



National
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ANNUAL REPORT 2014 - 2015

Director of
Defence Counsel Services





Défense nationale

National Defence

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20 August 2015

Major-General Cathcart, OMM, CD, Q.C.
Judge Avocate General
National Defence Headquarters
101 Colonel By Drive
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Major-General Cathcart,

Pursuant to article 101.11(4) of the *Queen's Regulations and Orders for the Canadian Forces*, I am pleased to present you with the 2014-2015 Annual Report of the Director of Defence Counsel Services. The report covers the period from 1 April 2014 through 31 March 2015.

Yours sincerely,

D.K. Fullerton
Colonel
Director of Defence Counsel Services

Annual Report of the Director of Defence Counsel Services 2014 - 2015

INTRODUCTION

1. This annual report covers the period from 1 April 2014 to 31 March 2015. It is prepared in accordance with article 101.11(4) of the *Queens' Regulations and Orders for the Canadian Forces (QR&O)* which sets out the legal services which are prescribed to be performed by the Director of Defence Counsel Services (DDCS) and requires the DDCS to report annually to the Judge Advocate General (JAG) on the provision of these legal services and the performance of other duties undertaken in the furtherance of the DDCS mandate. The Director during this period was Colonel D.K. Fullerton who, on 11 August 2014, completed his first term and was reappointed by the Minister for a further 4 years.

2. I have been very proud of the work of the officers posted to Defence Counsel Services over the past four and one-half years. They have been dedicated in their quest to represent and advance the interests of their assigned clients and have done so with considerable success. Moreover, in vigorously advancing the interests of their clients they have incidentally benefitted the larger military community by bringing clarity to certain outstanding legal issues. Some examples include:

A) *R. v. Leblanc* where the Court Martial Appeal Court (CMAC) ruled unconstitutional the statutory requirement that our judges be reappointed every five years, thus placing military judges on a more even footing with their civilian counterparts and clearing the way for legislative amendments which provided security of tenure to age 60.

B) *R. v. Cournoyea* where the CMAC, upholding the military judge at trial, made the first appellate level finding in Canada of not criminally responsible on the basis of PTSD, thus ensuring that our system of military justice takes cognizance of the realities of our military community.

C) *R. v. Wehmeier* where the CMAC reaffirmed that the trial by Canadian courts martial of civilians in Canada is restricted to those situations where it is "necessary" to do so or otherwise in the "best interests" of the civilian accused. The Minister's request for leave to appeal to the Supreme Court of Canada in search of a broader mandate over the trial of civilians by Courts Martial in Canada was denied.

D) Four cases (*Moriarity, Hannah, Larouche* and *Vezina*) in which the CMAC has addressed the relationship between the military and civilian courts, has more carefully focussed our military courts on the disciplinary needs of the Canadian Armed Forces and has restricted courts martial of military members for offences

occurring within the geographic confines of Canada to offences directly affecting military discipline, thus enhancing the primacy of our civilian courts. These decisions are presently before the Supreme Court of Canada and we await judgement as to whether our military courts can constitutionally adjudicate, under s. 130(1)(a) of the *National Defence Act (NDA)*, all federal offences, including *Criminal Code* offences occurring in Canada.

ROLE OF DDCS AND THE ORGANIZATION AND PERSONNEL OF DCS

Role of the DDCS

3. Under s. 249.17 of the *NDA* those persons, civilian or military, “liable to be charged, dealt with and tried under the Code of Service Discipline” have the “right to be represented in the circumstances and in the manner prescribed in regulations”. The Defence Counsel Services organization has as its responsibility the role of assisting these individuals to exercise these rights.

4. The DDCS is appointed by the Minister of National Defence under s. 249.18 of the *NDA*. He has a statutorily defined relationship with the Judge Advocate General (JAG) which is found at s. 249.2 of the *NDA* and which allows the JAG to “issue general instructions or guidelines in writing in respect of defence counsel services” and makes the DDCS responsible to make instructions issued pursuant to this section public. During this reporting period no such general instructions were issued.

5. Within this relationship of “general supervision” the DDCS exercises his duties and functions in a manner consistent with his responsibility to look to the individual interests of those who seek advice and representation from Defence Counsel Services.

6. The DDCS provides, supervises and directs the provision of the legal services set out in *QR&O* article 101.11. These services can be roughly divided into the areas of “legal advice” and “legal counsel” where legal advice is advice of a more summary nature, often delivered as a result of calls to the duty counsel line, and legal counsel involves a more sustained relationship with assigned counsel and representation before a judge or military judge.

7. Legal advice is provided where:

a) a person is the subject of an investigation under the Code of Service Discipline, a summary investigation or a board of inquiry, often at the time where they are being asked to make a statement or otherwise conscripted against themselves;

b) a person is arrested or detained, especially in that 72 hour window where the process of release by a custody review officer is being effected;

c) a person is considering whether he or she should be electing between a summary trial or a court martial; or

d) a person is seeking advice of a general nature as they approach and prepare for a hearing by summary trial or are considering a request for review of the finding or punishment.

8. Legal representation is provided where:

a) a custody review officer has declined to release an arrested individual such that they are to have a pre-trial custody hearing before a military judge;

b) there are reasonable grounds to believe that an accused person is unfit to stand trial;

c) an application to refer charges to a court martial has been made against an individual;

d) a person has appealed to the Court Martial Appeal Court or to the Supreme Court of Canada or has made an application for leave to appeal to the Supreme Court of Canada and the Appeal Committee, established under QR&O article 101.19, has approved representation at public expense; or

e) the Minister appeals the decision of a court martial or the Court Martial Appeal Court and the respondent wishes to be represented by a lawyer from Defence Counsel Services.

Organization and Personnel of DCS

9. Throughout this reporting period the Office of DCS has consisted of the Director, the Assistant Director, an appellate counsel at the rank of major, three regular force trial counsel working out of the Asticou Centre in Gatineau, Québec as well as four reserve force legal officers in practice at various locations in Canada. At the commencement of this reporting period we had 2 additional regular force trial counsel both of whom moved on with their careers and were not replaced during this period.

10. Administrative support is provided by two clerical personnel occupying positions classified at the level of CR3 and CR5, as well as a paralegal providing legal research services and administrative support for courts martial and appeals. Our CR5 position remains under review for higher classification consistent with other divisions of the Office of the JAG (OJAG).

TRAINING, SERVICES AND ACTIVITIES

Professional Development

11. The National Criminal Law Program remains the primary source of training in criminal law for counsel with DCS. In July 2014 the regular force lawyers attended this program which was held in Halifax, Nova Scotia. Additionally, counsel attended an annual one-day DCS in-house training program which dealt with a variety of issues relevant to Defence Counsel Services. Certain other courses sponsored by the Office of the JAG, Barreau du Québec, the Canadian Bar Association or the Criminal Lawyers Association were attended by individual counsel in order to meet their specific professional needs.

Duty Counsel Services

12. Bilingual service is available 24/7 to those dealt with under the Code of Service Discipline. DCS operates a duty counsel line for which the toll-free number is distributed throughout the CF and is available on the website or through the military police and others likely to be involved in investigations under the Code of Service Discipline.

13. During the reporting period, DCS counsel recorded 1468 calls on the duty counsel line. The calls ranged in duration but, on average, lasted for approximately 15 minutes.

Court Martial Services

14. When facing a court martial, an accused person has the right to be represented by DCS counsel at public expense, may retain legal counsel at his or her own expense, or may choose not to be represented.

15. Our records indicate that in sixty-six of the courts martial occurring during this reporting period the accused was represented through Defence Counsel Services. Pursuant to the authority granted under s. 249.21(2) of the *NDA*, the DDCS may hire civilian counsel at public expense in cases where, having received a request for representation by DCS counsel, no member of the DCS office can represent the particular individual. This is normally because of a conflict of interest, generally involving our representation of a co-accused, but could occur if no suitable DCS officer was available. During this reporting period seven civilian counsel were hired by DCS to represent an accused at their court martial. Our records indicate that a further four accused chose to either represent themselves or hire counsel at their own expense for their hearing.

Appellate Services

16. Twenty-three appeals were touched on at various points during this reporting period. Six of these appeals were filed by the Minister and seventeen were filed by the member. In one case the accused was represented by civilian counsel at public expense. In one case the

accused hired civilian counsel at his own expense. In twenty-one cases the members were represented by DCS legal officers.

17. In those cases in which an appeal or cross-appeal was entered by the Minister, the accused was automatically entitled to representation by DCS counsel. During this period, members submitted to the Appeal Committee, pursuant to QR&O 101.19, seventeen requests for appellate representation as public expense. Of these seventeen requests, sixteen were approved by the Appeal Committee and one was denied.

18. During this reporting year, five members of the CAF had their cases proceed to the Supreme Court of Canada. In four of these cases, the member's application for leave to appeal was granted and the cases were joined in a hearing that took place on 12 May 2015. The Court has reserved its decision on these matters and we expect that judgement to be determinative of a further nine outstanding appeals. In the remaining case, the Minister's application for leave to appeal was dismissed.

19. Some sense of the issues and tenor of the appeals during this period is given in the appendix below.

ADMINISTRATIVE ISSUES AND CONCERNS

20. It has been traditional in the annual report to discuss events or concerns that have arisen during the reporting period and have had an impact on the rights of our clients, the operation of this office, or which should otherwise be raised.

DCS Personnel and Administrative support

21. The administrative assistant (CR-5) position was, two reporting periods ago, submitted for re-evaluation and potential upgrading to an AS-1 position. This was done to better reflect the nature of the work performed and to ensure a level of parity between this position and positions doing similar work within other parts of the OJAG and the Canadian Forces. At the time of submission, it was indicated that this process could take up to two years for a determination. If successful this upgrade should support continuity of staffing within DCS and eliminate a traditional bar to retaining experienced staff.

DCS Reserve Counsel and Funding

22. We currently have reserve counsel in British Columbia, Québec, and Ontario. The DCS reserve bar is an important resource which has made, and continues to make, a significant contribution to the realization of our mandate. These officers were especially important during this reporting period when we unexpectedly lost two of our regular force trial counsel and our reservists were critical in filling the void. Nonetheless, this has had resourcing implications that extend into the current fiscal year as our reservists entered this period with significant caseloads that could foreseeably exceed their funding.

23. Throughout much of the past five years there has tended to be a resource imbalance between the military prosecution and military defence counsel organizations which has sometimes seen between five and eight regular force defence counsel working with up to sixteen regular force prosecutors. Neither reservists nor contracted counsel represent a cost effective way to fill this imbalance and a more careful alignment of resources between prosecution and defence may be necessary.

S.129 and Elections for Court Martial

24. I will raise several issues that have been raised with some regularity over the past four years, both inside our annual reports and elsewhere. The first involves QR&O 108.17(1)(a) which reads:

“(1) An accused person triable by summary trial in respect of a service offence has the right to be tried by court martial unless:

(a) the offence is contrary to one of the following provisions of the *National Defence Act*:

...

129 (Conduct to the Prejudice of Good Order and Discipline), but only where the offence relates to military training, maintenance of personal equipment, quarters or work space, or dress and deportment; and

...

25. The interpretation by commanding officers of the meaning of the term “offence relates to military training” found in this article is inconsistent and sometimes overly broad. This results in the inconsistent granting or refusal of the right to elect courts martial for members facing similar circumstances and charged under s. 129 of the *NDA*. Given the importance of the right to elect to the legal integrity of the summary trial process and given the fact that the election can be determinative of whether the individual will ultimately be found innocent or guilty of the offence, presiding officers would benefit from consistent guidance in this area.

Summary Trial of Persons with Mental Disorders

26. Further, subsections 163(1)(e) and 164(1)(e) of the *NDA* make it clear that commanding officers who have “reasonable grounds to believe” that an accused person is unfit to stand trial or was suffering from a mental disorder at the time of the commission of the alleged offence do not have jurisdiction to try that individual by summary trial and must send the charge to court martial for disposition.

27. Section 163(1)(e) of the *NDA* reads as follows:

“163. (1) A commanding officer may try an accused person by summary trial if all of the following conditions are satisfied: ...

(e) the commanding officer does not have reasonable grounds to believe that the accused person is unfit to stand trial or was suffering from a mental disorder at the time of the commission of the alleged offence.” (emphasis added)

28. This clear statutory provision places in the hands of our military judges the adjudication of offences involving those whom a commanding officer has reasonable grounds to believe are suffering from a recognized mental disorder. This is a pre-trial consideration which goes to jurisdiction. Yet, commanding officers often require their accused subordinates to

formally prove at a summary trial their mental disorder. Sometimes they are required to prove a mental disorder commensurate with the standard of being not criminally responsible or that he/she is unfit to stand trial.

29. In doing so, commanding officers are conflating the issues of jurisdiction to hear these cases with the ultimate issues of criminal responsibility and are removing from military judges cases that Parliament has specifically reserved to them. Moreover, they are forcing unrepresented accused to bare their mental health history publicly within their units, which appears to be both inconsistent with the law and often a significant stress on those suffering mental disorder within the CAF.

Requests for Representation by DCS

30. An issue that has crystallized as we have worked with the Rules of Court Committee and heard some of the other participants' concerns involves transmittal of requests for counsel. As we have seen, under section 249.17 of the *NDA* members of the CAF have a right to be represented in accordance with the regulations. QR&O 109.04(2) obliges an accused's commanding officer to inquire of the accused whether he/she desires to be represented by counsel from Defence Counsel Services and to inform Defence Counsel Services of those requesting services. These actions must take place at the time that charges are referred.

31. Nonetheless, our records reveal that transmittal of this information is often delayed. In 5% of our active cases for this period the information was conveyed the same day that the accused requested representation by DCS counsel. In 21% it was conveyed in the same week. However, in 65% of the cases it took between 1 and 3 months for this information to be conveyed to us and in 9% of the cases it took over 6 months to receive these requests for counsel. This delay is important because it can have an impact both on the rights of the accused and the speed of the cases moving through the system.

General Supervision or Command

32. Finally, the constitutional litigation this year has highlighted tensions which are inherent in a system where the Director Defence Counsel Services is commonly described as independent (in the sense that he is appointed by the Minister, for a fixed term, removable for cause and has a statutory mandate and responsibility to "provide, supervise and direct" prescribed legal services) but is, at the same time, described as being "under the command of" the JAG.

33. This tension is caused by professional, statutory and constitutional responsibilities which do not fit well within the concept of command. It is further caused by the two different characterizations of the JAG/DDCS relationship which are found at QR&O 4.081 and within the *NDA* itself. Within the QR&O the relationship is set out as one of command. Within the *NDA*, this relationship is set out as one of "general supervision" to be exercised within the statutory constraints of section 249.2. Adherence to the framework in the *NDA* enhances the transparency of the military justice system, ensures compliance with the *Charter* and our

professional norms. It further allows those subject to the Code of Service Discipline to be confident that the representation that they receive from our counsel is focussed on their interests and their legal needs.

CONCLUSION

34. This year has again been a challenging and interesting period for defence counsel within DCS. As we write this report we are awaiting the Supreme Court of Canada decision on issues that go to the purpose and scope of our military justice system. As in years past, our first priority has been to work with and on behalf of members of the Canadian Armed Forces who are charged with service offences. We have the privilege of assisting members as they go through what is often a difficult time in their careers and in their lives. Some go on to have full military careers and to be solid members of the military community. Others rejoin civilian life and, what we hope is, an opportunity to retake their place as productive members of Canadian civilian society.

A handwritten signature in blue ink, consisting of a stylized oval shape with a vertical line through it and a horizontal line extending to the right.

D.K. Fullerton
Colonel
Director Defence Counsel Services

20 August 2015

Appendix: Synopsis of Appeals

- **2Lt Moriarity** (CMAC 560) was found guilty of sexual interference, sexual assault and invitation to sexual touching contrary to s. 130(1)(a) of the *NDA*. The charges related to his interactions with cadets while a Cadet Instructor. He was sentenced to 12 months imprisonment, dismissal from Her Majesty's service and reduction in rank to 2 Lt. At trial and on appeal to the CMAC he argued the overbreadth of s. 130(1)(a) of the *NDA* in violation of ss. 7 and 11(f) of the *Charter*. The Military Judge rejected this argument on the basis that the military justice system was not restricted to matters pertaining directly to military discipline. The CMAC joined this case with that of Pte Hannah, dismissed the appeal but "read down" s. 130(1)(a) to matters that pertain directly to military discipline. An application for Leave to Appeal was granted by the Supreme Court of Canada (SCC) and the matter was set down for hearing to take place 12 May 2015.
- **Pte Hannah** (CMAC 563) was convicted under s. 130(1)(a) of the *NDA* for trafficking steroids. At trial, he argued the overbreadth of s. 130(1)(a) of the *NDA* in violation of ss. 7 and 11(f) of the *Charter*. The Military Judge rejected the arguments and found that the purpose of the military justice system was not restricted to matters pertaining directly to military discipline. The CMAC joined his case with that of 2Lt Moriarity, dismissed the appeal but "read down" s. 130(1)(a) to matters that pertain directly to military discipline. An Application for Leave to Appeal was granted by the Supreme Court of Canada in conjunction with that of 2Lt Moriarity and the matter was set down for hearing to take place 12 May 2015.
- **Pte Larouche** (CMAC 558) was found guilty of voyeurism and child pornography contrary to s. 130(1)(a) of the *NDA*. Both at trial and on appeal the member raised the unconstitutional overbreadth of section 130(1)(a) of the *NDA* and the unconstitutionality of the specific search of his home that had taken place in violation of section 8 of the *Charter*. The Military Judge sentenced him to 12 months imprisonment but, in making his rulings, did question whether the interests of justice and the public might have been better served by a trial before a civilian criminal court. On appeal to the CMAC the conviction was overturned and an acquittal entered on both charges on the basis of the unconstitutional search.
- **Lt Watts** (CMAC 559) was found guilty of one count of unlawfully causing bodily harm contrary to s. 130(1)(b) of the *NDA* as well as 2 counts of negligent performance of a military duty contrary to s. 124. He was sentenced to a reduction in rank from major to lieutenant and a severe reprimand. He appealed both conviction and sentence. His appeal was allowed and the Director of Military Prosecutions has decided that he will not be retried.

- **Pte Vezina** (CMAC 564) was tried on two counts of trafficking in cocaine contrary to s. 130(1)(a) of the *NDA*. Her defence of entrapment was rejected and she was found guilty and sentenced to six month imprisonment. On appeal, Pte Vezina argued both entrapment and the unconstitutionality of s. 130(1)(a) of the *NDA*. The CMAC dismissed the appeal. An Application for Leave to Appeal was granted by the Supreme Court on the constitutional question and the case was joined with the appeals of 2Lt Moriarity and Pte Hannah to be heard on 12 May 2015.
- **Sgt Arsenault** (CMAC 561) was convicted of fraud under s. 130(1)(a) of the *NDA* as well as willfully making a false declaration in a document required for official purposes contrary to s. 125. He was also charged in the alternate under section 117(f). He was sentenced to a reduction in rank from WO to Sgt and 30 days imprisonment. The member appealed his conviction both on the merits of the case and the unconstitutionality of ss. 130(1)(a) and 117(f) of the *NDA*. His appeal was dismissed by the CMAC and an Application for Leave to Appeal was granted by the Supreme Court of Canada. His case was joined with the appeals of Moriarity, Hannah, and Vezina to be heard on 12 May 2015.
- **Capt Wright** (CMAC 562) was tried on two counts of obstructing justice contrary to s. 130(1)(a) of the *NDA* and two counts alleging an act to the prejudice of good order and discipline contrary to s. 129. The Military Judge found that evidence had been obtained contrary to s. 8 of the *Charter* and it was excluded under s. 24. He was found not guilty of all charges. The CMAC dismissed the Minister's appeal.
- **MCpl Laflamme** (CMAC 565) was tried on two counts of obstructing a peace officer in the course of his duties contrary to s. 130(1)(a) of the *NDA*. He was found guilty on both charges and sentenced to a reprimand and a \$600 fine. MCpl Laflamme had his request to the Appeal Committee for publicly funded appellate counsel denied. He filed a notice of appeal and hired civilian counsel. The appeal was allowed, the guilty verdicts set aside and a new trial ordered on both charges.
- **Pte Dery** (CMAC 566) was tried on one count of sexual assault contrary to s. 130(1)(a) of the *NDA*. He was found guilty and sentenced to 30 days imprisonment. On appeal, Pte Dery raised the unconstitutionality of section 130(1)(a). The hearing of this appeal has been postponed by the CMAC pending the judgement of the Supreme Court on this issue.
- **MCpl Stillman** (CMAC 567) was convicted under section 130(1)(a) of the *NDA* of multiple weapons offences including: discharge of a weapon with intent to wound, discharge of a restricted weapon while reckless as to life and safety, aggravated assault, use of a firearm in the commission of an offence and possession of a loaded restricted firearm. He was sentenced to 6 years

imprisonment and dismissal. On appeal, MCpl Stillman raised the unconstitutionality of s. 130(1)(a) of the *NDA*. The hearing of this appeal has been postponed by the CMAC pending the decision of the Supreme Court on this same issue.

- **MCpl Royes** (CMAC 568) was convicted on one count of sexual assault contrary to s. 130(1)(a) of the *NDA*. He was sentenced to 36 months imprisonment. He raised the unconstitutionality of s. 130(1)(a) of the *NDA* and challenged the adequacy of the Military Judge's reasons. The hearing of this appeal has been postponed pending the decision of the Supreme Court on the constitutional issue.
- **MCpl Holloway** (CMAC 569) was tried on one count of possession of child pornography and one count of accessing child pornography contrary to s. 130(1)(b) of the *NDA*. He was found not guilty on both counts. The Minister filed and then abandoned his appeal.
- **Maj Wellwood** (CMAC 571) was found guilty of one count of obstructing a peace officer in the course of his duties contrary to s. 130(1)(a) of the *NDA* and one count of conduct to the prejudice of good order and discipline contrary to s. 129. She was sentenced to a reprimand. Maj Wellwood raised the unconstitutionality of s. 130(1)(a) and the adequacy of the Military Judge's instructions to the panel. The hearing of this appeal has been postponed pending the decision of the Supreme Court on the constitutional issue.
- **WO Brideau** (CMAC 572) was found not guilty of one count of conduct to the prejudice of good order and discipline contrary to s. 129 of the *NDA* and one count of negligent performance of a military duty contrary to s. 124. These charges were in relation to an accidental discharge of his weapon in Afghanistan. The Minister filed and then abandoned his appeal.
- **MCpl Laliberte** (CMAC 576) was found guilty of one count of interception of a private communication contrary to s. 130(1)(a) *NDA*, as well as two counts of behaving with contempt towards a superior officer under s. 85. He was fined one-thousand dollars. The member's civilian counsel did not raise the overbreadth of s. 130(1)(a) and the member filed an appeal with the CMAC alleging ineffective assistance of counsel and challenging both the finding and punishment. The member applied to the Appeal Committee requesting assistance at public expense and was granted such assistance solely in respect of the constitutionality of section 130(1)(a). The subsequent motion was denied by the CMAC on the grounds that the issue had not been raised at trial. MCpl Laliberté subsequently abandoned his remaining grounds of appeal.
- **Ex-PO2 Wilks** (CMAC 574) was found guilty of ten counts of sexual assault and fifteen counts of breach of trust contrary to s. 130(1)(a) of the *NDA*. He was

sentenced to 30 months imprisonment. The former member raised the unconstitutionality of s. 130(1)(a) and challenged the legality of the Military Judge's findings. The hearing of his appeal has been postponed by the CMAC pending the decision of the Supreme Court on the constitutional issue.

- **Capt Yurczyszyn** (CMAC 573) plead guilty to one count of drunkenness contrary to s. 97 of the *NDA* and was found guilty of one count of sexual assault contrary to s. 130(1)(a) of the *NDA*. He was sentenced to a reduction in rank from Major to Captain. He appealed the findings of the Court Martial and filed a motion requesting leave to appeal the unconstitutionality of s. 130(1)(a) of the *NDA*. He applied to the Appeal Committee for representation by DCS counsel at public expense which was granted solely on the issue of s. 130(1)(a). The CMAC denied the motion for leave to raise the constitutional issue as it had not been raised at trial and Capt Yurczyszyn subsequently abandoned his remaining grounds of appeal.
- **OS Cawthorne** (CMAC 575) was found guilty of one count of possession of child pornography and one count of accessing child pornography contrary to s. 130(1)(b) of the *NDA*. He was sentenced to 30 days imprisonment. He appealed the finding of guilt based on an impropriety that occurred before the panel. The majority of a three judge panel of the CMAC allowed the appeal and directed a new trial. The Minister has appealed this direction and the matter is presently pending before the Supreme Court of Canada.
- **WO Gagnon** (CMAC 577) was found by a General Court Martial to be not guilty of one charge of sexual assault contrary to s. 130(1)(a) of the *NDA*. The Minister appealed the acquittal and WO Gagnon filed a motion to quash the Minister's Notice of Appeal on the grounds that the legislative authority for such an appeal violated s. 7 and 11(d) of the *Charter*. The CMAC has heard the matter and reserved its decision.
- **Lt(N) Klein** (CMAC 578) was found guilty of one count of assault contrary to s. 130(1)(a) of the *NDA*. Lt(N) Klein raised the unconstitutionality of s. 130(1)(a). The hearing of this appeal has been postponed pending the decision of the Supreme Court on this issue.
- **Cpl Nadeau-Dion** (CMAC 579) was found guilty of one count of exporting a substance contained in schedule IV of the *Controlled Drugs and Substances Act* contrary to s. 130(1)(a) of the *NDA*. He raised the unconstitutionality of s. 130(1)(a) and challenged the legality of the Military Judge's findings. The hearing of this appeal has been postponed pending the decision of the Supreme Court on the constitutional issue.
- **Cpl Pfahl** (CMAC 580) was found guilty of one count of production of a substance contained in schedule IV of the *Controlled Drugs and Substances Act*

contrary to s. 130(1)(a) of the *NDA*. Cpl Pfahl raised the unconstitutionality of s. 130(1)(a). The hearing of this appeal has been postponed pending the decision of the Supreme Court on this issue.

- **Cpl Thibault** (CMAC 581) was charged with one count of sexual assault contrary to s. 130(1)(a) of the *NDA*. He brought a plea in bar in accordance with article 112.24 of the *Queens Regulations and Orders* pleading that the Court had no jurisdiction as the charge lacked nexus with his military service and thus did not disclose a service offence. The plea in bar was granted and the proceedings terminated. The Minister filed a Notice of Appeal in the CMAC and Cpl Thibault brought a motion to quash the appeal on the grounds that the legislative authority for such appeal violated s. 7 and 11(d) of the *Charter*. The CMAC has heard the matter and reserved its decision.