



National
Defence

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2017 - 2018 DIRECTOR OF MILITARY PROSECUTIONS ANNUAL REPORT



National Defence

Défense nationale

Director of Military Prosecutions

Directeur des poursuites militaires

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15 June 2018

Commodore Geneviève Bernatchez, CD
Judge Advocate General
National Defence Headquarters
101 Colonel By Drive
Ottawa, Ontario K1A 0K2

Commodore Bernatchez,

Pursuant to article 110.11 of the *Queen's Regulations and Orders for the Canadian Forces*, I am pleased to present you with the 2017-2018 Annual Report of the Director of Military Prosecutions. The report covers the period from 1 April 2017 through 31 March 2018.

Yours sincerely,

Colonel Bruce MacGregor, CD
Director of Military Prosecutions

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MESSAGE FROM THE DIRECTOR OF MILITARY PROSECUTIONS

I am pleased to present the Director of Military Prosecutions (DMP) Annual Report for the 2017-2018 reporting period, my fourth since being appointed as DMP on 20 October 2014.

As provided for in the *National Defence Act* (NDA), the DMP is responsible for the preferral of charges and prosecution of cases at courts martial under the *Code of Service Discipline* (CSD); he acts as counsel for the Minister of National Defence in respect of appeals to the Court Martial Appeal Court (CMAC) and Supreme Court of Canada (SCC); and he provides legal advice to the Canadian Forces National Investigation Service (CFNIS). Bolstered by his security of tenure as set out in legislation, the DMP fulfils his legal mandate in a fair, impartial and independent manner.

Canadians expect disciplined military forces that comply with Canadian and international law. The maintenance of discipline in the Canadian Armed Forces (CAF) is the responsibility of the chain of command and is crucial for operational effectiveness and mission success. A disciplined military promotes a respectful work environment, supportive of diversity, in which members feel valued and are motivated to contribute to mission success and to reach their full potential. The military justice system is designed to support the maintenance of discipline, efficiency and morale of CAF members as well as heightening respect for the rule of law.

During the fiscal year 2017-2018, the Canadian Military Prosecution Service (CMPS) remained committed to conducting prosecutions in a manner that is fair, transparent and responsive. To this end, CMPS continued to further push ahead initiatives that were launched during the previous reporting period, notably regarding the improvement of data collection and reporting tools to enhance decision-making and resource allocation, the updating of its policies which included the creation of the Deputy Director of Military Prosecutions (DDMP) Sexual Misconduct Action Response Team (SMART) position and

through the provision of specialized training to prosecutors pertaining to sexual misconduct offences and mental readiness.

CMPS has been actively involved in support of the efforts of the Office of the Auditor General (OAG) of Canada in conducting a review of the administration of military justice in the CAF and also the Court Martial Comprehensive Review (CMCR) mandated by the Judge Advocate General (JAG) by providing comments and data that illustrate the work being done by our military prosecutors and support staff on a daily basis.

Respecting appeals, in *R v Private Déry et al.*, 2017 CMAC 2, a second panel of the CMAC unanimously found that it was bound by its previous decision in *R v Master Corporal Royes* respecting the constitutionality of paragraph 130(1)(a) of the NDA vis-à-vis section 11(f) of the *Charter*. A third panel heard arguments on this issue on 30 January 2018 in the case of Corporal Beaudry and the CMAC has reserved its decision.

There were also several decisions rendered by the CMAC on other questions of law in the cases of *R v Major Wellwood*, 2017 CMAC 4; *R v Warrant Officer Gagnon*, 2018 CMAC 1; *R v Corporal Golzari*, 2017 CMAC 3; *R v Corporal Hoekstra*, 2017 CMAC 5; and *R v Master Corporal Edmunds*. Details about these cases can be found in the appeals section of chapter 3 of this report.

In closing, I wish to thank once more the CMPS team for their efforts and hard work. While this past year has been rife with challenges, I am confident that we were successful in meeting them and thus, in the process, remained resolutely committed to improving the quality and efficiency of military prosecutions.

ORDO PER JUSTITIA

Colonel Bruce MacGregor, CD
Director of Military Prosecutions

chapter THE CANADIAN MILITARY PROSECUTION SERVICE: ORDO PER JUSTITIA 1

Introduction

The nature of the operational missions entrusted to the Canadian Armed Forces (CAF) requires the maintenance of a high degree of discipline among CAF members. Parliament and the Supreme Court of Canada (SCC) have long recognized the importance of a Code of Service Discipline (CSD) supported by a separate military justice system to govern the conduct of individual soldiers, sailors and air force personnel, and to prescribe punishment for disciplinary breaches. In 1980 and 1992 the SCC in *MacKay v the Queen*¹ and *R v Généreux*,² unequivocally upheld the need for military tribunals to exercise their jurisdiction in order to contribute to the maintenance of discipline, efficiency and morale in the CAF.

These principles were unanimously reaffirmed by the SCC in 2015 in *Second Lieutenant Moriarity et al v R*: “I conclude that Parliament’s objective in creating the military justice system was to provide processes that would assure the maintenance of discipline, efficiency and morale of the military.”³ In *Moriarity* the SCC also reinforced that “... the behavior of members of the military relates to discipline, efficiency and morale even when they are not on duty, in uniform, or on a military base.”⁴

These views were directly in line with earlier comments by Chief Justice Lamer in *Généreux* that the CSD “does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare” and “recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. In other words, criminal

or fraudulent conduct, even when committed in circumstances that are not directly related to military duties, may have an impact on the standard of discipline, efficiency and morale in the CAF. There is thus a need for separate tribunals to enforce special disciplinary standards in the military.”⁵

Following *Moriarity*, the SCC delivered another unanimous decision related to the military justice system. In 2016, the SCC confirmed in the case of *R v Cawthorne*⁶ that the authority conferred to the Minister of National Defence over appeals was in compliance with the *Canadian Charter of Rights and Freedoms (Charter)*. This decision not only confirmed the organizational structure of the military prosecution service but also was important for all prosecution services across Canada as the court touched upon the concept of prosecutorial independence and abuse of process.⁷ This clearly shows that the military justice system is a respected parallel justice system within the broader Canadian legal mosaic.

1 [1980] 2 SCR 370 at paras 48 and 49.

2 [1992] 1 SCR 259 at para 50.

3 2015 SCC 55, [2015] 3 SCR 485 at para 46.

4 *Ibid* at para 54.

5 *Généreux*, at 281 and 293.

6 2016 SCC 32.

7 The Attorney General of Canada, the Attorney General of Ontario, the Attorney General of Quebec, the Attorney General of British Columbia and the Director of Criminal and Penal Prosecutions of Quebec all intervened in this appeal to the SCC.

1.1 The Military Justice System

Canadian military doctrine identifies discipline as one of the essential components of the Canadian military ethos. Discipline is described as a key contributor to the instilling of shared values, the ability to cope with the demands of combat operations, self-assurance and resiliency in the face of adversity, and trust in leaders. It enables military individuals and units to succeed in missions where military skill alone could not.⁸ Some cases may seem minor until they are seen in their military context as violations of the four core Canadian military values which are: duty, loyalty, integrity, and courage. The value of integrity obliges CAF members to maintain the highest possible levels for honesty, uprightness of character, honour, and the adherence to ethical standards.⁹ The military justice system exists in part to address instances where it is alleged that CAF members did not discharge their obligations to the required level.

To these ends, the *National Defence Act* (NDA) creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are courts martial. Significantly, court martial decisions may be appealed to the Court Martial Appeal Court (CMAC), which is made up of civilian justices of provincial superior courts, the Federal Court and the Federal Court of Appeal. CMAC decisions can be appealed further to the SCC, providing the court martial system with final civilian review similar to that of the criminal justice system.

In determining whether to prefer a matter for trial by court martial, military prosecutors conduct a two-stage analysis: they must consider whether there is a reasonable prospect of conviction should the matter proceed to trial and whether the public interest requires that a prosecution be

pursued.¹⁰ This policy is consistent with policies applied by attorneys general throughout Canada and by prosecution agencies elsewhere in the Commonwealth. What sets the military justice system apart are some of the public interest factors that must be taken into account by the military prosecutor as the maintenance of the discipline, efficiency, and morale of the CAF needs to be considered. These include:

- the likely effect on public confidence in military discipline or the administration of military justice;
- the prevalence of the alleged offence in the unit or military community at large and the need for general and specific deterrence; and
- the effect on the maintenance of good order and discipline in the CAF, including the likely impact, if any, on military operations.

Information relating to these and other public interest factors comes from the accused's commanding officer (CO) when the CO sends the charges to his or her next superior officer in matters of discipline. That superior officer is expected to also comment on public interest factors when referring the matter to the DMP.¹¹ Military prosecutors are to maintain effective communication with service authorities as it is necessary for the prosecutor to understand the needs and requirements of the chain of command after a charge is referred to the DMP and during the court martial process.¹²

Additionally, the consideration of uniquely military public interest factors as part of the second stage of the analysis further allows the DMP to support the CAF in "providing a workplace free from harassment and discrimination."¹³

8 Canada, Department of National Defence, "Canadian Military Doctrine," by the Chief of the Defence Staff, Ottawa: 2011-09 [Canadian Military Doctrine]. See, in particular, Ch. 2 "Generation and Application of Military Power" and Ch. 4 "The Canadian Forces" at 4-5.

9 Canadian Military Doctrine. See, in particular, Ch 2 "Generation and Application of Military Power" and Ch 4 "The Canadian Forces".

10 For further information, please refer to DMP Policy Directive 003/00 Post-Charge Review available on the DMP website: <http://www.forces.gc.ca/en/about-policies-standards-legal/post-charge-review.page>.

11 *Supra* note 7, at paragraph 28-29.

12 DMP Policy Directive 005/99 Communications with Service Authorities

13 Canada's Defence Policy, *Strong Secure Engaged*, p.27.

1.1.1 Unique features of the Court Martial System

The court martial system has many features in common with the civilian criminal justice system. For example, the *Charter* applies to both civilian criminal courts and to courts martial. As such, in both a civilian criminal trial and a trial by court martial, an accused person is presumed innocent until the prosecution proves his or her guilt beyond a reasonable doubt. Additionally, courts martial are independent and impartial tribunals and hearings are open to the public, just as they are before a civilian criminal court. They are announced in advance in the Routine Orders of the Base where the court martial is to occur. The media is also proactively invited to attend courts martial, and courts martial results and appeals are also communicated publically through a variety of means including the web and social media.

There are a number of features that are unique to the court martial system. For example, courts martial, in contrast to civilian justice processes, are mobile and may be held anywhere in or outside Canada. Normally, they are held at the unit of the accused person. This allows courts martial to take place in or close to the military community that was most affected by the alleged offences, whether it be an individual victim or a military unit. Those most affected by an alleged offence can see for themselves that justice is being done. This also means that all military judges, military defence counsel, and military prosecutors, are away from home on a regular basis. For this reporting year,

military prosecutors spent a total of 750 days on temporary duty (TD) outside of their assigned geographical locations for courts martial (including trial preparation), training (both prosecution and general service related) or other reasons pertaining to military service.

Table 1

REGION	COURT MARTIAL RELATED TD	APPEALS RELATED TD	TRAINING RELATED TD	OTHER TD	TOTALS
CMPS HQ	45	6	109	52	212
Atlantic	85	3	19	0	107
Eastern	28	0	82	1	111
Central	64	0	101	0	165
Western	73	0	29	0	102
Pacific	40	0	6	7	53
Totals	335	9	346	60	750

Here are other unique features worth mentioning outlined in the table, below.

FACTS	REMARKS
<ul style="list-style-type: none"> The purpose of the military justice system is to maintain the discipline, efficiency, and morale of the CAF 	<ul style="list-style-type: none"> Like their civilian colleagues, every military judge, military defence counsel, and military prosecutor is a graduate of a civilian law school. Each defence counsel and prosecutor is a member of at least one provincial law society Additionally, military judges, defence counsel, and prosecutors have the CAF training and experience to understand the unique aspects of the military justice system and the intricacies of military discipline
<ul style="list-style-type: none"> With few exceptions, civilian criminal courts cannot deal with offences committed outside Canada With few exceptions, courts martial can deal with offences committed anywhere in or outside Canada 	<ul style="list-style-type: none"> The CAF has the ability to maintain discipline, efficiency, and morale both in Canada and overseas
<ul style="list-style-type: none"> Civilian criminal courts have jurisdiction over everyone in Canada Courts martial have jurisdiction only over persons subject to the CSD 	<ul style="list-style-type: none"> When a person joins the CAF, they remain subject to all Canadian laws <u>and</u> they become subject to the CSD Thus, members of the CAF are subject to the concurrent jurisdiction of the civilian criminal justice system and the military justice system
<ul style="list-style-type: none"> There are two types of courts martial A General Court Martial (GCM) is composed of a military judge and a panel of five members A Standing Court Martial (SCM) is composed of a military judge sitting alone 	<ul style="list-style-type: none"> In the military justice system, a panel serves a similar function to that of a jury in the civilian criminal justice system A panel reaches a verdict by unanimous vote Panel members are randomly selected from members of the regular force Members of the regular force do <u>not</u> serve on civilian juries
<ul style="list-style-type: none"> With few exceptions, a person having authority to lay charges in the military justice system cannot do so without first obtaining legal advice concerning the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge. A similar requirement exists in some civilian jurisdictions but not all 	<ul style="list-style-type: none"> Military prosecutors provide pre-charge legal advice in all cases investigated by the Canadian Forces National Investigation Service (CFNIS) In certain circumstances, military prosecutors will also assist other legal officers in providing pre-charge legal advice in cases not investigated by the CFNIS
<ul style="list-style-type: none"> Most persons charged with a service offence are <u>not</u> placed under arrest If a person is arrested under the NDA, the person under arrest may be released by the person making the arrest, by certain specially designated “custody review officers”, or by a military judge 	<ul style="list-style-type: none"> Military prosecutors represent the CAF at custody review hearings, which are held before a military judge Military defence counsel provide legal advice to all persons arrested or detained in respect of a service offence, and to all persons taken before a military judge for a custody review hearing, at <u>no cost</u> to the person in custody

FACTS	REMARKS
<ul style="list-style-type: none"> As in the civilian criminal justice system, accused persons being tried by court martial have the constitutional right to make full answer and defence 	<ul style="list-style-type: none"> Like civilian crown attorneys, military prosecutors must disclose to the accused person all relevant information whether or not the prosecution intends to introduce it into evidence and whether it is inculpatory or exculpatory
<ul style="list-style-type: none"> Military defence counsel are provided at <u>no cost</u> to the accused person 	<ul style="list-style-type: none"> The ability to mount a defence is <u>not</u> limited by financial considerations Military defence counsel are able to zealously represent their clients and “raise fearlessly every issue, advance every argument, and ask every question” without regard to the client’s financial resources Applications under the <i>Canadian Charter</i>, which are very time-consuming and therefore costly, are quite common in the court martial system
<ul style="list-style-type: none"> In the court martial system, the CAF pays for the travel, meals, and accommodations of the accused person’s witnesses during the trial If the accused person is represented by military defence counsel, costs associated with hiring expert witnesses for the accused person are also borne by the CAF 	<ul style="list-style-type: none"> Again, an accused person’s ability to mount a defence is <u>not</u> limited by his or her financial resources
<ul style="list-style-type: none"> In the civilian criminal justice system, the prosecutor addresses the trier of fact last, except if the accused person chooses to call no evidence 	<ul style="list-style-type: none"> In the military justice system, counsel for the accused person always addresses the trier of fact last
<ul style="list-style-type: none"> Upon conviction, offenders may be sentenced to a number of punishments including minor punishments (e.g., extra work and drill, stoppage of leave), a fine, a reprimand, reduction in rank, detention, dismissal from the CAF, imprisonment, etc. 	<ul style="list-style-type: none"> Military judges have a wide variety of sentencing options at their disposal in order to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale
<ul style="list-style-type: none"> In cases where an offender is sentenced to a custodial sentence, he or she may serve that sentence at the Canadian Forces Service Prison and Detention Barracks 	<ul style="list-style-type: none"> The offender will serve his or her sentence of detention or imprisonment in a very safe and highly structured environment where the emphasis is on rehabilitation and discipline
<ul style="list-style-type: none"> Appeals from courts martial are heard by the CMAC Decisions of the CMAC may be further appealed to the SCC 	<ul style="list-style-type: none"> Military prosecutors represent the Minister of National Defence on appeals to the CMAC and the SCC For appeals launched by the accused, the Director of Defence Counsel Services (DDCS) provides legal representation, at no cost to CAF members, when authorized to do so by the Appeal Committee. Authorization is not required when the accused is the respondent

As illustrated above, the court martial system has its own particularities but these are not the hallmark of a second class substandard system. They are only differences designed to maintain or reinforce discipline. Even though there is some overlapping, the military justice system has different objectives than the civilian criminal justice system. This was well explained by Colonel (Retired) Michael Gibson, now a serving Ontario Superior Court Justice:

This synthesis illustrates that military law has a more positive purpose than the general criminal law in seeking to mould and modify behaviour to the specific requirements of military service. Simply put, an effective military justice system, guided by the correct principles, is a prerequisite for the effective functioning of the armed forces of a modern democratic state governed by the rule of law. It is also key to ensuring compliance of states and their armed forces with the normative requirements of international human rights and international humanitarian law.¹⁴

1.2 Duties and Functions of the DMP

The DMP is appointed by the Minister of National Defence.¹⁵ Section 165.11 of the NDA provides that the DMP is responsible for the preferring of all charges to be tried by court martial and for the conduct of all prosecutions at courts martial in Canada and abroad. The DMP also acts as counsel for the Minister of National Defence in respect of appeals before the CMAC and the SCC. DMP is also responsible for representing the CAF at custody review hearings and providing legal advice and training to the CFNIS.

In accordance with section 165.15 of the NDA, the DMP is assisted by officers from the Regular Force and the Reserve Force who are barristers or advocates. DMP can also count on a small but highly effective group of civilian support staff. Appointed for a four-year term, the DMP fulfils his mandate in a manner that is fair and impartial. Although the DMP acts under the general supervision of the Judge Advocate General (JAG), he exercises his prosecutorial mandate in an independent manner from the chain of command. DMP has a constitutional obligation, like any other public official exercising a prosecutorial function, to act independently of partisan concerns and other improper motives.

In accordance with sections 165.12 and 165.13 of the NDA, when a charge is referred to him, DMP determines whether:

- To prefer or not the charge(s);
- Prefer any other charge that is founded on fact disclosed by evidence in addition to or in substitution for the charge(s); or
- Refer it for disposal by an officer who has jurisdiction to try the accused by summary trial.

The DMP may also withdraw a charge that has been preferred.

¹⁴ Michael Gibson, "International Human Rights Law and the Administration of Justice through Military Tribunals: Preserving Utility while Precluding Impunity" (2008) 4: 1 Intl L and Relations 1, at 12.

¹⁵ Colonel Bruce MacGregor was appointed by the Minister of National Defence on 20 October 2014 to be the DMP for a four-year term.

1.3 Mission and Vision

Our Mission

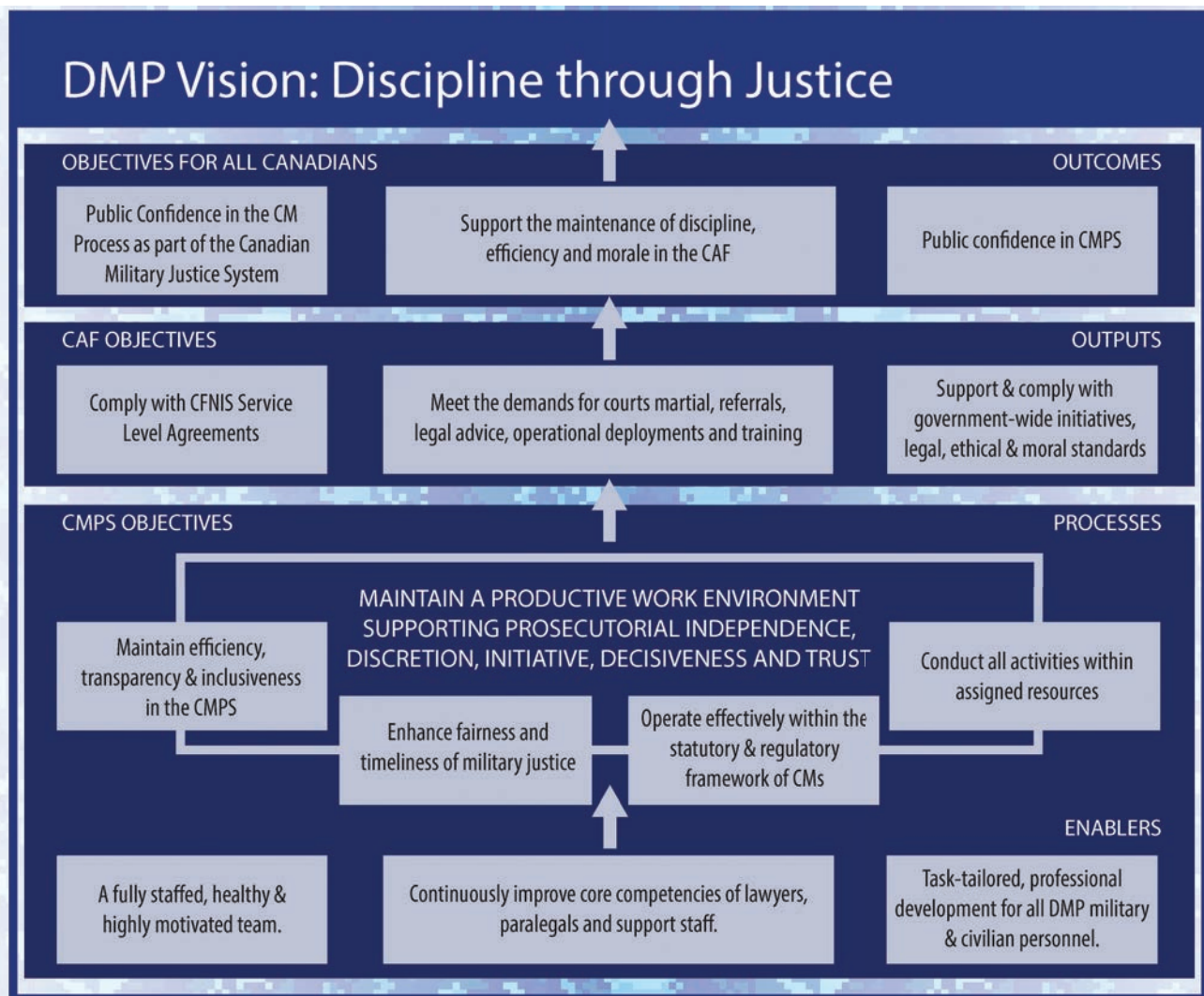
To provide competent, fair, swift and deployable prosecution services to the CAF in Canada and overseas.

Our Vision

"ORDO PER JUSTITIA" or *"DISCIPLINE THROUGH JUSTICE"*. The DMP is a key player in the Canadian military justice system helping to promote respect for the rule of law and the maintenance of discipline, efficiency and morale in the CAF.

The DMP's vision described in the graphic below, aligns itself with the JAG's new Strategic Direction.¹⁶

¹⁶ 2018-2021 Office of the JAG Strategic Direction, *Excellence Through Service*.



1.4 Organizational Structure

DMP and his staff of military prosecutors and civilian personnel are known collectively as the Canadian Military Prosecution Service (CMPS). It is organized regionally. Since the last reporting period some structural changes have been implemented. The two Deputy Directors of Military Prosecutions (DDMP) and the Assistant Director of Military Prosecutions (ADMP) respective roles were adjusted to improve efficiency and ensure a better distribution of files amongst prosecutors as well as allowing the ADMP to focus more on long term projects and strategic issues. There was also the creation of a new Lieutenant-Colonel (LCol) position, DDMP Sexual Misconduct Action Response Team (SMART). As a result, the CMPS is currently structured as:

- DMP headquarters at National Defence Headquarters in Ottawa consisting of the following personnel:
 - DMP;
 - ADMP;
 - DDMP Atlantic, Eastern and Pacific regions;
 - DDMP Central and Western regions;
 - DMP-2 (Policies, Training & Communications);
 - DMP-3 (Appellate Counsel);
 - CFNIS Legal Advisor;
 - CMPS Paralegal; and
 - Legal Assistant to the DMP.
- Regional Military Prosecutors' (RMP) offices, with the exception of the Pacific regional office, have an establishment of two Regular Force military prosecutors and one legal assistant, located at:
 - Halifax, Nova Scotia (Atlantic Region);
 - Valcartier, Quebec (Eastern Region);
 - Ottawa, Ontario (Central Region);
 - Edmonton, Alberta (Western Region);
 - Esquimalt, British Columbia (Pacific Region);
 - and
- DDMP SMART
 - The position of DDMP SMART was created in this reporting period 2017-2018 and is currently filled by a LCol from the Reserve Force working from Toronto, Ontario.
- Eight Reserve Force positions located individually across Canada, including a LCol position for the reserve who acts as DDMP Reserves

The DMP organization chart is provided at Annex A.



CMPS personnel at the 2018 DMP Continuous Legal Education (CLE) in Ottawa, Ontario on 26 February 2018

1.5 CMPS Personnel

Regular Force

During this reporting period, CMPS continued the integration and building of experience of our more junior prosecutors. Our RMP Pacific was posted out of his position but replaced by an experienced military prosecutor from Western Region. Western Region also welcomed a new prosecutor with a wealth of experience in policing matters. The DDMP Western and Pacific retired from the CAF during the reporting period and was replaced by an experienced LCol with prosecutorial background and significant knowledge of the military justice system.

CMPS also welcomed the arrival of two new Captains, both still on the basic training list, amongst its ranks: one in Quebec Region and one in Central Region. Both have some level of experience in prosecution from their previous civilian practice. Finally, at the headquarters, the ADMP was promoted to Colonel during the reporting period and posted out of CMPS to lead the Military Justice Division. He was replaced by the LCol who was the DDMP Central and Atlantic, ensuring continuity and retention of experience within CMPS.

Reserve Force

During this reporting period, two experienced Reserve Force RMPs left CMPS but not the legal branch. They are now both with Regional Services and one of them was promoted to the rank of LCol.

As shown in Figure 1, the departure of two experienced RMPs had an impact on the organization. During this reporting period, the parade days and court days of the CMPS reservists were at their lowest since 2013/2014.

As shown at Figure 2, the average parade days by reservist RMPs was only slightly higher than in 2013/2014 while the average court days by reservist RMPs was at its lowest since 2013/2014 for this reporting period. Because of health reasons, civilian career demands and taskings on special projects, the remaining Reserve RMPs were not in a position to take on the same number of files as the previous years. The DMP is committed to seeing the average parade and court days return to FY 2016-2017 levels.

Civilian Staff

During this reporting fiscal year, our paralegal left to pursue new opportunities within the public service. Our Central Region Administrative assistant, who is also a certified paralegal, has transferred with success into the paralegal position. Efforts to staff the Central Region Administrative assistant position permanently are still underway.

Figure 1:
Parade And Court Days - Reservist Regional Military Prosecutors

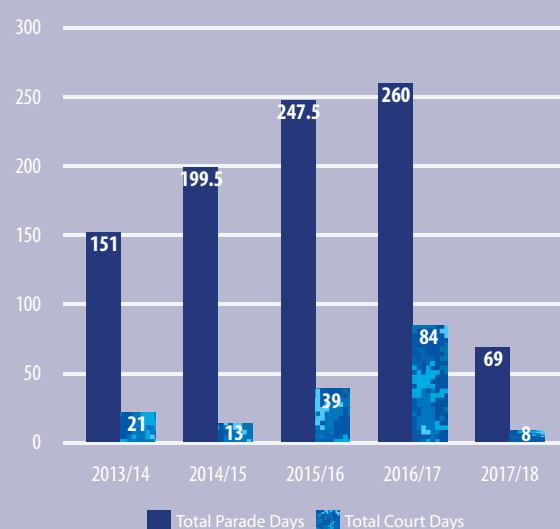
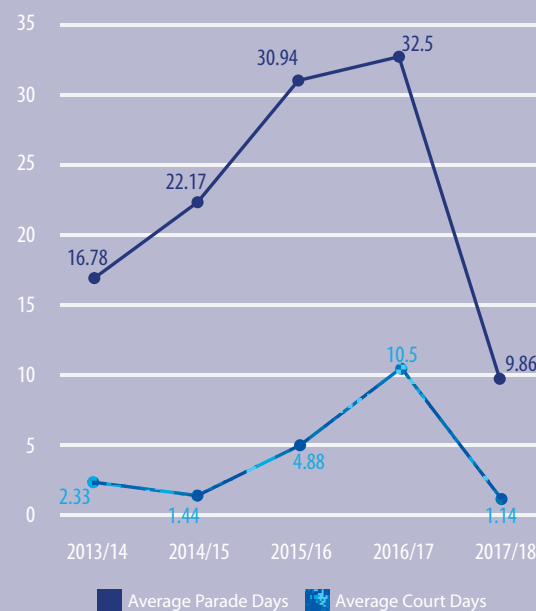


Figure 2:
Average Parade And Court Days - Reservists Regional Military Prosecutors



chapter REVIEW OF THE MILITARY JUSTICE SYSTEM 2

Introduction

During this reporting period, a number of reviews regarding diverse aspects of the military justice system were conducted. DMP fully collaborated with the different review authorities and has already taken proactive corrective actions regarding some deficiencies noted before official departmental or JAG review had been completed.

decision (whether to prefer a charge). With the benefit of an improved electronic database/case management system coming on-line in the near future, it is expected that the timeliness of courts martial will be improved. Close collaboration with the JAG and her Deputy JAG for Military Justice on a significantly improved information management system will bring benefits to the processing of courts martial and expedite disclosure to accused persons.

2.1 Audit by the Office of the Auditor General

The Office of the Auditor General of Canada has been tasked to conduct an audit on the Administration of Justice in the CAF. Since August 2017, CMPS prosecutors and administrative staff spent considerable resources and time to ensure that auditors sufficiently understood the military prosecution services and that all appropriate documents and information were provided in a timely fashion to the auditors.

Collaboration with the auditors proved extremely useful in immediately addressing process deficiencies and exploring potential efficiencies in file processing. Importantly, the CMPS has now instituted a number of changes to expedite disclosure to defence counsel. For example, before a file is assigned to a prosecutor, the prosecutor's supervisor will request disclosure from the appropriate investigative agency. In addition, prosecutors have been instructed to send disclosure to defence counsel once they have received and reviewed it and prior to making a

2.2 The Implementation of Court Martial Sentences

CMPS assisted in the investigation undertaken by the Directorate of Special Examination and Inquiries pertaining to the administrative procedures for court martial sentence implementation. CMPS helped confirm whether a Court Martial Result message was sent to the offender's Commanding Officer at the end of each trial and whether information related to the finding and sentence imposed were included in the message as per DMP obligations found at QR&O 112.05(23). A request was made to the DMP to provide court martial results messages for 138 cases that were held between 2010-2017. DMP has fulfilled this request and is now proactively working at updating documents/templates related to court martial messaging to ensure a consistent practice amongst all of its regional offices.

2.3 Court Martial Comprehensive Review

The Court Martial Comprehensive Review was initiated by our previous JAG, Major-General Cathcart, in May of 2016 to conduct a legal and policy analysis of all aspects of the CAF's court martial system and, where appropriate, to develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system. In July 2017, the Court Martial Comprehensive Review Team submitted an internal draft report to the current JAG.

Due to challenges related to methodology and a paucity of metrics and analytics, the report was found to be of limited assistance in assessing the current court martial system. In light of various external reviews of the military justice system, such as the one conducted by the Auditor General discussed above, it was determined by the JAG that no additional revision of the draft internal report was to be undertaken. The draft report thereby only serves as a discussion paper that represents the views of its authors and does not represent the views of the Office of the JAG or the DMP.

2017-2018 IN FOCUS: THE YEAR IN MILITARY PROSECUTIONS 3

Introduction

The information and analysis provided below reflects the workload of the CMPS pertaining to general file advice, pre-charge advice, post-charge review, custody review hearings, courts martial and appeals.

CMPS handled 129 pre-charges files and 14 appeals for a total number of files (pre-charge, referral and appeal files combined) of 342 files. This was the highest number of cases worked on by CMPS in five years.

3.1 Overview

Figure 3:
Total Number of Referrals Handled During The Fiscal Year



CMPS worked on a total of 199 referral files during the reporting period, 118 of which were received during the reporting period, and 81 which were carried over from FY 2016-2017.¹⁷ In addition,

3.2 General File Advice

In addition to reviewing and prosecuting charges under the CSD, the CMPS provides general legal advice to the CFNIS pertaining to investigations and other disciplinary matters. CMPS is also frequently consulted by Deputy Judge Advocates (DJAs) who are responsible for advising Military Police (MP) detachments and CAF units in the conduct of disciplinary investigations. This advice is provided by both the CFNIS LA and the RMPs, and is not reflected in the caseload statistics contained in this report.

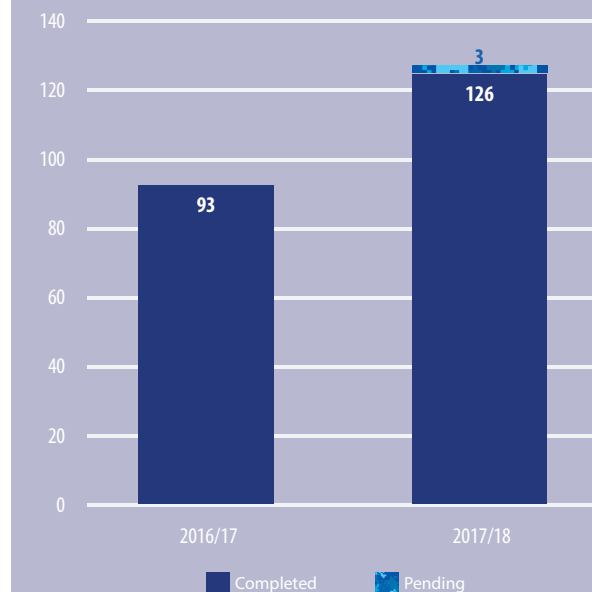
The CFNIS LA is a military prosecutor embedded with the CFNIS who provides dedicated legal advice to the CFNIS HQ in support of effective, timely and sound investigatory work, while respecting the necessary distinction between the investigative independence of the military police and the prosecutorial independence of the DMP. The CFNIS LA provides advice to investigators throughout all stages of an investigation. This proves essential in complex cases of cross-border operations where liaison and coordination with foreign police and prosecutorial entities are required. The CFNIS LA also provides the CFNIS with updates on criminal law developments and assists with systemic issues brought to light by individual cases, for example, by identifying deficiencies in policies, organizational structures, or unit processes.

¹⁷ a post-charge decision was still pending, supplementary investigations were requested but not yet received, cases were awaiting a trial date or the courts martial were not yet completed.

RMPs will also provide advice to CFNIS investigators in the early stage of the investigation upon request, such as in the investigative planning stage or in the drafting of a search warrant. However, RMPs will ensure that they avoid direct involvement in the investigative process, as this may impair their ability to provide independent advice at the pre-charge screening stage.

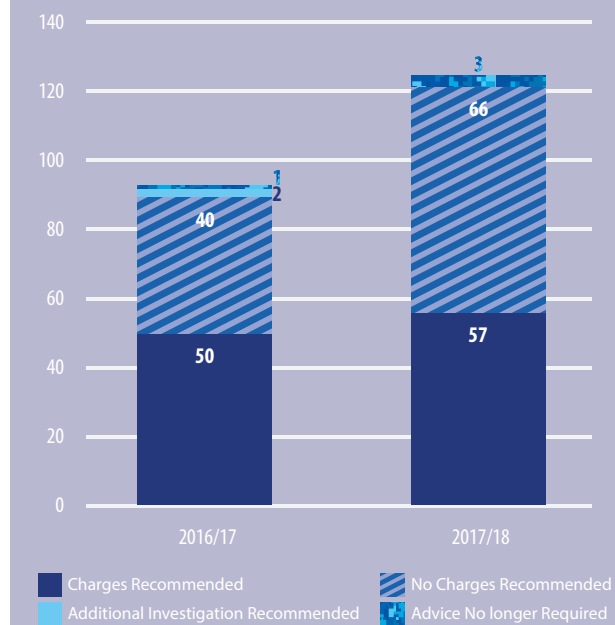
3.3 Pre-Charge Advice

Figure 4:
Pre-charge Files Handled by Fiscal Year
(Since Fiscal Year 2016-2017)



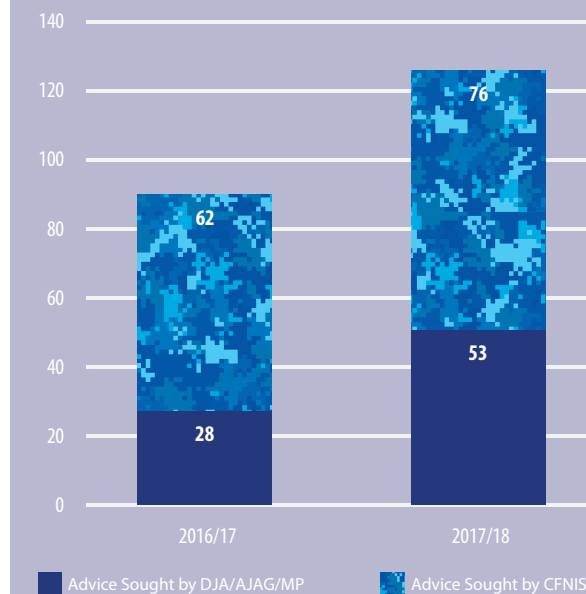
CMPS is responsible to provide pre-charge advice to the CFNIS, but also to DJAs who are advising individual CAF units in matters of discipline. As per JAG Policy Directive 048/18 – Pre-Charge Screening, if the pre-charge review of the evidence reasonably supports the conclusion that a charge will not proceed by way of summary trial, but instead will be referred to court martial, the DJA shall consult with a RMP. In FY 2017-2018, a total of 129 pre-charge files were handled by CMPS; 126 were completed and 3 were still pending as of 31 March 2018.

Figure 5:
Outcome - Pre-charge Files Completed
(Since Fiscal Year 2016-2017)



In relation to the 126 pre-charge files completed during the reporting period, RMPs recommended that a charge or charges be laid in 57 of them (45% of total files completed).

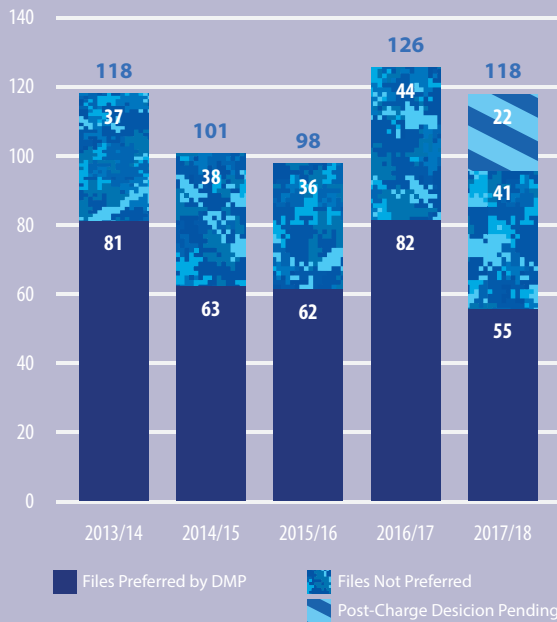
Figure 6:
Origin of Pre-charge Files
(Since Fiscal Year 2016-2017)



59% of pre-charge files came from the CFNIS and 41% from DJAs during the reporting period.

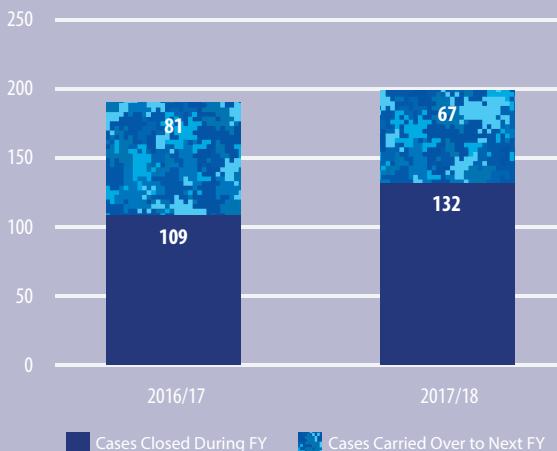
3.4 Files Referred to DMP

Figure 7:
Files Referred to DMP Over the Past Five Years



The number of files referred to DMP in the reporting period slightly decreased compared to the previous fiscal year (from 126 to 118). The

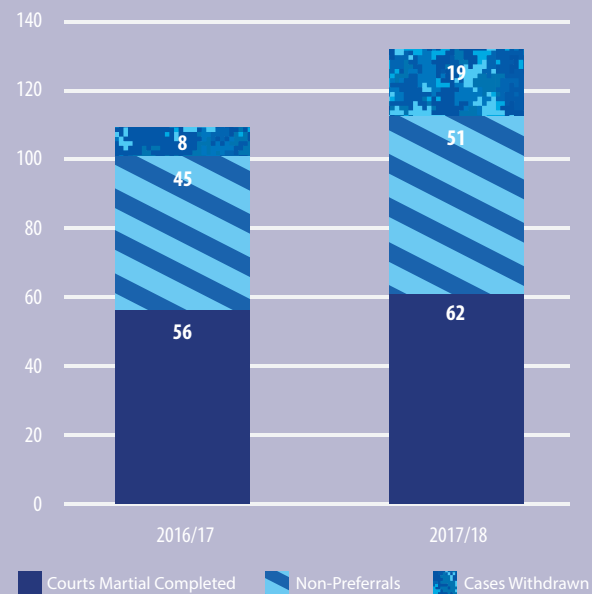
Figure 8:
Outcome of Referrals Processed by Fiscal Year
(Since Fiscal Year 2016-2017)



yearly average over five years is 112 referrals. For referrals received in FY 2017-2018, 55 files led to charges being preferred for court martial, 41 files were not preferred and 22 files were still pending prosecutorial decision as of 31 March 2018.

Of the 199 referrals processed, 132 files were closed¹⁸ during the reporting period; a 21% increase at the post-charge stage over FY 2016-2017. Of the files that were not completely resolved as of 31 March 2018, 45 had charges preferred and were awaiting court martial completion and 22 were at the post-charge review stage.

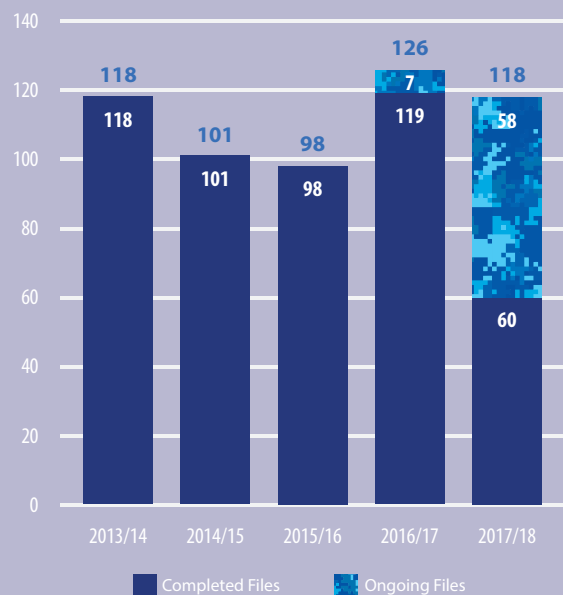
Figure 9:
Outcome Of Cases Closed During Fiscal Year
(Since Fiscal Year 2016-2017)



Of the 132 referrals closed during the reporting period (of which 60 were received in FY 2017-2018 and 72 from previous FYs), 62 referrals were closed through the conclusion of court martial proceedings; 51 files resulted in non-preference of charges and 19 cases resulted in withdrawal of charges.

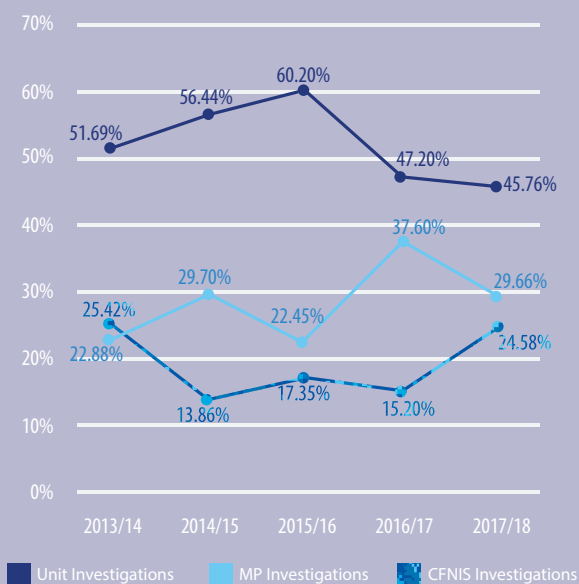
¹⁸ A file is considered closed either through the conclusion of court martial proceedings, through non-preference of charges or through withdrawal of charges.

Figure 10:
Status of Referrals Received by Fiscal Year



Current status of all referrals received per fiscal year for the past five years is displayed above. For referrals received in the reporting period, 60 were completed (either through a non-preferred decision, a completed court martial or withdrawal of charges), thus leaving 58 cases ongoing (pending

Figure 11:
Investigative Agencies - Referrals Received by Fiscal Year

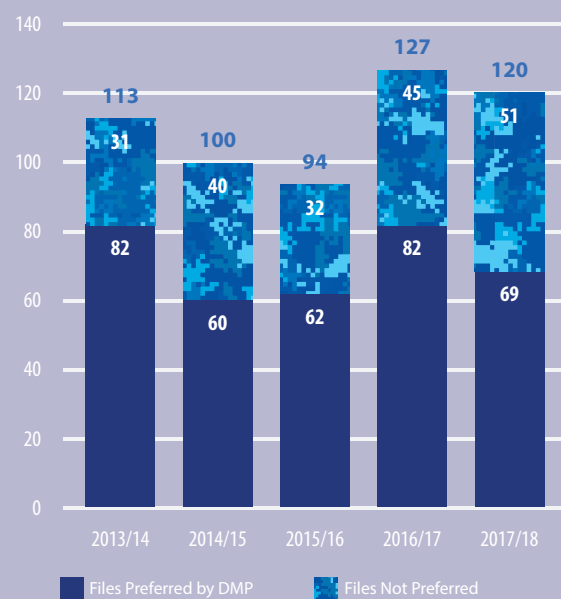


post-charge decision, awaiting trial date or court martial convened but not completed). As of 31 March 2018, 7 cases from previous fiscal years were still outstanding (for a total of 65 cases carried over to FY 2018-2019).

During the reporting period, the investigation of the alleged offence(s) was done at the unit level for over 45% of referrals (54 out of 118 referrals). In contrast, MP investigations amounted to more than 29% of referrals compared to close to 38% in FY 2016-2017. CFNIS investigations increased by 15% from referrals received in FY 2016-2017 to 25% of all referrals received during this reporting period.

3.5 Post-Charge Review

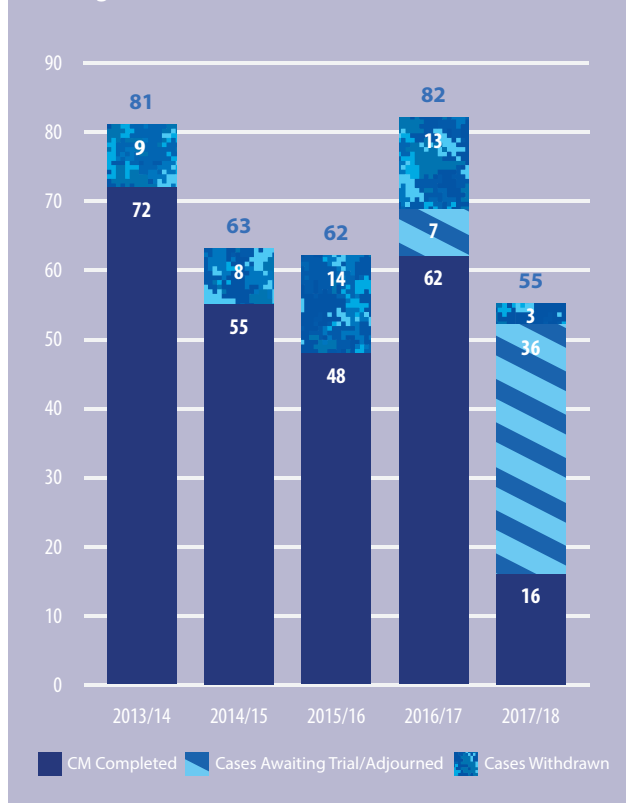
Figure 12:
Post-Charge Decisions per Fiscal Year (Total)



The number of post-charge decisions made by CMPS during the reporting period decreased slightly compared with 2016-2017. Out of the 199 referrals handled in the reporting period, decisions were made in relation to 120 of them. As of note, 57 files carried-over from previous FYs already had

charges preferred for court martial. An additional 22 files, all of them received in FY 2017-2018 were still awaiting post-charge decision as of 31 March 2018. Out of the total of 120 post-charge decisions made in the reporting period, 58% resulted in charges being preferred for court martial which is less than last year's preferal rate of 65%.

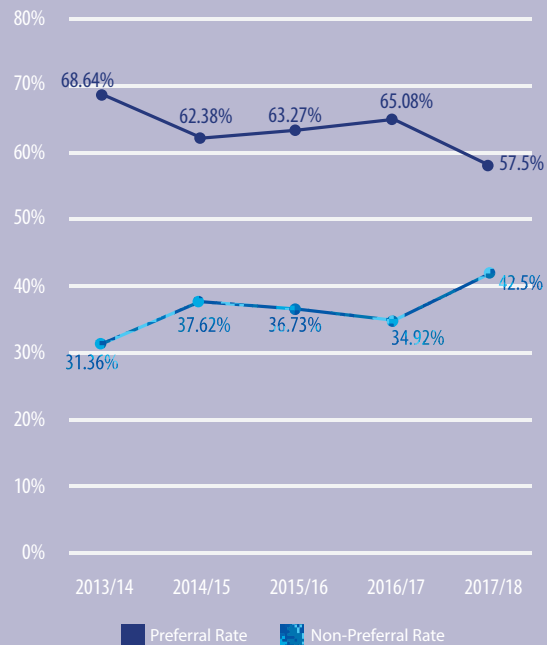
Figure 13:
Status of Files Preferred from Referrals Received
During the Fiscal Year (as of 31 March 2018)



The graph above displays the current status of referrals that were received in the corresponding fiscal year and for which charges were preferred for court martial. Out of a total of 69 files that were preferred for court martial in FY 2017-2018, 55 were preferred from referrals received during the reporting period. 19 cases were completed prior to 31 March 2018, including 16 out of the total 62 courts martial completed during the reporting period. An additional 14 referrals preferred during the reporting period were received during previous FYs.

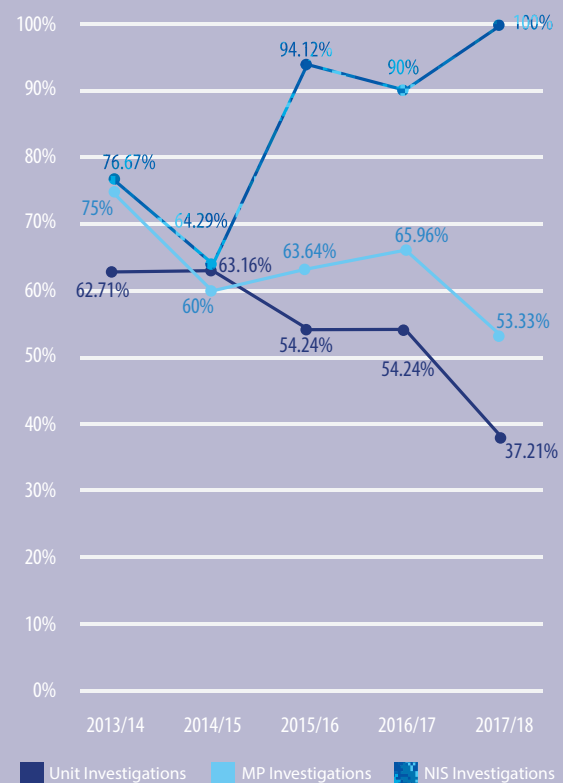
As of 31 March 2018, there were 7 files (6 accused) from previous FYs (all from FY 2016/2017) that were preferred for court martial and still outstanding:

Figure 14:
Preferal/Non-Preferal Rates (Based on Referrals
Received During the Fiscal Year)



As indicated by figure 14, the preferal rate for this reporting period was at its lowest since FY 2013-2014.

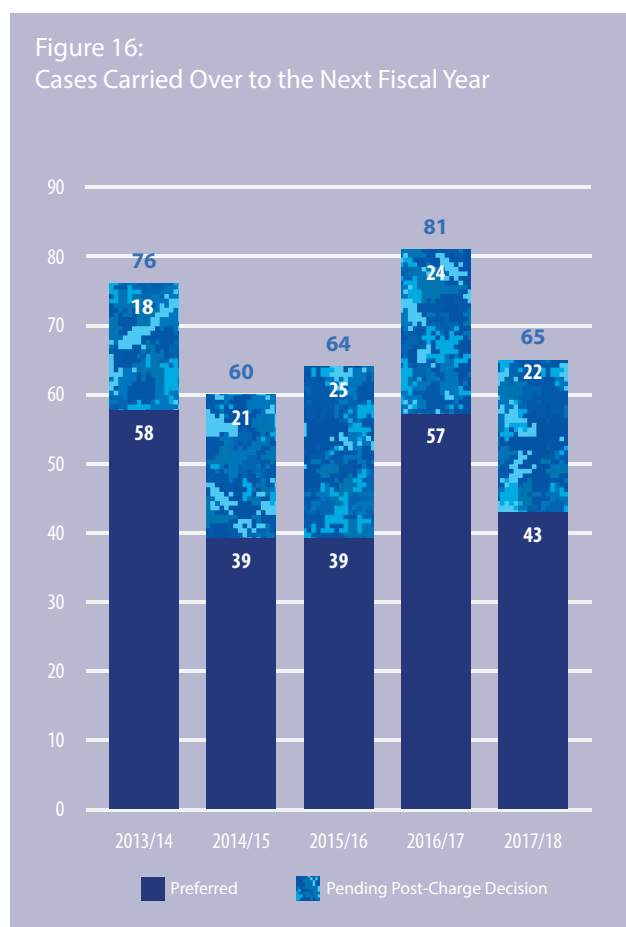
Figure 15:
Preferal Rate - Investigative Agencies



The DMP has noticed a downward trend regarding the preferral rate for cases investigated at the unit level which may be indicative of a systemic issue and has proceeded to bring it to the attention of the JAG in her capacity as superintendent of military justice.

3.6 Cases Carried-Over

Figure 16:
Cases Carried Over to the Next Fiscal Year



Of the 65 files that will be carried-over into FY 2018-2019, 43 had charges already preferred for court martial and an additional 22 were still pending as of 31 March 2018.

3.7 Military Justice Proceedings

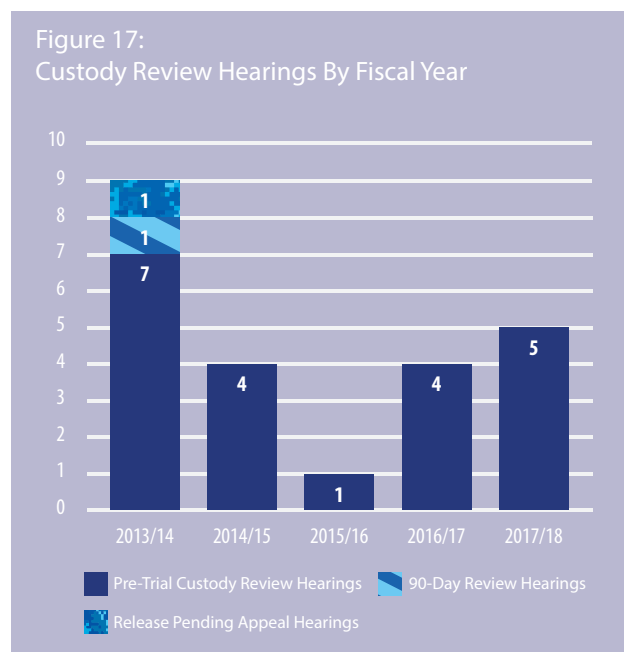
During the present reporting period, military prosecutors represented the Crown in several different types of judicial proceedings related to the military justice system. These proceedings included pre-trial custody hearings, courts martial, and appeals from courts martial to the CMAC and SCC.¹⁹

3.7.1 Custody Review Hearings

Military judges are, in certain circumstances, required to review orders made to retain a CAF member in service custody. The DMP represents the CAF at such hearings. During the reporting period, military prosecutors appeared at five pre-trial custody review hearings.²⁰ There were no 90-day review hearings²¹ and no release pending appeal revocation hearings.²²

Further information on custody reviews is provided at Annex G.

Figure 17:
Custody Review Hearings By Fiscal Year



19 The interests of the accused are usually represented at reviews of pre-trial custody, courts martial and appeals from courts martial to the CMAC and SCC by the DDCS. Representation by DDCS is provided at public expense. The accused may choose to retain counsel at his or her own expense.

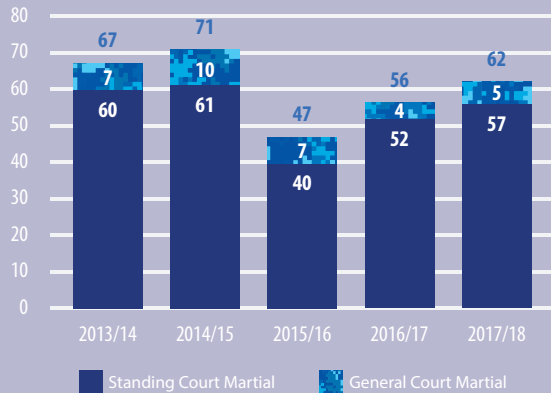
20 NDA, s. 159.

21 NDA, s. 159.8.

22 NDA, s. 248.1.

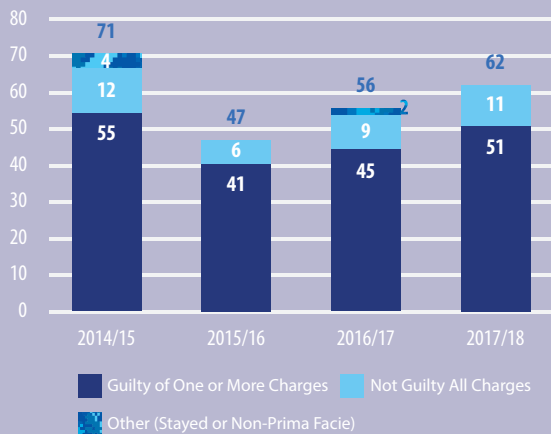
3.7.2 - Court Martial Proceedings

Figure 18:
Courts Martial By Type



During the reporting period, 62 courts martial were completed. The majority of these are SCMs presided by a military judge alone. Only five GCMs were held before a panel of five military members acting as trier of facts.

Figure 19:
Results - Courts Martial Since Fiscal Year 2014-2015



Sentences imposed at courts martial for service offences range from imprisonment for life to minor punishments which are prescribed by the QR&Os.²³ During the reporting period, 43% of punishments consisted in a fine and there were only two dismissals.

Courts martial sat for 173 days during the reporting period, for an average of 2.79 days per trial.

Figure 20:
Court Martial Sentences

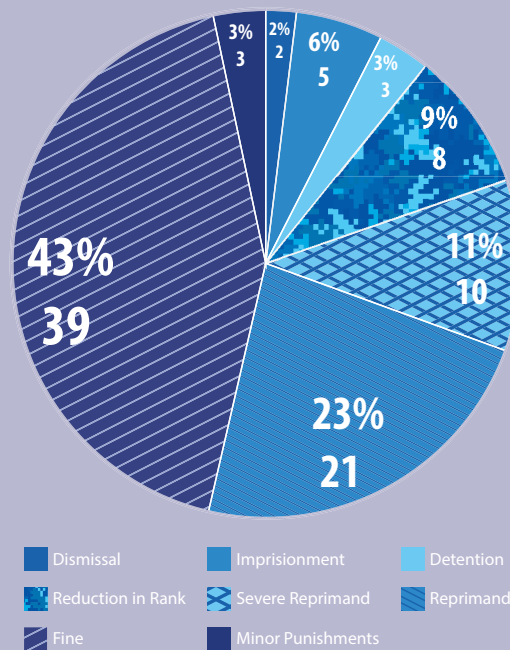


Figure 21:
Court Martial Completed, Preferrals And Non Preferrals By Region In Fy 2017-2018

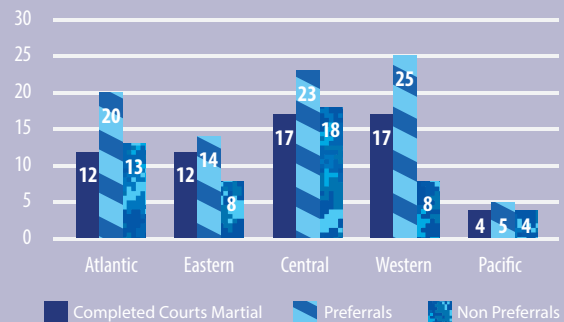
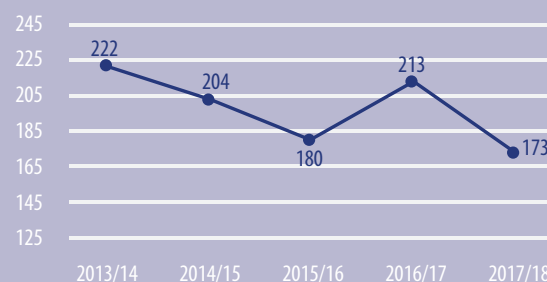
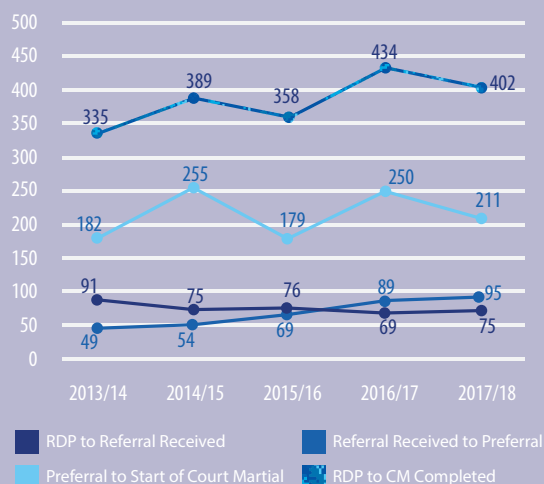


Figure 22:
Court Martial Sitting Days



²³ Sections 139(1) and 146 NDA.

Figure 23:
Delays For Courts Martial Completed Per Fiscal Year
(Calendar Days)



For the 62 courts martial that were completed during the reporting period, the average number of calendar days from the date of the record of disciplinary proceedings (RDP) to completion of the court martial was 402 days, 7% faster than in FY 2016-2017, thus bringing the five-year average to 384 days.

The time required to prefer charges increased from 89 days in 2016-2017 to 95 days in 2017-2018.

Cases Over 18 Months as of 31 March 2018

Following the SCC decision in the case of *R v Jordan*,²⁴ the court martial in the case of *R v Leading Seaman Thiele*²⁵ ruled that a court martial should be completed within 18 months from the laying of the charge on the RDP. As of 31 March 2018, the only case currently over the 18-month ceiling is the following:

Table 3	
CASE	18 MONTHS REACHED ON
Capt Nordstrom	19 January 2018. Trial in this case is set to commence on 8 June 2018

3.8 Special Interest Offences Categories

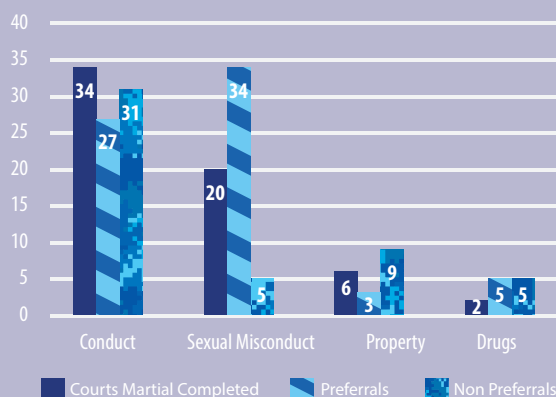
CMPS counsel prosecute offences found in the CSD, including offences under section 130 of the NDA, which incorporate by reference federal offences such as offences found in the *Criminal Code* and in the *Controlled Drugs and Substances Act* (CDSA).²⁶

A selection of courts martial in the following four broad areas is highlighted below:

- Military Conduct Offences (unique military offence such as disobedience of lawful command, insubordination, absence without leave, drunkenness desertion, etc.
- Sexual Misconduct Offences;
- Fraud and Other Offences Against Property; and
- Drug Offences

Additionally, a list of charges preferred under sections 129 and 130 of the NDA for courts martial held during the reporting period may be found at the end of this section.

Figure 24:
Offences by Categories
(Files Processed During The Fiscal Year)



26 See NDA sections 70 and 130. A service tribunal shall not try any person charged with any of the following offences committed in Canada: murder; manslaughter or an offence under any of sections 280 to 283 of the *Criminal Code*.

24 2016 SCC 27
25 2016 CM 4015

The cases discussed below are a sampling of those dealt with by courts martial during the reporting period. These cases give a sense of the offenders and offences that were prosecuted, as well as the sentences that were pronounced.

3.8.1 Sexual Misconduct Offences

For this section, the term sexual misconduct offence include a broad range of offences and is not limited to a sexual assault charge contrary to section 271 of the *Criminal Code*.

The NDA provides military prosecutors with a number of offences such as disgraceful conduct, abuse of a subordinate, sexual harassment etc. to deal with sexual misconduct in an appropriate manner. These are options open to the military prosecutor depending on the facts and the level of gravity of each case. These offences are not available in the civilian justice system. For example, under the CSD a prosecution for sexual harassment is a possibility which is not available under the civilian criminal justice system.

Figure 25:
Sexual Misconduct Offences in the Military Justice System over the Past Six Fiscal Years

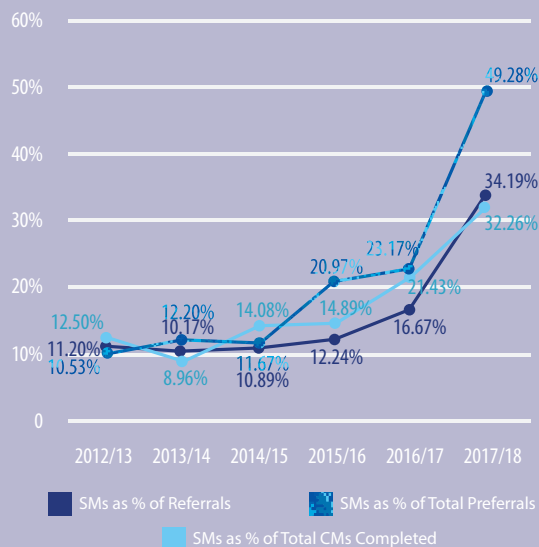


Figure 25 shows sexual misconduct offences in the military justice system over the past six fiscal years as a percentage of total referrals received, preferrals and courts martial completed.

Figure 26:
Preferrals for All Referrals Received During the Fiscal Year (Total and Sexual Misconduct Offences)

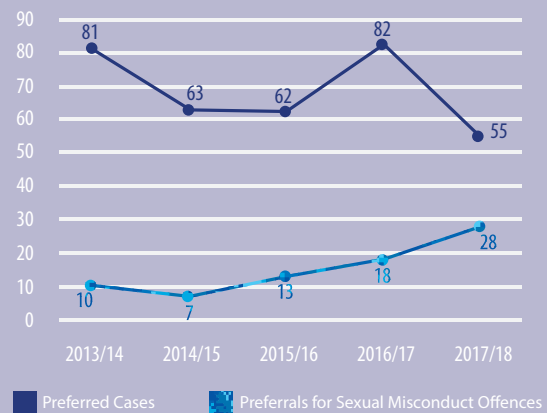


Figure 27:
Court Martial Completed - Total for Sexual Misconduct Offences by Fiscal Year

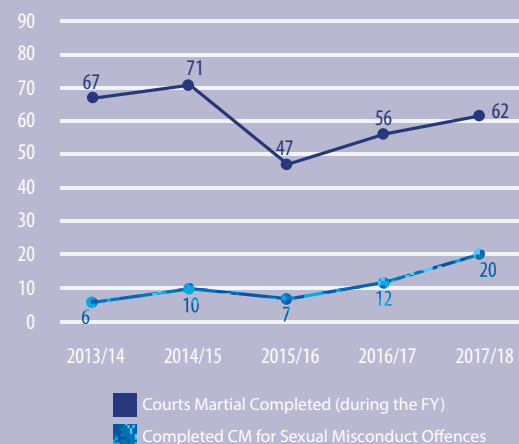


Figure 28:
Sexual Misconduct Offences (Based on Referrals Received During the Fiscal Year - As of 31 March 2018)

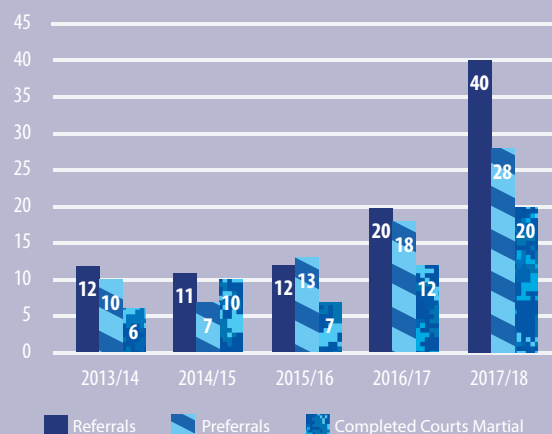
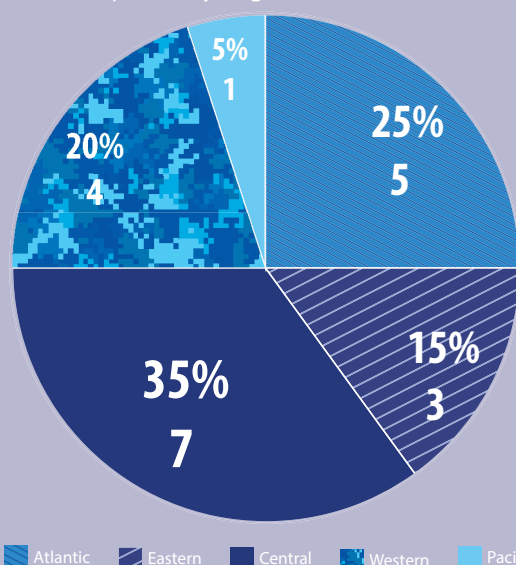


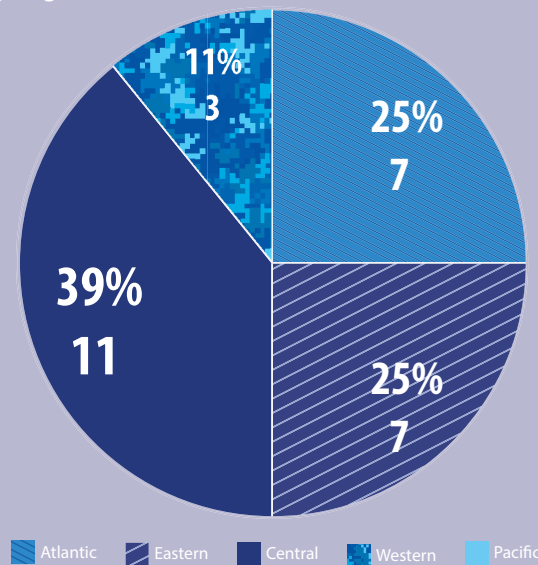
Figure 29: Sexual Misconduct Offences - Courts Martial Completed By Region



For this reporting period (as of 31 March 2018), here is a summary regarding sexual misconduct offences:

- 40 Referrals for sexual misconduct offences were received
 - 28 files (from referrals received during FY) have been preferred for CM (80% of the files for which we have a decision)
 - 7 were non-prefs (19% of files with decision)
 - 5 are currently pending decision
- 20 courts martial were completed for SMs
 - 11 x guilty pleas and guilty verdicts (55%)
 - 3 x non guilty pleas and guilty verdicts (15%)
 - 1 x non guilty plea and guilty of lesser and included offence (5%)
 - 5 x non guilty verdicts (25%)

Figure 30: Sexual Misconduct Offences - Preferrals By Region (As 31 March 2018)



List of courts martial for sexual misconduct offences during the reporting period (details can be found at annex D):

1	SCM	Capt Bannister
2	GCM	OS Betts
3	SCM	WO Buenacruz (Ret'd)
4	SCM	Cpl Cadieux
5	SCM	Lt(N) Clark
6	SCM	MS Cooper
7	SCM	Sgt Coveyow
8	SCM	Capt Duvall
9	SCM	Sgt Euper
10	SCM	Cpl Furtado
11	SCM	Cpl Gobin
12	SCM	WO Grant

Table 4

SEXUAL MISCONDUCT OFFENCES	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Referrals Received for SMs	14	12	11	12	21	40
Total Referrals Received During FY	125	118	101	98	126	118
SMs as % of Total Referrals Received	11.20%	10.17%	10.89%	12.24%	16.67%	34.19%
Preferrals for SMs During FY (Regardless of Date Received)	10	10	7	13	19	34
Totals Preferrals During FY	95	82	60	62	82	69
SMs as % of Total Preferrals	10.53%	12.20%	11.67%	20.97%	23.17%	49.28%
Courts Martial Completed for Sexual Misconduct	8	6	10	7	12	20
Total Courts Martial Completed	64	67	71	47	56	62
SMs as % of Total CMs Completed	12.50%	8.96%	14.08%	14.89%	21.43%	32.26%
Guilty Verdicts	5	4	5	7	10	15

13	SCM	Cdr Mensah
14	SCM	Cpl Miszczak
15	SCM	OCdt Morgado
16	SCM	MCpl Obele Ngoudni #1
17	SCM	Cpl Quirion
18	SCM	Cpl Riddell
19	SCM	MCpl W.
20	GCM	PO2 Wilks

3.8.2 Drug Offences

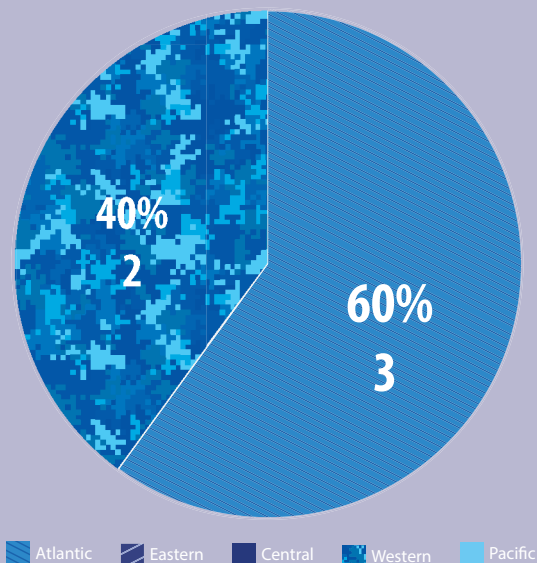
Like all Canadians, persons subject to the CSD are liable to prosecution for drug-related offences as provided in the CDSA. Unlike the civilian population, however, persons subject to the CSD are also liable to prosecution for drug use.²⁷ Such offence will be prosecuted using section 129 of the NDA.

During the reporting period there were only two courts martial completed for drug offences. Both were held in the Atlantic region (details can be found at annex D):

1	SCM	Pte Burrell
2	SCM	LS Smith

There were 5 preferrals for drug offences during the reporting period.

Figure 31:
Drug Offences - Preferrals by Region



3.8.3 Fraud and Other Offences against Property

Figure 32:
Fraud and Other Offences Against Property - Courts Martial Completed by Region

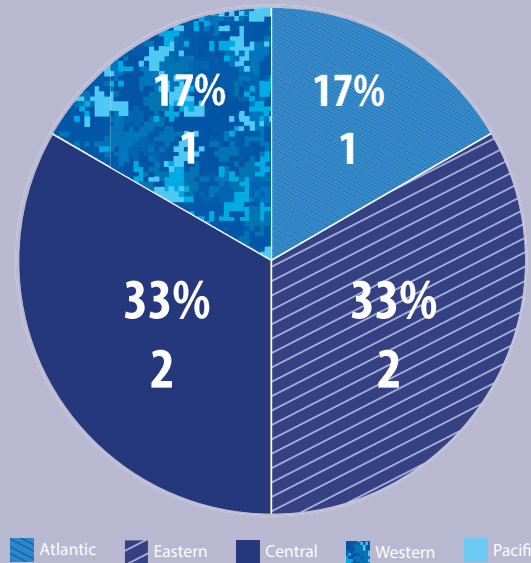
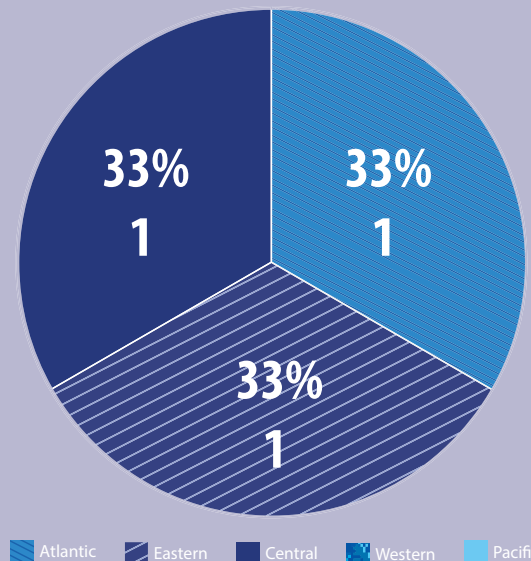


Figure 33:
Fraud and Other Offences Against Property - Preferrals by Region



List of courts martial for fraud and other offences against property during the reporting period (details can be found at annex D):

1	SCM	Cpl Chabot-Leroux
2	SCM	MS De Nobile

²⁷ QR&O, article 20.04.

3	GCM	MCpl Edmunds
4	SCM	MBdr Gaffey
5	SCM	Cpl Kroetsch
6	SCM	Cpl Whaley

3.8.4 Military Conduct Offences

Figure 34:
Military Conduct Offences
Courts Martial Completed By Region

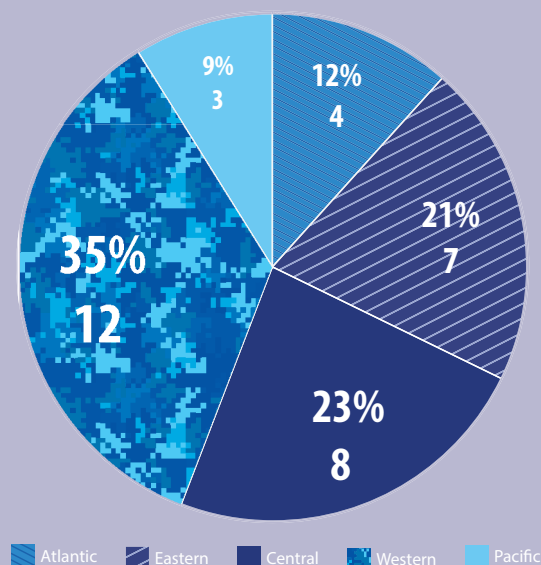
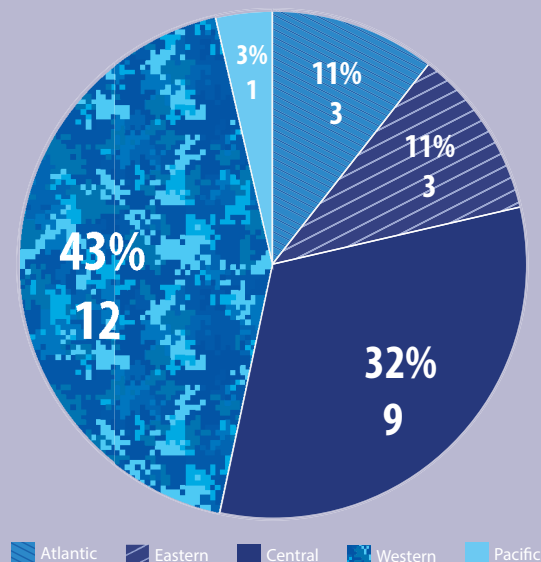


Figure 35:
Military Conduct Offences - Preferrals By Region



List of courts martial for military conduct offences during the reporting period (details can be found at annex D):

1	SCM	Cpl Ayers
2	SCM	OCdt Baluyot
3	SCM	Cpl Belleview
4	SCM	Sgt Burton
5	SCM	LCdr Carlyon
6	SCM	Cpl Dickey
7	GCM	WO Dowe
8	SCM	2Lt Ghaffari
9	SCM	Cpl Gibbons
10	SCM	Capt Gillespie
11	SCM	Spr Grening
12	SCM	Cdr Hopkie
13	SCM	Cpl Ladet
14	SCM	Cpl Lafrenière
15	SCM	MCpl Leadbetter
16	SCM	LS MacDonald
17	SCM	Lt(N) Makow
18	SCM	MCpl Matarewicz
19	SCM	Capt Matte
20	SCM	Cpl Newton
21	SCM	Pte Normand-Therrien
22	SCM	MCpl Obele Ngoudni #2
23	SCM	Sgt Ogston
24	SCM	Cpl Parent
25	SCM	MCpl Penner
26	SCM	Cpl Rollman
27	SCM	MWO Scotto D'anielo
28	SCM	Sgt Shulaev
29	SCM	Maj Skrok
30	GCM	Ex-Cpl Stuart
31	SCM	Sig Truelove
32	SCM	Sgt Williams
33	SCM	MCpl Wylie
34	SCM	MCpl Young

3.8.5 Section 129 of the *National Defence Act*

Subsection 129(1) of the NDA is broad and covers any act, conduct, disorder or neglect to the prejudice of good order and discipline. Every person convicted is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

During the reporting period, a total of 26 accused have faced 45 charges under section 129 of the NDA, of which 32 were for conduct, 7 for neglect and 6 for an act to the prejudice of good order and discipline.

List of courts martial with charges under section 129 of the NDA (details can be found at annex D):

1	SCM	Capt Bannister
2	GCM	OS Betts
3	SCM	WO Buenacruz (Ret'd)
4	SCM	LCdr Carlyon
5	SCM	Lt(N) Clark
6	SCM	Sgt Coveyow
7	SCM	MBdr Gaffey
8	SCM	Cpl Gibbons
9	SCM	Capt Gillespie
10	SCM	Cdr Hopkie
11	SCM	MCpl Leadbetter
12	SCM	LS MacDonald
13	SCM	Lt(N) Makow
14	SCM	Capt Matte
15	SCM	Cdr Mensah
16	SCM	Cpl Miszczak
17	SCM	Cpl Newton
18	SCM	MCpl Obele Ngoudni #2
19	SCM	Sgt Ogston
20	SCM	MCpl Penner
21	SCM	Cpl Rollman
22	SCM	Maj Skrok
23	GCM	Ex-Cpl Stuart
24	SCM	MCpl W.
25	SCM	Sgt Williams
26	SCM	MCpl Wylie

3.8.6 Section 130 of the *National Defence Act*

As indicated earlier, section 130 of the NDA incorporate by reference offences that are punishable under the *Criminal Code* or any other Act of Parliament. The essential elements of the underlying federal offences remain the same.

Over the reporting period, 86 charges were preferred under section 130 of the NDA in relation to 30 accused. The charges were preferred in relation to the following federal offences:

- Section 86(1) of the *Criminal Code* – Careless use of firearm (2 charges);
- Section 86(2) of the *Criminal Code* – Contravention of a regulation under paragraph 117(h) of the *Firearms Act* (1 charge);
- Section 87(1) of the *Criminal Code* – Pointing a firearm (1 charge);
- Section 88 of the *Criminal Code* – Possession of a weapon for a dangerous purpose (1 charge);
- Section 91(1) of the *Criminal Code* – Unauthorized possession of a firearm (1 charge);
- Section 122 of the *Criminal Code* – Breach of trust by a public officer (17 charges);
- Section 151 of the *Criminal Code* – Sexual interference (1 charge);
- Section 162.1 of the *Criminal Code* – Publication of an intimate image without consent (1 charge);
- Section 162.1(a) of the *Criminal Code* – Voyeurism (1 charge);
- Section 163.1(2) of the *Criminal Code* – Making child pornography (1 charge);
- Section 163.1(4) of the *Criminal Code* – Possession of child pornography (2 charges);
- Section 264(1) of the *Criminal Code* – Criminal harassment (1 charge);
- Section 264.1(1) of the *Criminal Code* – Uttering threats to cause death or bodily harm (9 charges);
- Section 265(1) of the *Criminal Code* – Assault (1 charge);
- Section 266 of the *Criminal Code* – Assault (10 charges);
- Section 271 of the *Criminal Code* – Sexual assault (9 charges);
- Section 286.1(1) of the *Criminal Code* – Obtaining sexual services for consideration (1 charge);
- Section 334 of the *Criminal Code* – Theft (2 charges);
- Section 337 of the *Criminal Code* – Public servant refusing to deliver property (1 charge);
- Section 355.2 of the *Criminal Code* – Trafficking in property obtained by crime (3 charges);
- Section 366(1)(a) of the *Criminal Code* – Made a forged document (1 charge);
- Section 368(1)(a) of the *Criminal Code* – Use of a forged document (1 charge);
- Section 380(1) of the *Criminal Code* – Fraud (8 charges);

- Section 430(1) of the *Criminal Code* – Mischief (2 charges);
- Section 463(b) of the *Criminal Code* – Attempted to defraud (1 charge);
- Section 4(1) of the CDSA – Possession (1 charge);
- Section 5(1) of the CDSA – Trafficking (2 charges);
- Section 5(2) of the CDSA – Possession for the purpose of trafficking (2 charges); and
- Section 7(2)(a.1) of the CDSA – Production of a substance (1 charge).

3.9 - Appeals

3.9.1 Appeals to the Court Martial Appeal Court

3.9.1.1 Constitutionality of paragraph 130(1)(a) of the *National Defence Act*

Paragraph 130(1)(a) of the NDA makes it a service offence to commit offences punishable under other Acts of Parliament. In *Moriarty*, the SCC unanimously decided that paragraph 130(1)(a) of the NDA was not unconstitutionally overbroad and that there was no requirement for a military nexus for the provision to be consistent with section 7 of the *Charter*. Following this decision, numerous appellants raised a new ground of appeal before the CMAC alleging that paragraph 130(1)(a) of the NDA violated their right to a jury trial contrary to section 11(f) of the *Charter*. Section 11(f) of the *Charter* provides that anyone charged with an offence has the right:

except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment...

Three separate panels of the CMAC have now heard arguments on this matter. During the previous reporting period, the CMAC ruled that

paragraph 130(1)(a) of the NDA did not violate section 11(f) of the *Charter* and did not require a military nexus (*R v Master Corporal Royes*, 2016 CMAC 1). During this reporting period, a second panel rendered its decision in *R v Private Déry et al.*, 2017 CMAC 2 – which included the cases of Petty Officer Second Class Blackman, Warrant Officer Gagnon, Corporal Thibault, Private Déry, Second Lieutenant Soudri, Lieutenant (Navy) Klein, Corporal Nadeau-Dion, Corporal Pfahl, Petty Officer Second Class Wilks, Master Corporal Stillman and Major Wellwood. The CMAC was unanimous that it was bound by its previous decision in *Royes*. However, JJ.A. Cournoyer and Gleason wrote extensive reasons as to why they would have found that paragraph 130(1)(a) of the NDA, absent a military nexus test, violated the right to a jury trial under section 11(f) of the *Charter*. C.J. Bell wrote separate reasons in support of the unanimous decision in *Royes*. The SCC granted leave to appeal this decision on 8 March 2018.

A third panel heard arguments on this issue on 30 January 2018 in the case of Corporal Beaudry. The CMAC has reserved its decision.

3.9.1.2 Other Questions of Law Heard on Appeal

***R v Major Wellwood*, 2017 CMAC 4**

In addition to the *Charter* challenge in *Déry*, this case involved a challenge to the Chief Military Judge's instructions to the General Court Martial panel. Maj Wellwood was convicted of obstructing a peace officer. The incident occurred when a corporal from the MP attended a command post location run by Maj Wellwood, in response to a 911 call regarding a potentially suicidal soldier. A confrontation ensued between Maj Wellwood and the MP officer.

The CMAC concluded that the military judge's instructions to the panel were needlessly complex, and failed to properly relate the evidence to the law. The CMAC further concluded that the military judge failed to adequately address Maj Wellwood's competing obligations toward the suicidal soldier and to what degree those obligations informed what was a reasonable and necessary exercise of police powers in the circumstances. The CMAC confirmed that the principle of police

independence applies to MP officers in the exercise of their law enforcement duties during their interactions with the chain of command. MP are not required to obey the orders of superior officers when those orders conflict with the exercise of their police duties.

The CMAC overturned the conviction and ordered a new trial. After further review by DMP following the appeal, it was decided not to prefer the matter for a second court martial.

R v Warrant Officer Gagnon, 2018 CMAC 1

In addition to the *Charter* challenge in *Déry*, this case involved a challenge to the Chief Military Judge's decision to put the defence of honest but mistaken belief to the General Court Martial panel. WO Gagnon was acquitted of one count of sexual assault.

A majority of the CMAC found that the Chief Military Judge erred in law by submitting to the court martial panel a defence of honest but mistaken belief in consent without having considered whether the statutory preconditions in section 273.2 of the *Criminal Code* had been met. Section 273.2 required WO Gagnon to take reasonable steps in the circumstances known to him at the time to confirm consent to the sexual activities in question. Two of the three justices concluded that a judge applying the proper framework would likely consider that reasonable steps had not been taken, and would therefore have not put the defence of honest but mistaken belief in consent to the panel. On this basis, the CMAC overturned the acquittal and ordered a new trial.

The Chief Justice, in dissent, concluded that there was evidence of reasonable steps and an air of reality to the defence of honest but mistaken belief on the facts of the case sufficient to put the defence to the panel, and therefore there was no error.

WO Gagnon has appealed this decision as of right to the SCC. This appeal is expected to be heard on 16 October 2018.

R v Corporal Golzari, 2017 CMAC 3

Cpl Golzari was charged with obstructing a peace officer and conduct to the prejudice of good order

and discipline resulting from an incident which occurred at the gate of CFB Kingston while the base was on high alert. At his court martial, the Chief Military Judge found that the prosecution had failed to lead any evidence that Cpl Golzari knew that the MP officer he was interacting with was a peace officer, and any evidence that there was a standard of conduct that had been breached by Cpl Golzari.

The CMAC unanimously concluded that the Chief Military Judge erred in this determination. With respect to the obstruction charge, the CMAC noted that MP are always peace officers in relation to persons subject to the CSD and that the knowledge component of the offence was complete when Cpl Golzari knew he was dealing with a MP officer. With respect to the conduct charge, the CMAC concluded that the prosecution is not required to prove a separate standard of conduct. The offence prohibits any conduct that is prejudicial to good order and discipline. The element of prejudice requires conduct that tends to, or is likely to, adversely affect good order and discipline. The CMAC further noted that, in most cases, the trier of fact should be able to conclude whether the proven conduct is prejudicial to good order and discipline based on their experience and general service knowledge.

The CMAC granted the appeal and ordered a new trial. After further review by DMP following the appeal, it was decided not to prefer the matter for a second court martial.

R v Corporal Hoekstra, 2017 CMAC 5

Cpl Hoekstra pled guilty to possession of marijuana, possession of explosives, unlawful possession of a firearm, and receiving property obtained by the commission of a service offence. The prosecution recommended a sentence of 18 months imprisonment. Defence counsel suggested a sentence of 60-90 days detention, a severe reprimand and a significant fine, or alternatively, 90 days detention and a reduction in rank to private. The military judge sentenced Cpl Hoekstra to 60 days imprisonment.

The CMAC unanimously concluded that the sentence was demonstrably unfit, and that an

appropriate sentence for this offence was 14 months imprisonment. Upon the admission of fresh evidence of Cpl Hoekstra's rehabilitative efforts and post-offence good conduct, and with the agreement of the prosecution, the CMAC stayed the remaining period of imprisonment.

R v Master Corporal Edmunds

MCpl Edmunds ran a fraudulent scheme whereby he contracted on behalf of the CAF with himself as a sole proprietor. After pleading guilty to one count of fraud over \$5000 involving two fraudulent transactions, he was charged with several additional counts of fraud which resulted in a second trial. He was sentenced to 30 days imprisonment at his first trial. At his second trial, MCpl Edmunds argued that the conduct of the investigators and prosecution was abusive, mainly alleging that the prosecution had improperly split its case. The issues at appeal arose from this second trial.

During a pre-trial disclosure and abuse of process application, the charge-layer testified that he did not know any information about the charges. He had been presented with a draft Record of Disciplinary Proceedings and had simply signed it. The military judge found that the charge-layer did not have an actual and reasonable belief that an offence had been committed, incorporating this finding into his decision on the abuse of process application.

In his decision on the abuse of process, the military judge found that the prosecution had not acted in bad faith or maliciously, but concluded that subjecting MCpl Edmunds to two trials was an abuse of process. The military judge concluded that the prejudice arising from this abuse was the possibility that MCpl Edmunds would be subjected to two separate periods of incarceration. He concluded that this prejudice could be remedied through mitigation of sentence.

MCpl Edmunds appealed the military judge's refusal to grant a stay of proceedings. After a review of the appeal record, the DMP agreed that the error at the charge laying stage was fatal to the charges and that the court martial had therefore been without jurisdiction. This vitiated the

proceedings and required the CMAC to quash the conviction. The CMAC agreed, declaring the court martial a nullity and overturning the conviction.

3.9.1.3 Upcoming Appeals to the CMAC

R v Corporal Cadieux

Cpl Cadieux was acquitted at a Standing Court Martial of sexual assault and drunkenness. The DMP appealed the acquittal on the basis that the military judge erred in his assessment of the defence of honest but mistaken belief in consent, in his assessment of witness credibility, and in his interpretation of the offence of drunkenness under section 97 of the NDA.

The CMAC heard oral arguments in this case on 12 March 2018 and reserved its decision.

R v Corporal Beaudry

This was the third time in which the CMAC heard constitutional arguments as to whether section 130(1)(a) of the NDA violates the right to a jury trial contrary to section 11(f) of the *Charter*.

The CMAC heard final oral arguments on 30 January 2018 and reserved its decision.

R v Captain Bannister

Capt Bannister was acquitted at a Standing Court Martial of two counts of disgraceful conduct and two counts of conduct to the prejudice of good order and discipline for inappropriate sexual comments made in the workplace. The DMP appealed the acquittal on the basis that the military judge erred in his interpretation of the offence of disgraceful conduct and erred in his interpretation of prejudice to good order and discipline.

The Notice of Appeal was filed on 29 March 2018.

Annex E provides additional information regarding appeals to the CMAC.²⁸

²⁸ Further information may also be obtained by accessing the CMAC website: <http://www.cmac-cacm.ca/index-eng.shtml>.

3.9.2 Upcoming Appeals to the Supreme Court of Canada

R v Master Corporal Stillman et al.

Following the CMAC decision in *Déry*, a number of the appellants sought leave to appeal to the SCC. The SCC granted leave to appeal on 8 March 2018. Seven of the appellants have now filed their Notice of Appeal. The questions on appeal are: Does paragraph 130(1)(a) of the NDA violate section 11(f) of the *Charter*; and if so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Charter*.

On 11 April 2018, the SCC granted the appellants' motion to extend the time for filing written submissions until eight weeks after the CMAC renders its decision in the *Beaudry* matter.

R v Warrant Officer Gagnon

As indicated previously, WO Gagnon appealed the decision of the CMAC as of right. The Notice of Appeal was filed on 5 March 2018. A tentative hearing date is scheduled for 16 October 2018.

Annex F provides additional information regarding appeals to the SCC.²⁹

Major Patrice Germain and Major Dylan Kerr at the CMAC in *R v Corporal Beaudry* on 31 October 2017

²⁹ Further information may also be obtained by accessing the SCC website: <http://www.scc-csc.gc.ca/case-dossier/info/hear-aud-eng.aspx?ya=2015&ses=03&submit=Search>.

Conclusion

In addition to general legal advice provided by CMPS on a regular basis to DJAs and CFNIS, RMPs have handled 199 referrals from the chain of command (118 of those having been received in 2017-2018), closed 132 cases, worked on 14 appeals (all at the CMAC) and provided pre-charge advice in relation to 126 files (with an additional 3 files still pending) during the reporting period. Overall, CMPS handled 342 files in FY 2017-2018. This is 42 files more than in 2016-2017 which was our busiest year in the last 5 years. This was accomplished even though our Reserves RMPs could not be as active as last year. Training invested in the RMPs the previous year and this year and the increase of experience appears to have helped in achieving these results.



Major Larry Langlois, RMP Central Region

chapter POLICY, TRAINING COMMUNICATION & OUTREACH 4

Policy, training, communication and outreach are key elements for CMPS. DMP policy directives govern prosecutions or other proceedings conducted by the RMPs to ensure that decisions are taken on a principled basis and in accordance with the law. Training is key to ensure that the RMPs discharge their duties in an efficient and competent manner. Finally, communication and outreach activities increase the knowledge about the CMPS mission, vision and activities, which are essential to ensure the confidence of CAF members and Canadians in the military justice system. These are the main accomplishments of CMPS in these areas during the reporting period.

4.1 Policy

4.1.1 Creation of DDMP SMART

During the previous reporting period, the CMPS amended a number of policy directives concerning the conduct of prosecutions for offences of a sexual nature. The two main objectives of that review were to ensure that offences of a sexual nature are prosecuted in the appropriate justice system and that the views of complainants are solicited, considered and addressed at all phases of the court martial process. In support of the CAF's goal to eliminate harmful and inappropriate sexual behaviour and building upon the policy amendments from the previous reporting period, the DMP created a new position within CMPS - DDMP SMART.

Sexual misconduct prosecutions are among the most serious and complex cases entrusted to the CMPS. Because of the personal and institutional damage that can result from sexual misconduct in the CAF, the vulnerability of the victims, and the unique evidentiary issues that may arise, military prosecutors require specialized training to optimize their knowledge and efficiency.

Other prosecution services across the country have recognized the unique challenges inherent in sexual misconduct cases and have responded by designating individual prosecutors as specialists and/or mentors for these cases in order to ensure proper training and continuity.

Consistent with Op HONOUR, Canada's Defence Policy³⁰ and DMP Policy Directive 004/00, the CMPS is committed to ensuring that its prosecutors possess the appropriate knowledge and skills necessary to prosecute sexual misconduct cases in a manner which instills public confidence in the administration of military justice.

The creation of DDMP SMART will be instrumental in achieving this objective in the following manner:

- The DDMP SMART identifies and facilitates regular training opportunities to ensure that RMPs acquire and maintain current knowledge and skills necessary to address the unique considerations which arise in sexual misconduct cases.
- The DDMP SMART works with DMP and ADMP to ensure continuity of expertise within the CMPS as needed, having regard to posting cycles.
- The DDMP SMART provides mentorship and support for prosecutors as needed in sexual misconduct prosecutions. This includes participating in ongoing cases, whether at the pre and post charge stage, during witness interviews and preparation as well as during courts martial, as needed.
- The DDMP SMART liaises with other prosecution services in Canada involved in sexual misconduct prosecutions to ensure that best practices are identified and followed at all stages of sexual misconduct prosecutions.
- The DDMP SMART participates in the

30 Strong, Secure, Engaged, *supra* note 13.

Coordinating Committee of Senior Officials (CCSO) Working Group on Access to Justice for Adult Victims of Sexual Assault, a working group created to explore, analyze and provide recommendations to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety.



Lieutenant-Colonel Maureen Pecknold, DDMP SMART, was awarded the Commitment to Justice Award 2017 by the Federal-Provincial-Territorial Heads of Prosecutions Committee on 26 October 2017

4.1.2 Special Prosecutors

The DPM issued a new Policy Directive on 12 April 2017 pertaining to the appointment of special prosecutors in instances where there may be the potential for an actual or perceived conflict of interest should military prosecution duties be conducted by a RMP.³¹ Special prosecutors are appointed by the DMP and must be members in good standing of the bar of a province or territory of Canada and must also be officers of the CAF but not part of the Office of the JAG.

The DMP appointed a special prosecutor for the first time on 19 February 2018 to conduct the post-charge review of charges laid by the CFNIS against the Chief Military Judge, Colonel Mario Dutil on 25 January 2018. The appointee is Lieutenant-Colonel Mark Poland, a reserve infantry officer who is also the Crown Attorney of the Waterloo Region with the Ontario Ministry of the Attorney General.

31 DMP Policy Directive 016/17: http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/about-policies-standards-legal/dmp-policy-directive-016-17-appointment-of-special-prosecutors.pdf

4.2 Training

4.2.1 Focus on specialized skills

During the previous reporting period, as a result of the number of newly posted legal officers into the CMPS, training for military prosecutors focused on basic foundational skills in order to assist military prosecutors to achieve proficiency in basic advocacy skills. However, during this reporting period, in order to better develop proficiency and expertise, the training provided to military prosecutors focused on more specialized topics such as expert witnesses, search and seizure, appellate advocacy, sexual violence and trauma informed prosecutions.

Given the small size of the CMPS, much of the required training is provided by external organizations. During the reporting period, military prosecutors participated in conferences and continuing legal education programs organized by the Federation of Law Societies of Canada, the Canadian Bar Association, the Ontario Crown Attorneys' Association, le Barreau du Québec, the International Association of Prosecutors, the Ontario Ministry of the Attorney General and the Public Prosecution Service of Canada (PPSC). These programs benefited the CAF not only through the knowledge imparted and skills developed but also through the professional bonds developed by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

CMPS held its annual Continuing Legal Education (CLE) workshop on 26 and 27 February 2018 for its Regular Force and Reserve Force military prosecutors. The event was held on two consecutive days again this year prior to the annual JAG CLE workshop and touched upon several topics, including a full day spent on resiliency training.

During the reporting period, 23 prosecutors took part in 15 different training activities for a total of 168 days of training (7.3 days of training per military prosecutor).

Military prosecutors also took part in a variety of professional development activities, including

significant participation from CMPS in the National Criminal Law Program held in Vancouver, BC from 10 to 14 July 2017.

Table 5	
Total days of Prosecution related training within CMPS	168
Number of Training Events	15
Number of Prosecutors who have received Training	23
Average Number of Days of Training per Prosecutor	7.304
Average Number of Training Events per Prosecutor	2.00

4.2.2 Memorandum of Understanding (MOU)

During the reporting year, CMPS entered into a partnership with the Attorney General for the Province of Ontario and PPSC for the temporary employment of a CAF legal officer as crown prosecutor with these provincial and federal prosecution services.

From October 2017 until the end of April 2018, a military prosecutor from the Central region was seconded to the Ottawa Crown Attorney's Office. As an Assistant Crown Attorney, he assisted and conducted several trials at the Ontario Court of Justice and one jury trial at the Superior Court of Justice, in matters concerning offences of sexual assault, domestic violence, prostitution and human trafficking. During that time, the prosecutor worked with detectives from various units of the Ottawa Police, caseworkers from the Victim and Witness Assistance Program, Probation officers, and experts from the Forensic Units of the Ottawa Police and from the Ontario Centre of Forensic Sciences.

These exchanges are invaluable in fostering relationships with other Canadian prosecution services, developing well-rounded advocates, and providing an opportunity to capture lessons learned that help further advance our practices and policies. In turn, it also promotes the quality and professionalism of counsel working at the Office of the JAG (OJAG).

4.2.3 Resilience Training and Mental Health

In line with Canada's new Defence Policy, "Strong, Secure, Engaged," and the promotion of psychosocial well-being in the workplace, the CMPS organization undertook a full day of training to explore different strategies to improve the mental resiliency of individual prosecutors. This training was the result of a partnership with the CAF Health Services Group started in 2016 and was specifically designed to deal with many of the challenges faced by military prosecutors. Based on the Road to Mental Readiness program (R2MR), the training was tailored specifically for military prosecutors and focused on:

- understanding and recognizing the impact stress has on your physiology and cognitive processes;
- applying stress management strategies in order to optimize well-being and performance in a high-stress occupational environment;
- identifying changes in health and performance as well as signs of under-recovery and mental illness; and
- knowing what mental health resources are available and how to access them.

The intent moving forward with this initiative is for all new legal officers posted into the CMPS to receive the training while also developing a refresher program for those who have already received the initial training.

4.2.4 Military Skills

In addition to prosecution training, CMPS military personnel also participate in other training activities in order to maintain their readiness to deploy into a theatre of operations. These activities include individual military skills training such as weapons familiarization, Chemical Biological Radiological Nuclear training, first aid training as well as maintaining an acceptable level of physical fitness.

During the reporting period, two of our RMPs attended The Governor General's Canadian Leadership Conference providing them with

unparalleled leadership training. This conference brings together Canada's emerging leaders from business, labor, government, NGOs, education and the cultural sector for a unique two-week experience aimed at broadening their perspectives on work, leadership, their communities and their country. Participation in this training provided the RMPs with an opportunity to broaden their experiences with leadership, and to understand the larger context of certain challenges such as access to justice and access to family services. The opportunity to discuss high-level leadership challenges with current and upcoming leaders from a variety of domains was invaluable.

4.2.5 Training provided by CMPS

CMPS also provides support to the training activities of the OJAG and other CAF entities. During the reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior military lawyers from the OJAG who completed a portion of their "on the job training" program by assisting in prosecutions at courts martial. CMPS also provided support to the Legal Officer Qualification Course as well as military justice briefings to JAG legal officers, criminal law/military justice training to members of the CFNIS, and served as supervisors for law graduates articling with the OJAG. Finally, legal officers serving outside the CMPS may, with the approval of their supervisor and the DMP, participate in courts martial as "second chair" prosecutors. The objective of this program is "to contribute to the professional development of unit legal advisors as well as to improve the quality of prosecutions through greater local situational awareness".³²

Annex B provides additional information regarding the legal training received by CMPS personnel.

4.3 Communication and Outreach

4.3.1 CAF Chain of Command

The military justice system is designed to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale. It also ensures that justice is administered fairly and with respect for the rule of law. Operational effectiveness requires a workplace that is fair, respectful, inclusive and supportive of diversity. To meet these objectives, the chain of command must be effectively engaged.

While protecting the prosecutorial independence of CMPS, the DMP recognizes the importance of maintaining collaborative relationships with the chain of command of the CAF. Collaborative relationships with the chain of command ensure that both entities work together to strengthen discipline and operational efficiency through a robust military justice system.

During the reporting period, the DMP continued his practice of regularly attending court martial proceedings and meeting with senior members of the chain of command on different military bases across Canada.

4.3.2 CFNIS

The DMP also recognizes the importance of maintaining relationships with investigative agencies, while at the same time respecting the independence of each organization. Good relationships with investigative agencies ensure that both the DMP and the agencies exercise their respective roles independently, but co-operatively, and help to maximize CMPS's effectiveness and efficiency as a prosecution service.

RMPs provide investigation-related legal advice to CFNIS detachments across Canada. In addition, RMPs provide training to CFNIS investigators on military justice and developments in criminal law. At the headquarters level, DMP has assigned a

32 The DMP and the Deputy Judge Advocate General Regional Services have an agreement whereby unit legal advisors may participate as second chairs to RMPs in preparation for and conduct of courts martial. Please see DMP Policy Directive #: 009/00 (<http://www.forces.gc.ca/en/about-policies-standards-legal/comms-with-legal-advisors.page>) for further information.

military prosecutor as legal advisor to the CFNIS command team in Ottawa.³³ Additionally, the DMP has visited numerous CFNIS detachments across the country during the reporting period to discuss prosecution needs and strategic intent.

4.3.3 Federal, Provincial and Territorial Heads of Prosecutions Committee

The DMP is a member of the Federal/Provincial/Territorial Heads of Prosecution Committee, which brings together the respective leaders of Canada's prosecution services to promote assistance and cooperation on operational issues. The Committee held two general meetings during the reporting period both of which the DMP personally attended. These meetings provided an invaluable opportunity for participants to discuss matters of common concern in the domain of criminal prosecutions and find opportunities for collaboration.

4.3.4 International Association of Prosecutors – Military Network of Prosecutors

The International Association of Prosecutors (IAP) is a non-governmental and non-political organization. It promotes the effective, fair, impartial, and efficient prosecution of criminal offences through the application of high standards and principles, including procedures to prevent or address miscarriages of justice. The IAP also promotes good relations between prosecution agencies and facilitates the exchange and dissemination among them of information, expertise and experience.

The DMP and a senior RMP both attended the IAP's 22nd Annual Conference and General Meeting in September 2017 in Beijing, China. At that time, the Network for Military Prosecutors was officially launched with DMP taking a leadership role in this new initiative and facilitating a number of roundtable discussions with military and civilian prosecutors.

³³ The provision of legal services by the military prosecutor assigned as CFNIS Legal Advisor is governed by a letter of agreement dated 30 September 2013, signed by DMP and the Canadian Forces Provost Marshal.

4.3.5 Victims

The DMP met with several victims of sexual misconduct offences in November 2017, notably victims in the "It's Just 700" group, to share information about CMPS's initiatives and recent policy updates aimed at better accounting for victims' perspectives in the military justice system and to listen to their concerns.



The DMP, Colonel Bruce MacGregor, speaking at the IAP's 22nd Annual Conference and General Meeting in September 2017 in Beijing, China



Major Chavi Walsh, RMP Central Region, at the IAP's 22nd Annual Conference and General Meeting in September 2017 in Beijing, China

chapter 5

INFORMATION MANAGEMENT AND TECHNOLOGY

CMPS has continued its effort to develop its case management system (CMS) to improve its transparency and efficiency in measuring performance with a view to increasing accountability and reducing overall delays in the military justice system. Competing priorities and challenges in resource allocation have delayed progress in that regard over the reporting period but CMPS is expecting that the DMP CMS will become operational later in 2018.

CMPS has further been engaged in the OJAG development of the Justice Administration and Information Management System (JAIMS), which is aimed at supporting all actors of the military justice system on information management.

chapter FINANCIAL INFORMATION 6

Operating Budget

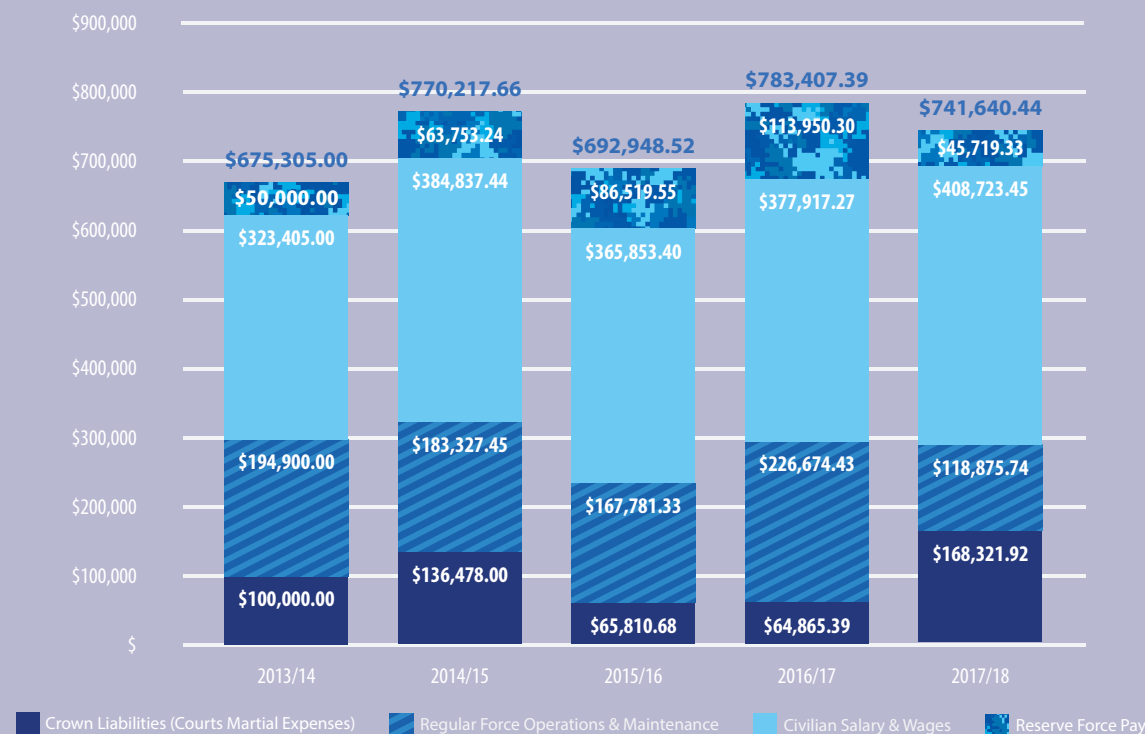
DMP's budget is allocated primarily to operations: that is, to providing prosecution services to the CAF. As a result of the uncertainty inherent in predicting the number of prosecutions that

will be conducted in a given year or where they may be held, it is difficult to accurately forecast expenditures.

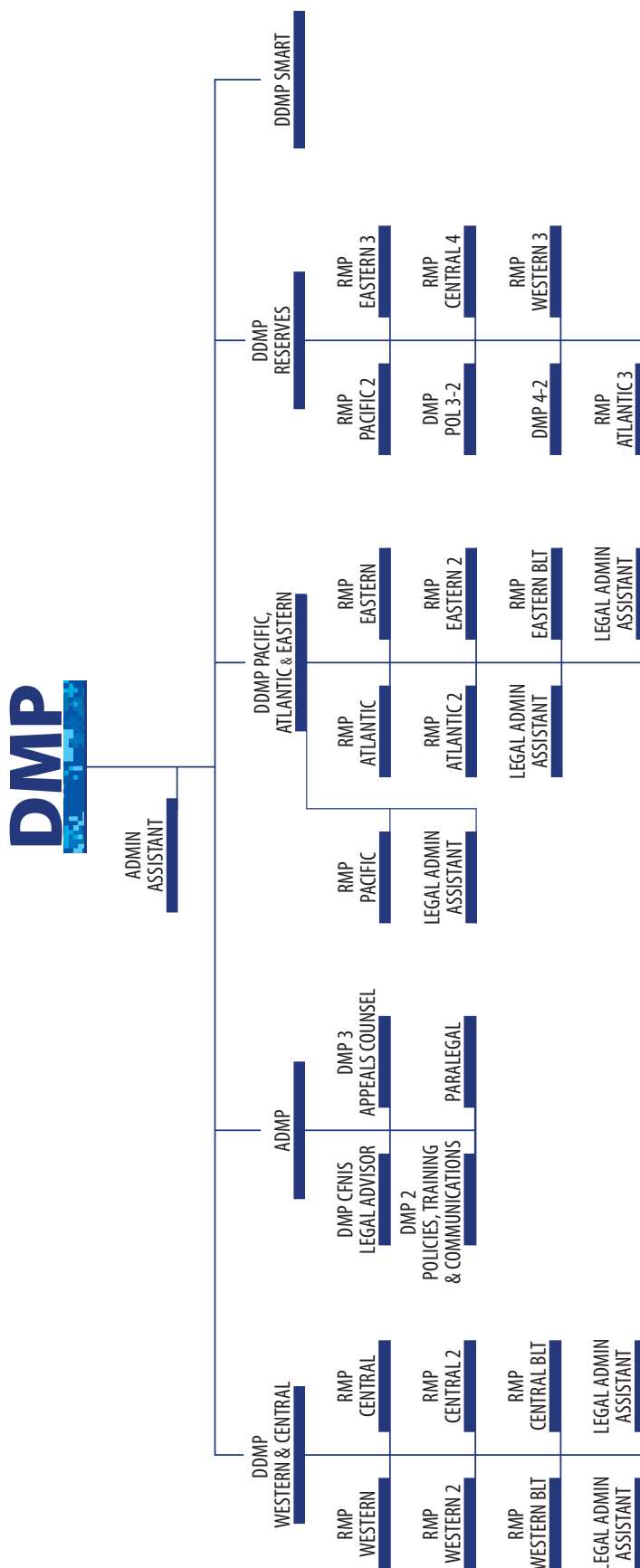
FY 2017-2018 DMP Budget Summary

FUND	INITIAL ALLOCATION	EXPENDITURES	BALANCE
Crown Liabilities (Courts Martial Expenses)	\$90,000.00	\$168,321.92	\$(78,321.92)
Regular Force Operations & Maintenance	\$217,800.00	\$118,875.74	\$98,924.26
Civilian Salary & Wages	\$298,472.00	\$408,723.45	\$(110,251.45)
Reserve Force Pay	\$119,000.00	\$45,719.33	\$73,280.67
Totals	\$725,272.00	\$741,640.44	\$(16,368.44)

Figure 36: DMP Operating Budget - Expenditures (Last 5 Years)



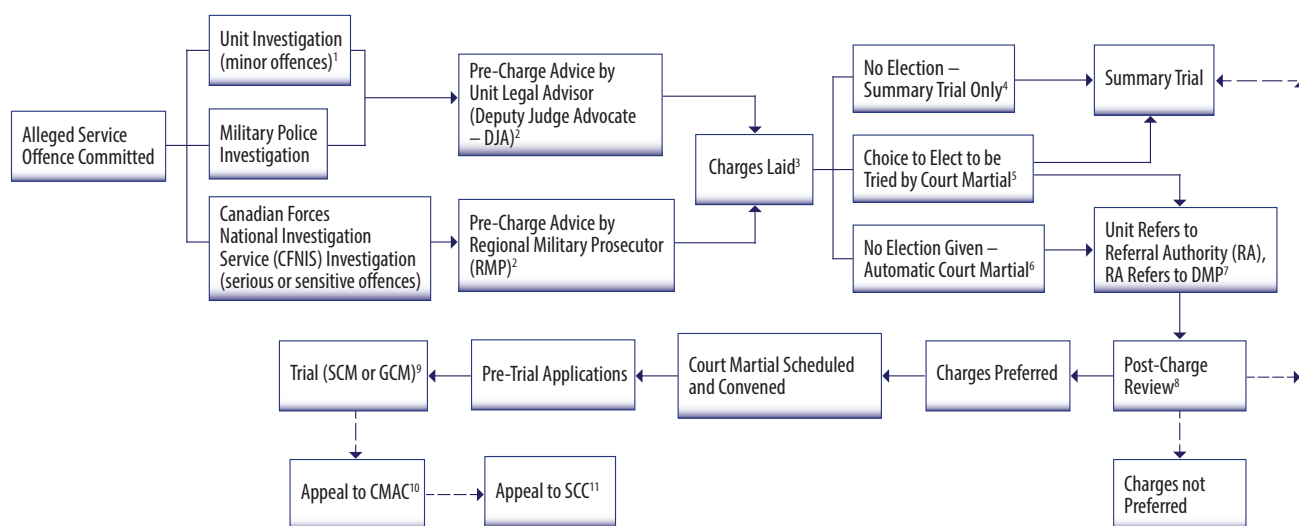
A Director of Military Prosecutions Organization Chart



annex Legal Training Statistics B

HOST ORGANIZATION	NAME OF COURSE	NUMBER OF ATTENDEES
Public Prosecution Service of Canada	PPSC School for Prosecutions – Prosecution Fundamentals (Level I)	1
Federation of Law Societies of Canada	2017 National Criminal Law Program	9
Ontario Crown Attorneys' Association	Sexual Violence	1
Ontario Crown Attorneys' Association	Experts	2
Ontario Crown Attorneys' Association	Search and Seizure	1
Ontario Crown Attorneys' Association	Trial Advocacy	3
Ontario Crown Attorneys' Association	Appellate Advocacy	2
Ontario Crown Attorneys' Association	Mental Health & the Criminal Justice System	1
Ontario Ministry of the Attorney General	2017 SVHAP Multidisciplinary Conference	1
Ontario Ministry of the Attorney General	Trauma Informed Prosecutions	5
End Violence Against Women International	Sexual Assault, Domestic Violence, and Systems Change	1
Canadian Bar Association	2017 CBA Military Law Conference	5
Barreau du Québec	Techniques de plaidoirie	1
International Association of Prosecutors	22nd Annual Conference	2
Director of Military Prosecutions	DMP Continuous Legal Education Seminar 2018	20

annex C Overview of the Referral Process



¹ See QR&O 106 "Investigation of Service Offences".

² Pre-charge advice is always advisable. Advice is mandatory under the circumstances in QR&O 107.03. See DMP Policy Directive 002/99 Pre-Charge Screening.

³ See QR&O 107 "Preparation, Laying and Referral of Charges".

⁴ Offences listed in QR&O 108.17(1)(a) must be tried by summary trial where the circumstances do not warrant punishment of detention, reduction in rank, or a fine greater than 25% of monthly pay under (1)(b).

⁵ Accused may elect court martial for offences listed in 108.17(1)(a) where the warranted punishment exceeds those in (1)(b), and offences listed in QR&O 108.07(2),(3).

⁶ Offences not listed in QR&O 108.07(2),(3) or where the accused is a LCol or higher must be tried by court martial.

⁷ See QR&O 109 "Application for Referral Authority for Disposal of a Charge".

⁸ See DMP Policy Directive 003/00 Post-Charge Review.

⁹ See QR&O 111 "Convening of Courts Martial and Pre-trial Administration".

¹⁰ See DMP Policy Directive 015/04 Appeals; QR&O 115 "Appeals from Courts Martial"; sections 230 and 230.1 of the *National Defence Act*.

¹¹ See DMP Policy Directive 015/04 Appeals; QR&O 115 "Appeals from Courts Martial"; section 245 of the *National Defence Act*.

annex Court Martial Statistics D

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
1	SCM	Cpl Ayers	90 NDA	Absence without leave	Guilty	Dismissal, a reduction in rank to Private, and one day imprisonment	N/A	Edmonton, AB	Edmonton, AB	English
			90 NDA	Absence without leave	Guilty					
			101.1 NDA	Failed to comply with a condition imposed under Division 3	Guilty					
2	SCM	OCdt Baluyot	86 NDA	Quarrels and disturbances	Guilty	Reprimand and a \$1,900 fine	N/A	Kingston, ON	Jean-sur-Richelieu, QC	English
3	SCM	Capt Bannister	93 NDA	Disgraceful conduct	Not Guilty	N/A	N/A	Charlottetown, P.E.I.	Charlottetown, P.E.I.	English
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			93 NDA	Disgraceful conduct	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			93 NDA	Disgraceful conduct	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
4	SCM	Cpl Bellevue	130 NDA (264.1(1) Criminal Code)	Uttering threats to cause death or harm	Guilty	Reprimand and a \$2,000 fine	N/A	St-Jean, QC	Jean-sur-Richelieu, QC	French
			130 NDA (264.1(1) Criminal Code)	Uttering threats to cause death or harm	Guilty					
			130 NDA (430(1) Criminal Code)	Wilfully committed mischief	Withdrawn					
			116(a) NDA	Wilfully damaged public property	Withdrawn					
			130 NDA (264(1) Criminal Code)	Criminal harassment	Withdrawn					
5	GCM	OS Betts	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$200 fine	N/A	Victoria, BC	Esquimalt, BC	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
6	SCM	WO Buenacruz (Ret'd)	130 NDA (271 Criminal Code)	Sexual assault	Not Guilty	N/A	N/A	Shilo, MB	Brandon, Manitoba	English

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
7	SCM	Pte Burrell	93 NDA	Disgraceful conduct	Not Guilty					
			130 NDA (286.1(1) Criminal Code)	Obtaining sexual services for consideration	Not Guilty					
			93 NDA	Disgraceful conduct	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			130 NDA (7(2) (a.1) CDSA)	Production of a substance	Guilty	Five months' imprisonment	N/A	Greenwood, NS	Greenwood, NS	English
			130 NDA (5(1) CDSA)	Trafficking	Not Guilty					
			130 NDA (5(2) CDSA)	Possession for the purpose of trafficking	Guilty					
8	SCM	Sgt Burton	130 NDA (88 Criminal Code)	Possession of a weapon for a dangerous purpose	Not Guilty					
			130 NDA (91(1) Criminal Code)	Unauthorized possession of a firearm	Not Guilty					
9	SCM	Cpl Cadieux	130 NDA (86(1) Criminal Code)	Used a firearm in a careless manner or without reasonable precautions for the safety of other persons	Stayed					
			130 NDA (86(2) Criminal Code)	Stored a firearm in contravention of the storage, display, transportation and handling of firearms by individual regulations	Guilty					
8	SCM	Sgt Burton	97 NDA	Drunkenness	Guilty	Reprimand and a \$750 fine	N/A	Shilo, MB	Yavoriv, Ukraine	English
9	SCM	Cpl Cadieux	130 NDA (271 Criminal Code)	Sexual assault	Not Guilty	N/A	N/A	Petawawa, ON	Savannah LA Mar, Jamaica	English
			97 NDA	Drunkenness	Not Guilty					
10	SCM	LCdr Carlyon	129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty	N/A	N/A	Quebec, QC	El Gorah, Egypt	English
			129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty					
			130 NDA (86(1) Criminal Code)	Carelessly stored a firearm	Not Guilty					
11	SCM	Cpl Chabot-Leroux	130 NDA (463(b) Criminal Code)	Attempted to defraud	Withdrawn	Severe Reprimand and a \$1,750 fine	N/A	Alouette, QC	Saguenay, QC	English
			130 NDA (366(1)(a) Criminal Code)	Made a forged document	Guilty					

annex Court Martial Statistics D

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			130 NDA (368(1)(a) Criminal Code)	Used of a forged document	Guilty					
12	SCM	Lt(N) Clark	130 NDA (266 Criminal Code)	Assault	Withdrawn	Reprimand and a \$2,000 fine	N/A	Gatineau, QC	Sydney, NS	English
			130 NDA (266 Criminal Code)	Assault	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty on facts that differ materially from the facts alleged in the particulars of the charge					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
13	SCM	MS Cooper	130 NDA (271 Criminal Code)	Sexual assault	Guilty	22 months' imprisonment, dismissal from the CAF and a reduction in rank to Ordinary Seaman.	N/A	Halifax, NS	Rota, Spain	English
			95 NDA	Abuse of subordinates	Guilty					
14	SCM	Sgt Coveyew	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and a \$200 fine	N/A	Greenwood, NS	Kentville, NS	English
15	SCM	MS De Nobile	130 NDA (334 Criminal Code)	Theft	Stayed	Reduction in rank to Able Seaman	N/A	Trois-Rivières, QC	Trois-Rivières, QC	French
			114 NDA	Stealing	Guilty					
16	SCM	Cpl Dickey	83 NDA	Disobedience of a lawful command	Withdrawn	Reprimand and a \$700 fine	N/A	Petawawa, ON	Petawawa, ON	French
			85 NDA	Insubordinate behaviour	Guilty					
			90 NDA	Absence without leave	Guilty					
			90 NDA	Absence without leave	Withdrawn					
17	GCM	WO Dowe	124 NDA	Negligent performance of a military duty	Withdrawn	Reprimand and a \$2,000 fine	N/A	Yellowknife, NWT	Yellowknife, NWT	English
			97 NDA	Drunkenness	Guilty					
18	SCM	Capt Duvall	93 NDA	Disgraceful conduct	Guilty	Severe reprimand and a \$1,000 fine	N/A	Gagetown, NB	Gagetown, NB	English
19	GCM	MCpl Edmunds	130 NDA (380 Criminal Code)	Fraud	Guilty	30 days' imprisonment	N/A	Petawawa, ON	Petawawa, ON	English

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Not Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Withdrawn					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Withdrawn					
			130 NDA (380 Criminal Code)	Fraud	Withdrawn					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Withdrawn					
			130 NDA (380 Criminal Code)	Fraud	Withdrawn					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Withdrawn					
			130 NDA (380 Criminal Code)	Fraud	Guilty with a special finding					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
20	SCM	Sgt Euper	95 NDA	Abuse of subordinates	Guilty	Reduction in rank to Corporal and a \$1,500 fine.	N/A	Edmonton, AB	Eureka, Nunavut	English
21	SCM	Cpl Furtado	86 NDA	Quarrels and disturbances	Guilty	Reprimand and a \$700 fine	N/A	Edmonton, AB	Wainwright, AB	English
22	SCM	MBdr Gaffey	130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty	Severe reprimand and a reduction in rank to Private	N/A	Gagetown, NB	Gagetown, NB	English
			114 NDA	Stealing	Guilty					
			130 NDA (355.5 Criminal Code)	Trafficking in property obtained by crime	Not Guilty					
			130 NDA (337 Criminal Code)	Public servant refusing to deliver property	Guilty					
			129 NDA	Act to the prejudice of good order and discipline	Guilty					
23	SCM	2Lt Ghaffari	130 NDA (266 Criminal Code)	Assault	Stayed	Reprimand and a \$1,000 fine	N/A	Montreal, QC	Kingston, ON	French
			86(a) NDA	Quarrels and disturbances	Guilty					

annex Court Martial Statistics D

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			86(b) NDA	Quarrels and disturbances	Guilty					
24	SCM	Cpl Gibbons	129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty	N/A	N/A	Borden, ON	Borden, ON	English
25	SCM	Capt Gillespie	130 NDA (87(1) Criminal Code).	Pointing a firearm	Not Guilty	Severe reprimand and a \$7,000 fine	N/A	Petawawa, ON	Petawawa, ON	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			95 NDA	Abuse of subordinates	Not Guilty					
26	SCM	Cpl Gobin	130 NDA (271 Criminal Code)	Sexual assault	Guilty of the lesser offence of assault (266 Criminal Code)	Reprimand and a \$1,500 fine	N/A	Shilo, MB	Wainwright, AB	English
27	SCM	WO Grant	93 NDA	Disgraceful conduct	Guilty	Reprimand and a \$1,500 fine	N/A	Gatineau, QC	Ottawa, ON	English
			93 NDA	Disgraceful conduct	Withdrawn					
			97 NDA	Drunkenness	Guilty					
			86 NDA	Quarrels and disturbances	Withdrawn					
28	SCM	Spr Grening	90 NDA	Absence without leave	Guilty	Reprimand and a \$1,000 fine.	N/A	Edmonton, AB	Edmonton, AB	English
			90 NDA	Absence without leave	Withdrawn					
			90 NDA	Absence without leave	Guilty					
29	SCM	Cdr Hopkie	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$500 fine	N/A	Gatineau, QC	Ottawa, ON	English
30	SCM	Cpl Kroetsch	114 NDA	Stealing	Guilty	Reprimand and a \$600 fine	N/A	Edmonton, AB	Edmonton, AB	English
			117(f) NDA	Fraud	Guilty					
31	SCM	Cpl Ladet	84 NDA	Striking a superior officer	Guilty	Reduction in rank to Private and a \$3,000 fine	N/A	Courcellette, QC	Cold Lake, AB	French
			130 NDA (264.1(1)(a) Criminal Code)	Uttering threats to cause death to a person	Not Guilty					
			130 NDA (264.1(1)(a) Criminal Code)	Uttering threats to cause death to a person	Not Guilty					
			130 NDA (266 Criminal Code)	Assault	Not Guilty					
			85 NDA	Insubordinate behaviour	Guilty					
			85 NDA	Insubordinate behaviour	Guilty					
32	SCM	Cpl Lafrenière	85 NDA	Insubordinate behaviour	Guilty	Minor punishment – caution	N/A	Courcellette, QC	Courcellette, QC	French

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			85 NDA	Insubordinate behaviour	Guilty					
33	SCM	MCpl Leadbetter	90 NDA	Absence without leave	Withdrawn	Reprimand and a \$3,000 fine	N/A	Edmonton, AB	Chicago, Illinois	English
			97 NDA	Drunkenness	Guilty					
			85 NDA	Insubordinate behaviour	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
34	SCM	LS MacDonald	129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn	\$750 fine	N/A	Halifax, NS	Palma deMallorca, Spain	English
			129 NDA	Neglect to the prejudice of good order and discipline	Guilty					
35	SCM	Lt(N) Makow	124 NDA	Negligent performance of a military duty	Not Guilty	N/A	N/A	Victoria, BC	Puerto Quetzal, Guatemala	English
			129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty					
			124 NDA	Negligent performance of a military duty	Not Guilty					
			129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty					
36	SCM	MCpl Matarewicz	130 NDA (266 Criminal Code)	Assault	Guilty	21 days' detention (suspended) and a severe reprimand	3 years prohibition order	Courcelette, QC	Glebokie, Poland	French
			130 NDA (264.1(1) Criminal Code)	Uttering threats to cause death or bodily harm	Guilty					
			130 NDA (430(1) Criminal Code)	Wilfully committed a mischief	Guilty					
			86 (b) NDA	Quarrels and disturbances	Guilty					
37	SCM	Capt Matte	97 NDA	Drunkenness	Not Guilty	Severe reprimand and a \$2,000 fine	N/A	Gatineau, QC	Kabul Afghanistan	French
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			95 NDA	Abuse of subordinates	Guilty					
			130 NDA (266 Criminal Code)	Assault	Stayed					
			95 NDA	Abuse of subordinates	Guilty					
			130 NDA (266 Criminal Code)	Assault	Stayed					

annex Court Martial Statistics D

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
38	SCM	Cdr Mensah	93 NDA	Disgraceful conduct	Withdrawn	Severe reprimand and a \$2,500 fine	N/A	Victoria, BC	Victoria, BC	English
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
39	SCM	Cpl Miszczak	130 NDA (162.1 Criminal Code)	Made available an intimate image without consent	Not Guilty	Reduction in rank to Private	N/A	Hamilton, ON	Meaford, ON	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
40	SCM	OCdt Morgado	130 NDA (271 Criminal Code)	Sexual assault	Withdrawn	Reprimand and a \$1,500 fine	N/A	Kingston, ON	Cold Lake, AB	English
			93 NDA	Disgraceful conduct	Guilty					
41	SCM	Cpl Newton	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and a \$500 fine	N/A	Cold Lake, AB	Cold Lake, AB	English
42	SCM	Pte Normand-Therrien	83 NDA	Disobedience of a lawful command	Guilty	21 days' detention (suspended) and an \$800 fine	N/A	Courcelette, QC	Courcelette, QC	French
			84 NDA	Striking a superior officer	Withdrawn					
			85 NDA	Insubordinate behaviour	Guilty					
43	SCM	MCpl Obele Ngoudni #1	130 NDA (266 Criminal Code)	Assault	Not Guilty	N/A	N/A	Courcelette, QC	Glebokie, Poland	French
			130 NDA (271 Criminal Code)	Sexual Assault	Not Guilty					
44	SCM	MCpl Obele Ngoudni #2	129 NDA	Act to the prejudice of good order and discipline	Guilty	\$200 fine and 10 days of confinement to barracks.	N/A	Courcelette, QC	Glebokie, Poland	French
45	SCM	Sgt Ogston	124 NDA	Negligent performance of a military duty	Not Guilty	\$200 fine and 30 days' stoppage of leave.	N/A	Gagetown, NB	Gagetown, NB	English
			129 NDA	Act to the prejudice of good order and discipline	Guilty					
			129 NDA	Act to the prejudice of good order and discipline	Not Guilty					
46	SCM	Cpl Parent	130 NDA (264.1(1)(a) Criminal Code)	Uttering threats	Guilty	Severe reprimand and a \$3,000 fine	N/A	Kingston, ON	Kingston, ON	English
			130 NDA (264.1(1)(a) Criminal Code)	Uttering threats	Not Guilty					
47	SCM	MCpl Penner	129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty	Reprimand and a \$750 fine	N/A	Edmonton, AB	Republic of Latvia	English
			97 NDA	Drunkenness	Guilty					

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
48	SCM	Cpl Quirion	130 NDA (266 Criminal Code)	Assault	Withdrawn	Reprimand and a \$1,500 fine	N/A	Alouette, QC	Cold Lake, AB	French
			95 NDA	Abuse of subordinates	Guilty					
			97 NDA	Drunkenness	Withdrawn					
49	SCM	Cpl Riddell	130 NDA (271 Criminal Code)	Sexual assault	Stayed	Severe Reprimand and an \$1,800 fine	N/A	Courcelette, QC	Ali Al Salem, Kuwait	English
			93 NDA	Disgraceful conduct	Guilty					
50	SCM	Cpl Rollman	84 NDA	Striking a superior officer	Not Guilty	N/A	N/A	Gagetown, NS	Gagetown, NS	English
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
51	SCM	MWO Scotto D'anielo	86(b) NDA	Quarrels and disturbances	Not Guilty	N/A	N/A	Courcelette, QC	Glebokie, Polande	French
			130 NDA (266 Criminal Code)	Assault	Withdrawn					
52	SCM	Sgt Shulaev	97 NDA	Drunkenness	Guilty	Reprimand and a \$750 fine	N/A	Shilo, MB	Yavoriv, Ukraine	English
53	SCM	Maj Skrok	129 NDA	Neglect to the prejudice of good order and discipline	Guilty	Reprimand and a \$1,500 fine	N/A	Victoria, BC	Singapore	English
			129 NDA	Neglect to the prejudice of good order and discipline	Withdrawn					
54	SCM	LS Smith	130 NDA (5(1) CDSA	Trafficking	Not Guilty	4 months' imprisonment and a \$4,500 fine	DNA Order	Halifax, NS	Halifax, NS	English
			130 NDA (5(2) CDSA	Possession for the purpose of trafficking	Guilty					
			130 NDA (4(1) CDSA	Possession	Guilty					
			130 NDA (86(2) Criminal Code)	Stored a firearm in contravention of the storage, display, transportation and handling of firearms by individual regulations	Guilty					
55	GCM	Ex-Cpl Stuart	129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn	Severe reprimand and a reduction in rank to Aviator	N/A	Cold Lake, AB	Cold Lake, AB	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			90 NDA	Absence without leave	Guilty					

annex Court Martial Statistics D

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
56	SCM	Sig Truelove	130 NDA (266 Criminal Code) 101.1 NDA	Assault Failed to comply with a condition imposed under Division 3	Guilty Guilty	1 day detention (suspended)	N/A	Kingston, ON	Kingston, ON	English
57	SCM	MCpl W.	83 NDA 130 NDA (163.1(2) Criminal Code) 130 NDA (151 Criminal Code) 130 NDA (271 Criminal Code) 130 NDA (163.1(4) Criminal Code) 130 NDA (163.1(4) Criminal Code) 130 NDA (162.1(a) Criminal Code) 129 NDA 90 NDA 97 NDA	Disobedience of a lawful command Making child pornography Sexual interference Sexual assault Possession of child pornography Possession of child pornography Voyeurism Conduct to the prejudice of good order and discipline Absence without leave Drunkenness	Withdrawn Withdrawn Withdrawn Guilty Withdrawn Withdrawn Withdrawn Withdrawn Withdrawn	Dismissal from the CAF with disgrace, 18 months' imprisonment and a reduction in rank to Private	SOIRA 20 years and DNA Order	Kingston, ON	Kingston, ON	English
58	SCM	Cpl Whaley	114 NDA 130 NDA (334(a) Criminal Code) 130 NDA (355.2 Criminal Code) 130 NDA (355.2 Criminal Code) 116(a) NDA	Stealing Theft Trafficking in property obtained by crime Trafficking in property obtained by crime Sold improperly public property	Guilty Not guilty Guilty Stayed Guilty	14 days' detention and \$3,000 fine	N/A	Greenwood, NS	Greenwood, NS	English
59	GCM	PO2 Wilks	130 NDA (122 Criminal Code) 130 NDA (122 Criminal Code) 130 NDA (122 Criminal Code) 130 NDA (122 Criminal Code) 130 NDA (271 Criminal Code)	Breach of trust by a public officer Breach of trust by a public officer Breach of trust by a public officer Breach of trust by a public officer Sexual assault	Not guilty Not guilty Not guilty Not guilty Guilty	9 months' imprisonment	N/A	London, ON	Thunder Bay, Ontario	English

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
60	SCM	Sgt Williams	130 NDA (122 Criminal Code)	Breach of trust by a public officer	Guilty	Severe reprimand and \$1,000 fine	N/A	St. John's, NL	St. John's, NL	English
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Guilty					
			95 NDA	Abuse of subordinates	Not guilty					
			95 NDA	Abuse of subordinates	Not guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
61	SCM	MCpl Wylie	130 NDA (264.1(1) Criminal Code)	Uttering threats	Not guilty	N/A	N/A	Edmonton, AB	Edmonton, AB	English
			130 NDA (264.1(1) Criminal Code)	Uttering threats	Not guilty					
			129 NDA	Act to the prejudice of good order and discipline	Not guilty					
			129 NDA	Act to the prejudice of good order and discipline	Withdrawn					
62	SCM	MCpl Young	95 NDA	Abuse of subordinates	Not guilty	N/A	N/A	St. John's, NL	St. John's, NL	English
			95 NDA	Abuse of subordinates	Not guilty					

annex E Appeals to the Court Martial Appeal Court of Canada

CMAC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
566	Pte Déry	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
567	MCpl Stillman	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
571	Maj Wellwood	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
574	PO2 Wilks	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
577	Her Majesty the Queen	WO Gagnon	(1) Legality of Finding (2) Cross appeal- Constitutional Challenge	(1) Appeal granted (2) Appeal dismissed
578	Lt(N) Klein	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
579	Cpl Nadeau-Dion	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
580	Cpl Pfahl	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
581	Her Majesty the Queen	Cpl Thibault	(1) Legality of Finding (2) Cross appeal- Constitutional Challenge	(1) Appeal granted (2) Appeal dismissed
583	2Lt Soudri	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
584	PO2 Blackman	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
587	Her Majesty the Queen	Cpl Golzari	Legality of Finding	Appeal granted
588	Corporal Beaudry	Her Majesty the Queen	Constitutional Challenge	Waiting for Decision
589	Her Majesty the Queen	Cpl Hoekstra	Legality of Sentence and Severity of Sentence	Appeal granted
590	Ex-MCpl Edmunds	Her Majesty the Queen	Legality of Finding	Charges declared a nullity and quashed the conviction
591	Her Majesty the Queen	Cpl Cadieux	Legality of Finding	Waiting for Decision
592	Her Majesty the Queen	Capt Bannister	Legality of Finding	Ongoing

Appeals to the Supreme Court of Canada

SCC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
37701	MCpl Stillman, <i>et al</i>	Her Majesty the Queen	Legality of Finding (appeal as of right)	Leave to Appeal granted on 8 March 2018.
37972	WO Gagnon	Her Majesty the Queen	Legality of Finding (appeal as of right)	Notice of Appeal was filed on 5 March 2018. Hearing date scheduled for 16 October 2018.

annex Custody Review Hearings G

#	ACCUSED	DATE	ALLEGED CHARGES		DECISION
1	Cpl Ayers	24 April 2017	90 NDA 90 NDA 101.1 NDA	Absence without leave Absence without leave Failed to comply with condition imposed under division 3	Released on conditions
2	Sgt Conway	27 April 2017	90 NDA 90 NDA	Absence without leave Absence without leave	Released on conditions
3	Cpl McGregor	15 May 2017	130 NDA (348(1)(b) Criminal Code) 130 NDA (348(1)(b) Criminal Code) 130 NDA (348(1)(b) Criminal Code) 130 NDA (163.1(4) Criminal Code) 130 NDA (271 Criminal Code) 130 NDA (162(1) Criminal Code) 130 NDA (162(1) Criminal Code) 130 NDA (184(1) Criminal Code) 130 NDA (184(1) Criminal Code) 130 NDA (184(1) Criminal Code) 130 NDA (162.1(1) Criminal Code) 130 NDA (191(1) Criminal Code) 130 NDA (191(1) Criminal Code) 130 NDA (334 Criminal Code) 130 NDA (354(1) Criminal Code)	Breaking and Entering Breaking and Entering Breaking and Entering Possession of Child Pornography Sexual Assault Voyeurism Voyeurism Interception of communications Interception of communications Interception of communications Transmission of Intimate Images without Consent Possession of a Device for Surreptitious Interception of Private Communication Possession of a Device for Surreptitious Interception of Private Communication Theft Possession of property obtained by crime	Released on conditions

annex G Custody Review Hearings

#	ACCUSED	DATE	ALLEGED CHARGES		DECISION
4	Pte McGovern	12-13 July 2017	<i>130 NDA (264.1 Criminal Code)</i> <i>129 NDA</i> <i>101.1 NDA</i>	Uttering Threats Conduct to the prejudice of good order and discipline Failed to comply with condition imposed under division 3	Released on conditions
5	Pte Truelove	27 Oct -15 Nov 2017	<i>130 NDA (267(a) Criminal Code)</i> <i>102(a) NDA</i> <i>130 NDA (270(1)(b) Criminal Code)</i> <i>97 NDA</i> <i>101.1 NDA</i>	Assault with a Weapon Resist Arrest Assault of a peace officer Drunkenness Failed to comply with condition imposed under division 3	Released on conditions