 reporting period. This decrease of 335 summary trials in comparison to the last reporting period is coupled with a decrease of 624 charges in the overall number of charges disposed of at summary trial.

In particular, the number of charges for disobedience of a lawful command, contrary to section 83 of the *NDA*, declined from 62 in the last reporting period to 31. Similarly, the number of charges for absence without authorized leave, contrary to section 90 of the *NDA*, declined from 667 to 459. Most significantly, the number of charges for conduct to prejudice of good order and discipline contrary to section 129 of the *NDA* declined from 711 to 391. The court martial decision in *R. v. Brideau*, 2014 CM 1005, which clarified the law with respect to negligent discharges (which are generally charged under section 129 of the *NDA*), along with a reduction in the number of troops on pre-deployment training and a change in international operations from ground- to air-centric operations all likely contributed to the reductions in summary trials and charges.

After a charge is laid by an authorized charge layer, if it is determined that the accused can be tried by summary trial then, except for cases involving a limited number of prescribed offences whose surrounding circumstances are sufficiently minor (for example, certain cases of insubordinate behavior, absence without leave, or drunkenness), an accused person has a right to be offered an election to be tried by court martial. The election process was designed to provide the accused with the opportunity to make an informed choice regarding the type of trial to be held, bearing in mind that an accused who elects not to be tried by court martial is, in effect, waiving the right to be tried by that form of trial with full knowledge of the implications. There are many differences between summary trials and courts martial. Courts martial are more formal and provide the accused more procedural safeguards than those available at summary trial, such as the right to be represented by legal counsel. The election process was designed to provide the accused a reasonable opportunity to be informed about both types of trial in order to decide whether to exercise the



right to be tried by court martial and to communicate and record the choice.

During the reporting period, accused members elected trial by court martial 53 times out of the 295 cases in which an election was offered (17.97%). This rate of election to trial by court martial represents another consecutive increase. During the 2013-2014, 2012-2013 and 2011-2012 reporting periods, members respectively elected trial by court martial 15.68%, 14.20% and 8.93% of the time when an election was offered. This trend was identified during the last reporting period and this continued increase signals the need for an in-depth study of its cause. Consideration will be given as to what mechanisms should be used during the upcoming reporting period to obtain clarity on this continued increase.

The jurisdiction of a summary trial is limited by such factors as: the rank of the accused, the type of offence the accused is charged with, and whether the accused has elected to be tried by court martial. In those cases that cannot be dealt with by summary trial, the matter is referred to the Director of Military Prosecutions (DMP), who determines whether the matter will be disposed of by court martial.

During the last reporting period, 40 cases were directly referred to court martial, including one where the presiding officer found in his pre-trial determinations that he did have not sufficient powers of punishment to try the accused<sup>5</sup>. This is a decrease from last year when 48 cases were directly referred to the DMP.

The disposition of charges by summary trial is meant to occur expeditiously. Accordingly, other than for two civil offences for which the limitation period is six-months<sup>6</sup>, a presiding officer may not try an accused person by summary trial unless the trial commences within one year after the day on which the service offence is alleged to have been committed.

The procedures at summary trial are straightforward and the powers of punishment are limited. This limitation reflects both the less serious nature of the offences involved, and the intent that the punishments be primarily corrective in nature.

## Review of a Finding Made and/or Sentence Imposed at Summary Trial

All offenders convicted at summary trial have the right to apply to a review authority for a review of the findings, the punishment imposed, or both. The findings and/or punishment imposed at summary trial may also be reviewed on the independent initiative of the CAF. A review authority is a more senior officer in the chain of command of the officer who presided over the summary trial, as designated by the QR&O. Review authorities must obtain legal advice before making any determination.

During the reporting period, reviews were conducted based on a request for review made by a member found guilty at summary trial or on a review authority's own initiative 19 times based on finding, 15 times based on sentence, and 15 times based on both finding and sentence. The results of these reviews were as follows:

<sup>5</sup> Pursuant to article 108.16(1)a.iii of the *Queen's Regulations and Orders for the Canadian Forces*, before commencing a summary trial, an officer having summary trial jurisdiction shall, as part of pre-trial determinations, determine if his or her powers of punishment are inadequate having regard to the gravity of the alleged offence.

<sup>6</sup> See note B at article 108.16(1)a.iii of the *Queen's Regulations and Orders for the Canadian Forces*.

16 of the original decisions were upheld; 23 findings were quashed; 2 punishments were substituted; and, 8 punishments were mitigated, commuted or remitted. Given the decrease in number of summary trials held, the number of reviews during this reporting period (49) compared to the number of reviews during the last reporting period (46) reflects an increase from 3.9% to 5.9% in terms of percentage.<sup>7</sup> This increase, similarly to the increase in court martial election, signals the need for an in-depth study of its causes. Likewise, consideration will be given as to what mechanisms should be used during the next reporting period to obtain clarity on this increase.

## Summary Trial Database

During this reporting period, significant efforts were made to continue to validate and improve the accuracy of data within the existing summary trial database, which provides essential information to assist in the superintendence of the administration of military justice. For instance, with a view to minimizing the risk of misrepresenting any statistics reported, as noted in the 2013-14 Annual Report, *NDA* section 129 offences (conduct to the prejudice of good order and discipline), which were previously reported using broad classifications such as offences of a sexual nature, are no longer reported that way since it is difficult to identify these offences on a Record of Disciplinary Proceedings with reliable precision. In contrast, *NDA* section 129 offences arising from the negligent discharge of a weapon can be easily identified from the particulars set out in the RDP and are included in the report.

With a view to validating accuracy of the existing summary trial database, manual reviews of the Records of Disciplinary Proceedings for the last three reporting periods and this reporting period were conducted. The revised statistics, inclusive of Records of Disciplinary Proceedings received after the publication of the JAG Annual Report for their respective years, can be found at Annex A and B.<sup>8</sup> The manual review disclosed that the current summary trial database was not completely accurate. In response, resources and priorities for the ongoing development of an improved database were increased. The new database is expected to be in place during the next reporting period.

## Courts Martial

The court martial – a formal military court presided over by a military judge – is designed to deal with more serious offences. During the reporting period, 70 courts martial were held, representing 7.80% of service tribunals.<sup>9</sup> This is a small increase of 3 courts martial in comparison to the last reporting period. Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts and have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of [their] jurisdiction.”<sup>10</sup>

At a court martial, the prosecution is conducted by a military prosecutor authorized by the Director of Military Prosecutions. The accused is entitled to be represented by defence counsel assigned by the Directorate of Defence Counsel Services at no cost, or

<sup>7</sup> The number of reviews reported includes reviews requested by the accused person and those initiated by the CAF.

<sup>8</sup> Statistics for the 2013-2014 and 2014-2015 reporting period can be found at Annex A and those for 2011-2012 and 2012-2013 can be found at Annex B.

<sup>9</sup> There were 70 courts martial and 71 accused (1 joint trial).

<sup>10</sup> See section 179 of the *NDA*.

by civilian counsel at his or her expense. The accused can also choose not to be represented by a lawyer.

The *NDA* provides for two types of court martial: General and Standing. These courts martial can be convened anywhere, in Canada and abroad. The General Court Martial (GCM) is composed of a military judge and a panel of five CAF members. The panel is selected randomly by the Court Martial Administrator and is governed by rules that reinforce its military character. At a GCM, the panel serves as the trier of fact while the military judge makes all legal rulings and imposes the sentence. Panels must reach unanimous decisions on any finding of guilt. At a Standing Court Martial (SCM), the military judge sits alone, makes any of the required findings and, if the accused person is convicted, imposes the sentence. During this reporting period, 9 GCM and 61 SCM were convened across Canada.

## Appeal of a Court Martial Decision

Decisions made at courts martial may be appealed by the person subject to the CSD or the Minister of National Defence (the Minister) to the Court Martial Appeal Court of Canada (CMAC). The CMAC is composed of civilian judges who are designated from the Federal Court of Canada and the Federal Court of Appeal, or appointed from the Superior Courts and Courts of Appeal of the provinces and territories. During the reporting period, 7 decisions were rendered by the CMAC, including 1 decision on an application for release pending appeal. In addition, 2 appeals were started but not pursued by the Minister and 2 by the convicted person. A total of 9 cases are also held in abeyance pending a Supreme Court of Canada (SCC) decision on the same constitutional question raised by those cases. During the reporting period, 7 new notices of appeal were filed with the CMAC. Out of the 7 applications, 5 were initiated by the convicted person and 2 by the Minister.

CMAC decisions may be appealed to the SCC 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 SCC. During this reporting period 4 requests for leave to appeal to the SCC were made; 3 made by convicted persons were granted and 1 by the DMP was dismissed without costs.

## Statistics Reported

Annex A includes statistics for matters not previously reported on in previous reports. Suspended sentences of imprisonment and detention at court martial were previously not reported discretely, and were included in the reported numbers of sentences of imprisonment and detention. Annex A now includes separate statistics for suspended sentences of imprisonment and detention. Furthermore, appeals reporting have now been subdivided into CMAC statistics and SCC statistics.

## Sexual Misconduct

In the 2013-14 Annual Report, it was noted that summary trial statistics related to “offences of a sexual nature” (pursuant to *NDA* section 129 – conduct to the prejudice of good order and discipline) were not included in the breakdown of section 129 offences following the 2009-2010 Annual Report. It was identified that this type of offence is typically set out on a Record of Disciplinary Proceedings with brief particulars that do not necessarily capture all of the alleged circumstances. Since it is difficult to identify these offences on an Record of Disciplinary Proceedings with reliable precision, and in order to minimize the risk of misrepresenting any statistics reported, it was decided to omit the breakdown of these *NDA* section 129 offences. Alternatives to obtain

statistics with reliable precision for offences related to sexual misconduct that are disposed of at summary trial will be examined during the next reporting period.

In contrast, sexual misconduct offences disposed of at court martial can be accurately identified and reported. In particular, during the reporting period, 19 charges of sexual assault and 18 charges of breach of trust (sexual in nature) were disposed of at court martial.<sup>11</sup> One charge of criminal harassment (sexual in nature) was also prosecuted at court martial. Finally, a total of 3 charges of possession of child pornography and 2 charges of access to child pornography were disposed of at court martial during the reporting period.

## Compliance with the *Official Languages Act*

An accused may, pursuant to the *Official Languages Act*, choose to have his or her summary trial conducted in either English or French. Note A to QR&O 108.16 states that the presiding officer must be able to understand the official language in which the proceedings are to be conducted without the assistance of an interpreter and, should he or she determine that they do not have the required language ability, the officer should refer

the charge to another officer who has the required ability.

QR&O 107.07 prescribes the form of a Record of Disciplinary Proceedings, in which the language of the proceedings, as chosen by the accused, must be recorded. A similar provision exists for courts martial. QR&O 111.02(2)(b) requires that orders convening a court martial must indicate the language of proceedings chosen by the accused. During the reporting period, discrepancies between the language chosen for proceedings by the accused person and the language used to particularize offences on the Records of Disciplinary Proceedings were found in 13 cases. In addition, the manual review of Records of Disciplinary Proceedings disclosed 8, 15 and 23 cases with the same discrepancy for the 2013-2014, 2012-2013 and 2011-2012 reporting periods, respectively. Notwithstanding these discrepancies, there were no reports during this reporting period, nor the previous three reporting periods, of an accused person tried by a service tribunal other than in the official language of their choice. Further study will be carried out to determine the impact of these discrepancies on the language rights of the accused persons.

<sup>11</sup> Out of those 19 charges of sexual assault and 18 charges of breach of trust respectively, 11 (of 19) and 18 (of 18) were in relation to the same accused person in the same trial. The accused was found guilty of 10 counts of sexual assault and 15 counts of breach of trust; see *R. v. Wilks*, 2013 CM 3032 and *R. v. Wilks*, 2014 CM 3008.

# Chapter 4:

## Military Justice: Jurisprudence and Developments

This chapter highlights select jurisprudence from the reporting period, as well as legislative and regulatory developments.

### Jurisprudence - Court Martial

#### **Sexual Assault - *R. v. Yurczyszyn*, 2014 CM 2004, 2005**

Major (Maj) Yurczyszyn was the Base Commander of Canadian Forces Base (CFB) Wainwright. After representing CFB Wainwright at Remembrance Day ceremonies, Maj Yurczyszyn consumed alcohol at several locations before attending a house party that evening. He was visibly intoxicated and still in uniform when he arrived, and he continued to drink and conduct himself in an embarrassing manner in the presence of the other officers and civilian guests at the party. Maj Yurczyszyn was introduced to a civilian woman, asked her if she was wearing a padded bra, and touched her breast.

Maj Yurczyszyn was charged with sexual assault (contrary to the *Criminal Code* and punishable under section 130 of the *NDA*), and for drunkenness. Maj Yurczyszyn pleaded guilty to the charge of drunkenness, and was found guilty of the charge of sexual assault. He was sentenced to reduction in rank to the rank of Captain.



#### **Desertion - *R. v. deJong*, 2014 CM 2008**

Lieutenant (Navy) (Lt(N)) deJong was serving on HMCS PRESERVER as a Logistics Officer trainee. During a port visit in Florida, Lt(N) deJong sent a letter to his Commanding Officer alleging a “toxic working relationship” with the ship’s Supply Officer and requesting an immediate repatriation to Halifax. He also visited the ship’s physician assistant and sought a repatriation based on medical grounds. Unhappy with the pace of the decision making process, Lt(N) deJong left the ship in civilian clothing and flew at his own expense back to Halifax where he reported to the military police. Naval authorities reassigned Lt(N) deJong to shore-based duties, where he received strong performance assessments from his new supervisors.

Lt(N) deJong was charged with, and ultimately pleaded guilty to, desertion. At sentencing, the military judge found that even though Lt(N) deJong felt harassed and disrespected on board ship, there were many avenues of redress available to him to deal with these issues. Lt(N) deJong was sentenced to a severe reprimand and a fine in the amount of \$5,000.



## **Conduct - *R. v. Miller*, 2014 CM 2018**

Lieutenant-Colonel (LCol) Miller was charged with 11 offences in connection with wearing various medals and other honours on her uniform without authority. LCol Miller pleaded guilty to three of these charges, and the others were withdrawn. The military judge acknowledged that to some outside the military the matter may seem minor, but stated that it was not. For the military judge, honours only retain their meaning if there is rigour in awarding them and ensuring that they are worn only by those who have earned them. In addition, the offences said much about LCol Miller's integrity as a senior officer, particularly since they followed previous convictions for dishonesty. On a joint submission, LCol Miller was sentenced to a severe reprimand and a \$5,000 fine.

## **Harassment - *R. v. McKenzie*, 2014 CM 2016**

Ex-Warrant Officer (Ex-WO) McKenzie maintained contact with the complainant after the complainant sought to end their four-year extramarital relationship. Ex-WO McKenzie continued to email the complainant and initiate meetings after being informed that these actions were unwanted and he had been ordered to refrain from contacting her. The complainant reciprocated contact to some degree, and they had a number of consensual intimate encounters. Some of the emails that Ex-WO McKenzie sent to the complainant had a disturbing tone; for example, one had the statement "I will always haunt you."

Ex-WO McKenzie was charged with and ultimately pleaded guilty to disobeying a lawful command for his failure to obey the order to refrain from contacting the complainant. He was also charged with criminal harassment (contrary to the *Criminal Code* and punishable under section 130 of the *NDA*) and, in the alternative, conduct to the prejudice of good order

and discipline for contravening the general CAF-wide orders on harassment. The military judge found him not guilty of criminal harassment as he found that whilst the conduct was unprofessional, it had not caused the complainant to reasonably fear for her own safety. The military judge did, however, find him guilty of conduct to the prejudice of good order and discipline as that charge did not require the complainant have a reasonable apprehension of risk of harm. In sentencing, the military judge underscored the negative effect that harassment has on the CAF, noting that it "undermines the basics of military discipline and is highly prejudicial to morale, cohesion, and the operational effectiveness of any unit in which it occurs." Ex-WO McKenzie was sentenced to a severe reprimand and a fine of \$3,000.

## **Fraud - *R. v. Parent*, 2014 CM 2012**

The CAF pays separation benefits to qualifying military personnel who are separated from their spouses for service reasons. In 2009, Caporal (Cpl) Parent changed his marital status and applied for these benefits by submitting documents attesting to the fact that he was in a common law relationship with the woman who had given birth to his child several years earlier, even though they remained separated and were not in a common law relationship. In order to receive these separation benefits, CAF members have to certify each month in writing that they have a dependant and that they have not separated with intent to remain separated during the previous period, which Cpl Parent did for 39 consecutive months. In all, Cpl Parent fraudulently claimed a total of \$46,773 in separation benefits.

Cpl Parent pleaded guilty to one count of theft over \$5,000 (contrary to the *Criminal Code* and punishable under section 130 of the *NDA*), and alternate and related charges were withdrawn. In accepting a joint submission and sentencing Cpl Parent to 90 days' detention, the military judge emphasized that

confidence in the honesty, integrity, discipline, and good judgment of members of the CAF, both by the general public and other military personnel, is critical to the effectiveness of the CAF in the fulfilment of its important functions. The military judge added that the proper functioning of the system of financial benefits relies upon the integrity of those same members.

## Jurisprudence - Court Martial Appeal Court

### **Voyeurism and Possession of Child Pornography - *Private Réjean Larouche v. Her Majesty the Queen*, 2014 CMAC 6**

Private (Pte) Larouche separately took nude photos of a CAF member and a civilian, who had both given their permission provided the photos were destroyed later. After one of the women observed the nude photos of the other at Pte Larouche's home, she became worried about her own photos and complained to the military police. In the course of the ensuing investigation into voyeurism, a search warrant was obtained from a civilian judge. When the warrant was executed, investigators found a large quantity of child pornography.

At court martial, Pte Larouche was found guilty of voyeurism and possession of child pornography (each contrary to the *Criminal Code* and punishable under section 130 of the *NDA*). While the military judge acknowledged the existence of constitutional defects in the search warrant, he admitted the evidence obtained on the basis that failure to admit it would erode public confidence in the military justice system.

Pte Larouche appealed to the Court Martial Appeal Court (CMAC) on two issues. First, he challenged the constitutionality of section 130 of the *NDA*, which makes *Criminal Code* offences punishable as military

offences. The CMAC found that, although section 130 of the *NDA* was written in an overbroad way, it was appropriate to read in a requirement for a "military nexus" to the offence. Read in such a way, the section was not unconstitutional. Second, Pte Larouche argued that the military judge had erred in law in admitting the evidence from the search. Instead of considering the limited impact of admitting the evidence on the reputation of the military justice system, he should have considered the justice system as a whole. The CMAC excluded the evidence, set aside the convictions and entered an acquittal.

### **Unlawfully Causing Bodily Harm and Negligent Performance of Military Duty - *Lieutenant D.W. Watts v. Her Majesty the Queen*, 2014 CMAC 9**

Captain (Capt) Watts was a platoon commander in Afghanistan under orders to conduct training on the Claymore mine (a command-detonated directional explosive) with his platoon. The Claymore mine was not included in the unit's pre-deployment training. Given that Capt Watts was not qualified to run a range for the Claymore mine, his superior did not appoint him the Officer-in-Charge (OIC) for the range that day; this position was instead given to a senior non-commissioned member. An accident occurred during the training, resulting in the death of one soldier and several others receiving serious injuries.

At trial, the court martial found Capt Watts guilty of unlawfully causing bodily harm (a *Criminal Code* offence punishable under section 130 of the *NDA*) and two charges of negligent performance of a military duty: one for failing to conduct inert round training before proceeding to live fire training, and the other for failing to stop the live fire training once it had begun. The military judge sentenced him to a reduction in rank to Lieutenant and a severe reprimand.

Capt Watts appealed on a number of grounds. The CMAC found that the military judge had made significant errors in his instructions to the court martial panel, including by failing to bring up the implications of another person being OIC of the range. It also found that there were no inert rounds available, so conducting training with inert rounds would have been impossible. It ruled that “[t]here cannot be an offence that carries significant penalties, of negligently performed duty, that is impossible to perform.”

The CMAC set aside the findings of guilt and directed a new trial on the charge of unlawfully causing bodily harm and the negligent performance of a military duty charge relating to the failure to stop the live fire training. The CMAC set aside the finding of guilt and entered a finding of not guilty on the other negligent performance of a military duty charge relating to the failure to conduct inert round training. The Director of Military Prosecutions decided not to proceed with the unlawfully causing bodily harm and the negligent performance of military duty charges that had been returned for a possible new trial.

## Jurisprudence – Supreme Court of Canada

During this reporting period, leave to appeal was granted to accused persons in 3 cases. These cases are: *Private Alexandra Vezina v. Her Majesty the Queen*<sup>12</sup>, a traffic in cocaine matter; *Second Lieutenant Moriarity, et al v. Her Majesty the Queen, et al.*<sup>13</sup>, a Sexual Exploitation,

Sexual Assault and Invitation to Sexual Touching matter; and, *Sergeant Damien Arsenault v. Her Majesty the Queen*<sup>14</sup>, a fraud matter. The Supreme Court of Canada (SCC) granted the application for leave to appeal on the constitutionality of section 130(1)(a) of the *NDA* (which makes *Criminal Code* offences that take place in Canada punishable as military offences). The question considered by the SCC is whether the CMAC erred in finding that paragraph 130(1)(a) of the *NDA* is not overbroad as its proper interpretation includes a “military nexus” that ensures the provision is no broader than necessary to achieve the *NDA*’s purposes.

Leave to appeal by the Director of Military Prosecutions was dismissed without costs in *Her Majesty the Queen v. Paul Wehmeier*.<sup>15</sup>

## Legislative and Regulatory Developments

### **Bill C-14: An Act to Amend the Criminal Code and the National Defence Act (Mental Disorder), (Statutes of Canada, 2014, chapter 6)**

Bill C-14, which was introduced in November 2013 and received Royal Assent on 11 April 2014, is the successor to Bill C-54, which died on the order paper. Like its predecessor, Bill C-14 addressed concerns raised by victims of crime with respect to accused persons found not criminally responsible (NCR) on account of mental disorder.

<sup>12</sup> *Private Alexandra Vezina v. Her Majesty the Queen*, 2014 CMAC 4, leave to appeal to SCC granted, 35873 (24 July 2014), while the SCC granted leave to appeal on the constitutional question, the SCC dismissed the application for leave to appeal on the law of entrapment.

<sup>13</sup> *Second Lieutenant Moriarity, et al. v. Her Majesty the Queen, et al.*, 2014 CMAC 1, leave to appeal to SCC granted, 35755 (24 July 2014).

<sup>14</sup> *Sergeant Damien Arsenault v. Her Majesty the Queen*, 2014 CMAC 8, leave to appeal to SCC granted, 35946 (11 December 2014), leave to appeal was also granted on section 117(f) of the *NDA*, which makes criminal certain non-particularized acts “of a fraudulent nature”.

<sup>15</sup> *Her Majesty the Queen v. Paul Wehmeier*, 2014 CMAC 5, leave to appeal to SCC dismissed, 35933 (30 October 2014).

The Bill amends both the *Criminal Code* and the *NDA* mental disorder regimes. The Bill: (1) explicitly sets out that safety of the public is the “paramount consideration” in the decision-making process relating to accused persons found to be NRAMD; (2) creates a scheme for finding that certain persons who have been found NRAMD are also “high-risk accused” to be held in custody and not to be considered for release until the designation is revoked; and (3) enhances the “involvement of victims” in the process concerning mental disorder.

The provisions of Bill C-14 that amend the *NDA* will come into force at a future day or days that will be determined by the Governor in Council.

### **Bill C-15: *Strengthening Military Justice in the Defence of Canada Act*, (Statutes of Canada, 2013, chapter 24)**

On June 1, 2014, some provisions of Bill C-15 came into force, resulting in amendments to the *NDA* that:

- establish the position of the Canadian Forces Provost Marshal (CFPM), define his or her responsibilities and enhance the accountability and transparency of the MP by setting out the legislative framework governing the relationship between the CFPM, the military police and the chain of command;
- provide the Chief of the Defence Staff with the authority, subject to certain limitations, to delegate his or her powers, duties or functions as the final authority in the grievance process;
- enhance the perception of judicial independence by ensuring that an initial authority does not deal with grievances submitted by military judges;
- require the recommendation of an inquiry committee prior to the removal from office for cause of the Director of Defence Counsel Services or the CFPM to enhance the perception of the independence of these offices and ensure that any inquiry is conducted in a fair and independent manner by setting out the powers, rights and privileges of the inquiry committees;
- establish a timeline within which the CFPM is required to resolve conduct complaints and also protects complainants from being penalized for submitting a complaint in good faith; and
- set as seven-year periods the timelines for conducting future independent reviews on the military justice system, the military police complaints process, the role and mandate of the CFPM and the grievance process while taking into account situations where certain provisions of the *NDA* have been reviewed and amended based on the previous independent review.

Amendments to the *Queen's Regulations and Orders for the Canadian Forces* to implement the aforementioned provisions of Bill C-15 came into force on June 1, 2014.

The *Sex Offender Information Registration Regulations (Canadian Forces)* were also amended on June 1, 2014 to harmonize those regulations with the Bill C-15 changes of terminology concerning the CFPM.

The provisions of Bill C-15 that are not yet in force are related to the operation of the military justice system. They will come into force on a day or days to be fixed by the Governor in Council.



# Chapter 5:

## The Way Ahead

As the superintendent of the administration of military justice in the Canadian Armed Forces (CAF), the JAG will ensure that Canada's military justice system continues to reflect Canadian values and the rule of law. To that end, the Office of the JAG will continue its commitment towards proactive oversight, responsible development and positive change during the reporting periods to come. These efforts, in turn, will help enable the CAF to maintain their history of excellence in operations.

In the year ahead, the Office of the JAG will seek to finalize the implementation of the statutory and regulatory amendments stemming from Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*. The purposes of Canada's military justice system and its inextricable link to discipline in the CAF have been reinforced by Parliament following Royal Assent of this Act. Specifically, when that legislation comes into force, it will require military tribunals to consider, when determining the appropriate sentence to impose upon an offender, the promotion of operational effectiveness of the CAF, in particular the maintenance of discipline, efficiency and morale, as well as respect for the law and the maintenance of a just, peaceful and safe society.

As noted in the Communiqué, on 27 March 2015, the CDS received the External Review Authority's (ERA) report into sexual misconduct and sexual harassment in the CAF. While the ERA's mandate excluded issues related to the military justice system, as superintendent of the administration of military justice in the CAF, the JAG is committed to ensuring that those findings and recommendations that touch upon the military justice system are carefully reviewed. The Office of the JAG will



work closely with stakeholders, including the Canadian Forces Provost Marshal and the CAF Strategic Response Team on Sexual Misconduct, to ensure that any changes to military justice legislation, policies and practices are consistent with the approaches being developed by stakeholders.

The Summary Trial Database, which provides essential data relevant to the JAG's superintendence of the administration of military justice, will continue to undergo conversion to enable enhanced data collection, and better accuracy, as well as to allow for greater and more nuanced reviews of information.

## Conclusion

Canada's military justice system is a *sui generis* system of justice designed to be a fair, efficient and effective mechanism to instill discipline and support the operational effectiveness of the CAF. To ensure that the confidence of Canadians in this system is further strengthened, the Office of the JAG will continue to monitor and learn from relevant legislative and jurisprudential developments, both in Canada and



respecting other similarly-situated military justice systems from around the world. The Office of the JAG will also continue to ensure that the Canadian military justice system evolves in a manner that reflects responsible development and that it remains aligned

with Canadian values and the rule of law. As such, both the Office of the JAG and Canada's military justice system are well positioned to support and remain responsive to the needs of the Government of Canada, the Department of National Defence and the CAF.

# Annex A:

## Summary Trials, Courts Martial and Appeals - Year in Review

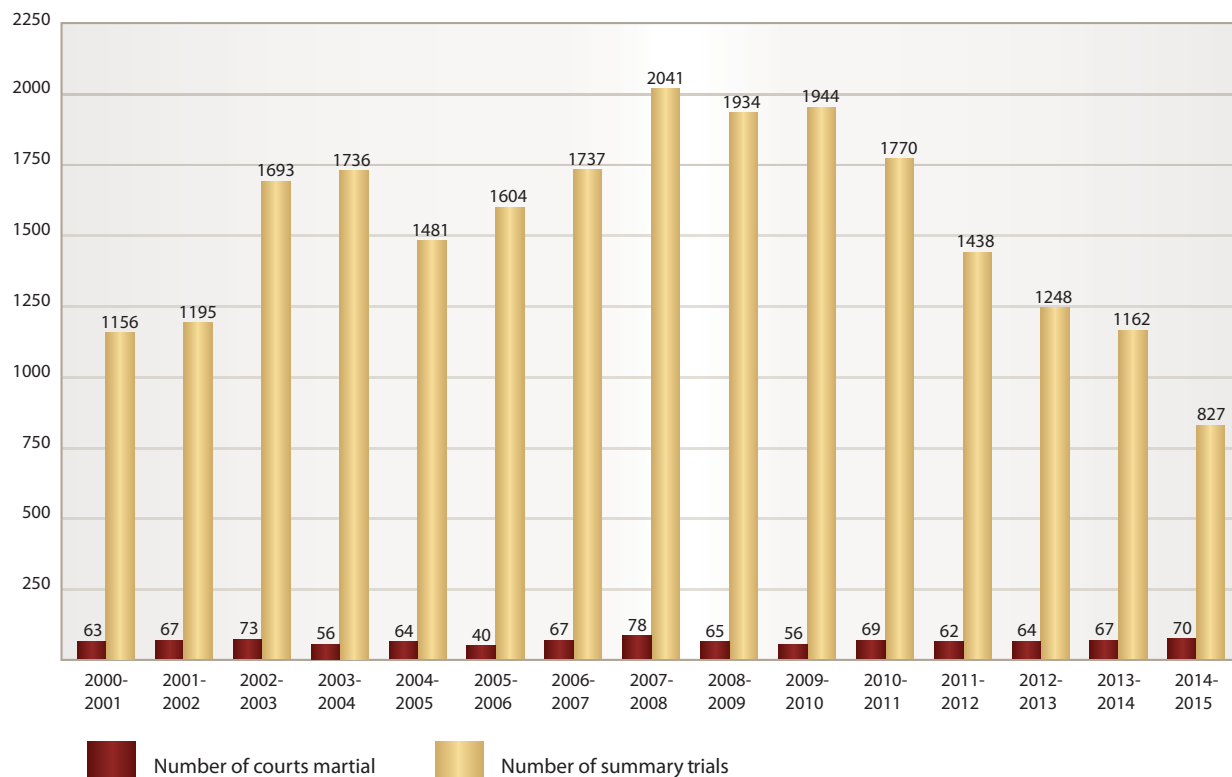
Statistics: 1 April 2014 - 31 March 2015. These statistics are current as of 20 May 2015.

### Distribution of Service Tribunals

	2013-2014		2014-2015	
	#	%	#	%
Number of courts martial	67	5.45	70 <sup>1</sup>	7.80
Number of summary trials	1162	94.55	827	92.20
<b>Total</b>	<b>1229</b>	<b>100</b>	<b>897</b>	<b>100</b>

<sup>1</sup> There were 70 courts martial and 71 accused (1 joint trial).

### Distribution of Disciplinary Proceedings Year to Year Comparison



## I. Summary Trials Reporting

1 April 2014 - 31 March 2015

For statistics relating to 2011-12 and 2012-13, refer to Annex B and for prior years, refer to previous JAG annual reports. These statistics are current as of 20 May 2015.

### Elections

	2013-2014		2014-2015	
	#	%	#	%
Elections to be tried by summary trial	356	84.56	242 <sup>1</sup>	82.03
Elections to be tried by court martial	65	15.44	53	17.97
<b>Total</b>	<b>421</b>	<b>100</b>	<b>295</b>	<b>100</b>

<sup>1</sup> Includes 1 case where the accused elected summary trial but the matter was subsequently referred to court martial pursuant to article 108.16(1)a.iii of the *Queen's Regulations and Orders for the Canadian Forces*.

### Disposition of cases at unit level

	2013-2014		2014-2015	
	#	%	#	%
Cases directly referred to courts martial	48	3.72	40 <sup>1</sup>	4.29
Elections to be tried by courts martial	65	5.03	53	5.68
Elections to be tried by summary trial	356	27.58	242 <sup>2</sup>	25.94
Summary trials without an election	806	62.43	585	62.70
Cases not proceeded with at summary trial	16	1.24	13	1.39
<b>Total</b>	<b>1291</b>	<b>100</b>	<b>933</b>	<b>100</b>

<sup>1</sup> In previous reports, this statistic reflected the number of referrals from a commanding officer to a referral authority. To reflect more accurately the nature of this statistic, it now reports the number of referrals made by a referral authority.

<sup>2</sup> Includes 1 case where the accused elected summary trial but the matter was subsequently referred to court martial pursuant to article 108.16(1)a.iii of the *Queen's Regulations and Orders for the Canadian Forces*.

### Language of Summary Trials

	2013-2014		2014-2015	
	#	%	#	%
Number in English	983	84.60	711	85.97
Number in French	179	15.40	116	14.03
<b>Total</b>	<b>1162</b>	<b>100</b>	<b>827</b>	<b>100</b>

### Summary Trials by Rank

	2013-2014		2014-2015	
	#	%	#	%
Private and Corporal (includes Master-Corporal <sup>1</sup> )	943	81.15	699	84.52
Sergeant to Chief Warrant Officer	75	6.45	52	6.29
Officer	144	12.39	76	9.19
<b>Total</b>	<b>1162</b>	<b>100</b>	<b>827</b>	<b>100</b>

<sup>1</sup> Pursuant to article 3.08 of the *Queen's Regulations and Orders for the Canadian Forces*, Master Corporal is not a rank but an appointment.

### Summary of Charges

NDA Article	Description	2013-2014		2014-2015	
		#	%	#	%
83	Disobedience of lawful command	62	3.43	31	2.62
84	Striking or offering violence to a superior officer	1	0.06	2	0.17
85	Insubordinate behavior	60	3.32	52	4.40
86	Quarrels and disturbances	63	3.49	39	3.30
90	Absence without leave	667	36.93	459	38.83
91	False statement in respect of leave	0	0.00	5	0.42
93	Cruel or disgraceful conduct	3	0.17	0	0.00
95	Abuse of subordinates	2	0.11	2	0.17
97	Drunkenness	134	7.42	126	10.66

NDA Article	Description	2013-2014		2014-2015	
		#	%	#	%
101.1	Failure to comply with conditions	4	0.22	6	0.51
107	Wrongful acts in relation to aircraft or aircraft material	0	0.00	1	0.08
111	Improper driving of vehicles	1	0.06	2	0.17
112	Improper use of vehicles	17	0.94	9	0.76
114	Stealing	18	1.00	10	0.85
116	Destruction, damage, loss or improper disposal	9	0.50	8	0.68
117	Miscellaneous offences	15	0.83	4	0.34
124	Negligent performance of duties	1	0.06	0	0.00
125	Offences in relation to documents	17	0.94	9	0.76
127	Injurious or destructive handling of dangerous substances	0	0.00	1	0.08
129 <sup>1</sup>	Conduct to the prejudice of good order and discipline – Negligent discharge	213	11.79	107	9.05
129	Conduct to the prejudice of good order and discipline – Excluding negligent discharge	498	27.57	284	24.03
130	Service trial of civil offences	21	1.16	25	2.12
<b>Total</b>		<b>1806</b>	<b>100</b>	<b>1182</b>	<b>100</b>

<sup>1</sup> An offence under section 129 of the NDA is typically set out on a Record of Disciplinary Proceedings with brief particulars that do not necessarily capture all of the alleged circumstances. Prior to 2010-2011 reporting period, section 129 offences were reported in the JAG Annual Reports using broad classifications such as offences of a sexual nature. Since it is difficult to identify these offences on a Record of Disciplinary Proceedings with reliable precision, and in order to minimize the risk of misrepresenting any statistics reported, it was decided to omit any breakdown of section 129 offences along these lines in reports after the 2009-2010 report. In contrast, offences arising from the negligent discharge of a weapon represent a significant proportion of all disciplinary proceedings in the CAF and can be easily identified from the particulars set out in the Record of Disciplinary Proceedings.



### Summary Trials by Command

	2013-2014		2014-2015	
	#	%	#	%
Vice Chief of the Defence Staff	9	0.77	13	1.57
Canada Joint Operations Command	50	4.30	59	7.13
Canada Special Operations Forces Command	11	0.95	11	1.33
Royal Canadian Navy	251	21.60	125	15.11
Canadian Army	567	48.80	459	55.50
Royal Canadian Air Force	78	6.71	73	8.83
Chief of Military Personnel	187	16.09	84	10.16
Assistant Deputy Minister (Information Management)	4	0.34	1	0.12
Assistant Deputy Minister (Material)	5	0.43	1	0.12
Canadian Forces Intelligence Command <sup>1</sup>	0	0.00	1	0.12
<b>Total</b>	<b>1162</b>	<b>100</b>	<b>827</b>	<b>100</b>

<sup>1</sup> Effective 27 June 2012, Chief of Defence Intelligence became known as Canadian Forces Intelligence Command.

### Findings by Charge

	2013-2014		2014-2015	
	#	%	#	%
Guilty	1590	88.04	1062	89.85
Guilty – Special findings	10	0.55	6	0.51
Guilty of related offence	0	0.00	2	0.17
Not guilty	133	7.36	71	6.01
Charge stayed	41	2.27	19	1.61
Charge not proceeded with	32	1.77	22	1.86
<b>Total</b>	<b>1806</b>	<b>100</b>	<b>1182</b>	<b>100</b>

## Punishments

	2013-2014		2014-2015	
	#	%	#	%
Detention (suspended)	1	0.07	7	0.64
Detention	31	2.07	19	1.73
Reduction in rank	7	0.47	4	0.36
Severe reprimand	5	0.33	3	0.27
Reprimand	53	3.55	54	4.90
Fine	882	59.00	610	55.40
Confinement to ship or barracks	346	23.14	283	25.70
Extra work and drill	102	6.82	76	6.90
Stoppage of leave	29	1.94	27	2.45
Caution	39	2.61	18	1.63
<b>Total</b>	<b>1495</b>	<b>100</b>	<b>1101</b>	<b>100</b>

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

## Reviews

	2013-2014		2014-2015	
	#	%	#	%
Review based on finding	12	26.09	19	38.78
Review based on sentence	12	26.09	15	30.61
Review based on finding & sentence	22	47.83	15	30.61
<b>Total</b>	<b>46</b>	<b>100</b>	<b>49</b>	<b>100</b>

Note: An officer or non-commissioned member may request a review authority to set aside the finding of guilty and/or to alter the sentence. A request for review can also be initiated by the CAF.

### Decisions of Review Authority

	2013-2014		2014-2015	
	#	%	#	%
Upholds decision	13	28.26	16	32.65
Quashes findings	24	52.17	23	46.94
Substitutes punishment	7	15.22	2	4.08
Mitigates/Commutes/Remits punishment	2	4.35	8	16.33
<b>Total</b>	<b>46</b>	<b>100</b>	<b>49</b>	<b>100</b>

### Official Languages

	2013-2014	2014-2015
	#	#
Charge on a Record of Disciplinary Proceedings not in language of trial	8	13
<b>Total</b>	<b>8</b>	<b>13</b>

## II. Court Martial Reporting

1 April 2014 - 31 March 2015

For statistics relating to prior years, refer to previous JAG Annual Reports. These statistics are current as of 20 May 2015.

### Courts Martial by Type

	2013-2014		2014-2015	
	#	%	#	%
Standing Court Martial	60	89.55	61	87.14
General Court Martial	7	10.45	9	12.86
<b>Total</b>	<b>67</b>	<b>100</b>	<b>70</b>	<b>100</b>

### Language of Courts Martial

	2013-2014		2014-2015	
	#	%	#	%
English	52	77.61	55	78.57
French	15	22.39	15	21.43
<b>Total</b>	<b>67</b>	<b>100</b>	<b>70</b>	<b>100</b>

### Courts Martial by Rank

	2013-2014	2014-2015
	#	#
Private to Corporal (includes Master-Corporal <sup>1</sup> )	43	50
Sergeant to Chief Warrant Officer	11	11
Officer	12	10
<b>Total</b>	<b>67</b>	<b>71<sup>2</sup></b>

<sup>1</sup> Pursuant to article 3.08 of the *Queen's Regulations and Orders for the Canadian Forces*, Master-Corporal is not a rank but an appointment.

<sup>2</sup> There were 70 courts martial and 71 accused (1 joint trial).

## Summary of Charges

NDA Article	Description	2013-2014	2014-2015
		#	#
83	Disobedience of lawful command	11	16
84	Striking or offering violence to a superior	2	7
85	Insubordinate behaviour	5	14
86	Quarrels and disturbances	0	6
87	Resisted an escort whose duty it was to have him in charge	1	0
88	Desertion	2	1
90	Absent without leave	37	19
93	Cruel or disgraceful conduct	2	4
95	Abuse of subordinates	2	6
97	Drunkenness	8	5
101.1	Failure to comply with conditions	9	11
102	Resisted a non-commissioned member in performing arrest of a person subject to the Code of Service Discipline	0	1
111	Improper driving of vehicles	1	0
114	Stealing	4	8
115	Receiving	0	1
116	Destruction, damage, loss or improper disposal	1	5
117(f)	An act of a fraudulent nature	8	7
124	Negligent performance of a military duty	2	0
125(a)	Wilfully (or negligently) made a false entry	15	4
125(c)	With intent to deceive, altered a document issued for military purpose	2	1
127	Injurious or destructive handling of dangerous substances	1	0
128	Conspired to commit an offence	0	0
129	An act to the prejudice of good order and discipline	41	44
130 (4 CDSA) <sup>1</sup>	Possession of a substance	2	7
130 (5(1) CDSA)	Trafficking in substance	8	3



NDA Article	Description	2013-2014	2014-2015
		#	#
130 (5(2) CDSA)	Possession for purpose of trafficking	0	1
130 (6 CDSA)	Exporting / Exportation of substances	0	2
130 (7 CDSA)	Production of substance	0	1
130 (31 FDA) <sup>2</sup>	Unlawfully selling a substance	1	0
130 (80 CC) <sup>3</sup>	Breach of duty of care re explosive	1	0
130 (85(1) CC)	Using a firearm in the commission of an offence	1	0
130 (86 CC)	Careless storage	1	0
130 (86(1) CC)	Negligent handling of a firearm	5	4
130 (86(2) CC)	Contravention of storage regulations	0	6
130 (90 CC)	Carrying a concealed weapon	1	2
130 (91(2) CC)	Unauthorized possession of prohibited weapon or restricted weapon	2	6
130 (92(2) CC)	Possession of a prohibited weapon	0	2
130 (93 CC)	Possession of a firearm at an unauthorized place	1	2
130 (94(1) CC)	Unauthorized possession in motor vehicle	0	1
130 (95 CC)	Possession of a prohibited or restricted firearm with ammunition	1	3
130 (122 CC)	Breach of trust by public officer	0	18 <sup>4</sup>
130 (129 CC)	Offences relating to public or peace officer	3	1
130 (131 CC)	Perjury	0	1
130 (139 CC)	Obstructing justice – Wilful attempt to obstruct, pervert or defeat the course of justice	4	1
130 (163.1(4)CC)	Possession of child pornography	1	3
130 (163(4.1) CC)	Accessing child pornography	1	2
130 (184(1) CC)	Interception of private communication	0	1
130 (244 CC)	Discharging a firearm with intent	2	0
130 (244.2 CC)	Discharging a firearm recklessly	2	0
130 (264.1 CC)	Uttering threats	0	3

NDA Article	Description	2013-2014	2014-2015
		#	#
130 (264(2)(d) CC)	Criminal harassment	0	1
130 (266 CC)	Assault	1	10
130 (267 CC)	Assault with a weapon or causing bodily harm	1	4
130 (268 CC)	Aggravated assault	1	0
130 (269 CC)	Unlawfully causing bodily harm	1	0
130 (270.01 CC)	Assaulting a peace officer causing bodily harm	0	2
130 (271 CC)	Sexual assault	4	19 <sup>5</sup>
130 (334 CC)	Punishment for theft - value stolen does not exceed \$5000	3	2
130(354 CC)	Possession of stolen property	3	0
130 (367 CC)	Commits forgery	2	0
130 (368 CC)	Uttering a forged document	2	9
130 (380(1) CC)	Fraud	7	3
130 (419 CC)	Unlawful use of military uniforms or certificates	0	3
130 (430(4) CC)	Mischief	1	1
<b>Total Offences</b>		<b>217</b>	<b>284</b>

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

<sup>1</sup> *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

<sup>2</sup> *Food and Drugs Act*, R.S.C., 1985, c.F-27.

<sup>3</sup> *Criminal Code*, R.S.C., 1985, c. C-46.

<sup>4</sup> Out of those 18 charges of breach of trust, 18 were in relation to the same accused person in the same trial.

<sup>5</sup> Out of those 19 charges of sexual assault, 11 were in relation to the same accused person in the same trial.

### Courts Martial by Command

	2013-2014		2014-2015	
	#	%	#	%
Vice Chief of the Defence Staff	6	8.96	6	8.46
Canada Joint Operations Command	4	5.97	0	0.00
Royal Canadian Navy	13	19.40	16	22.53
Canadian Army	30	44.78	29	40.84
Royal Canadian Air Force	9	13.43	8	11.27
Chief of Military Personnel	3	4.48	12	16.90
Canadian Forces Intelligence Command <sup>1</sup>	1	1.49	0	0.00
Assistant Deputy Minister (Information Management)	1	1.49	0	0.00
<b>Total</b>	<b>67</b>	<b>100</b>	<b>71</b>	<b>100</b>

<sup>1</sup> Effective 27 June 2012, Chief of Defence Intelligence became known as Canadian Forces Intelligence Command.

### Disposition by Case

	2013-2014		2014-2015	
	#	%	#	%
Found/Plead guilty of at least one charge	54	80.60	55	77.46
Not guilty of all charges	13	19.40	12	16.90
Stay of all charges	0	0.00	2	2.82
Withdrawal of all charges	0	0.00	2	2.82
<b>Total</b>	<b>67</b>	<b>100</b>	<b>71</b>	<b>100</b>

## Sentences

	2013-2014	2014-2015
	#	#
Dismissal	2	1
Imprisonment	8	6
Imprisonment (suspended)	3	2
Detention	4	4
Detention (suspended)	0	4
Reduction in rank	5	1
Severe reprimand	11	18
Reprimand	18	13
Fine	37	39
Forfeiture of seniority	0	0
Minor punishments: Confinement to ship or barracks	0	0
<b>Total</b>	<b>88</b>	<b>88</b>

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

### III. Appeals Reporting - Court Martial Appeal Court of Canada

1 April 2014 - 31 March 2015

For statistics relating to prior years, refer to previous JAG Annual Reports. These statistics are current as of 20 May 2015.

Nature of Appeals	
	2014-2015
	#
Finding	19 <sup>1</sup>
Finding and sentence	1
Release pending appeal	1
<b>Total</b>	<b>21</b>

<sup>1</sup> This statistic is inclusive of 7 appeals on the same constitutional ground.

Disposition of Appeals	
	2014-2015
	#
Granted	3 <sup>1</sup>
Granted in part	1
Dismissed	2
Abandoned	4
In abeyance or reserved	9 <sup>2</sup>
Ongoing	2
<b>Total</b>	<b>21</b>

<sup>1</sup> This statistic is inclusive of a granted release pending appeal.

<sup>2</sup> This statistic is inclusive of *Royes v. R.* where the appeal was dismissed on all grounds except for a constitutional question which has receive leave to appeal by the Supreme Court of Canada in a separate matter.

### Appeals by Party

	2014-2015
	#
Crown	4
Offender	17
<b>Total</b>	<b>21</b>



#### IV. Appeals Reporting - Supreme Court of Canada

1 April 2014 - 31 March 2015

For statistics relating to prior years, refer to previous JAG Annual Reports. These statistics are current as of 20 May 2015.

##### Nature of Appeals

	2014-2015
	#
Finding	3
Finding and sentence	0
Release pending appeal	1
<b>Total</b>	<b>4</b>

##### Disposition of Appeals

	2014-2015
	#
Granted	1
Granted in part	0
Dismissed	0
Abandoned	0
In abeyance or reserved	3
Ongoing	0
<b>Total</b>	<b>4</b>

##### Appeals by Party

	2014-2015
	#
Crown	0
Offender	4
<b>Total</b>	<b>4</b>

# Annex B:

## Summary Trials and Court Martial - Year in Review

Statistics: 1 April 2011 - 31 March 2013. These statistics are current as of 20 May 2015.

### Distribution of Service Tribunals

	2011-2012		2012-2013	
	#	%	#	%
Number of courts martial	62	4.13	64	4.88
Number of summary trials	1438	95.87	1248	95.12
<b>Total</b>	<b>1500</b>	<b>100</b>	<b>1312</b>	<b>100</b>

## I. Summary Trials Reporting

1 April 2011 - 31 March 2013

For statistics relating to prior years, refer to previous JAG annual reports. These statistics are current as of 20 May 2015.

### Elections

	2011-2012		2012-2013	
	#	%	#	%
Elections to be tried by summary trial	500	91.07	405	85.81
Elections to be tried by court martial	49	8.93	67	14.19
<b>Total</b>	<b>549</b>	<b>100</b>	<b>472</b>	<b>100</b>

### Disposition of cases at unit level

	2011-2012		2012-2013	
	#	%	#	%
Cases directly referred to courts martial	52	3.34	60	4.31
Elections to be tried by courts martial	49	3.14	67	4.81
Elections to be tried by summary trial	500	32.07	405	29.09
Summary trials without an election	938	60.17	843	60.56
Cases not proceeded with at summary trial	20	1.28	17	1.22
<b>Total</b>	<b>1559</b>	<b>100</b>	<b>1392</b>	<b>100</b>

### Language of Summary Trials

	2011-2012		2012-2013	
	#	%	#	%
Number in English	1130	78.58	1013	81.17
Number in French	308	21.42	235	18.83
<b>Total</b>	<b>1438</b>	<b>100</b>	<b>1248</b>	<b>100</b>

### Summary Trials by Rank

	2011-2012		2012-2013	
	#	%	#	%
Private and Corporal (includes Master-Corporal <sup>1</sup> )	1202	83.59	1001	80.21
Sergeant to Chief Warrant Officer	73	5.08	71	5.69
Officer	163	11.33	176	14.10
<b>Total</b>	<b>1438</b>	<b>100</b>	<b>1248</b>	<b>100</b>

<sup>1</sup> Pursuant to article 3.08 of the *Queen's Regulations and Orders for the Canadian Forces*, Master-Corporal is not a rank but an appointment.

### Summary of Charges

NDA Article	Description	2011-2012		2012-2013	
		#	%	#	%
83	Disobedience of lawful command	68	3.38	29	1.67
84	Striking or offering violence to a superior officer	3	0.15	8	0.46
85	Insubordinate behavior	86	4.27	55	3.17
86	Quarrels and disturbances	63	3.13	52	3.00
87	Resisting or escaping from arrest or custody	1	0.05	0	0.00
90	Absence without leave	671	33.30	607	35.00
91	False statement in respect of leave	0	0.00	1	0.06
93	Cruel or disgraceful conduct	5	0.25	4	0.23
95	Abuse of subordinates	7	0.35	6	0.35
97	Drunkenness	173	8.58	153	8.82
98	Malingering, aggravating disease or infirmity or injuring self or another	3	0.15	0	0.00
101.1	Failure to comply with conditions	6	0.30	3	0.17
102	Hindering arrest or confinement or withholding assistance when called on	2	0.10	0	0.00
108	Signing inaccurate certificate	2	0.10	1	0.06
111	Improper driving of vehicles	3	0.15	6	0.35
112	Improper use of vehicles	13	0.64	15	0.87
113	Causing fires	0	0.00	1	0.06
114	Stealing	11	0.54	12	0.69
115	Receiving	0	0.00	1	0.06
116	Destruction, damage, loss or improper disposal	11	0.54	9	0.52
117	Miscellaneous offences	10	0.50	30	1.73
118(2)	Failure to appear or attend	0	0.00	1	0.06
122	False answers or false information	1	0.05	0	0.00
124	Negligent performance of duties	1	0.05	0	0.00
125	Offences in relation to documents	22	1.09	11	0.63

NDA Article	Description	2011-2012		2012-2013	
		#	%	#	%
127	Injurious or destructive handling of dangerous substances	0	0.00	3	0.17
129 <sup>1</sup>	Conduct to the prejudice of good order and discipline – Negligent discharge	263	13.05	260	15.00
129	Conduct to the prejudice of good order and discipline – Excluding negligent discharge	554	27.49	440	25.37
130	Service trial of civil offences	36	1.79	26	1.50
<b>Total</b>		<b>2015</b>	<b>100</b>	<b>1734</b>	<b>100</b>

<sup>1</sup> An offence under section 129 of the NDA is typically set out on a Record of Disciplinary Proceedings with brief particulars that do not necessarily capture all of the alleged circumstances. Prior to 2010-2011 reporting period, section 129 offences were reported in the JAG Annual Reports using broad classifications such as offences of a sexual nature. Since it is difficult to identify these offences on an Record of Disciplinary Proceedings with reliable precision, and in order to minimize the risk of misrepresenting any statistics reported, it was decided to omit any breakdown of section 129 offences along these lines in reports after the 2009-2010 report. In contrast, offences arising from the negligent discharge of a weapon represent a significant proportion of all disciplinary proceedings in the CAF and can be easily identified from the particulars set out in the Record of Disciplinary Proceedings.

## Summary Trials by Command

	2011-2012	
	#	%
Vice Chief of the Defence Staff	7	0.49
Canada Command	1	0.07
Canada Operational Support Command	9	0.62
Canada Special Operations Forces Command	9	0.62
Canada Expeditionary Force Command	176	12.24
Chief of Maritime Staff	219	15.23
Chief of the Land Staff	661	45.97
Chief of the Air Staff	111	7.72
Chief of Military Personnel	227	15.79
Assistant Deputy Minister (Information Management)	3	0.21
Assistant Deputy Minister (Material)	0	0.00
Chief of Defence Intelligence <sup>1</sup>	15	1.04
<b>Total</b>	<b>1438</b>	<b>100</b>

<sup>1</sup> Effective 27 June 2012, Chief of Defence Intelligence became known as Canadian Forces Intelligence Command.



## Summary Trials by Command

	2012-2013	
	#	%
Vice Chief of the Defence Staff	17	1.36
Canada Joint Operations Command <sup>1</sup>	64	5.13
Canada Special Operations Forces Command	15	1.20
Royal Canadian Navy <sup>2</sup>	248	19.87
Canadian Army <sup>3</sup>	623	49.92
Royal Canadian Air Force <sup>4</sup>	96	7.69
Chief of Military Personnel	180	14.43
Assistant Deputy Minister (Information Management)	3	0.24
Assistant Deputy Minister (Material)	2	0.16
Chief of Defence Intelligence <sup>5</sup>	0	0.00
<b>Total</b>	<b>827</b>	<b>100</b>

<sup>1</sup> Effective October 2012, Canada Command, Canada Operational Support Command and Canada Expeditionary Force Command merged to form the Canada Joint Operations Command.

<sup>2</sup> Effective 7 February 2012, Chief of Maritime Staff became known as the Royal Canadian Navy.

<sup>3</sup> Effective 17 January 2012, Chief of Land Staff became known as the Canadian Army.

<sup>4</sup> Effective 17 January 2012, Chief of Air Staff became known as the Royal Canadian Air Force.

<sup>5</sup> Effective 27 June 2012, Chief of Defence Intelligence became known as Canadian Forces Intelligence Command.

## Findings by Charge

	2011-2012		2012-2013	
	#	%	#	%
Guilty	1800	89.33	1545	89.10
Guilty – Special findings	8	0.40	6	0.35
Guilty of related offence	9	0.47	4	0.23
Not guilty	124	6.15	107	6.17
Charge stayed	45	2.23	49	2.83
Charge not proceeded with	29	1.44	23	1.33
<b>Total</b>	<b>2015</b>	<b>100</b>	<b>1734</b>	<b>100</b>

## Punishments

	2011-2012		2012-2013	
	#	%	#	%
Detention (suspended)	8	0.44	8	0.50
Detention	51	2.78	42	2.62
Reduction in rank	5	0.27	8	0.50
Severe reprimand	6	0.33	5	0.31
Reprimand	61	3.32	52	3.24
Fine	1092	59.51	1011	63.07
Confinement to ship or barracks	431	23.49	341	21.27
Extra work and drill	126	6.87	90	5.61
Stoppage of leave	16	0.87	25	1.56
Caution	39	2.13	21	1.31
<b>Total</b>	<b>1835</b>	<b>100</b>	<b>1603</b>	<b>100</b>

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

## Reviews

	2011-2012		2012-2013	
	#	%	#	%
Review based on finding	7	22.58	10	31.25
Review based on sentence	15	48.39	16	50.00
Review based on finding & sentence	9	29.03	6	18.75
<b>Total</b>	<b>31</b>	<b>100</b>	<b>32</b>	<b>100</b>

Note: An officer or non-commissioned member may request a review authority to set aside the finding of guilty and/or to alter the sentence. A request for review can also be initiated by the CAF.

### Decisions of Review Authority

	2011-2012		2012-2013	
	#	%	#	%
Upholds decision	14	46.67	10	31.25
Quashes findings	6	20.00	8	25.00
Substitutes punishment	1	3.33	5	15.63
Mitigates/Commutes/Remits punishment	9	30.00	9	28.13
<b>Total</b>	<b>30<sup>1</sup></b>	<b>100</b>	<b>32</b>	<b>100</b>

<sup>1</sup> A decision has not been made in one file where a request for review was made - currently under review.

### Official Languages

	2011-2012	2012-2013
	#	#
Charge on Record of Disciplinary Proceedings not in language of trial	23	15
<b>Total</b>	<b>23</b>	<b>15</b>