National Defence / Défense nationale

ANNUAL REPORT 2015 - 2016

Director
Defence
Counsel
Services

Défense nationale

Service d'avocats de la défense
Centre Asticou, Bloc 300
241 boulevard Cité des jeunes
GATINEAU (Québec) Canada J8Y 6L2
Tél : (819) 994-9151

QGDN Ottawa, On. K1A 0K2

National Defence

Defence Counsel Services
Asticou Centre, Block 300
241Cité des jeunes Blvd
GATINEAU (Québec) Canada J8Y 6L2
Fax : (819) 997-6322

NDHQ Ottawa ON, K1A 0K2

25 May 2016

Major-General Cathcart, OMM, CD, Q.C.
Judge Advocate General
National Defence Headquarters
101 Colonel By Drive
Ottawa, Ontario K1A 0K2

Major-General Cathcart,

Pursuant to article 101.11(4) of the Queen`s Regulations and Orders for the Canadian Forces, enclosed please find the annual report of the Director of Defence Counsel Services. The report covers the period from 1 April 2015 through 31 March 2016.

Yours sincerely,

D.K. Fullerton
Colonel
Director of Defence Counsel Services

Canada

OVERVIEW

1. This report covers the period from 1 April 2015 to 31 March 2016. It is prepared in accordance with article 101.11(4) of the Queen's Regulations and Orders (QR&O) for the Canadian Armed Forces (CAF), which sets out the legal services 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 legal services and the performance of other duties undertaken in furtherance of the DDCS mandate. The DDCS during this period was Colonel D.K. Fullerton.

ROLE OF THE DDCS

2. Under section 249.17 of the *National Defence Act* (*NDA*) individuals, 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." Defence Counsel Services (DCS) is responsible for assisting these individuals exercise their rights under this section.

3. The DDCS is appointed by the Minister of National Defence (Minister) under section 249.18 of the *NDA*. Section 249.2 of the *NDA* provides that the DDCS acts under the "general supervision of the Judge Advocate General" and makes provision for the JAG to exercise this role through "general instructions or guidelines in writing in respect of Defence Counsel Services." Subsection 249.2(3) of the *NDA* places on the DDCS the responsibility to ensure that these general instructions and guidelines are available to the public. During this reporting period no such general instructions were issued.

4. The DDCS "provides, and supervises and directs" the provision of the legal services set out in QR&O article 101.11. These services may be divided into the categories of "legal advice" where advice of a more summary nature is provided, often delivered as a result of calls to the duty counsel line, and "legal counsel" which typically involves a more sustained solicitor-client relationship with assigned counsel and representation of an accused before a judge or military judge.

5. Legal advice is provided in situations where:

a) Members are the subject of investigations under the Code of Service Discipline, summary investigations, or boards of inquiry, often at the time when they are being asked to make a statement or otherwise conscripted against themselves;

b) Members are arrested or detained, especially in the 48 hour period within which the custody review officer must make a decision as to the individual's release from custody;

c) Members are considering an election between a summary trial or a court martial;

d) Members are seeking advice of a general nature in preparation for a hearing by summary trial; and

e) Members are preparing a Request for Review of the finding and/or punishment(s) awarded to them at summary trial or are considering submitting such a request.

6. Legal representation is provided in situations where:

a) Custody review officers decline to release arrested individuals, such that a pre-trial custody hearing before a military judge is required;

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

c) Applications to refer charges to a court martial have been made against individuals;

d) Individuals are appealing to the Court Martial Appeal Court (CMAC) or to the Supreme Court of Canada (SCC) or have made an application for leave to appeal and the Appeal Committee, established under QR&O article 101.19, has approved representation at public expense; and

e) In appeals by the Minister of court martial rulings and CMAC rulings, in cases where members wish to be represented by DCS counsel.

7. The statutory duties and functions of the DDCS and defence counsel within DCS are exercised in a manner consistent with our constitutional and professional responsibilities to give precedence to the interests of clients. Where demands for legal services fall outside the DCS mandate the members are advised to seek civilian counsel at their own expense.

THE ORGANIZATION AND PERSONNEL OF DCS

8. Throughout the reporting period, the DCS organization has been situated in the Asticou Centre in Gatineau, Québec. The office has consisted of the Director, the Assistant Director, an appellate counsel at the rank of lieutenant-commander, and three regular force trial counsel at the rank of major/lieutenant-commander. In July 2015, two regular force legal officers were posted to DCS into positions which had been left vacant when counsel left DCS during the last reporting period. Throughout this period there were four reserve force legal officers in practice at various locations in Canada, who worked on DCS matters part-time. One regular force trial counsel was unavailable to DCS during a six month deployment, and was replaced by a DCS reserve force counsel on a class B contract.

9. Administrative support was 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. The CR5 position remains under review for higher classification in order to make it consistent with the equivalent positions in the Directorate of Military Prosecutions (DMP) and other divisions of the Office of the JAG (OJAG).

TRAINING, SERVICES, AND ACTIVITIES

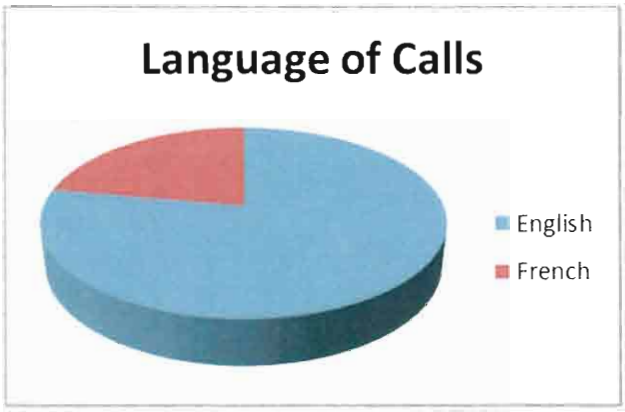
Professional Development

10. The Federation of Law Societies' National Criminal Law Program remains the primary source of training in criminal law for counsel with DCS. In July 2015, six regular force defence counsel and three reserve force counsel attended this program, which was held in Edmonton, Alberta. Additionally, in March 2016, most regular and reserve force counsel attended an annual one-day DCS in-house training program in Ottawa, Ontario, which dealt with a variety of issues relevant to the DCS mandate. Certain other courses sponsored by the OJAG, le Barreau du Québec, and the Criminal Lawyers' Association were attended by individual counsel in order to meet their specific professional needs.

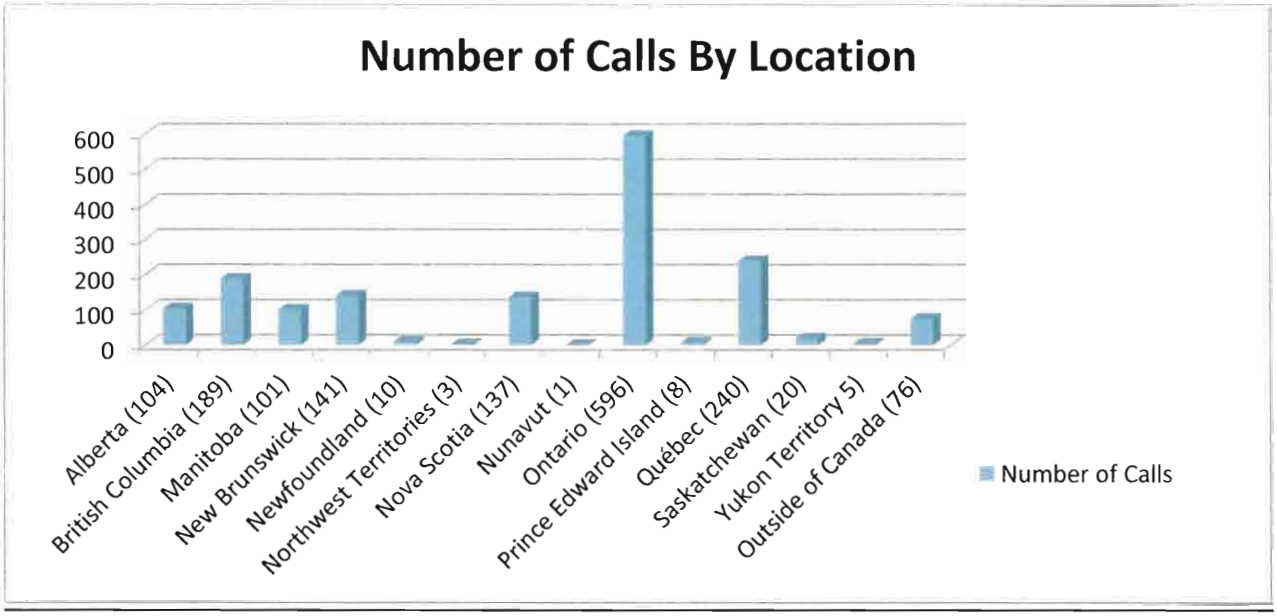
Duty Counsel Services

11. Legal advice is available twenty-four hours a day, seven days a week, to members who are dealing with situations described in paragraph 5, above. Legal advice is typically provided through the duty counsel line, a toll-free number which is distributed throughout the CAF and is available on the DCS website and through the military police and other officials likely to be involved in investigations and detentions under the Code of Service Discipline.

12. During the reporting period, DCS counsel received 1,656 calls on the duty counsel line. Services are provided in both official languages. DCS counsel provided service in English on 1,252 calls and in French on 357 calls as depicted in the chart below.



13. The calls ranged in duration but, on average, lasted for approximately 15 minutes. Calls originated from every Canadian province and territory, as well as various locations outside of Canada from members serving abroad. The majority of these calls originated from Ontario, as illustrated in the graph below.



Court Martial Services

14. When facing court martial, accused persons have the right to be represented by DCS counsel at public expense, they may retain legal counsel at their own expense, or they may choose not to be represented by counsel.

15. Defence counsel from DCS represented the accused persons in 79 cases which came to a conclusion during the reporting period. This number represents all cases in which charges were referred to DMP, the accused requested representation by DCS, and a DCS counsel was assigned. It includes cases in which the prosecution elected not to proceed with the charges as provided for in article 110.04(1)(c) of the QR&O. Of the 79 cases which came to a conclusion during the reporting period, a total of 44 proceeded to court martial for disposition with DCS counsel acting for the accused.

16. In accordance with section 249.21(2) of the *NDA*, the DDCS may hire civilian counsel to assist accused persons at public expense in cases where, having received a request for representation by DCS counsel, no DCS counsel are in a position to represent the particular individual. This occurs primarily as a result of a real or potential conflict of interest, often involving DCS representation of a co-accused. It may occur for other reasons as well. During this reporting period, civilian counsel were hired by the DDCS to represent accused persons in five cases. Four of these cases proceeded to court martial for disposition, while one was withdrawn by the prosecution prior to trial.

17. During the reporting period, DCS counsel represented the interests of their clients with a focus on the interests of the individual member represented. In the course of doing so, they incidentally benefitted the military justice system by clarifying some ongoing legal issues. Some examples are summarized below. With a view to respecting the privacy interests of clients, the names of accused persons have been omitted.

2016 CM 4002 – The accused, a junior sailor, was arrested pursuant to a warrant for arrest issued by his commanding officer after he did not return to duty following a period of leave. The accused challenged the constitutionality of subsection 157(1) of the *NDA*, which authorizes commanding officers and delegated officers to issue warrants for arrest. In his reasons, the military judge found section 157(1) to be of no force and effect pursuant to section 52(1) of the *Constitution Act*, 1982, as it violated section 8 of the *Charter* and was not justified under section 1. The SCC's decision in *Hunter v. Southam* imposed a number of requirements in the context of search and seizure, which were transposed to the context of arrest warrants in their later decision in *R. v. Feeney*. In *Feeney*, the SCC held that a judicially authorized arrest warrant is required in order to carry out an arrest in a dwelling house. To issue such a warrant, one is not required to possess the independence of a judge. However they must be capable of acting judicially in the sense of being "a truly neutral and detached arbiter in locating the constitutional balance between a justifiable expectation of privacy and the legitimate needs of the state." The military judge stated that a commanding officer, who is often either directly or indirectly supervising the investigators, and is the person ultimately responsible for discipline in the unit, is incapable of acting judicially when authorizing an arrest warrant under subsection 157(1). Although this finding rendered it unnecessary to address the accused's additional argument, that subsection 157(1) violated section 7 of the *Charter*, the military judge nonetheless provided some comments on this issue in obiter. He expressed that although the notion that arrest warrants can only be authorized by persons capable of acting judicially is not an established principle of fundamental justice, it meets the test for recognizing a new principle, set out by the SCC in *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)*. The fact that an arrest warrant can be issued by a person directly involved in the investigation of an offence and the fact that this warrant is made available to police officers across the country, is a violation of an accused's liberty interests guaranteed under section 7 of the *Charter*.

2015 CM 3009 – The offender had been found guilty of seven charges at trial relating to fraudulent claims that he had submitted for family care assistance benefits. At sentencing, the military judge stated that reduction in rank is a purely military sentence that reflects the loss of trust in the offender to act in a leadership position at his current rank. Noting that there was no evidence that the offender had used his rank, function, position, authority, knowledge, or skills related to his trade or experience in the commission of the offences, the military judge refused to impose the punishment of reduction in rank which had been independently suggested by each counsel as one of a group of potential punishments. The military judge explained that while honesty was an issue, it was not honesty in regard to the offender's rank and position, but simply as an employee toward his employer.

2015 CM 4009 – The offender pled guilty to one charge under section 129 of the *NDA* for having, under false pretences, obtained permission from his superior to be excused from duty for an afternoon. He had prior convictions, two which involved charges for unauthorized absences from duty. The offender had received minor punishments at summary trial for his previous convictions, as well as a fine in the amount of $200.00 in one instance. At sentencing, the prosecution proposed a sentence of fourteen days detention. The military judge declared that courts must take a step-based approach to the scale of punishments found at section 139 of the *NDA*, rather than jumping over steps in the scale to arrive at a specific punishment. In this respect, the judge found that it was not appropriate to ignore the punishments in-between minor punishments, at the lowest end of the scale, and custodial sentences like detention, at the higher end of the scale. The principle that the court should impose the least severe punishment that will maintain discipline was reiterated, as well as the prohibition against depriving an offender of liberty if less restrictive sanctions may be appropriate.

2015 CM 4013 – The offender pled guilty to three charges of having used insulting language toward a superior officer, contrary to section 85 of the *NDA*, and one charge of disobeying a lawful command, contrary to section 83 of the *NDA*. The prosecution argued that the fifteen month delay in having the matter brought to trial had a negative effect on the confidence members in the unit had in the disciplinary process and that this should be considered an aggravating factor. The military judge declared that an accused cannot suffer aggravating consequences from the fact that members of a unit may become dissatisfied with the time it takes for a case to be tried.

2016 CM 1001 – The offender pled guilty to one count of making a false entry in a document contrary to section 125(a) of the *NDA*, and one count of altering an official document under section 125(c) of the *NDA*. She had falsified documents to show that she had successfully completed her physical fitness test, when this was not the case. At sentencing, the prosecution argued that breach of trust, under section 718.2(a)(iii) of the *Criminal Code*, was an applicable aggravating factor. While the military judge recognized that the offender had abused the trust and confidence vested in her position, he found that section 718.2(a)(iii) of the *Criminal Code* applies only in relation to a "victim." The chain of command, and specific members of that chain of command, were not "victims" in the circumstances of the case. Unlike cases of fraud or theft from an employer, there was no evidence that any harm was done or loss was suffered by a specific person in this case.

2015 CM 3010 – The offender, the second in command of the unit canteen, pled guilty to two charges of stealing, contrary to section 114 of the *NDA*, for stealing money and merchandise from the canteen. The prosecution argued for a sentence of 90 days imprisonment. While the military judge recognized that Canadian criminal courts have categorized theft by persons in a position of trust in a special category for sentencing purposes and that a sentence of incarceration is usually required, he noted that a different approach has been adopted in the military justice system. The military judge reviewed relevant court martial decisions over the

past six years. He found that punishments vary from a purely military sentence, such as reduction in rank, sometimes combined with a severe reprimand or a fine, to incarceration, the sentence more typically handed down in civilian criminal courts. He stated that the closer the offence is linked to the military community, the more appropriate a purely military sentence becomes. Given the close link this offence had to the military community, along with a consideration of other factors and principles, the military judge found that the relevant objectives of sentencing would be better served by the imposition of reduction of rank and a severe reprimand in conjunction with a fine equivalent to the amount stolen.

2015 CM 4020 – The offender pled guilty to eight charges under the *NDA* and admitted the facts constituting the essential elements to four additional charges, which resulted in four more guilty findings. At sentencing, the prosecution argued that a term of imprisonment should be served at the Canadian Forces Service Prison and Detention Barracks, while defence counsel argued that it should be served in civilian prison. Although the ultimate decision on sentence rendered the argument moot, the military judge felt that it was necessary to provide clarity on this issue. He interpreted QR&O article 114.06 (reproducing subsection 220(3) of the *NDA*) as requiring him, as the "committal authority", to commit offenders sentenced to imprisonment for a period of less than two years, to civilian prisons "as soon as practicable." He articulated that the phrase "as soon as practicable" means upon signing a committal order on the bench. This is the general rule. The exception to this rule is that a service prisoner may be committed to a service prison or detention barracks in cases where the "exigencies of the service" make it desirable to do so. The military judge stated that, should a given offender request to be sent to a service prison to serve his or her punishment and the prosecution consents, he would accept that the criteria of the exigencies of the service are met. However, this will not be the case when the offender prefers serving the sentence in a civilian prison. In such cases, the burden will be on the prosecution to establish that the exigencies of the service test has been established on a balance of probabilities.

2016 CM 1002 - The accused was charged with neglect to the prejudice of good order and discipline, contrary to section 129 of the *NDA*, for failing to report a domestic event relevant to her Post Living Differential allowance, when she had a duty to report the event under article 26.02 of the QR&O. Subsection 129(2) creates a non-rebuttable presumption that any contravention of regulations and/or any written instruments expressly mentioned in that subsection is prejudicial to good order and discipline. Accordingly, it dispenses with the need for the prosecution to prove the essential element of prejudice to good order and discipline. The accused challenged the constitutionality of subsection 129(2). The military judge found subsection 129(2) to be void under section 52 of the *Constitution Act, 1982*, as it violated the presumption of innocence protected by section 11(d) of the *Charter*, and was not justified under section 1. The military judge declared that the non-rebuttable presumption in subsection 129(2) made accused persons liable to be convicted despite the existence of a reasonable doubt on one of the elements as it obliged the trier of fact to convict in spite of a reasonable doubt on the essential element of prejudice to good order and discipline.

Appellate Services

18. Twenty appeals were touched on at various points during this reporting period, including seven appeals to the SCC. Of the appeals to the SCC, three were filed by the Minister and four were on behalf of the accused. Of the appeals to the CMAC, one was filed by the Minister and twelve were filed on behalf of the accused.

19. During the reporting period, pursuant to QR&O article 101.19, members made sixteen requests for representation at public expense to the Appeal Committee. Of these sixteen requests for representation at public expense, fifteen were approved by the Appeal Committee, and one was denied. The one member who was denied representation at public expense nonetheless proceeded with his appeal. He hired civilian counsel at his own expense and was successful before the CMAC. Accordingly, DCS counsel represented accused persons in nineteen of the twenty appeals which were touched on at various points over the reporting period.

20. During this reporting period, four cases which were joined together and were heard at the SCC. The issue was the constitutionality of subsection 130(1)(a) of the *NDA*. On behalf of the appellants, DCS counsel argued that subsection 130(1)(a) was overbroad in that it permitted federal offences to be prosecuted within the military justice system in relation to everyone subject to the Code of Service Discipline, regardless of the circumstances in which they were committed.

21. In November 2015, the SCC released its decision in these cases, *2015 SCC 55*. In dismissing the appeal, the SCC declared that "the prosecution under military law of members of the military engaging in the full range of conduct covered by ss. 130(1)(a) and 117(f) is rationally connected to the maintenance of discipline, efficiency and morale regardless of the circumstances of the commission of the offence. The challenged provisions are therefore not overbroad." However, the SCC noted that "the scope of Parliament's authority to legislate in relation to "Militia, Military and Naval Service, and Defence under s. 91(7) of the *Constitution Act, 1867* and the scope of the exemption of military law from the right to a jury trial guaranteed by s. 11(f) of the *Charter* are not before the Court in these appeals." Therefore, the question which remained unanswered is whether subsection 130(1)(a) violates the right to a jury trial, guaranteed under section 11(f) of the *Charter*.

22. During this reporting period, twelve cases (CMAC file numbers: CMAC-566, CMAC 567, CMAC-568, CMAC-571, CMAC-574, CMAC-577, CMAC-578, CMAC-579, CMAC-580, CMAC-581, CMAC-583, CMAC-584), were joined together to consider this outstanding issue – whether subsection 130(1)(a) violates the right to a jury trial, guaranteed under section 11(f) of the *Charter*. The matter was heard at the CMAC on 26 April 2016, and a decision is pending.

23. In June 2015, DMP filed a Notice of Appeal at the SCC in the decision of *2015 CMAC 1*. On behalf of the Respondent member, DCS filed a motion to state a constitutional question and

a motion to quash the Notice of Appeal on the basis that subsection 245(2) of the *NDA*, which provides that the Minister may appeal decisions to the SCC, violates the right to an independent prosecutor, a principle of fundamental justice guaranteed under section 7 of the *Charter*. The argument being that the right to an independent prosecutor requires that the prosecutor be independent from improper political interference from the perspective of a reasonable person and that subsection 245(2) of the *NDA* is unconstitutional because it confers the right of appeal in criminal matters on the Minister of National Defence who, unlike the Attorney General, does not have a constitutionally recognized independence and is bound by the principle of cabinet solidarity such that he cannot reasonably be perceived as independent from political interference. In addition, the Respondent argued that subsection 245(2) of the *NDA* violates section 11(d) of the *Charter* given that the Minister's lack of prosecutorial independence attracts the supervisory jurisdiction of the tribunal even in the absence of abuse of process, thus eroding the independence of the Court.

24. In late 2014 and early 2015, DMP filed Notices of Appeal at the CMAC in two decisions. DCS counsel, on behalf of the Respondents, filed motions to quash the Notices of Appeal in these cases on the basis that section 230.1 of the *NDA*, which sets out the circumstances under which the Minister may appeal to the CMAC, violates section 7 of the *Charter* for the same reasons applicable to subsection 245(2) above. On 21 December 2015, the CMAC rendered its decision, finding that section 230.1 of the *NDA* was invalid. It suspended the declaration of invalidity for a period of six months in order to allow changes to be made to the offending provision. The Minister appealed this decision to the SCC. These two decisions, along with the decision described in the paragraph above, were heard at the SCC on 25 April 2016. A decision is pending.

ADMINISTRATION OF DCS

DCS Personnel and Administrative Support

25. Three reporting periods ago, a submission was made to re-evaluate and upgrade the DCS administrative assistant position from CR-5 to AS-1. This was done in order to better reflect the nature of the work performed and to ensure a level of parity between this position and positions doing similar work at DMP and within other sections of the OJAG and the CAF. At the time of submission, it was indicated that the process could take up to two years. Although this time period has expired the matter is progressing. An upgrade to the classification of this position is critical to eliminating what has served as a bar to retaining support staff in this position, and to enable continuity of staffing at DCS.

DCS Reserve Counsel

26. There are currently a total of four reserve DCS counsel, one in British Columbia, one in Québec and two in Ontario. One reserve counsel will reach mandatory retirement age in the

next reporting period. Around the same time, one reserve counsel will be transferring to the regular force and out of DCS.

27. The DCS reserve bar is an important resource which has made, and continues to make, a significant contribution to the realization of the DCS mandate. Recruitment of replacement reserve defence counsel is underway.

DCS Regular Force Resources

28. Throughout much of the past six years, there has been a resource imbalance between the DMP and DCS 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 civilian counsel represent a cost-effective way to address this imbalance and a more careful alignment of resources between prosecution and defence is necessary.

Funding

29. This year the following funds were expended:

FUND		EXPENDITURE
C125	Contracting (Counsel, Experts, and Services)	$107,867.11
L101	Operating Expenditures	$61,105.55
L111	Civilian Pay and Allowances	$179,133.49
L112	Primary Reserve Pay and Allowances	$308,173.53
L115	Primary Reserve Operations and Maintenance	$50,819.01
TOTAL		**$707,098.69**

General Supervision or Command

30. The constitutional litigation this year has again highlighted tensions which are inherent in a system where the DDCS is commonly described as independent (in the sense that the Director 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, "under the command of" the JAG.

31. This tension is caused by defence counsel's constitutional duty of commitment to the client's cause, which does 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 article 4.081 and within the *NDA* itself. Within QR&O 4.081, the relationship is set out as one of command. However in the *NDA* itself, the relationship is set out as one of "general supervision" to be exercised within the statutory constraints of section 249.2(2).

32. Adherence to the framework in the *NDA* enhances the transparency of the military justice system. It ensures compliance with the *Charter* and professional norms in the carrying out of our statutory responsibilities. It allows those subject to the Code of Service Discipline to be confident that the representation they receive from DCS counsel is focussed on their legal needs and interests and free of other obligations which might interfere with defence counsel's constitutional duty of commitment to the client's cause.

LEGAL ISSUES

33. In previous annual reports we have discussed events and trends that are reflected during the reporting period and of which should be brought to your attention in your capacity of superintendent of the military justice system. It is my intention this year to highlight a single issue which has been previously raised, but which is nonetheless of importance to the fair treatment of our members.

Summary Trial of Persons with Mental Disorders

34. Subsections 163(1)(e) and 164(1)(e) of the *NDA* provide that Presiding 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 refer the charge for disposition by court martial. This is a pre-trial condition or prerequisite to summary trial jurisdiction. It places the adjudication of offences involving accused persons who, on reasonable grounds, are believed to have been suffering from a mental disorder at the time of the alleged offence, in the exclusive jurisdiction of a court martial.

35. This issue has been discussed in previous annual reports. It continues to be a common concern surrounding summary trials. Presiding Officers often impose a burden on accused persons to formally prove a mental disorder, sometimes to the standard of being not criminally responsible or unfit to stand trial. In doing so, Presiding Officers are conflating the issues of jurisdiction to hear these cases with the ultimate issue of criminal responsibility and are removing from courts martial cases that Parliament has specifically reserved to them. Moreover, this manner of proceeding forces unrepresented accused persons to raise their mental health history publicly within their units, which appears to be both inconsistent with the law and the well-being of our members suffering mental disorder within the CAF.

36. Where there exist reasonable grounds to believe that the accused person is unfit to stand trial and this is the issue being litigated, the accused has the right to be represented by DCS counsel and, pursuant to section 198.1 of the *NDA*, a court martial is the forum.

37. During this reporting period, this issue was the subject of an Application for Judicial Review. The accused, holding the rank of private, was charged with conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA*, for having his quarters in a state

which did not meet the prescribed standard during an inspection. At the time of the alleged offence, the accused was undergoing treatment for a mental health condition, and was under permanent medical employment limitations as a result of his mental health condition. The accused raised the issue of jurisdiction and provided evidence of his mental disorder. The Presiding Officer found him fit to stand trial and ultimately found him guilty, sentencing him to a fine and confinement to barracks. The accused submitted a Request for Review asking that the finding be quashed on the basis of a lack of jurisdiction. The review authority did not reverse the finding, noting that the trial was properly proceeded with given that the accused was found fit to stand trial. The accused filed an Application for Judicial Review at the Federal Court. Several weeks after his Application was filed, the accused's formation commander reviewed the finding of the summary trial on his own initiative. He decided to quash the finding without directly addressing this issue. Given this decision, the Federal Court declined to hear this matter and it remains to be litigated within this forum.

CONCLUSION

38. It has been another busy and challenging year for legal officers within Defence Counsel Services. As in past years, the priority has remained the provision of legal advice and legal counsel to qualifying members of the military community desiring DCS assistance. It is a privilege to assist these members as they go through what is often a difficult period of their military careers. Many continue with their careers and their contribution as dedicated and reliable members of the military community. For others, their charges are part of their transition from service to civilian life.

D.K. Fullerton
Colonel
Director of Defence Counsel Services

25 May 2016