



National
Defence

Défense
nationale



Director of Military Prosecutions Annual Report 2018 - 2019

Canada 



National Defence

Défense nationale

Director of Military Prosecutions

Directeur des poursuites militaires

National Defence Headquarters

Quartier général de la Défense nationale

Major-General George R. Pearkes Building

Édifice Major-général George R. Pearkes

101 Colonel By Drive

101, promenade du Colonel-By

Ottawa, ON K1A 0K2

Ottawa (Ontario) K1A 0K2

19 June 2019

Commodore Geneviève Bernatchez, OMM, 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 2018-2019 Annual Report of the Director of Military Prosecutions. The report covers the period from 1 April 2018 through 31 March 2019.

Yours sincerely,

Colonel Bruce MacGregor, CD, Q.C.

Director of Military Prosecutions

Table of Contents



Message from the Director of Military Prosecutions	III
--	-----

Chapter One

The Canadian Military Prosecution Service	1
Duties and Functions of the DMP	1
Mission and Vision	2
Canadian Military Prosecution Service....	2
CMPS Personnel	3
Training and Continuing Legal Education	5
Temporary Duty	8

Chapter Two

The Military Justice System and the Court Martial System	9
Introduction	9
Courts Martial	10

Chapter Three

Military Justice Proceedings:	
Year in Review	13
Courts Martial	13
Case Management	16
Pre-Charge Advice	17
Offences Categories	19
Appeals.....	22
Custody Review Hearings	28

Chapter Four

<i>R v Beaudry</i>	29
--------------------------	----

Chapter Five

Report of the Auditor General of Canada in the Administration of Justice in the Canadian Armed Forces	32
Introduction	33
Policy Amendments	33
Case Management System	36
Canadian Forces Military Police Academy	36

Chapter Six

Policy Updates	37
Special Prosecutor	38
Additional Amendments	39
Victims	40

Chapter Seven

Communication and Outreach	41
CAF Chain of Command	41
Canadian Forces National Investigation Service	42
Federal, Provincial and Territorial Heads of Prosecutions Committee	42
International Association of Prosecutors	43
United Nations	44
Royal United Services Institute of Nova Scotia	44
Ukraine - Reforming Ukraine's Military Justice System	44

Chapter Eight

Information Management and Technology	45
Case Management System	45

Chapter Nine

Financial Information	47
Operating Budget	47

Annex A

Court Martial Statistics	49
--------------------------------	----

Annex B

Appeals to the Court Martial Appeal Court of Canada	57
---	----

Annex C

Appeals to the Supreme Court of Canada	58
--	----

Annex D

Custody Review Hearings	59
-------------------------------	----

Message from the Director of Military Prosecutions



I am pleased to present the Director of Military Prosecutions (DMP) Annual Report for the 2018/19 reporting period, my fifth since being appointed by the Minister of National Defence as DMP on 20 October 2014.

As a Commanding Officer, it gives me great pride to lead an organization such as the Canadian Military Prosecution Service (CMPS) and those talented individuals who work within it. Despite a number of challenges faced by the CMPS this year, we were able to successfully continue to support the Canadian Armed Forces (CAF) in the maintenance of the discipline, efficiency and morale of the men and women who serve their country with distinction.

In September of 2018, the Court Martial Appeal Court (CMAC) released its decision in the case of *R v Beaudry*. Despite two previous rulings to the contrary, the CMAC held that s. 130(1)(a) of the *National Defence Act* violates section 11(f) of the *Canadian Charter of Rights and Freedoms*. The immediate effect of that ruling was that the CMPS was no longer able to prosecute those cases where accused persons were charged with offences under that section and were subject to a punishment of imprisonment for five years or more. At the time of the decision, nearly half of our annual caseload was impacted.

Within 48 hours of the decision, our team responded by appealing the decision on behalf of the Minister of National Defence and by filing two motions with the Supreme Court of Canada (SCC) – one to request a stay of execution of the declaration of invalidity

and a second motion to join the matter with the case of *R v Stillman* which was already before the SCC on the very same issue.

On 14 January 2019, the SCC denied the request for a stay of execution. I immediately instructed all members of my team to examine those impacted cases on a principled basis to determine whether those matters could still proceed through the military justice system or if they had to be transferred to the civilian justice system. In all cases where there were victims, I required that they be consulted and informed prior to any decisions being taken.

It is an understatement to say that this presented a challenge to our organization and our ability to continue to prosecute cases through the military justice system. At all times, we continued to balance the need to hold those accused of offences to account for their actions along with the interests of victims and the rights of the accused to be tried within a reasonable time as indicated by the SCC in the recent case of *R v Jordan*. On 26 March 2019, the cases of *Beaudry* and *Stillman* were argued before the SCC and a decision is expected in the next reporting period.

In addition, this past reporting period the Auditor General of Canada, as a part of his 2018 Spring Report, reported on the administration of military justice. That report indicated a number of concerns related to delay, the documenting of key decisions in court martial files and the independence of the DMP. The Auditor General made a series of recommendations which were accepted and our prosecution team updated a number of our policies and procedures to ensure better efficiencies and that key decisions were properly documented.

In terms of independence, I continue to work with the Judge Advocate General and others to ensure that conflicts do not arise in the duty of my prosecutors to act in the public interest. Properly recognized by the Auditor General, prosecutorial independence that is free from any form of interference is one of the keys to a properly functioning criminal justice system.

This past reporting period there were a number of appeal decisions from the CMAC as well as the case of *R v Gagnon* which was also argued at the SCC. In that case, in a unanimous decision from the bench, the SCC affirmed the requirement, in cases of sexual assault, for an accused to take reasonable steps to ensure that the complainant is consenting to sexual activity. At the CMAC, aside from *Beaudry*, the court also rendered two other decisions in *R v Edmunds* and *R v Cadieux*. In addition, on behalf of the Minister, I appealed four court martial decisions to the CMAC on several questions of law in *R v Bannister*, *R v MacIntyre*, *R v Edwards* and *R v Spriggs*. All of these cases are discussed in greater detail in Chapter Three.

This past reporting period I also took considerable steps to engage in strategic outreach with members of the CAF as well as with civilian and military prosecutors both nationally and internationally through the Federal/Provincial/Territorial Heads of Prosecution Committee and the International Association of Prosecutors. These organizations are designed to promote good relations between prosecution agencies and facilitate the exchange and dissemination of information, expertise and experience in those areas that touch upon criminal law and practice management. Through these relationships not only do we improve the conduct of prosecutions within the CMPS through the sharing of best practices but we also continue to strengthen the legitimacy of Canada's military justice system.

To further improve the abilities of my prosecutors I also put a high priority on training and professional development opportunities. With such a junior cadre of military prosecutors within the CMPS, training becomes an essential component in the improvement of the core prosecutorial competencies of our personnel. To that end, my prosecutors were afforded a number of training opportunities including some who worked alongside our civilian counterparts through memorandums of understanding with provincial prosecution services to prosecute cases under the mentorship of civilian Crown

counsel. Given the busy workload and high tempo throughout the year, most of the CMPS leadership was involved in the two appeals to the SCC as well as providing assistance and guidance on the extraordinarily high number of cases argued at the CMAC this year. This made external training opportunities of vital importance to enhance the skill set of our personnel as internal training opportunities and day-to-day mentoring were greatly reduced.

Finally, this year saw significant development of and improvement to our electronic case management system. This system which tracks all court martial cases throughout the court martial process will improve transparency and efficiency by increasing accountability and reducing overall delays in the court martial system. In response to the recommendation by the Auditor General that a case management system be put in place to monitor and manage the progress and completion of military justice cases, the case management system was operationalized on 1 June 2018. The work done this year to enhance the case management system is discussed in greater detail in Chapter Eight.

In closing, it has been a very busy and challenging year for the CMPS and I would like to thank my entire team for their dedication, tenacity and professionalism in successfully meeting each and every one of these challenges as we continue to support the rule of law and support the maintenance of discipline, efficiency and morale in the Canadian Armed Forces.

ORDO PER JUSTITIA

Colonel Bruce MacGregor, CD, Q.C.
Director of Military Prosecutions



CHAPTER ONE

The Canadian Military Prosecution Service



Duties and Functions of the Director of Military Prosecutions

The Director of Military Prosecutions (DMP) is the senior military prosecutor in the Canadian Armed Forces (CAF). He is appointed by the Minister of National Defence for a fixed term pursuant to subsection 165.1(1) of the *National Defence Act* (NDA). Under the NDA the DMP is responsible to prefer all charges to be tried by court martial and for the conduct of all prosecutions at courts martial. The DMP also acts as counsel, when instructed, in respect of appeals to the Court Martial Appeal Court (CMAC) and the Supreme Court of Canada (SCC). The DMP is also responsible to provide advice in support of investigations conducted by the Canadian Forces National Investigation Service (CFNIS), a military police service that reports to the Canadian Forces Provost Marshal. The DMP also represents the CAF at custody review hearings and provides legal advice and training to the CFNIS.

The DMP is under the general supervision of the Judge Advocate General (JAG) and, in this regard, the JAG may issue general instructions or guidelines in writing in respect of prosecutions, which the DMP must ensure are made available to the public. The JAG may also issue specific instructions or guidelines in writing in respect of a particular prosecution. The DMP must ensure that these instructions or guidelines are also available to the public, unless the DMP considers that doing so would not be in the best interest of the administration of military justice. To date, the JAG has never issued specific instructions or guidelines on a particular prosecution.

Appointed for a four-year term, the DMP acts independently from CAF and Department of National Defence (DND) authorities when exercising his prosecutorial powers, duties and functions and fulfils his mandate in a



manner that is fair and impartial. Although the DMP acts under the general supervision of the JAG, he exercises his prosecutorial mandate independent from the JAG and the chain of command. The 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, the DMP determines whether to:

- Prefer (or not prefer) the charge;
- Prefer any other charge that is founded on facts disclosed by evidence in addition to or in substitution for the charge; or
- Refer it for disposal by an officer who has jurisdiction to try the accused person by summary trial in those cases where the DMP is satisfied that a charge should not be proceeded with by court martial.

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

Mission and Vision

Canadian Military Prosecution Service

Mission

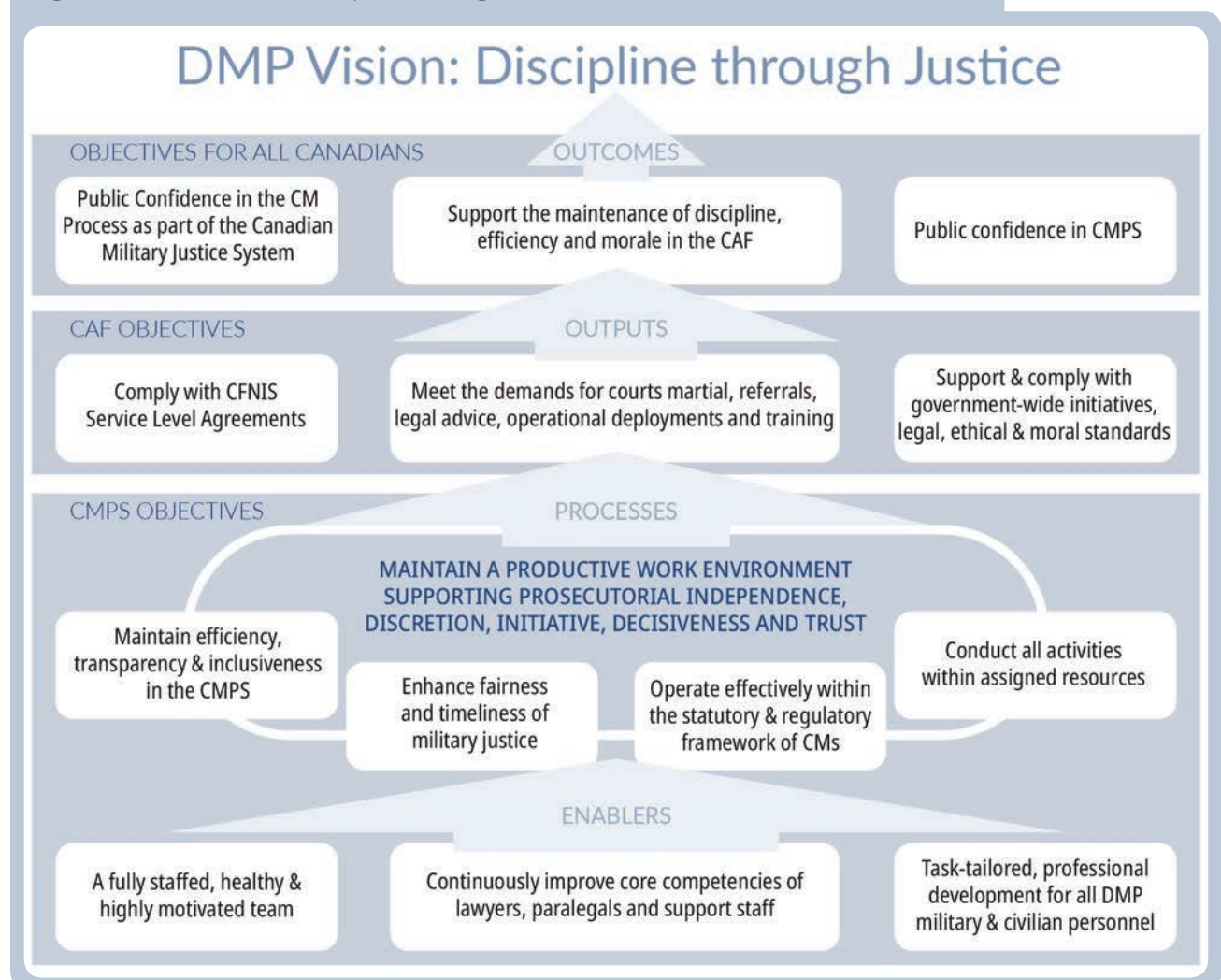
To provide competent, fair, swift and deployable prosecution services to the CAF in Canada and overseas.

Vision

Ordo Per Justitia or Discipline Through Justice. The DMP is a key player in the Canadian military justice system helping to promote respect for the law, as well as discipline, good order, high morale, *esprit de corps*, group cohesion and operational efficiency and capability.

In accordance with section 165.15 of the NDA, the DMP may be assisted and represented, to the extent determined by the DMP, by officers who are barristers or advocates with standing at the bar of a province. In this regard the DMP is assisted by a number of Regular and Reserve Force legal officers appointed to act as military prosecutors, along with a civilian paralegal and support staff. This organization, known as the Canadian Military Prosecution Service (CMPS), is headquartered in Ottawa and with several Regional Military Prosecutors (RMPs) located across Canada.

Figure 1-1: DMP Vision: Discipline Through Justice



CMPS Headquarters

Along with the DMP, at the CMPS Headquarters, there is the Assistant Director of Military Prosecutions (ADMP); two Deputy Directors of Military Prosecutions (DDMPs); Appellate Counsel; Policy Counsel and the Legal Advisor to the CFNIS.

ADMP

The ADMP is responsible to assist the DMP in the day-to-day management of the CMPS. In addition, the ADMP supervises the appellate counsel, the prosecutor responsible for policy, training and communications and the legal advisor to the CFNIS.

DDMPs

The DDMPs are responsible to supervise and mentor the RMPs. One DDMP supervises those RMPs located in the Atlantic, Eastern and Pacific regions and the second DDMP supervises those RMPs in the Central and Western regions.¹

Appellate Counsel

The Appellate counsel is responsible to appear as counsel on behalf of the Minister of National Defence for all cases argued at the CMAC and the SCC.²

Prosecutor responsible for policy, training and communications

The prosecutor responsible for policy, training and communications provides advice to the DMP on all policy related matters and to update the DMP Policy Directives, as necessary. The policy counsel is also responsible to assist in the coordination of all training opportunities for members of the CMPS.

CFNIS Legal Advisor

The CFNIS Legal Advisor is a military prose-



cutor embedded with the CFNIS who provides legal advice to the CFNIS Headquarters. The CFNIS Legal Advisor also provides advice to investigators throughout all stages of an investigation as well as provides the CFNIS with updates on criminal law developments.

Regional Military Prosecution Offices

The RMP offices are located in Halifax, Valcartier, Ottawa, Edmonton and Esquimalt. With the exception of Esquimalt, which only has one RMP and one civilian administrative support staff, each RMP Office has two RMP positions and one civilian administrative support staff. All RMPs also represent the CAF at custody review hearings on behalf of the DMP and provide legal advice and training to the CFNIS.

Reserve Force Prosecutors

The CMPS also relies on five experienced civilian prosecutors who are members of the Reserve Force and prosecute cases with the CMPS. These five members consist of DDMP Reserve, a Lieutenant Colonel who is

¹ The DDMP for the Central and Western regions also supervises those prosecutions which occur outside of Canada.

² Depending on the caseload for appeal files it is common for other officers within the CMPS to also appear as counsel or co-counsel at the CMAC or the SCC.

responsible for the overall supervision and management of Reserve Force prosecutors, as well as four prosecutors who assist their Regular Force counterparts in the prosecution of cases at courts martial.

Sexual Misconduct Action Response Team

The position of the DDMP for the Sexual Misconduct Response Team (SMART) was created in the last reporting period and is primarily responsible for mentoring prosecutors in the performance of their duties related to serious sexual misconduct prosecutions.

The organizational chart for DMP can be found at Figure 1-2.

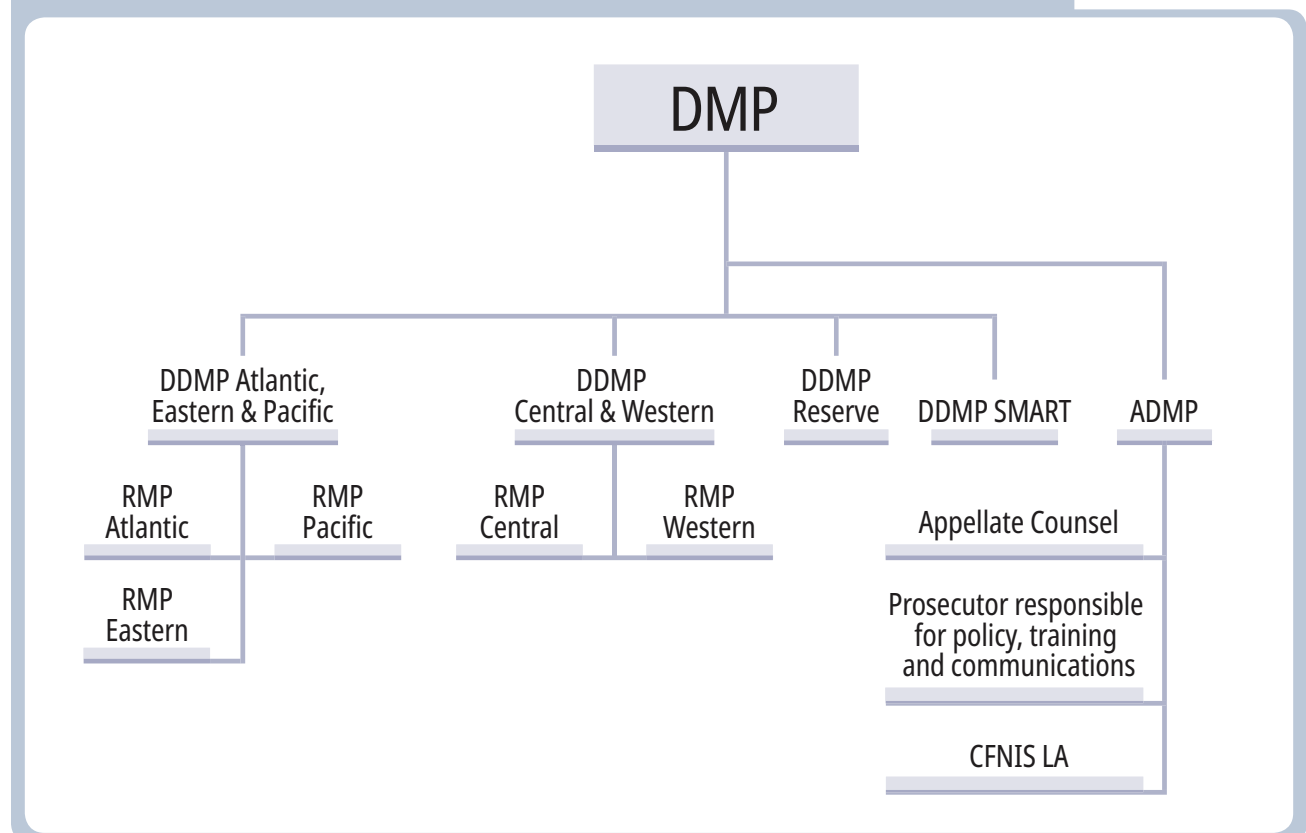
CMPS Personnel

Regular Force

On October 20, 2018, the DMP was re-appointed by the Minister to a second four year term as the DMP. Also during the reporting period there were a number of postings and changing of positions within the CMPS. The ADMP was posted out of CMPS after nearly ten years of military prosecution experience and was replaced by the DDMP for the Atlantic, Eastern and Pacific Regions. Filling the spot of the DDMP was the Appellate Counsel who was promoted to the rank of Lieutenant Colonel during the reporting period. Additionally, the senior RMP from the Halifax office was relocated to Ottawa and assumed the duties of Appellate Counsel.

There were also a number of internal postings within CMPS as prosecutors already with the CMPS were posted into RMP positions in

Figure 1-2: Organizational Chart for the Director of Military Prosecutions



the Halifax, Ottawa and Esquimalt regional offices. Also, the senior RMP from the Ottawa office was posted as the CFNIS legal advisor. There were four new prosecutors posted to the CMPS occupying positions in the Atlantic, Eastern and Western regions as well as the Prosecutor responsible for policy, training and communications located at CMPS Headquarters. Finally, two RMPs, one in the Pacific Region and one in the Atlantic Region, were on maternity leave during this reporting period.

Reserve Force

During this reporting period an offer of employment was made to an experienced civilian Crown counsel in Nova Scotia. That individual continues to progress through the enrollment process and is expected to join the CMPS as a Reserve Force prosecutor early in the next reporting period.

Civilian personnel

During the reporting period, the CMPS paralegal left the organization to pursue other opportunities within the federal public service. This position was filled on a short term basis with another civilian member from the Office of the JAG filling it for a four month period in an acting capacity. It is expected that the position will be filled on a permanent basis in the next reporting period.



In addition, the position of legal assistant in the Central Region was vacant at the beginning of the reporting period. It was filled, on an interim basis, between June and October 2018 and was permanently filled in December 2018.

Training and Continuing Legal Education

The need to continue to develop legal skills and keep abreast of key developments in the law is important for any lawyer but is critical for all prosecutors, including military prosecutors. The state of criminal law remains in constant evolution as a result of court rulings as well as through changes to the *Criminal Code of Canada* as well as the NDA.

The DMP places a premium on training opportunities for members of the CMPS and, aside from an annual Continuing Legal Education workshop, relies heavily on external organizations to fulfill much of its training requirements. The following sections describe those training opportunities undertaken by members of the CMPS as well as those training activities which were provided by members of the CMPS to other organizations.

Canadian Military Prosecution Service Continuing Legal Education Workshop

The CMPS held its annual Continuing Legal Education workshop on 11 and 12 February 2019 for its Regular Force and Reserve Force military prosecutors. The training touched upon several topics, including media training and an interactive demonstration dealing with a mock sexual assault scenario.

As prosecutors may be exposed to frequent interactions with journalists, prosecutors received a half-day of training from public affairs where practice interviews were held enabling prosecutors to enhance their skills in order to better interact with the media. This is consistent with the requirement that the military justice system be transparent and accessible to the public.

The mock sexual assault interactive demonstration was focused on those prosecutors with the least number of years of experience. The exercise allowed these junior prosecutors to develop their skills through scenario-based training through various stages of the court martial process including the analysis of whether there is a reasonable prospect of conviction, victim preparation, direct examination, cross examination and making submissions in court.

Finally, the CMPS also held a civilian training workshop on 12 February 2019 which focused on topics such as file management, finance and training on the functionality of the new case management system.

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, in 2016 the CMPS, in partnership with the CAF Health Service Group, explored different strategies to improve the mental resiliency of individual prosecutors. Based on the Road to Mental Readiness program, 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.

During the reporting period, a full day of training was provided to those prosecutors who did not receive the training offered last year.



Partnership with the Attorney General for the Province of Ontario and the Public Prosecution Service of Canada

During the last reporting year, CMPS entered into a partnership with the Attorney General for the Province of Ontario and the Public Prosecution Service of Canada for the temporary employment of a CAF legal officer as a Crown prosecutor with these provincial and federal prosecution services.

During the reporting year, two military prosecutors from the Central region worked with the Ottawa Crown Attorney's Office. As such, these prosecutors acted as second chair during several Ontario Court of Justice trials and one Superior Court of Justice jury trial for cases such as aggravated assault, sexual assault and breach of conditions. 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. Our prosecutors also received positive feedback from victims for the manner in which they treated the victims throughout the court process.

External organizations

During the reporting period, military prosecutors participated in continuing legal education programs organized by the Federation of Law Societies of Canada, the Public Prosecution Service of Canada, the Ontario Crown Attorneys' Association, *le Barreau du Québec*, Osgoode Professional Development, the Canadian Institute, the Advocates' Society and the Nova Scotia Public Prosecution Service. 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.

For a complete breakdown of training opportunities provided by external organizations, please refer to Table 1-3.

Table 1-3: External Training Opportunities

HOST ORGANIZATION	NAME OF COURSE	NUMBER OF ATTENDEES
Federation of Law Societies of Canada	2018 National Criminal Law Program	6
Public Prosecution Service of Canada	PPSC School for Prosecutions - Prosecution Fundamentals (Level 1)	2
Ontario Crown Attorneys' Association	Nuts and Bolts	3
Ontario Crown Attorneys' Association	Experts	2
Ontario Crown Attorneys' Association	Sexual Violence	1
Ontario Crown Attorneys' Association	Trial Advocacy	2
Ontario Crown Attorneys' Association	Search and Seizure	1
Barreau du Québec	Techniques de plaidoirie	1
Osgoode Professional Development	Written Advocacy	1
The Canadian Institute	9th Annual Law of Policing Conference	1
Osgoode Professional Development	National Symposium on Sexual Assault Cases	3
The Advocates' Society	Leading Your Case	1
Nova Scotia Public Prosecution Service	Crown Conference	1

Training provided by CMPS

The CMPS also provides support to the training activities of the Office of the JAG and other CAF entities. During the reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior legal officers from the Office of the JAG who completed a portion of their “on the job training” program by assisting in prosecutions at courts martial. The CMPS also provided support to the military justice briefings to JAG legal officers and to the Regional Services Division of the Office of the JAG.

Also, 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”.³

Temporary Duty

The portability of the court martial system means that courts martial can occur anywhere in Canada or overseas. Unlike their civilian counterparts, military prosecutors are often called upon to travel away from their home for significant periods of time to conduct courts martial or appeals as well for various training opportunities. Travel away from home – referred to as temporary duty – has a significant impact on the well-being of CMPS personnel and their families. This year, members of the CMPS were on temporary duty for a total of 704 days. Table 1-4 shows the breakdown of temporary duty for all CMPS personnel for this reporting period.

Table 1-4: CMPS Temporary Duty

REGION	COURT MARTIAL RELATED TD	APPEAL RELATED TD	TRAINING RELATED TD	OTHER TD	TOTAL TD
CMPS HQ	47	18	87	49	201
Atlantic	78	0	28	0	106
Eastern	33	0	42	0	75
Central	72	0	30	0	102
Western	107	0	44	0	151
Pacific	38	0	18	13	69
TOTAL	375	18	249	62	704

³ 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 (<https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/communications-with-unit-legal-advisors.html>) for further information.

The Military Justice System and the Court Martial System

Introduction

The nature of the operational missions entrusted to the CAF requires the maintenance of a high degree of discipline among CAF members. Parliament and the SCC have long recognized the importance of 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*⁴ and *R v G  n  reux*,⁵ unequivocally upheld the need for military tribunals to exercise their jurisdiction in order to contribute to the maintenance of discipline, and associated military values, as a matter of vital importance to the integrity of the CAF as a national institution.

These principles were unanimously reaffirmed by the SCC in 2015 in *Second Lieutenant Moriarity et al v R*⁶: "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

4 [1980] 2 S.C.R. 370 at paras 48 and 49.

5 [1992] 1 S.C.R. 259 at para 50.

6 [2015] 3 S.C.R. 485.

morale of the military.”⁷ 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.”⁸

These views were directly in line with earlier comments by Chief Justice Lamer in *Généreux* that the *Code of Service Discipline* “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.”⁹

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*¹⁰ that the authority conferred to the Minister of National Defence over appeals was in compliance with the *Canadian Charter of Rights and Freedoms*. This decision not only confirmed the organizational structure of the CMPS but also was important for all prosecution services across Canada as the court touched upon the concept of prosecutorial independence and abuse of process.¹¹ This clearly shows that the military justice system is a respected parallel justice system within the broader Canadian legal mosaic.

Courts Martial

Courts martial are formal military courts presided over by independent military judges. These tribunals are similar in nature to civilian criminal courts and are designed to deal predominantly with service offences that are more serious in nature and are conducted in accordance with rules and procedures similar to those followed in civilian criminal courts while maintaining the military character of the proceedings. This chapter provides a basic overview of the court martial system. For further information regarding the court martial process, please refer to Table 2-1.

The court martial system has many features in common with the civilian justice system. For example, the *Canadian Charter of Rights and Freedoms* applies to both the military justice system as well as the civilian justice system. As such, in both systems of justice, the accused person is presumed innocent until the prosecution has proven his or her guilt beyond a reasonable doubt.

Additionally, courts martial are independent and impartial tribunals whose hearings are open to the public. Before a court martial takes place, it is announced in the Routine Orders of the base where it is to occur and the media is also proactively informed. Once a court martial is completed, the results are communicated publicly through a variety of means including through social media.

Statutorily, courts martial have the same rights, powers and privileges as superior courts of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of its jurisdiction,” including the attendance, swearing and examination of witnesses, the production and inspection of documents, and the enforcement of their orders.¹²

There are two types of courts martial provided for under the NDA: General Courts Martial and Standing Courts Martial. A General Court

7 *Ibid* at para 46.

8 *Supra* note 6 at para 54.

9 *Supra* note 5 at 281 and 293.

10 2016 SCC 32.

11 The Attorney General of Canada, the Attorney General of Ontario, the Attorney General of Quebec, the Attorney General of British Columbia and the *Directeur des poursuites criminelles et pénales* of the province of Québec all intervened in this appeal to the SCC.

12 *National Defence Act*, section 179.

Martial is comprised of a military judge and a panel of five CAF members. The panel is selected randomly by the Court Martial Administrator and is governed by rules that reinforce its military character. At a General Court Martial, the panel serves as the trier of fact while the military judge makes all legal rulings and imposes the sentence. Panels must reach unanimous decisions on any finding of guilt.

A Standing Court Martial is conducted by a military judge sitting alone who is responsible for the finding on the charges and imposing a sentence if the accused is found guilty.

At a court martial, the prosecution is conducted by a legal officer from the office of the DMP. In determining whether to prefer a matter for trial by court martial, military prosecutors must 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. This test is consistent with those 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. 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, in part, from the accused's commanding officer when he or she sends the matter to his or her next



superior officer in matters of discipline. That superior officer also comments on public interest factors when referring the matter to the DMP.

An accused person tried by court martial is entitled to legal representation by or under the supervision of the Director of Defence Counsel Services. This legal representation is provided to an accused person at no cost to the accused. An accused person may also choose to retain a lawyer at his or her own expense.

In most cases, the accused person has the right to choose between trial by General or Standing Court Martial. However, for the most serious offences a General Court Martial will generally be convened while a Standing Court Martial will be convened for less serious offences.¹³

Both an offender convicted by court martial and the Minister of National Defence have a right to appeal court martial decisions to the

¹³ Please refer to sections 165.191 and 165.192 of the *National Defence Act*.

CMAC, a court comprised of civilian judges who are designated from the Federal Court of Canada and the Federal Court of Appeal, or appointed from the Superior Courts and Courts of Appeal of the provinces and territories.

the CMAC dissents, or on any question of law if leave to appeal is granted by the SCC.¹⁴

CMAC decisions may be appealed to the SCC on any question of law on which a judge of

Table 2-1: Additional Facts about the Court Martial System

TOPIC	REMARKS
Purpose of the Military Justice System	The purpose of the military justice system is to contribute to the operational effectiveness of the CAF by maintaining discipline, efficiency and morale.
Jurisdiction of the Military Justice System	Courts martial only have jurisdiction over those persons who are subject to the <i>Code of Service Discipline</i> . When a person joins the CAF, they remain subject to all Canadian laws but also become subject to the <i>Code of Service Discipline</i> . Therefore, members of the CAF are subject to the concurrent jurisdiction of both the civilian and the military justice system.
Requirement for Pre-charge Legal Advice	<p>In the majority of cases, the person authorized to lay a charge in the military justice system must first obtain pre-charge legal advice concerning the sufficiency of the evidence, whether or not a charge should be laid and the appropriate charge.</p> <p>Military prosecutors provide pre-charge legal advice to all cases investigated by the CFNIS. In some cases, military prosecutors will also assist legal officers with the Office of the JAG by providing pre-charge legal advice in cases investigated by those members of the military police who are not a part of the CFNIS as well as by unit investigators.</p>
Custody Review Process	If a person is arrested under the <i>Code of Service Discipline</i> he or she may be released by the person making the arrest or by a custody review officer. If the individual is not released the matter will go before a military judge to determine if the individual is to be released, with or without conditions, or if he or she is to remain in custody. Military prosecutors represent the CAF at all custody review hearings which are held before a military judge.
Disclosure Obligations	Accused persons in the military justice system have the constitutional right to make full answer and defence. Therefore, military prosecutors must disclose all relevant information to the accused, including both inculpatory and exculpatory, whether or not the prosecution intends to introduce it into evidence.
Sentencing	<p>Under the NDA, military judges have a wide variety of sentencing options available for those members found guilty at Court Martial. Aside from fines and periods of imprisonment which are also available in the civilian justice system, military judges are able to sentence offenders to dismissal with disgrace, dismissal, reprimands, detention, reduction in rank and minor punishments.</p> <p>In addition, new provisions added to the NDA this reporting period also allow military judges to grant absolute discharges, order that the offender serve his or her sentence intermittently as well as to suspend the execution of any sentences of imprisonment or detention.</p>

¹⁴ *National Defence Act*, section 245.

Military Justice Proceedings: Year in Review

The information and analysis provided below reflects the operations of the CMPS over the course of the reporting period in relation to all courts martial, referrals, post-charge reviews, requests for pre-charge advice, appeals and custody review hearings.

Courts Martial

This section provides an overview and analysis of those cases heard at court martial during the reporting period. For a complete breakdown of all court martial data for the reporting period please refer to Annex A.

Number of Courts Martial

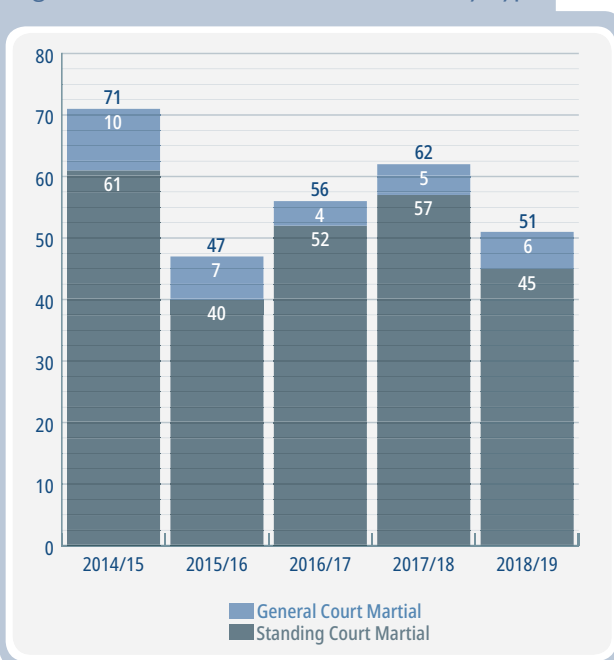
This past reporting period there were a total of 51 courts martial.¹⁵ Of those, 45 were Standing Courts Martial and six were General Courts Martial. Although this is slightly below the average number of courts martial over the past five years (57), this is not unexpected in that there were only three of four sitting military judges over the course of the reporting period. In addition, 40 cases were affected by the CMAC decision in *R v Beaudry*¹⁶ meaning those cases were prevented from being heard through the military justice system. A complete picture of the number of courts martial broken down by type of court martial since 2014/15 can be found at Figure 3-1.

¹⁵ In addition, there were three courts martial which were commenced during the reporting period but were not completed by the end of the reporting period. Two of these cases (*R v McGregor* and *R v August*) were adjourned as a result of the CMAC decision in *Beaudry* and a third case (*R v Banting*) was commenced just prior to the end of the reporting period.

¹⁶ 2018 CMAC 4.



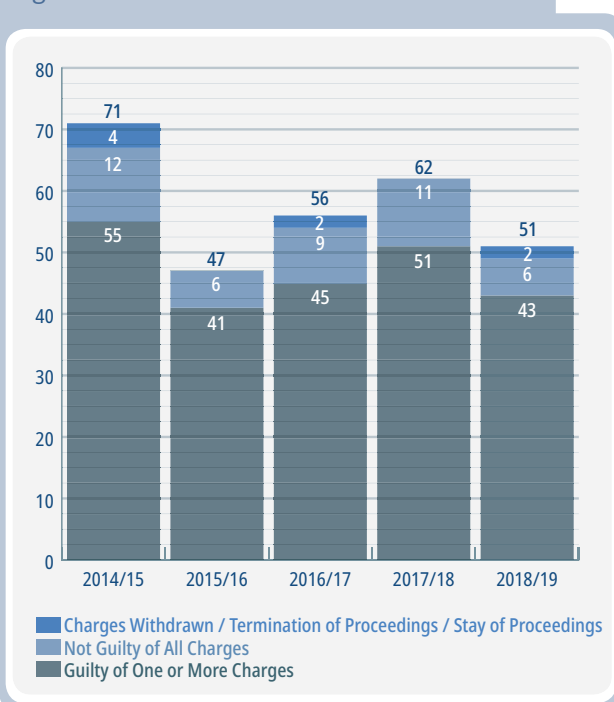
Figure 3-1: Number of Courts Martial by Type



Court Martial Results

Of those 51 courts martial, accused persons were found guilty of one or more charges in 43 cases, found not guilty of all charges in six cases, had all charges withdrawn in one case and had a termination of proceedings in one case. Figure 3-2 shows a breakdown of all court martial results since 2014/15.

Figure 3-2: Courts Martial Results



Punishments at Court Martial

While only one sentence may be imposed at a court martial, more than one punishment may be given as a part of that sentence. In this reporting period a total of 43 sentences were handed down by courts martial involving a total of 57 punishments. The most common punishment awarded at courts martial was a fine with a total of 35 fines awarded, representing 61 percent of all punishments and awarded in 81 percent of all sentences. The next most common punishment awarded was a severe reprimand which was awarded in 10 cases and accounted for over 17 percent of all punishments.

A total of four custodial punishments were awarded representing nearly nine percent of all punishments. Of those custodial punishments, there was one punishment of detention handed down at court martial which was suspended by the military judge. A complete breakdown of all punishments imposed at courts martial from 2014/15 can be found in Table 3-3.



Table 3-3: Punishments at Court Martial

PUNISHMENT	2014/15	2015/16	2016/17	2017/18	2018/19
Dismissal	1	2	1	3	2
Imprisonment	6	3	4	7	3
Detention	4	4	4*	4**	1***
Reduction in Rank	1	3	9	9	2
Severe Reprimand	18	10	6	11	10
Reprimand	13	13	17	20	4
Fine	39	32	39	38	35
Minor Punishments	0	0	0	3	0
TOTAL	82	67	80	95	57

* One of these punishments was suspended by the Military Judge.

** Three of these punishments were suspended by the Military Judge.

*** This punishment was suspended by the Military Judge.

Court Martial Timelines

During this reporting period the average number of days from the time a file was referred to the DMP until a decision had been taken by a prosecutor was approximately 88 days. This is a decrease of seven percent from the previous reporting period. Figure 3-4 illustrates the average number of days from referral to a post-charge decision for the past five reporting periods.

In this reporting period, the average number of days from the preferral of charges until the commencement of the court martial was 244 days. This is an increase of 33 days in comparison to the previous reporting period and is 16 days above the five year average. Figure 3-5 shows the average number of days from the preferral of charges until the commencement of the court martial since 2014/15.

Figure 3-4: Average Number of Days from Referral to Post-Charge Decision

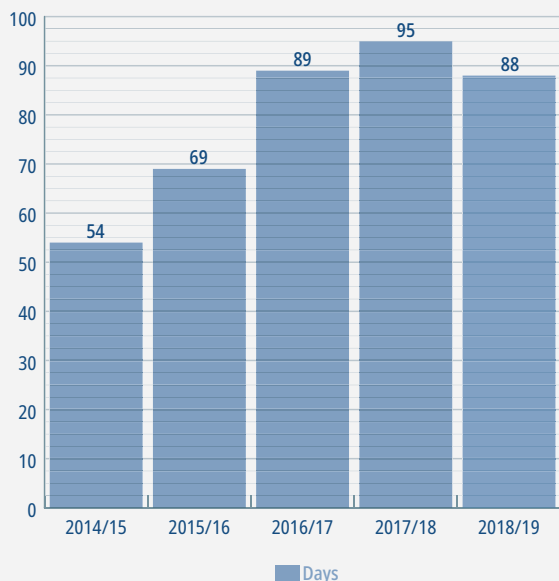
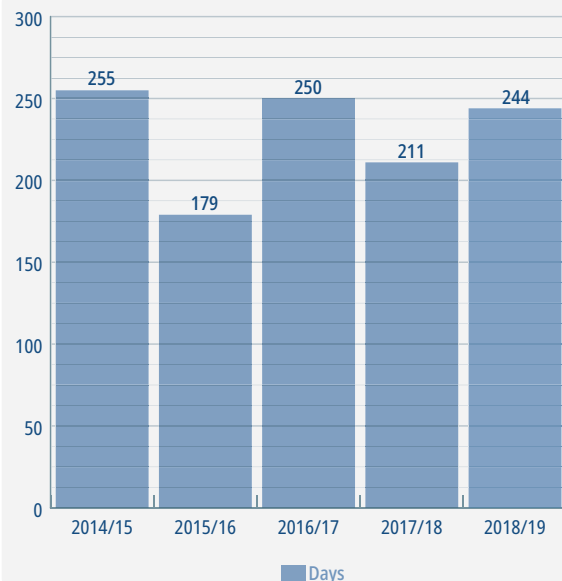


Figure 3-5: Average Number of Days from Preferral to Commencement of Court Martial



Case Management

Number of Referrals

During this reporting period there were 102 referrals received by the DMP. This is consistent with the average number of referrals received over the past five years which is approximately 109. When combined with the 70 referrals carried over from the previous reporting period, there were a total of 172 referrals processed during this reporting period. The 172 referrals processed during the current reporting period is the second lowest number of referrals processed over the past five years but is relatively consistent with the five year average of 179 referrals per year.

Of those 172 referrals processed, 154 cases were completed in that a decision on post-charge was taken by a prosecutor leaving 18 referrals carried over into the next reporting period. This number of files carried over is well below the average number of referrals carried over to the following year over the past five years which is approximately 58 files. Figure 3-6 shows the total number of referrals processed over the past five reporting periods.

This reporting period there were a total of 107 cases where charges were preferred and 47 cases where no charges were preferred giving an overall preferral rate of 69 percent. Although this is the highest preferral rate in the last five reporting periods it is only slightly higher than the average preferral rate of 63 percent over the past five reporting periods. However, as can be seen in Figure 3-8 the total number of prosecutorial decisions taken on post charge is significantly higher than it has been over the past five reporting periods. The reason for this is that although there were not as many referrals as there have been in previous years, there were far fewer files which are carried forward to the next reporting period meaning that the rate of files processed (90 percent) was much higher this reporting period. Figure 3-7 shows the total number of preferrals and non-preferrals for the five previous reporting periods.

Figure 3-6:
Total Number of Referrals Processed

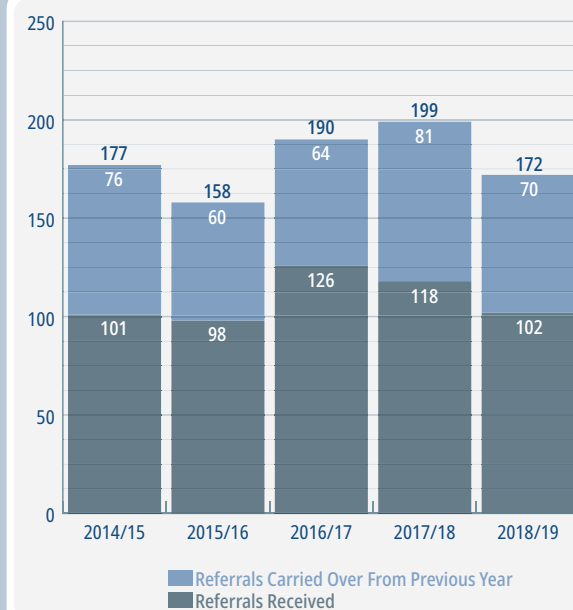
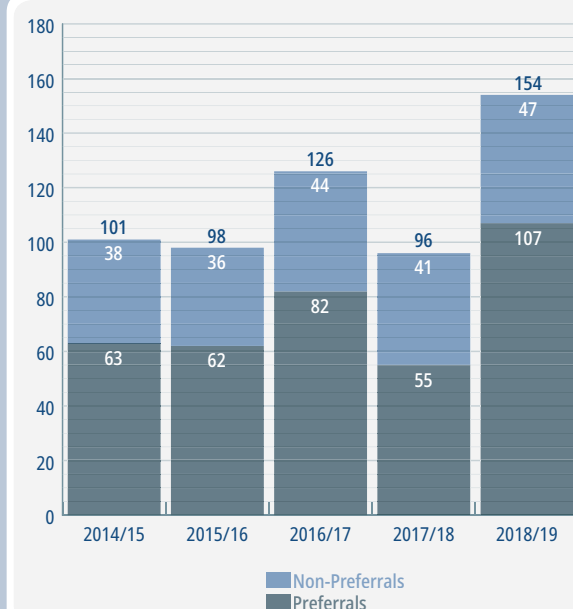


Figure 3-7: Total Number of
Preferrals and Non-Preferrals

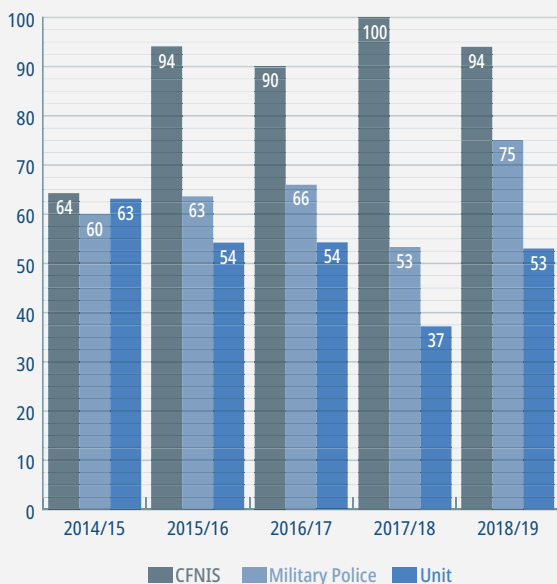


Preferral Rates by Investigative Agency

Although all files referred to the DMP are received through a referral authority, the incident giving rise to the charge may be investigated by one of three investigative agencies – the CFNIS, an investigator with the military police who is not a member of the CFNIS and a unit investigator. The rate of referrals varies greatly as between the investigative agency. For example, during this reporting period the referral rate for those files investigated by the CFNIS was 94 percent¹⁷, this is a much higher referral rate when compared to that of the regular military police and unit investigators which were 75 percent and 53 percent, respectively.

This divergence of referral rates has been consistent over the past several years with those investigations conducted by the CFNIS being preferred at a much higher rate than regular military police and unit investigators. For a complete overview of referral rates by investigative agency over the past five years, please refer to Figure 3-8.

Figure 3-8: Referral Rates by Investigative Agency



¹⁷ This figure does not include those cases which were investigated by the CFNIS but were non-preferred as a result of the CMAC decision in *Beaudry*.

The DMP has identified this as an issue and has taken a number of courses of action to improve the referral rates of all investigative agencies. For example, this reporting period he amended a number of his policy directives to require his prosecutors to provide feedback to the investigator both when there is a decision not to prefer a charge and also at the conclusion of the court martial with the aim of improving the quality of future investigations.

Pre-Charge Advice

Number of Requests for Pre-Charge Legal Advice

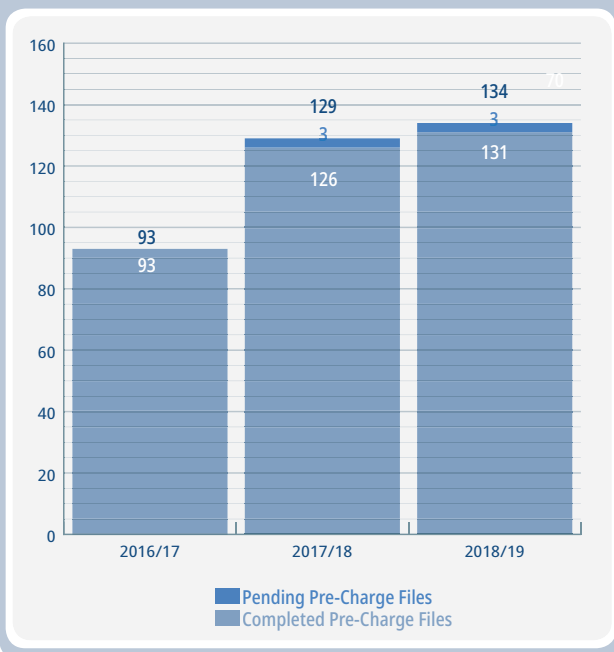
Prosecutors with the CMPS are responsible to provide pre-charge advice to both the CFNIS¹⁸ and to unit legal advisors.¹⁹ In this reporting period, there were a total of 118 cases sent to the CMPS for pre-charge legal advice. In addition, there were 16 pre-charge files carried over from the previous reporting period for a total of 134 pre-charge files processed during the reporting period. Of the 134 requests for pre-charge legal advice, three files were pending at the end of the reporting period.

The number of pre-charge files sent for review by a military prosecutor remained relatively consistent this reporting period when compared to the previous reporting period where there were 129 requests for pre-charge advice. Figure 3-9 shows the total number of pre-charge files processed for each of the previous three reporting periods.

¹⁸ DMP Policy Directive 002/00: Pre-Charge Screening - <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/pre-charge-screening.html>.

¹⁹ JAG Policy Directive 048/18 : Pre-Charge Screening requires unit legal advisors to seek the opinion of a prosecutor for pre-charge advice when the evidence reasonably supports the conclusion that a charge will not proceed by way of summary trial but is likely to be referred for trial by court martial.

Figure 3-9: Total Number of Pre-Charge Files Processed



Origin of Requests for Pre-Charge Legal Advice

As in previous reporting periods, the majority of requests for pre-charge legal advice come from the CFNIS. During this reporting period there were 91 requests for pre-charge legal advice from the CFNIS compared to only 43 requests from unit legal advisors. Figure 3-10 shows the number of requests for pre-charge legal advice broken down by requestor.

Outcome of Requests for Pre-Charge Legal Advice

During the reporting period charges were recommended in 62 cases and no charges were recommended in 67 cases.²⁰ Therefore, charges were recommended in approximately 48 percent of all requests for pre-charge legal advice. Figure 3-11 provides an overview of the number of cases where charges were and were not recommended for the past three reporting periods.

Figure 3-10: Origin of Requests for Pre-Charge Legal Advice

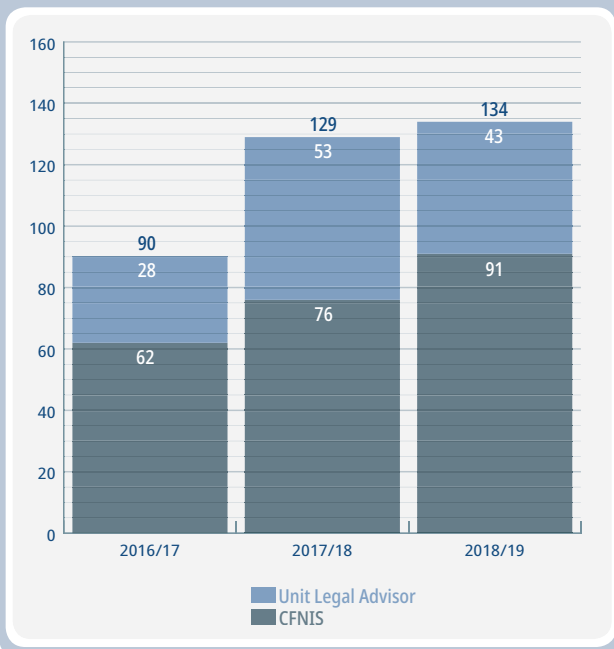
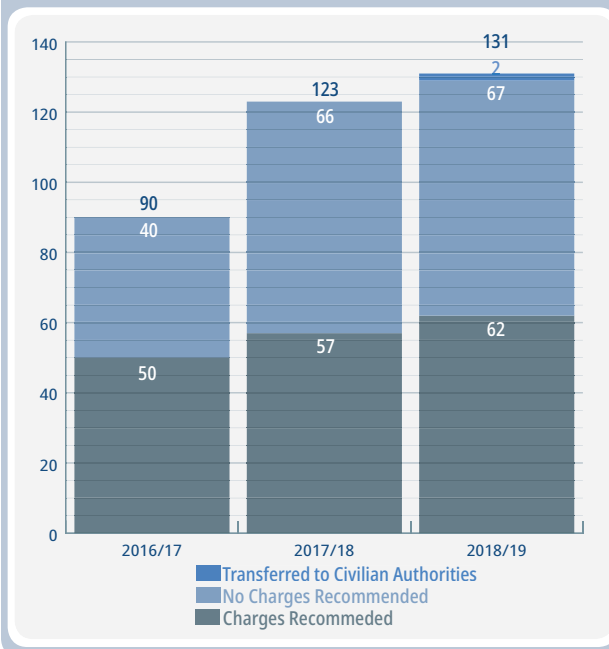


Figure 3-11: Outcome of Requests for Pre-Charge Legal Advice



²⁰ In this reporting period there were two cases where there was a request for pre-charge legal advice and those files were transferred to civilian authorities as a result of the decision in *Beaudry*. Therefore, these files did not count as neither charges recommended nor charges not recommended.

Timelines

DMP Policy Directive 002/00 (Pre-Charge Screening) requires that prosecutors, when requested to provide pre-charge legal advice, must do so within 14 days of receiving the file when all of the proposed charges, including electable offences, can be tried by summary trial and within 30 days in those instances where any charge would result in an automatic court martial for the accused. During this reporting period, the average number of days it took for prosecutors to provide pre-charge legal advice once the file was received was approximately 48 days.



Offence Categories

All files prosecuted by the DMP are categorized into one of four broad offence categories: sexual misconduct, drugs, conduct offences and fraud and other property related offences. The following sections provide an overview of the number of courts martial for each offence, the outcomes for each type of offence category as well as a summary of some notable cases during the reporting period.

Sexual Misconduct

Of the 51 courts martial during the reporting period, there were 20 cases that dealt with sexual misconduct. Of those 20 cases, the accused was found guilty of at least one charge in 14 cases.

R v Reyes, 2018 CM 4015

Master Warrant Officer Reyes, a reservist, pleaded guilty to a charge of disgraceful conduct for having surreptitiously made visual recordings of a female in a washroom at the Denison Armoury in Toronto. He was sentenced to imprisonment for a period of five months and a reduction in rank to the rank of Sergeant.

In considering the prosecution and defence counsel's joint submission pertaining to sentencing, the military judge emphasized the significant breach of trust given Master Warrant Officer Reyes' senior rank and the intrusive nature of the offence. In light of those facts, the legal precedents and the sentencing principles, the judge found the proposed sentence was reasonable.

R v Paul, 2018 CM 4013

Master Corporal Paul pleaded guilty to disgraceful conduct of a sexual nature. During the course of a holiday function at the junior ranks' mess, the accused touched the breast of the wife of a subordinate.

Counsel made a joint submission recommending a sentence of reduction in rank to Private. During sentencing, the military judge considered aggravating factors, notably that Master Corporal Paul had been formally briefed on Operation HONOUR only a few hours prior to the incident, the incident was highly intrusive, constituted a breach of trust of military families and demonstrated a failure in leadership. The judge also considered mitigating factors, such as Master Corporal Paul's voluntary release from the

CAF following the incident and ongoing rehabilitative efforts. In the balance, the judge found that a while a reduction in rank for a member who is releasing from the CAF is largely symbolic, it meets the objectives of deterrence and denunciation under 203.1(1) of the NDA without jeopardizing the accused's rehabilitative efforts.

Conduct Offences

Of the 51 courts martial during the reporting period, there were 21 cases that dealt with conduct offences. Of those 21 cases, the accused was found guilty of at least one charge in 20 cases.

R v McEwan, 2018 CM 4012 & 2018 CM 4019

Corporal (retired) McEwan pleaded guilty to failing to appear before a service tribunal under s.118.1 of the NDA.

While undergoing voluntary release procedures, Corporal McEwan was charged by his unit with absence without leave. Corporal McEwan failed to appear at his summary trial on two occasions. He was then charged

with failing to appear at his service tribunal and the case was referred to the DMP. Again, Corporal McEwan failed to appear at his Court Martial, which led to the military judge issuing a judicial warrant for his arrest.

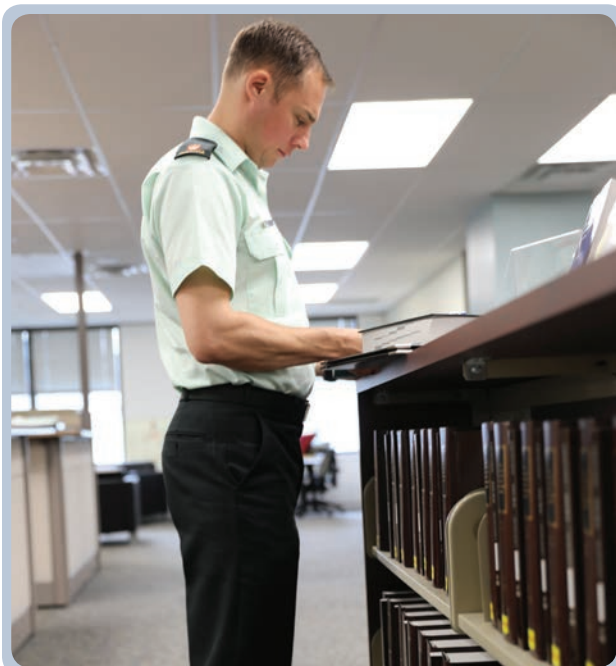
Subsequent to his arrest, Corporal McEwan was tried by Court Martial despite his prior release from the Regular Force, because he committed the offence while he was still a member of the Regular Force and subject to the *Code of Service Discipline*. The military judge stated that, despite no longer being in the military, "administering justice in relation to Mr. McEwan does have an impact on those serving today." The judge added, "the NDA provides an obligation on members of the CAF to serve and perform duty until lawfully released. Refraining from enforcing this obligation on a person simply because he or she is on the way out of the CAF would send a message of impunity which may undermine good order and discipline of those serving within the CAF."

At the sentencing hearing, Corporal McEwan admitted having committed service offences similar in character to the offence charged at his court martial, but for which he was not formally charged. Under s. 194 of the NDA, the military judge agreed to take these alleged offences into consideration for the purposes of the sentence as if Corporal McEwan had been charged with, tried for and found guilty. The judge sentenced the accused to imprisonment for a period of five days.

R v Worthman, 2018 CM 2024

Corporal Worthman pleaded guilty to assault under s.130 of the NDA (s. 266 of the *Criminal Code*) and drunkenness under s. 97 of the NDA. She was given a suspended sentence of detention for a period of ten days.

Military Police (MP) found Corporal Worthman severely intoxicated and causing a disturbance. She refused to be escorted to her home, and subsequently resisted being brought to the MP detachment, striking and injuring a MP officer during the ensuing struggle.



In a joint submission, both counsel recommended ten days detention, but given the indirect consequences of the sentence, proposed that the sentence be suspended. The military judge found no basis that “the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.” The judge agreed to a suspended sentence to promote the accused’s ongoing rehabilitative efforts.

R v Haire, 2018 CM 2015

Lieutenant-Colonel Haire, commanding officer of 1 Royal Canadian Horse Artillery pleaded guilty to neglect to the prejudice of good order and discipline under s.129 of the NDA for failing to ensure that the chamber was empty when performing the unload drill on the C7A2 rifle, resulting in the discharge of one blank round.

During the plea, the Court explained that the standard of care that Lieutenant-Colonel Haire’s conduct is measured against is that of an infantry officer. He did not have to meet an elevated standard because he was the commanding officer of a unit.

Based on multiple mitigating factors, notably Lieutenant-Colonel Haire’s acceptance of guilt at the earliest opportunity and exceptional leadership in dealing with the incident, the military judge accepted a joint submission to impose a \$500 fine.

Drugs

Of the 51 courts martial during the reporting period, there were five cases that dealt with drugs. Of those five cases, the accused was found guilty of at least one charge in four cases.

R v Stow, 2018 CM 3014

Leading Seaman Stow pleaded guilty to trafficking under s. 5(1) of the *Controlled Drugs and Substances Act*, which constitutes an offence under s. 130 of the NDA.

The evidence before the Court demonstrated that Leading Seaman Stow trafficked in cocaine in the Halifax area, both on and off the Base, to both civilians and military members. Along with another member, Leading Seaman Stow trafficked approximately \$10,000 in cocaine.

The military judge emphasized that “involvement with drugs in the military environment must be treated as a very serious matter.” The judge relied upon a joint submission by counsel and sentenced the accused to ten months imprisonment in a civilian facility.

Fraud and other Property Offences

Of the 51 courts martial during the reporting period, there were five cases that dealt with fraud and other related property offences. Of those five cases, the accused was found guilty of at least one charge in all five cases.

R v MacDonald, 2018 CM 3011

Private MacDonald pleaded guilty to stealing under s. 114 of the NDA and wilfully damaging public property.

The accused forced his entry into locked sheds, causing significant damage. He then stole a snow blower (CAF property valued at \$900). Upon learning that the MP had commenced an investigation, Private MacDonald disposed of the snow blower, which was never recovered.

In imposing the sentence, the military judge considered aggravating factors of breach of trust, premeditation, non-recovered stolen property and post-offence conduct. These factors were mitigated by the guilty plea, the absence of previous convictions and the fact that the accused had since released from the CAF. On the balance, the judge sentenced Private MacDonald to a severe reprimand and a \$2000 fine.

Appeals

This section provides an overview of those cases which were appealed to the CMAC as well as to the SCC. For a quick overview of the disposition of those cases appealed to the CMAC, please refer to Annex B and for those cases appealed to the SCC, please refer to Annex C.

Court Martial Appeal Court

Decisions Rendered

R v Edmunds, 2018 CMAC 2

Master Corporal 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, Master Corporal Edmunds argued that the conduct of the investigators and prosecution was abusive, mainly alleging that the prosecution had improperly split its case. The issues on 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 Master Corporal Edmunds to two trials was an abuse of process. The military judge concluded

that the prejudice arising from this abuse was the possibility that Master Corporal Edmunds would be subjected to two separate periods of incarceration. He concluded that this prejudice could be remedied through mitigation of sentence.

Master Corporal Edmunds appealed the military judge's refusal to grant a stay of proceedings. After a review of the appeal record, the appellate counsel noted the error relating to the laying of the charges discussed above was fatal. It demonstrated that the charge-layer did not have the requisite reasonable belief to lay the charges. 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. The CMAC reiterated that the requirement that the charge-layer possess reasonable grounds to believe the accused has committed the offence charged constitutes a safeguard against the irresponsible laying of charges. A charge laid without such a belief is fatal and results in a loss of jurisdiction. Where this loss of jurisdiction arises, the subsequent referral of charges by the DMP does not cure the defect.



R v Cadieux, 2018 CMAC 3

At the end of EX Tropical Dagger in Jamaica, following festivities held on the evening of 27-28 November 2015 where the consumption of alcohol was authorized, Corporal Cadieux entered the female-only tent to find the complainant in order to invite her back to a party. He knelt beside the complainant's cot, where she was sleeping, and called her name quietly to awaken her. According to him, she then grabbed his head, pulled him toward her and began kissing him passionately. He reciprocated her kiss and touched the complainant's pelvic area. Corporal Cadieux testified the touch to the pelvic area was either accidental or to balance himself as he leaned over the complainant in his attempt to awaken her. The military judge accepted this explanation. As a result, the sexual nature of the touching, for the purposes of the CMAC analysis, is limited to the kissing. During the kissing, the complainant mumbled the name "Steve", to which Corporal Cadieux replied, "It's not Steve, its Simon". The complainant then pushed him off, telling him to "stop" or "stop it".

The following morning, Corporal Cadieux, still under the influence of alcohol, behaved in a disorderly manner in a number of ways. This included: (1) entering the all-female tent and refusing to leave when ordered by a superior, (2) sitting in the driver's seat of the Jamaican Defence Force-provided bus and honking the horn, (3) bringing alcohol on the bus without authorization and (4) attempting to operate a rental vehicle while not being in a condition to do so due to his previous alcohol consumption. Corporal Cadieux was charged with one count of sexual assault and one count of drunkenness.

At trial, the military judge concluded that Corporal Cadieux lacked the requisite *mens rea* to commit the offence of sexual assault. As a result, he decided it was unnecessary to consider the defence of honest but mistaken belief in consent raised by Corporal Cadieux. In relation to the charge of drunkenness, the military judge stated that it was unclear whether Corporal Cadieux's conduct on

the morning of November 28th was due to the consumption of alcohol or because he was hungover. He further concluded that, although Corporal Cadieux demonstrated disturbing behaviour, there was no evidence the conduct was disorderly or that it harmed the reputation of Her Majesty's service. Corporal Cadieux was subsequently acquitted of sexual assault and drunkenness.

The DMP appealed the acquittal on the basis that the military judge erred (1) in his assessment of the *mens rea* and of the defence of honest but mistaken belief in consent, (2) in his assessment of witness credibility, and (3) in his interpretation of the offence of drunkenness under section 97 of the NDA. On 8 June 2017, the DMP filed a notice of appeal to the CMAC. The case was heard on 12 March 2018. In a unanimous decision rendered on 10 September 2018, the CMAC quashed the acquittals and ordered a new trial.

The Court found that the military judge erred in not applying the requisite legal test to analyze the defence of honest but mistaken belief in consent, since raising this defence "is essentially an assertion by an accused that he or she lacked the *mens rea* required to commit the alleged sexual assault". The Court reviewed the test in light of the facts and came to the conclusion that "the complainant had no reason to kiss Corporal Cadieux, he had no reason to believe she wanted to kiss him, and, importantly, immediately prior to the actual kissing, he had no reason to believe she wanted him to kiss her."

As to the charge of drunkenness, the Court found that being hungover is so inextricably linked to the state of being drunk that creating a distinction between the two states when analysing this offence is flawed.

R v Beaudry, CMAC 2018 4

Corporal Beaudry is alleged to have sexually assaulted a female soldier on a military base. He was convicted of one offence punishable under s. 130(1)(a) of the NDA, that being sexual assault causing bodily harm contrary to s. 272 of the *Criminal Code*. He was sentenced

to a term of imprisonment for 42 months and to dismissal from Her Majesty's service. He was also made subject to a number of ancillary orders. Corporal Beaudry appealed his conviction, alleging that s. 130(1)(a) of the NDA was unconstitutional.

On 19 September 2018, the CMAC delivered its judgment. In a split decision, the majority found that paragraph 130(1)(a) of the NDA violates the right to a jury trial pursuant to subsection 11(f) of the *Charter*. The majority allowed the appeal, set aside the guilty verdict, and declared that paragraph 130(1)(a) of the NDA, is of no force or effect in its application to any "civil offence" for which the maximum sentence is five years or more imprisonment. This decision was appealed to the SCC by the DMP on behalf of the Minister of National Defence. For further information on this case, please refer to Chapter Four.

Hearings

R v Bannister, CMAC-592

Captain Bannister was a Cadet Instructor Cadre (CIC) Officer and the Commanding Officer of the 148 Royal Canadian Army Cadet Corps in Charlottetown, PEI. He was acquitted of six charges (three counts of disgraceful conduct and three alternate counts of conduct to the prejudice of good order and discipline) at a Standing Court Martial on 27 February 2018. The DMP, on behalf of the Minister, appealed this case to the CMAC. Oral arguments were heard in Halifax on 21 November 2018.

The charges arose from a number of separate incidents involving comments made by Captain Bannister.²¹ On two separate occasions, Captain Bannister made a number of inappropriate sexual comments to the victim, first while she was a cadet and then later when she was a subordinate officer with the CIC.

²¹ Although there were two victims in this case the issues on appeal only related to one of the two complainants covering four of the six charges.

At the court martial, the military judge concluded that the behaviour of Captain Bannister was not disgraceful, as there was no evidence that his conduct presented a significant risk of harm to the victim in a way that undermined the respect for her dignity. He also concluded that there was no evidence that his behaviour tended to adversely affect good order and discipline. More specifically, he found that although the behaviour had an adverse impact on the victim, there was no evidence that the behaviour had an adverse impact on the unit or other unit members.

On behalf of the Minister, the DMP argued that (1) the military judge applied a test for disgraceful conduct that is too restrictive and does not properly reflect the purpose and objective of the offence, (2) that the military judge refused to apply his experience and general service knowledge to determine whether the conduct was prejudicial to good order and discipline and (3) that the military judge erred in concluding that there was no evidence that the conduct tended to adversely affect good order and discipline.

A decision on this case is expected to be issued by the CMAC during the next reporting period.

R v MacIntyre, CMAC-594

On 27 June 2018, Sergeant K.J. MacIntyre was found not guilty of one charge of sexual assault by a General Court Martial. The DMP, on behalf of the Minister, appealed the decision to the CMAC. The Court heard oral arguments on 27 March 2019.

The alleged sexual assault occurred on the first night of a deployment in Glasgow, Scotland, in 2015. The complainant and the accused were both part of a fleet logistics support team. Sergeant MacIntyre was the military police officer tasked with security liaisons in foreign ports. The complainant (navy sub-lieutenant at the time) was a logistics officer.

At trial, the complainant testified that after an overnight flight, a day of work and an evening drinking and dancing, she was helped to her



hotel room by the accused and another fellow female navy officer. The complainant said she fell asleep and awoke during the night to find the accused in her bed naked. He then proceeded to sexually assault her despite her repeated refusals and attempts to resist.

Sergeant MacIntyre denied the allegations of sexual assault and testified that he had consensual sex with the complainant.

On behalf of the Minister, the DMP argued two grounds of appeal, both relating to the final instructions from the military judge to the General Court Martial panel. The first one relates to incorrect instructions on the *mens rea* and the second to an unjustified instruction titled “inadequate police investigation”.

A decision on this case is expected to be issued by the CMAC during the next reporting period.

Appeals Initiated at the CMAC

R v Edwards, CMAC-595

On 16 November 2018, a Standing Court Martial held in Halifax, Nova Scotia, found Leading Seaman Edwards not guilty of one charge of prejudice to good order and discipline for the use of cocaine. The alleged

offence occurred between 25 September 2015 and 23 July 2016, at or near Halifax, Nova Scotia, where it was alleged that the accused used cocaine, contrary to *Queen's Regulations and Orders* article 20.04.

In evidence was a voluntary statement provided by Leading Seaman Edwards to an investigator with the CFNIS, in which he admitted to purchasing and using cocaine.

The military judge acquitted the accused on the basis that the prosecution did not prove that the use occurred at or near Halifax, as particularized in the charge. The military judge also expressed concerns about the voluntary confession of the accused, and chose to disbelieve portions of it despite the fact that he had no basis in law to do so.

The DMP, on behalf of the Minister, has appealed this case to the CMAC. This case will be heard in the following reporting period.

R v Spriggs, CMAC-597

On 17 October 2017, the CFNIS laid one charge of sexual assault against Corporal Spriggs for an incident alleged to have occurred on 25 July 2016. On 4 April 2018, the prosecutor preferred one charge pursuant to s. 130(1) (a) of the NDA for sexual assault contrary to s. 271 of the *Criminal Code*.

On 27 November 2018, the prosecutor withdrew this charge sheet and replaced it with a charge pursuant to s. 93 for behaving in a disgraceful manner. The original charge of sexual assault was withdrawn by the prosecution due to the inability of the prosecution to try accused individuals charged under section 130(1)(a) of the NDA by court martial as a result of the decision in *Beaudry*.

At the commencement of the trial for Corporal Spriggs the defence presented an application claiming that Corporal Spriggs had been subjected to an abuse of process. The defence alleged that withdrawing the sexual assault charge and substituting the disgraceful conduct charge amounted to an abuse of process in that the accused was no longer able to benefit from a jury trial through the civilian criminal justice system. The defence sought a stay of the proceedings under subsection 24(1) of the *Charter* as a remedy for the alleged violation.

The military judge found that Corporal Spriggs had been subjected to an abuse of process because the substitution of charges deprived Corporal Spriggs of “his newly acquired *Charter* right to have the charge of sexual assault heard by a judge and jury in civilian courts of criminal jurisdiction”. As a result, the military judge terminated the proceedings.

The DMP, on behalf of the Minister, appealed the *Spriggs* case to the CMAC. However, in preparation for the appeal, the appellate counsel conducted a detailed review of the case leading to a concern about whether there was a reasonable prospect of conviction in the event the CMAC ordered a new trial. It was determined that the matter would not be pursued at court martial even if a new trial was ordered. Therefore, on behalf of the Minister, the DMP abandoned the appeal, as it would be improper to continue forward with this appeal in the absence of a reasonable prospect of conviction.

For an overview of all appeals at the CMAC for the reporting period please refer to Annex B.

Supreme Court of Canada

Hearings Conducted

R v Gagnon, SCC 2018 41

The alleged sexual assault occurred on or about 15 December 2011 as Warrant Officer Gagnon and the complainant, a corporal, were both members of Régiment de la Chaudière, an Army reserve unit. After the annual Christmas luncheon Warrant Officer Gagnon and the complainant made their way to the armory. Warrant Officer Gagnon initiated sexual activity with the complainant progressing through four distinct sexual acts. Warrant Officer Gagnon confirmed during his testimony at trial that he took no steps to ascertain the complainant’s consent before moving from one act to the next. The complainant testified that in addition to being passive, she communicated discomfort and physically resisted, at different times during the encounter. Warrant Officer Gagnon claimed that either the complainant consented or that he held an honest but mistaken belief that she consented, if the court found that she did not.

On 22 August 2014, a General Court Martial found Warrant Officer Gagnon not guilty of sexual assault after the military judge put the defence of honest but mistaken belief in consent to the panel for consideration. On 17 September 2014, the DMP on behalf of the Minister appealed this decision to the CMAC on the basis that the military judge should not have left the defence of honest but mistaken belief in consent with the panel for consideration.

A majority of the CMAC judges found that the military judge erred 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 Warrant Officer 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 of the CMAC, 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 at law committed by the military judge.

Warrant Officer Gagnon appealed the decision to the SCC and arguments were heard on 16 October 2018.

In a unanimous decision from the bench the SCC ruled that the defence of honest but mistaken belief in consent had no air of reality and that the trial judge committed a legal error when he instructed the panel of the General Court Martial to consider it. The SCC added that there was no evidence to show that Warrant Officer Gagnon took any steps to ascertain consent and that, as a result, the defence was barred pursuant to s. 273.2(b) of the *Criminal Code*. The SCC confirmed the CMAC majority decision and ordered a new trial.

R v Stillman/Beaudry, SCC 37701 and SCC 38308

These appeals to the SCC were joined together as they both deal with the constitutionality of s. 130(1)(a) of the NDA. Contextually, these appeals arose out of three separate decisions from the CMAC.

The CMAC first dealt with the central issue raised in this appeal in *R v Royes*²². In that case, a unanimous panel concluded that the acts or omissions referred to in s. 130(1)(a) are service offences and that service offences are offences under military law. As such, s. 130(1)(a) falls within the exception to the right to a



trial by jury in section 11(f) of the *Charter*. The CMAC further concluded that the effect of the SCC decision in *R v Moriarity*²³ was to correct the CMAC's prior reasoning respecting s. 130(1)(a) and military nexus. The CMAC found that its prior jurisprudence regarding military nexus was no longer valid, and therefore that s. 130(1)(a), without resort to a military nexus test, does not violate s. 11(f) of the Charter.

The CMAC ruled on the same constitutional issue for a second time in the case of *R v Déry*.²⁴ In *Déry*, the Chief Justice agreed with the analysis undertaken by the CMAC in *Royes*. The majority, however, found that "it is only by the reading in of a military nexus test that paragraph 130(1)(a) of the NDA can pass constitutional muster". Nevertheless, the CMAC unanimously concluded that it was bound by *Royes*, a decision it found to be "a fully reasoned treatment of the issue by a unanimous bench". The constitutional challenge was dismissed.

²² 2016 CMAC 1.

²³ 2015 SCC 55.

²⁴ 2017 CMAC 2.

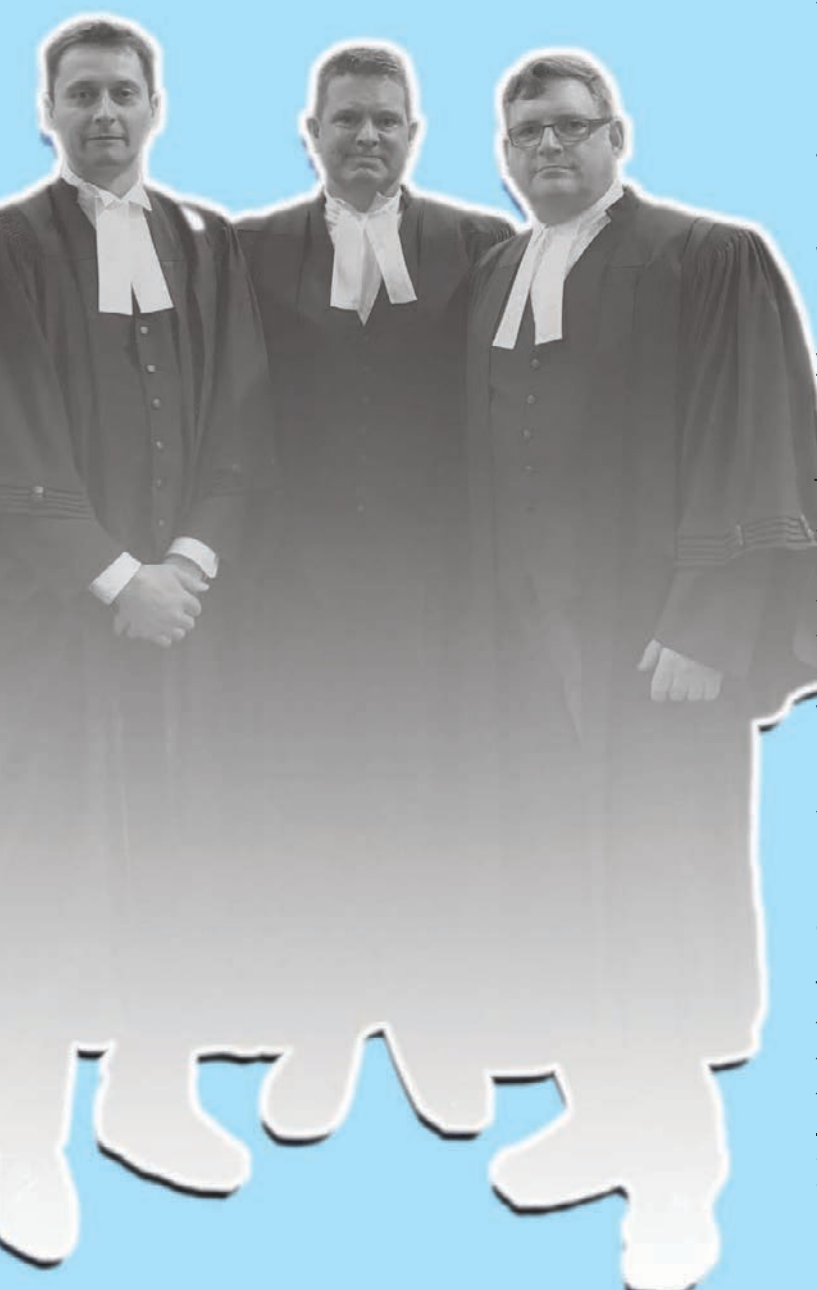
Following the CMAC decision in *Déry*, a number of the appellants were granted leave to appeal to the SCC under the name of *Stillman* which grouped seven appellants together into one matter. Following a motion to join, the SCC ordered that the appeal of *Beaudry* be heard concurrently to that of *Stillman*. These appeals were all heard on 26 March 2019. Further information regarding this appeal is contained in Chapter Four.

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 all such hearings. During the reporting period, military prosecutors appeared at four pre-trial custody review hearings. Of those four hearings, the accused individual was released with conditions on all four occasions. A complete summary of all custody review hearings can be found at Annex D.



R v Beaudry



Following a Standing Court Martial held in July 2016, Corporal Beaudry was found guilty of having committed a sexual assault causing bodily harm, contrary to section 272 of the *Criminal Code*, under section 130 of the NDA.²⁵ He was sentenced to a term of imprisonment for 42 months and dismissal from Her Majesty's service and was also required to provide DNA for the purpose of forensic DNA analysis, ordered to comply with the *Sex Offender Information Registration Act* for a period of 20 years and was prohibited from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition, prohibited ammunition or explosive substance for a period of ten years.

Corporal Beaudry appealed the military judge's decision to the CMAC arguing that section 130(1)(a) violates subsection 11(f) of the *Canadian Charter of Rights and Freedoms* by depriving him of his right to a trial by jury for a civil offence.²⁶ On 19 September 2018, the CMAC rendered its judgment and in a split decision, the majority set aside the guilty verdict and declared section 130(1)(a) of the NDA to be in violation of section 11(f) of the *Charter* for those offences where the accused faces punishment of five years imprisonment or more.²⁷ The conviction was quashed and Corporal Beaudry was released from prison after having served nearly 26 months.

The decision by the CMAC in *Beaudry* was not the first time that the court has considered this issue. In June 2016, in the case of *R v Royes* the CMAC unanimously ruled that s. 130(1)(a)

²⁵ 2016 CM 4010.

²⁶ Section 11(f) of the *Charter* guarantees the right to a trial by jury where the maximum punishment for the offence is imprisonment for five years or a more except in those cases where the offence falls under military law tried before a military tribunal.

²⁷ 2018 CMAC 4.

did not violate s. 11(f) of the *Charter*. Later, in May 2017, a majority of the CMAC in the case of *R v Déry* disagreed with the conclusions in *Royes*, but found that they were nevertheless bound by *Royes* and ruled that s. 130(1)(a) did not violate s. 11(f) of the *Charter*. The *Déry* decision was appealed to the SCC under the name *R v Stillman*.

In its decision in *Beaudry*, not only did the CMAC overrule two of its recent previous decisions on this matter, the Court did not suspend the declaration of invalidity at the time of the ruling meaning that the declaration would take effect immediately and any accused individuals charged under section 130(1)(a) of the NDA could no longer be tried for any civil offence committed in Canada for which a maximum sentence is five years imprisonment or more through the military justice system.

At the time of the ruling, there were 40 cases within the military justice system where the accused had been charged for a civil offence under section 130(1)(a) of the NDA. This included 21 cases involving sexual related offences such as sexual assault, sexual exploitation and voyeurism. Therefore, with no ability to proceed with these cases through the military justice system, within 48 hours of the CMAC decision in *Beaudry*, the DMP, on behalf of the Minister of National Defence, appealed the decision to the SCC and filed a motion requesting the SCC to order a stay of execution of the CMAC declaration of unconstitutionality of paragraph 130(1)(a) of the NDA until the SCC has rendered a decision on the appeal. In addition, the DMP also filed a motion requesting to join the hearing of the appeal in *Beaudry* to the appeal in *Stillman* as they both relate to the same legal issue.

On 13 November 2018, the Chief Justice of the SCC directed that the cases of *Beaudry* and *Stillman* be heard together in a single hearing set for 26 March 2019. In addition, an oral hearing for the request for a stay of execution of the CMAC decision in *Beaudry* was set for 14 January 2019.

At the hearing for the request for a stay of execution, counsel with the CMPS argued that a stay of the CMAC decision in *Beaudry* was necessary to allow cases to continue to proceed through the military justice system as it was better placed to ensure the maintenance of the discipline, efficiency and morale of the CAF.

However, the SCC dismissed the request for a stay of execution. This meant that the finding of unconstitutionality of section 130(1)(a) of the NDA remained in place and any accused individuals charged under that section could not be tried through the military justice system at that time for civil offences committed in Canada for which a maximum sentence is five years imprisonment or more.

Immediately following the ruling on the request for a stay of execution, the DMP communicated the decision to the highest levels of the chain of command within the CAF and set out the way ahead as to his intentions on how to proceed with those cases which were impacted by *Beaudry*. The DMP directed his team to, where appropriate, determine whether cases could proceed under other NDA charges or whether those cases should proceed through the civilian justice system. The DMP expressly required his prosecutors to ensure that the appropriateness of any charge was to be considered on a principled basis and was not to be done simply to deny an accused his or her right to be tried by a jury through the civilian criminal justice system.

Over the course of the next several weeks, a number of steps were taken by military prosecutors in these cases to ensure that all impacted cases proceed in a fair and timely fashion and that the concerns of all victims were solicited, considered and addressed.

At the end of the reporting period, there were a total of 40 prosecution cases which were impacted by the CMAC decision in *Beaudry*. Of those cases, 18 affected cases remain in the military justice system; ten cases were referred to civilian prosecutors (an information was laid in eight cases and civilian prosecutors declined to proceed in two cases);



six cases remain in the military justice system and are proceeding by non-affected charges; military prosecutors declined to proceed with charges and did not refer the case to civilian authorities in one case; and five cases have already proceeded through the military justice system by non-affected charges resulting in a finding of guilty.

Oral arguments were made to the SCC on 26 March 2019 in both the cases of *Stillman* and *Beaudry*. It is expected that the SCC will rule on the constitutionality of s. 130(1)(a) in the next reporting period.

Report of the Auditor General of Canada on the Administration of Justice in the Canadian Armed Forces



Introduction

As a part of its 2018 Spring Reports, the Auditor General of Canada reported to Parliament on the Administration of Justice in the CAF.²⁸ The audit focused on whether the CAF administered the military justice system efficiently and in particular, it assessed the effectiveness of the CAF in processing military justice cases in a timely manner.

In regards to those areas that fell within the responsibility of the DMP, the Auditor General concluded that:

- It took too long to resolve many of its cases;
- The policy on disclosing relevant evidence to the accused did not establish time standards to provide evidence to the accused;
- There was no formal requirement to communicate with the military police about whether charges were laid or to provide feedback on the quality of the police investigations;
- The procedure for assigning cases and decision-making authorities to prosecutors was not clear and the assignment of cases to prosecutors was not always documented.

As a result, the Auditor General made a series of recommendations designed to address those concerns. Those recommendations that fell within the responsibility of the DMP included:

- The CAF should establish formal communication processes to ensure that the Military Police, the DMP, the JAG's legal officers, and the military units receive the information that they need to carry out their duties and functions in a timely manner.

- The CAF should define and communicate expectations for the timely disclosure of all relevant information to members charged with an offence.
- The CAF should put in place a case management system that contains the information needed to monitor and manage the progress and completion of military justice cases.
- The DMP should ensure that the policies and processes for assigning cases to prosecutors, and for documenting decisions made in military justice cases, are well defined, communicated, and fully implemented by the members of the CMPS.

Before the report was released, the DMP instituted a number of changes to address the concerns of the Auditor General. For example, the DMP directed his two DDMPs who supervise RMPs to request disclosure from the appropriate investigative agency before the file is assigned. In addition, before the report was released, the DMP had already made changes to the instruments for the appointment of prosecutors clarifying the limits for the exercise of their prosecutorial powers indicating that they were authorized to exercise the statutory powers given to the DMP on his behalf but subject to those limitations as indicated in his policy directives.

Policy Amendments

Following the release of the report, the DMP undertook a detailed policy review by 1 September 2018 to ensure that his policies properly reflect the concerns expressed by the Auditor General and that all key decisions taken on a file affecting the disposition of that file are properly documented and communicated. Those changes made in response to the concerns raised by the Auditor General are set out below.

²⁸ Auditor General of Canada, "Administration of Justice in the Canadian Armed Forces", 29 May 2018.

DMP Policy Directive 001/00: Relationship with Canadian Forces National Investigation Service

Once a decision has been made to prefer charges for trial by court martial, prosecutors are required to actively follow-up with the investigator to ensure that they are aware of the decision and to discuss next steps as required. If the decision was not to prefer, the discussion with the investigator will essentially be to provide feedback to assist with improving future investigations.

Once a court martial has been completed the prosecutor must provide feedback to the investigator in order to address any concerns which may have arisen during the course of the court martial. The intent of the feedback is to identify and address areas of mutual concern with the aim of improving the quality of future investigations.

DMP Policy Directive 002/00: Pre-Charge Screening

If a prosecutor is unable to complete the pre-charge screening in the allotted timeframe, he or she shall contact the appropriate DDMP and seek approval to extend the timeline beyond the applicable time period. In those cases where the DDMP approves an extension beyond the applicable time period, he or she shall do so in writing and shall document the reasons as to why the extension was approved. The written authorization by the DDMP shall be placed in the case file.

Once an extension beyond the applicable time period has been approved the prosecutor shall contact the investigator and provide a reasonable estimate as to how much time will be required to provide the advice and a brief explanation as to why more time is required.

DMP Policy Directive 003/00: Post-Charge Review

File Assignment and Final Disposition

Upon receipt of a referral from a referral authority the appropriate DDMP shall conduct an initial review of the file to familiarize him or herself with the size and complexity of the file prior to assigning it to a prosecutor. At this stage, where the applicable DDMP concludes that a particular file will result in a non-preferred decision, in the interests of efficiency, he or she may complete the necessary documentation to dispose of the file without assigning it to a prosecutor.

Should the applicable DDMP not dispose of the file immediately, he or she shall request disclosure from the applicable investigative agency and assign a prosecutor to conduct the post-charge review.

Where a prosecutor does not have final disposition authority, he or she shall make their recommendation regarding disposition to the proper authority within the applicable timeframe. Once a decision is taken by the proper authority, that person must then ensure that they record their decision and place it in the prosecution case file.

Disclosure

Once a prosecutor has ensured that he or she has received complete disclosure he or she shall review the disclosure material in order to determine whether a charge or charges should be preferred. Where possible, the prosecutor shall prepare the disclosure package to be sent to defence counsel contemporaneously with the decision on whether or not to prefer charges. Where the prosecutor is unable to send the disclosure contemporaneously with the decision on whether or not to prefer charges, he or she shall notify the applicable DDMP informing him or her as to why disclosure will be delayed. In all cases, the necessary vetting of the disclosure materials shall commence immediately upon receipt in order to ensure that all relevant material is provided to the accused as soon as possible.

Reassignment of File

Where a file is to be reassigned from one prosecutor to another, the applicable DDMP shall assign a new prosecutor in writing. Once a new prosecutor has been assigned to the file, he or she shall review the file to determine whether there is a reasonable prospect of conviction should the matter proceed to trial by court martial and whether the public interest requires that a prosecution be pursued. In all cases, the new prosecutor shall document his or her decision and place it in the prosecution case file.

Timelines

The timeline to complete a post-charge review will be determined by the appropriate DDMP by considering the size and complexity of the file, the workload and experience of the prosecutor and any other relevant factors. Should the prosecutor require longer than the assigned time to complete the post-charge review he or she shall request approval from the appropriate DDMP and provide a reasonable estimate as to how much time will be required to complete the review and a brief explanation as to why more time is required.

Where the appropriate DDMP approves an extension of the deadline for the post-charge review, he or she must ensure that the approval is provided in writing and contains an explanation as to why the extension was provided. This approval shall be placed in the prosecution case file.

DMP Policy Directive 005/00: Communications with Service Authorities

This policy reiterates the requirement for prosecutors to speak with investigators after a court martial to provide feedback to assist in improving the quality of future investigations. However, it also makes it a requirement to do so in cases of military police and unit investigations.



DMP Policy Directive 011/00: Withdrawal of Charges

Once a decision to withdraw a charge has been made, the individual with final disposition authority must ensure that they record their decision and place it in the prosecution case file.

DMP Policy Directive 017/18: Court Martial Scheduling

This is a new policy that deals with the scheduling of courts martial and pre-trial applications. It holds that prosecutors shall take all best efforts to ensure that they schedule all courts martial, including pre-trial applications, in a timely manner. According to the policy, two timelines have been put in place to move cases more quickly:

- Once disclosure has been sent to defence counsel, prosecutors shall inform the accused of any witness who he or she proposes to call as soon as practicable and, except in exceptional circumstances, no later than 15 days after providing disclosure.

- Once disclosure and the list of witnesses have been sent to the accused, the prosecutor shall make best efforts to engage defence counsel within 30 days to discuss possible dates for court martial.

The policy also offers some guidance for the bringing of scheduling applications. In those cases where it may be appropriate to do so, the policy sets out a number of factors that should be taken into consideration such as:

- Whether the prosecutor has made reasonable efforts to schedule a court martial with defence counsel or an unrepresented accused;
- Whether the prosecutor is of the opinion that there is no valid reason to justify why a court martial should not be scheduled; and
- Whether the prosecutor is of the opinion that the only way for a court martial to be scheduled in a timely manner is to make a scheduling application.

Case Management System

In 2016, the DMP began work to create an electronic database to track cases throughout the court martial process with the aim of improving transparency and efficiency, increasing accountability and reducing overall delays in the court martial system. In response to the recommendation by the Auditor General that the CAF put a case management system in place that monitors and manages the progress and completion of military justice cases, the DMP responded that he was prepared to employ a significantly improved electronic database / case management system by 1 June 2018.

Referred to as the Case Management System (CMS), this database was operationalized on 1 June 2018 and allows all prosecutors within the CMPS to monitor the progress of each file and to conduct specific actions on each file such as the assignment of files by the DDMPs. Since 1 June 2018, a number of upgrades have been made to CMS to further improve its functionality and enhance the way in which files are tracked through the court martial process. For a more detailed explanation of the CMS, please refer to Chapter Eight.

Canadian Forces Military Police Academy

In order to further enhance communications between prosecutors and military police, the DMP also undertook to examine how additional legal support could be provided to the Canadian Forces Military Police Academy (CFMPA). In addition to facilitating the provision of information between military prosecutors and military police, the intent is to assist in the improvement of the quality of future investigations through coordinated training and feedback. Since the release of the Report, the DMP has continued to offer assistance to locate an additional prosecutor at the CFMPA.

Policy Updates



The policy directives of the DMP serve a key role in the prosecution of cases at courts martial. Not only do they set out the authorities and limitations for prosecutors but they provide specific direction on a number of related issues such as communications with victims and with service authorities, media relations, the appeal process and the appointment of special prosecutors. They govern the prosecutions and other military justice proceedings conducted by prosecutors and ensure that all decisions taken by prosecutors are done on a principled basis and in accordance with the law.

In an effort to further enhance public confidence in the administration of military justice, the DMP, during this reporting period, promulgated the CMPS Complaints Policy which sets out the procedure for an individual to make a complaint on any matter within the purview of the CMPS and details the process for the timely resolution of all complaints.²⁹

Although the CMPS is responsible to prosecute all service offences with diligence and in a manner that is fair, impartial and objective, on occasion a member of the CAF or a member of the Canadian public may feel as though they have been treated unfairly or that a prosecutor with the CMPS has not conducted him or herself in accordance with CMPS policies or directives. In such cases, that individual may wish to initiate a formal complaint for resolution.

²⁹ The CMPS Complaints Policy Directive can be found at <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/cmcs-complaints.html>.

As independent actors within the military justice system, prosecutors with the CMPS are required to exercise their discretion in a variety of circumstances and on a regular basis. Therefore, the goal of this policy is to ensure the CAF and the Canadian public that the CMPS remains accountable to exercise their discretionary powers properly and in accordance with the direction provided by the DMP. In those instances where a complaint has been made, members of the CAF and the Canadian public can have the confidence that the leadership of the CMPS organization will take action as necessary when a matter has been brought to their attention.

In order to make a complaint, an individual must submit the complaint in writing, in either official language, and provide all relevant information in order to allow for a thorough review of the matter. Complaints may speak to the conduct of a particular prosecutor but may also be more general in nature addressing any procedure, practice or policy of the CMPS which results in the unfair treatment of any individual.

Where possible, the CMPS will provide the complainant with a written response within forty days of the complaint being received. If the CMPS is unable to do so, the complainant will be notified and will be provided with a

written explanation for the delay. Additionally, in most cases, where a complainant is dissatisfied with the initial response he or she may request that the complaint be reviewed personally by the DMP for resolution.

Special Prosecutor

On 12 April 2017 The DMP issued a new policy directive for the appointment of special prosecutors whenever there is a risk of an actual or perceived conflict of interest in the conduct of military prosecution duties that may adversely impact public confidence in the administration of military justice.³⁰ 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 a member of the Office of the JAG.

The DMP appointed a special prosecutor, 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 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.

On 31 July 2018, the DMP appointed Second Lieutenant Cimon Sénécal, a criminal and penal prosecuting attorney with the *Directeur des poursuites criminelles et pénales* of Québec, to assist Lieutenant-Colonel Poland. However, on 26 December 2018, Lieutenant-Colonel Poland was appointed by the Attorney General of Ontario as a justice in the Ontario Court of Justice. As a result, Second Lieutenant Sénécal will now be the lead prosecutor in this matter.



30 The CMPS Policy Directive on the Appointment of Special Prosecutors can be found at https://www.canada.ca/content/dam/dnd-mdn/migration/assets/FORCES_Internet/docs/en/about-policies-standards-legal/dmp-policy-directive-016-17-appointment-of-special-prosecutors.pdf.

Additional Amendments

In addition to those policy amendments made as a result of the Report of the Auditor General on the Administration of Justice in the CAF a number of additional policy amendments were made to provide better clarity in areas where the policy was not as clear as it should have been. These amendments were made contemporaneously with those to respond to the concerns of the Auditor General and were promulgated on 1 September 2018.

DMP Policy Directive 002/00: Pre-Charge Screening³¹

The notion of further investigation at the pre-charge stage will no longer exist. That is, prosecutors will no longer return a file and request that additional investigation be undertaken thereby “stopping the clock” for how long it takes a prosecutor to conduct pre-charge screening. If a prosecutor receives a file and the evidence in the file does not satisfy the test to recommend that a charge be laid, the prosecutor will return the file with a recommendation that no charge be laid.

However, if the prosecutor believes that further investigation may assist he or she shall discuss this with the investigator and provide sufficient detail to assist the investigator in conducting any necessary further investigation. Should the investigator conduct further investigation and resubmit for pre-charge screening, the file will be reopened and the prosecutor will provide his or her opinion based on the information contained in the updated file.



DMP Policy Directive 003/00: Post-Charge Review³²

Changes made to this policy provide a bit more clarity to how serious sexual misconduct files are assigned and how final disposition authority is given to the DDMP SMART. Where a DDMP receives a file which contains an allegation of sexual misconduct, he or she will determine whether the allegation is one of serious sexual misconduct. Where required, the DDMP will consult with the DDMP SMART when making such a determination.

Where the file contains an allegation of serious sexual misconduct, the DDMP will assign the file to a prosecutor in consultation with DDMP SMART. In all cases involving an allegation of serious sexual misconduct, the DDMP will ensure that DDMP SMART is assigned final disposition authority. In all other cases of sexual misconduct, the DDMP will ensure that DDMP SMART is aware of the file.

³¹ The CMPS Policy Directive on Pre-Charge Screening can be found at <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/pre-charge-screening.html>.

³² The CMPS Policy Directive on Post-Charge Review can be found at <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/post-charge-review.html>.

DMP Policy Directive 009/00: Communications with Unit Legal Advisors³³

This policy was amended to set out that prosecutors will only conduct pre-charge screening at the request of a Deputy Judge Advocate (DJA) after the DJA has thoroughly reviewed the file and has formed the opinion that charges triable only by court martial are warranted.

In addition, after providing pre-charge legal advice, the prosecutor will proactively follow up with the unit legal advisor and address any questions or concerns arising from that advice.

Victims

This reporting period, the DMP also created a new e-mail address, monitored daily, to provide victims of sexual misconduct with an online option to seek information from



military prosecutors about the status of their case and the court martial process, or to get answers on questions they may have about their file.³⁴

This initiative was introduced to ensure that victims remain informed and supported throughout the court martial process following recent amendments to a number of DMP policy directives requiring military prosecutors to consider the views of the victim in a variety of circumstances.

Information available to victims includes, but is not limited to:

- The decision of the prosecutor on whether to prefer a charge against the accused;
- Any release conditions placed on the accused prior to trial or any amendments thereto;
- Information regarding the court martial process;
- Publication bans or other available methods to protect victims' identities;
- Information regarding testifying at court martial;
- Any decision by the prosecutor to enter into plea negotiations with defence counsel;
- Any decision by the prosecutor to withdraw charges against the accused; and
- The ability of the victim to provide a victim impact statement at court martial.

³³ The CMPS Policy Directive on Communications with Unit Legal Advisors can be found at <https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/communications-with-unit-legal-advisors.html>.

³⁴ The e-mail address for victims is CMPSVictimInformation-SCPMInformationVictime@forces.gc.ca.

Communication and Outreach

Communication and outreach activities play a vital role in the legitimization of Canada's military justice system. From key players in the military justice process as well as national and international strategic partners and organizations, communication and outreach activities form an integral part of the DMP's strategic view to promoting Canada's military justice system. In that regard, the DMP has made a concerted effort to engage a number of organizations to further enhance the legitimacy of Canada's military justice system. This Chapter sets out those communications and outreach activities by the DMP over the course of the reporting period.

CAF Chain of Command

The military justice system is designed to promote the operational effectiveness of the CAF by contributing to its maintenance of discipline, efficiency, and morale. It also ensures that justice is administered fairly and with respect for the rule of law. As the military justice system is but one of several tools available to the chain of command in order to help it reach these objectives, it is required that the DMP and those prosecutors within the CMPS actively and effectively engage the chain of command throughout the court martial process.

While protecting the prosecutorial independence of the 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 ensures 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 proactively meeting with senior members of the chain of command on different military bases across Canada.

During the reporting period, the DMP also participated as a guest speaker at the CAF Discipline Advisory Council held on January 14, 2019. On this occasion, the DMP had the opportunity to provide details on unit disciplinary investigations, victim support and an update on *Beaudry* to CWOs/CPO1s posted into various strategic positions within the CAF.

Canadian Forces National Investigation Service

The CFNIS was established in 1997 with a mandate to investigate serious and sensitive matters related to DND and the CAF. It performs a function similar to that of a major crime unit of the Royal Canadian Mounted Police or large municipal police agency. It is important for all prosecutors to maintain a strong relationship with investigative agencies, while at the same time respecting the independence of each organization. Good relationships with investigative agencies ensure that the prosecutor and the investigator exercise their respective roles independently, but co-operatively, and help to maximize the CMPS's effectiveness and efficiency as a prosecution service.

This reporting period the DMP visited numerous CFNIS detachments across the country to discuss prosecution needs and strategic intent. In addition, the DMP, accompanied by

the DDMP for the Atlantic, Eastern and Pacific regions, presented at the CFNIS Indoctrination Course on DMP's role and responsibilities, prosecutorial independence, and disclosure best practices. The presentation enhanced the incoming investigators' awareness of the legislative and regulatory framework surrounding the role of a prosecutor.

Federal, Provincial and Territorial Heads of Prosecutions Committee

The Federal, Provincial and Territorial Heads of Prosecutions (HoP) Committee is comprised of the DMP, the Director of Public Prosecutions as well as the equivalent heads of all provincial and territorial prosecution services. It is a national coordination and consultation forum that discusses common problems which touch upon criminal law and practice management. In order to promote inter-jurisdictional cooperation on operational issues and afford a unique opportunity to keep abreast of new developments in the area of criminal prosecutions, the HoP Committee holds two meetings throughout the year at various locations across Canada. 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.

This reporting period the HoP Committee held two general meetings, both of which were personally attended by the DMP. The 55th general meeting of the HoP Committee was held in St. Andrews, NB on May 16 and 17, 2018. The DMP was an active participant during the discussions ensuring that the interests of the military justice system remain at the forefront of criminal law in Canada.



The 56th general meeting of the HoP Committee was co-hosted by the DMP at the CFB Esquimalt Wardroom and Chief Petty Officer's & Petty Officer's Mess facilities on October 24 and 25, 2018. In his capacity as co-chair the DMP ensured the promotion of the military justice system throughout the broader Canadian legal community and also ensured that the military justice system remains aligned with broader Canadian values further contributing to the legitimacy of the military justice system.

International Association of Prosecutors

The International Association of Prosecutors (IAP) is the only world-wide association of prosecutors. It is non-governmental and non-political. It was established in 1995 and now has more than 183 organizational members from over 177 different countries, representing every continent. The IAP promotes the effective, fair, impartial, and efficient prosecution of criminal offences through high standards and principles,

including procedures to prevent or address miscarriages of justice.

In addition, the IAP also promotes good relations between prosecution agencies and facilitates the exchange and dissemination of information, expertise and experience. Its annual conference is attended by prosecutors from a variety of nations, including other Canadian federal and provincial heads of prosecutions.

The DMP attended the IAP's 23rd Annual Conference and General Meeting held from 9 to 13 September 2018 in Johannesburg, South Africa. The main theme of the General Meeting was "Prosecutorial Independence – the Cornerstone of Justice to Society". The DMP presented on the enforcement of sexual misconduct in the CAF at the main plenary session as well as co-chaired two meetings of the Network for Military Prosecutors.

In addition, the DMP participated as moderator to the 5th IAP Regional Conference for North America and the Caribbean held in October 2018 in Toronto. Also at the Regional Conference, the DDMP for the Central and Western regions presented on mental health for prosecutors outlining those initiatives put in place within the CMPS in order to improve mental health and resiliency.

United Nations

The DMP was invited to speak at the United Nations in New York as a representative of the IAP about bringing terrorists to justice before national courts. The DMP spoke about the myriad of challenges faced by investigators and prosecutors in the collection and preservation of evidence in conflict areas and the difficulty in complying with national law to have this evidence admitted during criminal prosecutions.

Royal United Services Institute of Nova Scotia

During the reporting period, the DMP was invited by the Royal United Services Institute of Nova Scotia to speak to its members about the military justice system, the role of the DMP and current key issues facing the administration of military justice in the CAF. The DMP spoke to a number of issues outlining his role and responsibilities, prosecutorial independence and key cases moving through the military justice system.

Ukraine – Reforming Ukraine's Military Justice System

In May of 2018, the previous ADMP attended a conference in the Ukraine regarding military justice reform in the Ukraine. The ADMP presented an overview of the Canadian military justice system and the role and responsibilities of the DMP with a view to informing the discussion and providing a balanced voice as the Ukraine continues to take steps to advance its own national military justice system.



Information Management and Technology

Case Management System

In his report on the Administration of Justice in the CAF, the Auditor General recommended that the CAF put in place a case management system that contains the information needed to monitor and manage the progress and completion of military justice cases. Prior to making this recommendation, the DMP had already begun to develop an electronic case management system to track cases throughout the court martial process with the aim of improving transparency efficiency, increasing accountability and reducing overall delays in the court martial system. In response to the report, the DMP committed to making the CMS operational by 1 June 2018.

Launched on 1 June 2018, the CMS is a file management tool and database used to monitor the progress of all cases referred to the DMP through the court martial process. In addition, it allows for the tracking of all data in order to provide the DMP with the necessary statistics in real time about all cases in the court martial system.

The CMS tracks the status of files and collects data at pre-charge, referral, post-charge, the pre-trial phase and appeal period. In addition, it also tracks cases where there has been a custody review hearing and general file advice. All important dates associated with these files are also recorded in the CMS, including but not limited to the dates when the file was referred to the DMP, when the file was assigned to a prosecutor, the date of the decision of the prosecutor on whether or not to prefer charges as well as key dates in the court process. In addition, the CMS also allows for the automatic creation of documents from compiled data, including but not limited to charge sheets and letters informing key actors when a charge has been preferred by a prosecutor.

The design of the CMS is user-friendly and is meant to provide each prosecutor with a quick overview of each of their cases. To that end, each prosecutor has access to a dashboard that shows the status of all relevant files and allows quick access to the data as necessary.

The CMS is intended to replace previous methods for the tracking of cases which has typically been done through a spreadsheet application. Currently, the DMP maintains both systems for tracking cases in order to ensure the quality control of all data.

However, once the CMS undergoes a series of quality control tests in the upcoming reporting period, it is expected that the CMS will become the sole tracking system for all DMP cases in the court martial system.

Further, in the next reporting period, work will continue with the developers of the Justice Administration Information Management System (JAIMS) in order to determine whether the CMS is compatible with JAIMS allowing files from JAIMS to be electronically transferred into CMS once a case has been referred to the DMP.



Financial Information

Operating Budget

DMP's operating budget is allocated primarily to operations and is divided into four main categories: Regular Force Operations and Maintenance, Civilian Salary and Wages, Reserve Force Pay and Reserve Force Operations and Maintenance. Operations and Maintenance includes items such as travel, training costs, general office expenditures and other costs that support the personnel and maintain equipment. A complete overview of DMP's budget including initial allocation and expenditures can be found at Table 9-1. Figure 9-2 shows DMP's operating budget over a five year period.

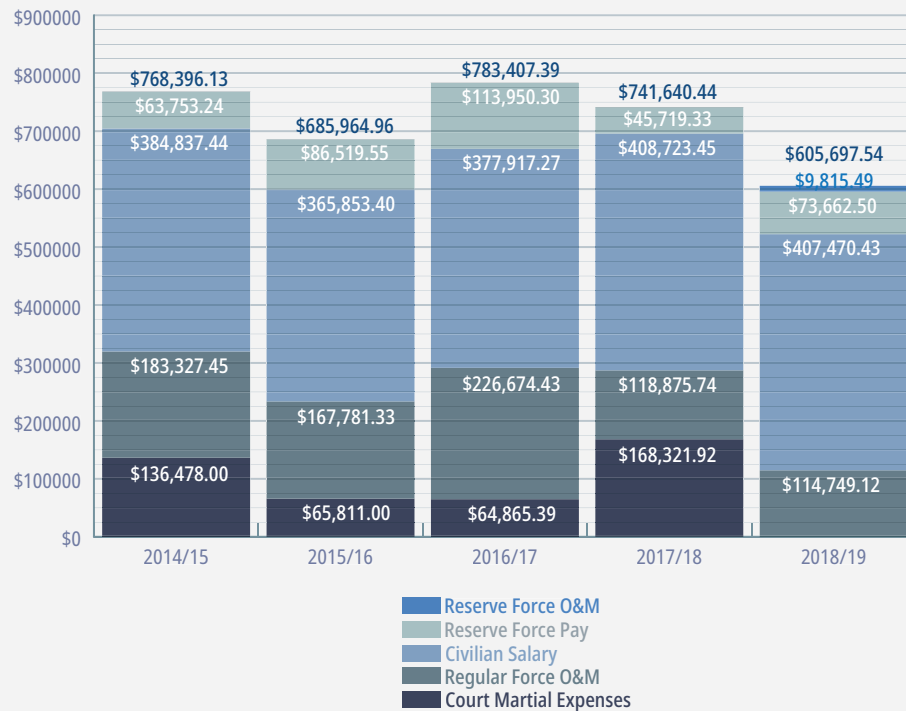
In previous reporting periods court martial expenses was included as a part of DMP's operating budget. However, court martial expenses are no longer a part of the DMP's budget but instead are administered through a centralized fund. Due to various factors such as the number of courts, the duration of courts as well as any unpredictable expenses such as the requirement for expert witnesses, etc., court martial expenditures can be difficult to plan for and can vary greatly from one reporting period to the next. This year the total expenditures for courts martial was \$248,873.90.



Table 9-1: Summary of DMP's Operating Budget

FUND	INITIAL ALLOCATION	EXPENDITURES	BALANCE
Regular Force Operations & Maintenance	\$147,000.00	\$114,749.12	\$32,250.88
Civilian Salary & Wages	\$395,532.00	\$407,470.43	(\$11,938.42)
Reserve Force Pay	\$100,000.00	\$73,662.50	\$26,337.50
Reserve Force Operation and Maintenance	\$5,000.00	\$9,815.49	\$(4,815.49)
TOTALS	\$647,532.00	\$605,697.54	\$41,834.46

Figure 9-2: DMP's Operating Budget – 2014/15 to 2018/19



Court Martial Statistics

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
Maj Abbott	SCM	93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty	\$2,500 Fine and a severe reprimand	Asticou, QC	5 November 2018	English
MS Baycroft	GCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	\$200 Fine	Esquimalt, BC	13 June 2018	English
Capt Belanger	SCM	125 <i>NDA</i>	Offences in relation to documents	Stay of proceedings	\$750 Fine	Kingston, ON	17 December 2018	French
		117(f) <i>NDA</i>	Miscellaneous offences	Guilty				
		91 <i>NDA</i>	False statement in respect of leave	Guilty				
OCdt Bellefontaine	SCM	90 <i>NDA</i>	Absence without leave	Guilty	\$800 Fine	St-Jean, QC	17 July 2018	English
		85 <i>NDA</i>	Insubordinate behaviour	Withdrawn				
		85 <i>NDA</i>	Insubordinate behaviour	Withdrawn				
		97 <i>NDA</i>	Drunkenness	Withdrawn				
MCpl Camire	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	\$400 Fine	Valcartier, QC	5 February 2019	French
MCpl Cribbie	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	\$1,550 Fine	Borden, ON	18 June 2018	English
LS Derival	SCM	90 <i>NDA</i>	Absence without leave	Not guilty	Reprimand and a \$1,800 fine	Esquimalt, BC	9 Apr – 8 May 2018	English
		90 <i>NDA</i>	Absence without leave	Not guilty				
		125(a) <i>NDA</i>	Offences in relation to documents	Not guilty				
		130 <i>NDA</i> (368(1) CCC)	Use, trafficking or possession of forged document	Guilty				
MCpl Desrosiers	SCM	93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty	\$3,000 Fine and a severe reprimand	St-Jean, Qc	23 May 2018	French
		97 <i>NDA</i>	Drunkenness	Guilty				
MWO Durnford	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and a \$1,000 fine	Halifax, NS	4 December 2018	English
Capt Duvall	SCM	93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty	Severe reprimand and a \$2,000 fine	Esquimalt, BC	28 September 2018	English

ANNEX A

Court Martial Statistics

(continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
LS Edwards	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Not guilty	N/A	Halifax, NS	5-16 November 2018	English
OS Florian-Rodriguez	SCM	130 NDA (271 CCC)	Sexual assault	Not guilty	Severe reprimand and a \$2,000 fine	Halifax, NS	9 April 2018	English
		93 NDA	Behaved in a disgraceful manner	Guilty				
		130 NDA (266 CCC)	Assault	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
MCpl Guernon	SCM	114 NDA	Theft	Guilty	\$500 Fine	Valcartier, QC	26 June 2018	French
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
Sgt Guillemette-Jerome	SCM	90 NDA	Absence without leave	Guilty	\$200 Fine	Valcartier, QC	7 November 2018	French
LCol Haire	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$500 Fine	Shilo, MB	10 April 2018	English
Cpl Handfield	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and \$700 fine	Edmonton, AB	26 July 2018	French
		95 NDA	Abuse of subordinates	Not guilty				
		95 NDA	Abuse of subordinates	Not guilty				
		95 NDA	Abuse of subordinates	Not guilty				
		95 NDA	Abuse of subordinates	Not guilty				
		95 NDA	Abuse of subordinates	Not guilty				
		95 NDA	Abuse of subordinates	Not guilty				

Court Martial Statistics

(continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
Sgt Hansen	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and \$1,000 fine	Gagetown, NB	16-18 April 2018	English
LS Harding	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$2,000 Fine	Halifax, NS	5 November 2018	English
LS Honeyman	GCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$250 Fine	Esquimalt, BC	10-12 December 2018	English
MBdr Hosford	SCM	129 NDA	Neglect to the prejudice of good order and discipline	Not guilty	\$200 Fine	Gagetown, NB	23 July 2018	English
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
		87(d) NDA	Broke out of barracks	Stay of proceedings				
		90 NDA	Absence without leave	Guilty				
LCol Jonasson	SCM	95 NDA	Abuse of subordinates	Not guilty	N/A	Asticou, QC	4-8 February 2019	English
		97 NDA	Drunkenness	Not guilty				
Maj Krajaefski	SCM	93 NDA	Behaved in a disgraceful manner	Not Guilty	N/A	Asticou, QC	18-21 March 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty				
MCpl Lamontagne	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$200 Fine	Borden, ON	15 January 2019	French
		85 NDA	Insubordinate behaviour	Stay of proceedings				
Sgt Levangie	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$200 Fine	Halifax, NS	4 December 2018	English
MCpl Lewis	SCM	83(a) NDA	Insubordination	Not guilty	N/A	Winnipeg, MB	19-22 November 2018	English
		86(b) NDA	Quarrels and disturbances	Not guilty				
Cpl (ret'd) McEwan	SCM	90 NDA	Absence without leave	Withdrawn	Imprisonment for a period of five days	Petawawa, ON	16 July – 30 November 2018	English
		118.1 NDA	Failure to appear or attend	Guilty				

ANNEX A

Court Martial Statistics (continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
Pte MacDonald	SCM	130 <i>NDA</i> (348(1)(b) CCC)	Break and enter	Withdrawn	Severe reprimand and a \$2,000 fine	Gagetown, NB	30 April – 1 August 2018	English
		130 <i>NDA</i> (334 CCC)	Theft	Withdrawn				
		114 <i>NDA</i>	Stealing	Guilty				
		116(a) <i>NDA</i>	Wilfully damaged public property	Guilty				
Sgt MacIntyre	GCM	130 <i>NDA</i> (271 CCC)	Sexual assault	Not guilty	N/A	Halifax, NS	18 – 27 June 2018	English
Capt Mileusnic	SCM	109 <i>NDA</i>	Low flying	Guilty	\$2,000 Fine	Cold Lake, AB	21 January	English
		124 <i>NDA</i>	Negligent performance of duties	Not guilty				
		127 <i>NDA</i>	Injurious or destructive handling of dangerous substances	Not guilty				
LS Mitchell	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	Severe reprimand a \$2,500 fine	Saint-John, NB	6 December 2018	English
		97 <i>NDA</i>	Drunkenness	Guilty				
Bdr Moulton	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Withdrawn	\$1,200 Fine	Petawawa, ON	27 November 2018	English
		97 <i>NDA</i>	Drunkenness	Guilty				
LS Murphy	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	\$150 Fine	Esquimalt	3 October 2018	English
		130 <i>NDA</i> (351 CCC)	Possession of a break-in instrument	Withdrawn				
Capt Nordstrom	SCM	130 <i>NDA</i> (271 CCC)	Sexual assault	Not guilty	N/A	Edmonton, AB	4 June – 4 July 2018	English
		130 <i>NDA</i> (266 CCC)	Assault	Not guilty				
MCpl Paul	GCM	130 <i>NDA</i> (271 CCC)	Sexual Assault	Withdrawn	Reduction in rank to the rank of pte	Shilo, MB	24 July 2018	English
		93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty				
		93 <i>NDA</i>	Behaved in a disgraceful manner	Withdrawn				

Court Martial Statistics

(continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
LCol Popowych	SCM	130 NDA (271 CCC)	Sexual assault	Withdrawn	N/A	Asticou, QC	22 October 2018	English
MWO Reyes	SCM	93 NDA	Behaved in a disgraceful manner	Guilty	Imprisonment for a period of five months and a reduction in rank to the rank of Sgt	Toronto, ON	2-3 October 2018	English
LS Richard	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$3,500 Fine	Halifax, NS	19-22 February 2019	English
Sgt Roodzant	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$2,000 Fine	Petawawa, ON	27 November 2018	English
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
Avr Rutherford	SCM	93 NDA	Behaved in a disgraceful manner	Guilty	Dismissal from Her Majesty's service and a severe reprimand	St-Jean, QC	17 July 2018	English
		130 NDA (266 CCC)	Assault	Guilty				
		93 NDA	Behaved in a disgraceful manner	Guilty				
		130 NDA (266 CCC)	Assault	Guilty				
		130 NDA (266 CCC)	Assault	Guilty				
		130 NDA (266 CCC)	Assault	Guilty				
Lt(N) Ryan	SCM	130 NDA (271 CCC)	Sexual assault	Not guilty	Severe reprimand and \$2,500 fine	Kingston, ON	8-16 May 2018	English
		130 NDA (264 CCC)	Criminal harassment	Guilty				

ANNEX A

Court Martial Statistics

(continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
Sgt Scott	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Severe reprimand	Borden, ON	10 September – 21 November 2018	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	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
Cpl Sloan	SCM	130 NDA (4(1) CDSA)	Possession of substance	Not guilty	\$200 Fine	Greenwood NS	29 May 2018	English
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
Cpl Spriggs	GCM	93 NDA	Behaved in a disgraceful manner	Proceedings terminated	N/A	Asticou, Cc	28-31 January 2019	English
Cpl St. James	SCM	97 NDA	Drunkenness	Guilty	\$800 Fine	Montreal, QC	14 January 2019	English

Court Martial Statistics

(continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGU AGE
LS Stow	SCM	130 <i>NDA</i> (5(1) CDSA)	Trafficking	Guilty	Imprisonment for a period of 10 months	Halifax, NS	28 August 2018	English
		130 <i>NDA</i> (5(1) CDSA)	Trafficking	Withdrawn				
		130 <i>NDA</i> (5(2) CDSA)	Possession for the purpose of trafficking	Withdrawn				
		130 <i>NDA</i> (4(1) CDSA)	Possession of a substance	Withdrawn				
		130 <i>NDA</i> (129(a) CCC)	Resisting a peace officer	Withdrawn				
		130 <i>NDA</i> (4(1) CDSA)	Possession of a substance	Withdrawn				
Pte Taylor	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Not guilty	\$2,000 Fine	St-Jean, QC	9-15 October 2018	English
		129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty				
		129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Not guilty				
		129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Not guilty				
Cpl Tremblay	SCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	\$3,500 Fine and a severe reprimand	Bagotville, QC	6 November 2018	French
LS Whelan	GCM	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Guilty	Dismissal from Her Majesty's Service	Esquimalt, QC	13 November – 20 December 2018	English
2Lt White	SCM	95 <i>NDA</i>	Abuse of subordinates	Withdrawn	\$850 Fine	Petawawa, ON	19 December 2018	English
		97 <i>NDA</i>	Drunkenness	Guilty				
Cpl Worthman	SCM	130 <i>NDA</i> (266 CCC)	Assault	Guilty	10-day detention (suspended)	Trenton, ON	6 September 2018	English
		97 <i>NDA</i>	Drunkenness	Guilty				

ANNEX A

Court Martial Statistics

(continuation)

ACCUSED	TYPE	OFFENCE	DESCRIPTION	DISPOSITION	SENTENCE	LOCATION (CM)	DATE	LANGUAGE
NCdt Yergeau	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$1,000 Fine	Esquimalt, BC	20 March 2019	French

Appeals to the Court Martial Appeal Court of Canada

CMAC#	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
588	Cpl Beaudry	Her Majesty the Queen	Legality of Finding	Appeal allowed and conviction quashed
590	Ex-MCpl Edmunds	Her Majesty the Queen	Legality of Finding	Appeal allowed and convictions quashed
591	Her Majesty the Queen	Cpl Cadieux	Legality of Finding	The appeal is allowed, both acquittals are quashed and a new trial is ordered for each charge
592	Her Majesty the Queen	Capt Bannister	Legality of Finding	Waiting for Decision
594	Her Majesty the Queen	Sgt MacIntyre	Legality of Finding	Waiting for Decision
595	Her Majesty the Queen	LS Edwards	Legality of Finding	Waiting for Decision
596	MCpl Stillman	Her Majesty the Queen	Application for Release from Detention or Imprisonment Pending Appeal from Court Martial	Order for release rendered
597	Her Majesty the Queen	Cpl Spriggs	Legality of Finding	Abandoned by the appellant

Appeals to the Supreme Court of Canada

SCC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
37701	MCpl Stillman et al	Her Majesty the Queen	Legality of Finding (appeal by leave)	Judgment reserved
37972	WO Gagnon	Her Majesty the Queen	Legality of Finding (appeal as of right)	Appeal Dismissed
38308	Her Majesty the Queen	Cpl Beaudry	Legality of Finding (appeal as of right)	Judgment reserved

Custody Review Hearings

ACCUSED	DATE	OFFENCE	DESCRIPTION	DECISION
Avr Cline	29-Aug-18	90 <i>NDA</i>	Absence without leave	Released on conditions
		90 <i>NDA</i>	Absence without leave	
		90 <i>NDA</i>	Absence without leave	
		90 <i>NDA</i>	Absence without leave	
		101.1 <i>NDA</i>	Failed to comply with conditions	
		101.1 <i>NDA</i>	Failed to comply with conditions	
LS Whelan #1	30-Oct-18	129 <i>NDA</i>	Conduct to the prejudice of good order and discipline	Released on conditions
		101.1 <i>NDA</i>	Failed to comply with conditions	
LS Whelan #2	13-Nov-18	101.1 <i>NDA</i>	Failed to comply with conditions	Released on conditions
Pte Truelove	26-Nov-18	90 <i>NDA</i>	Absence without leave	Released on conditions