



National  
Defence

Défense  
nationale

**DMP**

ANNUAL REPORT  
2019-2020

20 years • 1999-2019 • 20 ans



Canadian Military Prosecution Service  
Le Service canadien des poursuites militaires

Canada





National Defence

Défense nationale

Director of Military Prosecutions

Directeur des poursuites militaires

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23 June 2020

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 2019-2020 Annual Report of the Director of Military Prosecutions. The report covers the period from 1 April 2019 to 31 March 2020.

Yours sincerely,

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

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# MESSAGE FROM THE DIRECTOR OF MILITARY PROSECUTIONS



I am pleased to present the Director of Military Prosecutions Annual Report for the 2019/20 reporting period, my sixth since being appointed by the Minister of National Defence on 20 October 2014.

As a Commanding Officer, it gives me great pride to lead an organization such as the Canadian Military Prosecution Service and those talented individuals who work within it. Despite this reporting period starting with uncertainty regarding the jurisdiction of the military justice system due to the Court Martial Appeal Court of Canada's decision in *R v Beaudry* in September 2018, our prosecution team pressed forward and made positive strides in ensuring that military justice continued in an open, transparent and principled manner that remains consistent with the *Canadian Charter of Rights and Freedoms*. Canadians, especially those in uniform, should expect no less from their military prosecutors.

On 26 July 2019, the Supreme Court of Canada delivered its decision in *R v Stillman*, 2019 SCC 40. This decision was the latest in a series of decisions by the Supreme Court of Canada which recognize the vital importance of the military justice system as a parallel system of justice which stands side-by-side with the criminal justice system. The Supreme Court of Canada has been resoundingly clear that the military justice system is

necessary for the maintenance of discipline, efficiency and morale of the Canadian Armed Forces, and that the fundamentals of our system are constitutionally sound. No system is perfect – we can and will continue to evolve to meet the expectations of the Canadian Armed Forces and all Canadians. But, I am very proud of the role that our military prosecutors continue to fulfil each and every day within the military justice system.

This past reporting period, I have continued to engage in strategic outreach with members of the Canadian Armed Forces 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 Canadian Military Prosecution Service through the sharing of best practices but we also continue to strengthen the legitimacy of Canada's military justice system.

Finally, this year saw further development of and improvement to our electronic case management system.

This system tracks all court martial cases throughout the court martial process, improving transparency and efficiency by increasing accountability and reducing overall delays in the court martial system. In response to the 2018 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 next version of our case management system, which would have been compatible with the Justice Administration and Information Management System, was scheduled to be released at the end of this reporting period. Due to the Canadian Armed Forces' response to the COVID-19 pandemic, this release has been postponed until summer of 2020.

In closing, it has been another very busy and challenging year for the Canadian Military Prosecution Service 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 promote the maintenance of discipline, efficiency and morale of those women and men who proudly serve Canada with distinction, both at home and abroad.

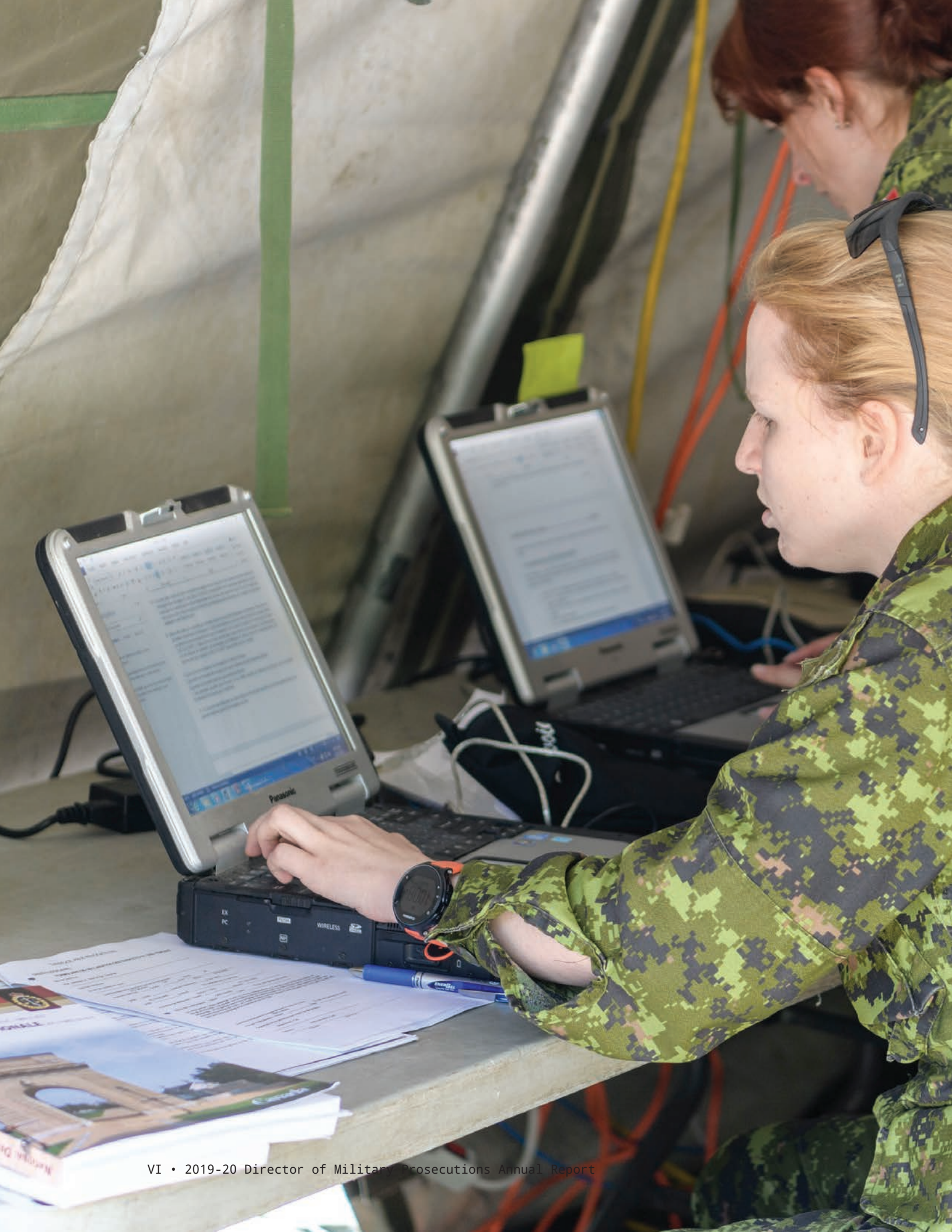
*ORDO PER JUSTITIA*

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









# THE CANADIAN MILITARY PROSECUTION SERVICE: *ORDO PER JUSTITIA*

## DUTIES AND FUNCTIONS OF THE DMP

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 (MND) for a fixed term pursuant to subsection 165.1(1) of the *National Defence Act* (NDA).<sup>1</sup> 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 acts as counsel to the MND, 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), which is the investigative arm of the Canadian Forces Military Police. The DMP represents the CAF at custody review hearings before military judges and the CMAC.

The DMP operates 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 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.

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 independently 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.

<sup>1</sup> *National Defence Act*, RSC 1985, c N-5.

# MISSION AND VISION

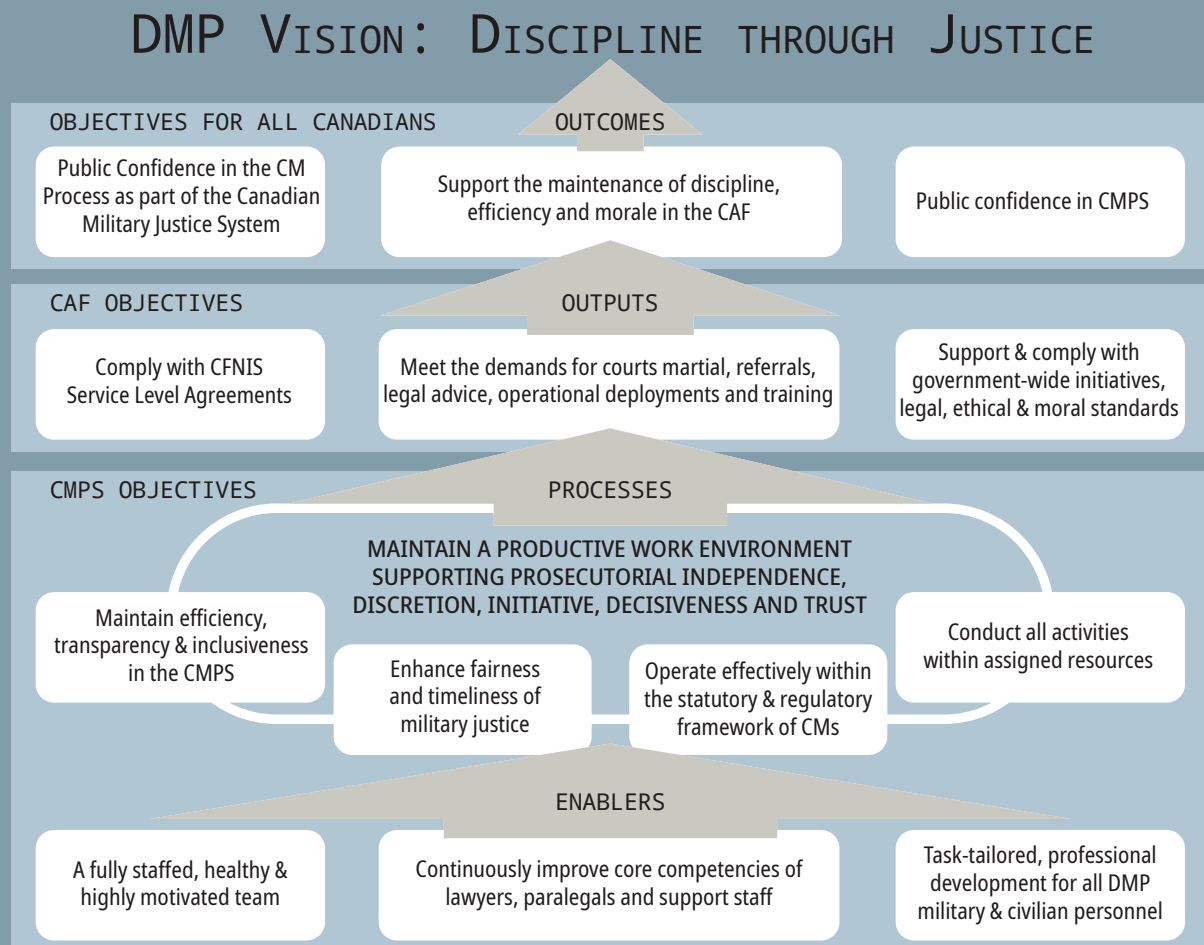
## Our Mission

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

## Our Vision

“ORDO PER JUSTITIA” or “DISCIPLINE THROUGH JUSTICE”. The DMP is a key player in the Canadian military justice system helping to promote respect for the law, as well as discipline, good order, high morale, esprit de corps, group cohesion and operational efficiency and capability.

FIGURE 1-1:  
DMP VISION: DISCIPLINE THROUGH JUSTICE





# CANADIAN MILITARY PROSECUTION SERVICE

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 comprised of several Regional Military Prosecutor (RMP) offices located across Canada.

## CMPS Headquarters

The CMPS Headquarters (HQ) consists of the DMP, the Assistant Director of Military Prosecutions (ADMP), two Deputy Directors of Military Prosecutions (DDMPs), the Appellate Counsel, the Senior Counsel – Policy & Training, and the CFNIS Legal Advisor.

### 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 Senior Counsel – Policy & Training, and the CFNIS Legal Advisor.

### DDMPs

The DDMPs are responsible to supervise and mentor the RMPs. One DDMP currently supervises RMPs located in the Central, Atlantic, and Eastern regions. The other DDMP supervises RMPs located in the Western and Pacific regions.<sup>2</sup>

## Appellate Counsel

The Appellate Counsel prepares and files written materials and appears as counsel on behalf of the MND for all matters at the CMAC and the SCC.<sup>3</sup>

## Senior Counsel – Policy & Training

The Senior Counsel – Policy & Training is a senior military prosecutor who provides advice and support to the DMP on all policy-related matters. They also assist in the coordination of all training opportunities for members of the CMPS, including the organization of an annual Continuing Legal Education workshop.

## CFNIS Legal Advisor

The CFNIS Legal Advisor is a military prosecutor embedded with the CFNIS and responsible to provide legal advice to members of the CFNIS HQ. The CFNIS Legal Advisor also provides advice to investigators throughout all stages of an investigation, as well as updates on developments in the criminal law.

## Regional Military Prosecutor Offices

Regional offices are located in Halifax, Valcartier, Ottawa, Edmonton and Esquimalt. Each office is comprised of two RMPs and one civilian administrative support staff with the exception of the Esquimalt Office, which only has one RMP. RMPs are responsible for the conduct of courts martial, for representing the CAF at custody review hearings, and for the provision of legal advice and training to their respective CFNIS Detachments.

<sup>2</sup> The DDMP for the Central, Atlantic, and Eastern regions also supervises prosecutions which occur outside of Canada.

<sup>3</sup> 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 and at the SCC.

## Sexual Misconduct Action Response Team

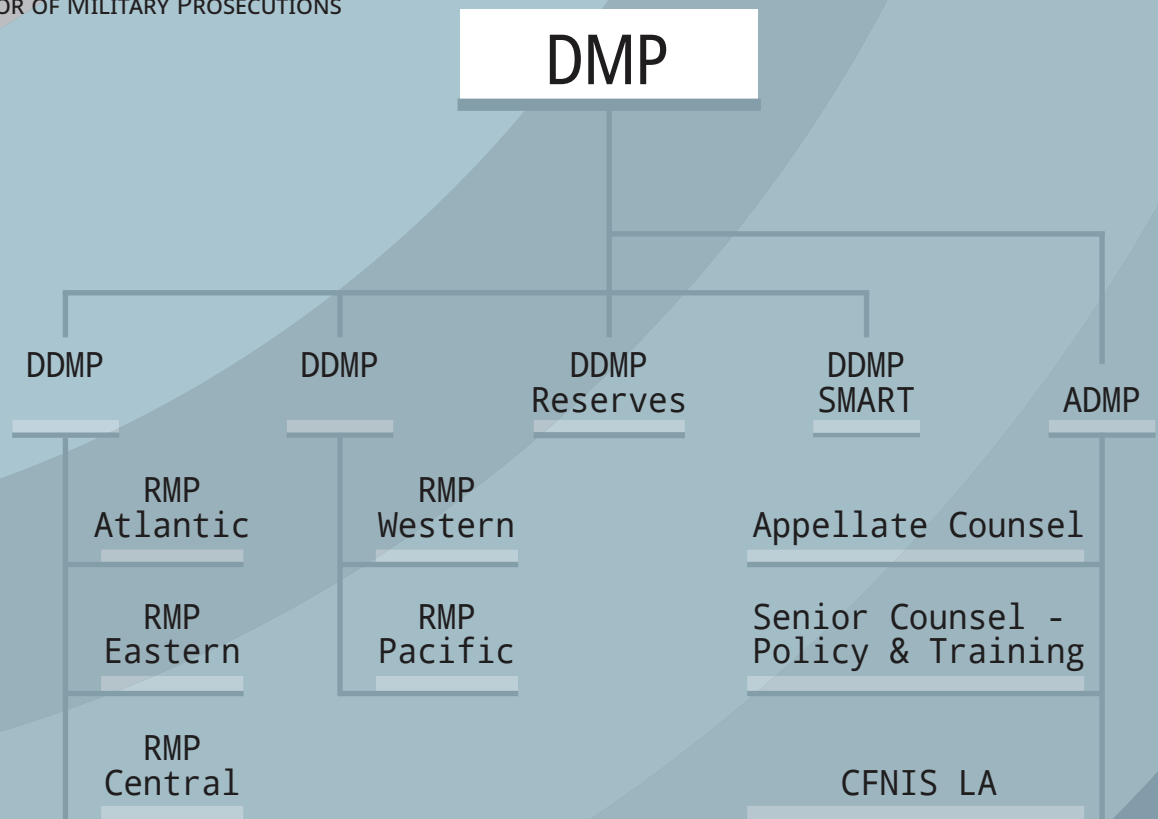
The DDMP for the Sexual Misconduct Action Response Team (SMART) is primarily responsible for mentoring prosecutors in the performance of their duties related to serious sexual misconduct prosecutions. The DDMP SMART is an experienced Reserve Force prosecutor who holds the rank of Lieutenant-Colonel (LCol).

## Reserve Force Prosecutors

The CMPS relies on eight experienced civilian prosecutors who are members of the Reserve Force. These members consist of a DDMP Reserves, at the rank of LCol, who is responsible for the overall supervision and management of Reserve Force prosecutors, the DDMP SMART, and six prosecutors who assist their Regular Force counterparts in the prosecution of cases at courts martial.

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

FIGURE 1-2:  
ORGANIZATIONAL CHART FOR THE  
DIRECTOR OF MILITARY PROSECUTIONS



# CMPS PERSONNEL UPDATE

## Regular Force

*JAG Instruction Regarding Postings of Regular Force members at the CMPS*

Recognizing the needs and challenges associated with developing experienced military prosecutors, the JAG issued an instruction to ensure that Regular Force members can remain with the CMPS for a minimum of five years before being considered for a posting. Before this instruction, Regular Force members of the Office of the JAG (OJAG) would normally be considered for a posting outside of the CMPS within three years. This instruction has helped the CMPS in building a pool of experienced RMPs, the benefits of which are beginning to be realized. This reporting period, the JAG renewed her commitment to the five-year minimum posting approach.

## Reserve Force

During this reporting period, one civilian assistant Crown attorney from Nova Scotia enrolled in the CAF and joined the CMPS as a Reserve Force prosecutor. One position remains vacant and is expected to be staffed in the next fiscal year.

## Civilian Personnel

The CMPS Paralegal position was filled in an acting capacity by another civilian member from the OJAG for a period of four months during the reporting period. In September 2019, a new paralegal was hired into the position.

Additionally, in September 2019, the civilian member who occupied the position of Office Manager/Administrative Assistant for the Pacific Region office took a year of leave without pay to pursue an employment opportunity with the provincial government. In the meantime, the position is being filled on a part time basis by a former member of the CAF.

# 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. The state of criminal law remains in constant evolution through judicial decisions at the trial and appellate levels, as well as through changes to the *Criminal Code* and the NDA.

The DMP places a premium on training opportunities for members of the CMPS and, aside from a yearly 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.

## CMPS Continuing Legal Education Workshop

The CMPS was scheduled to hold its annual Continuing Legal Education (CLE) workshop at the end of March 2020 for its Regular Force and Reserve Force military prosecutors. Unfortunately, on 12 March 2020, in response to the coronavirus pandemic (COVID-19) and in accordance with CAF directives, the JAG placed a restriction on all temporary duty travel of its members for a period of at least 30 days. This led to the cancellation of the JAG CLE workshop. Similarly, the CMPS postponed its portion of the CLE workshop until the next reporting period.

## Civilian Personnel Training Workshop

On 24 and 25 April 2019, the CMPS held a civilian administrative assistant training workshop, which focused on topics such as file management, finance, and training on the functionality of the electronic Case Management System.

## Partnership with the Directeur des poursuites criminelles et pénales du Québec

During the last reporting year, the CMPS entered into a partnership with the Directeur des poursuites criminelles et pénales (DPCP) for the temporary employment of an RMP as a Crown prosecutor with the province of Quebec.

One RMP from the Eastern region was seconded to the Quebec City DPCP's Office for a few months. During that time, the RMP acted as second chair for several trials involving sexual violence offences held at the Cour du Québec and the Cour supérieure du Québec. The RMP also followed two in-house courses regarding interaction with media and warrants. Finally, the RMP assisted Crown prosecutors in the conduct of military matters that had been referred to the civilian justice system following the decision of the CMAC in the matter of *R v Beaudry*.<sup>4</sup> 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.

## External organizations

During the reporting period, RMPs participated in continuing legal education programs delivered by a number of organizations including the Federation of Law Societies of Canada, the Public Prosecution Service of Canada, the Ontario Crown Attorneys' Association, le Barreau du Québec, the Osgoode Professional Development, the Professional Development Institute, the Canada School of Public Service and the Alberta Crown 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 RMPs with their colleagues from the provincial and federal prosecution services.

For a complete breakdown of training opportunities provided by external organization, 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	2019 National Criminal Law Program	18
Public Prosecution Service of Canada	PPSC School for Prosecutions - Prosecution Fundamentals (Level 2)	1
Ontario Crown Attorneys' Association	Nuts and Bolts	3
Ontario Crown Attorneys' Association	Appellate Advocacy	1
Ontario Crown Attorneys' Association	Financial Crimes	1
Ontario Crown Attorneys' Association	Trial Advocacy	1
Ontario Crown Attorneys' Association	Search and Seizure	2
Barreau du Québec	Techniques de plaidoirie	1
Osgoode Professional Development	Search Warrant Drafting	1
Alberta Crown Prosecution Service	Indigenous Justice: Cultural Competency Law and Practice	1
Alberta Crown Prosecution Service	Alberta Crown Conference	1
Professional Development Institute	Rule of Law Conference	1
Canada School of Public Service	Change Management Training	1

<sup>4</sup> *R v Beaudry*, 2018 CMAC 4 [Beaudry].



## Training provided by the CMPS

The CMPS also provides support to the training activities of the OJAG and other CAF entities. During the reporting period, this support included the mentoring and supervision by RMPs of a number of junior legal officers from the OJAG who completed a portion of their “On the job training” program by assisting at courts martial. The CMPS also provided support to military justice briefings given to JAG legal officers and military justice briefings offered by the Regional Services division of the OJAG to other members of the CAF.

Legal officers serving outside the CMPS may also, 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”.<sup>5</sup>

## TEMPORARY DUTY

The portability of the court martial system means that courts martial can occur anywhere in Canada or around the world. Unlike their civilian counterparts, RMPs are called upon to travel away from their home for significant periods of time to conduct courts martial and appeals, or to attend training events. Travel away from home – referred to as temporary duty (TD) – has a significant impact on the well-being of CMPS personnel and their families. This year, members of the CMPS were on TD for a total of 806 days. This is an increase of 102 days in comparison to the last reporting period (from 704 to 806). The increase in total number of TD days for this reporting period is mostly due to an increase in court martial-related TD days in comparison to the last reporting period (from 375 to 448).

Table 1-4 shows the breakdown of temporary duty for CMPS personnel by region 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	72	25	23	63	183
Atlantic	41	0	22	4	67
Eastern	77	0	19	4	100
Central	143	0	65	1	209
Western	76	0	115	1	192
Pacific	39	0	11	5	55
<b>Total</b>	<b>448</b>	<b>25</b>	<b>255</b>	<b>78</b>	<b>806<sup>6</sup></b>

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

6 The total number of TD days for this reporting period does not account for TD days spent by four Regular Force prosecutors and one Reserve Force prosecutor while following the Legal Officer Qualification Course (LOQC). The LOQC, which was held from 24 April to 24 May 2019 in Canadian Force Base Kingston, is a necessary training requirement for all legal officers in order to become occupationally qualified and provide legal services as members of the OJAG.



# MILITARY JUSTICE 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*<sup>7</sup> and *R v Généreux*,<sup>8</sup> 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 *R v Moriarity*: “I conclude that Parliament’s objective in creating the military justice system was to provide processes that would assure the maintenance of discipline, efficiency and morale of the military.”<sup>9</sup> 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.”<sup>10</sup>

These views were directly in line with earlier comments by Chief Justice Lamer in *Généreux* that the Code of Service Discipline (CSD) “does not serve merely to regulate conduct that undermines such discipline and integrity. The CSD 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.”<sup>11</sup>

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*<sup>12</sup> that the authority conferred to the MND over appeals was in compliance with the *Canadian Charter of Rights and Freedoms* (*Charter*). 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.<sup>13</sup> This clearly shows that the military justice system is a legitimate and respected parallel justice system within the broader Canadian legal mosaic.

On 26 July 2019, the SCC ruled yet again, in *R v Stillman*, that section 130(1)(a) of the NDA is constitutional finding it consistent with section 11(f) of the *Charter*.<sup>14</sup> In its decision, the SCC further seized the opportunity to summarize and affirm its prior jurisprudence relating to the military justice system. Amongst other things, the SCC recalled its decision in *MacKay v The Queen* which recognized the constitutionality of section 130(1)(a) as a valid exercise of Parliament’s power under section 91(7) of

7 *MacKay v the Queen*, [1980] 2 SCR 370 at paras 48 and 49.

8 *R v Généreux*, [1992] 1 SCR 259 at para 50 [*Généreux*].

9 *R v Moriarity*, 2015 SCC 55 at para 46.

10 *Ibid* at para 54.

11 *Généreux*, supra note 2 at 281 and 293.

12 *R v Cawthorne*, 2016 SCC 32.

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

14 *R v Stillman*, 2019 SCC 40 [*Stillman*].



the *Constitution Act, 1867*.<sup>15</sup> The SCC also reemphasized its decision in *Généreux*, which recognized the uniqueness of the military justice system as an essential mechanism to properly perform the public function of “maintaining discipline and integrity in the Canadian Armed Forces.”<sup>16</sup> Finally, the SCC upheld its decision in *Moriarty*, and refused to require a military nexus when charging a service member under section 130(1)(a) other than “the accused’s military status.”<sup>17</sup> Please refer to Chapter 4 for a detailed discussion of this case.

## 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 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 *Charter* 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, pursuant to section 179 of the NDA, 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 in and examination of witnesses, the production and inspection of documents, and the enforcement of their orders.

There are two types of courts martial provided for under the NDA: General Courts Martial (GCM) and Standing Courts Martial (SCM). A GCM 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 GCM, the panel serves as the trier of fact while the military judge makes all legal rulings and imposes the sentence. Panels must reach unanimous decisions on the ultimate finding as to whether an accused is guilty beyond a reasonable doubt.

An SCM 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 appointed by the DMP. In determining whether to prefer a matter for trial by court martial, RMPs 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 they send the matter to their next superior officer in matters of discipline. That superior officer may also comment on public interest factors when referring the matter to the DMP.

15 *Ibid* at paras 4 and 113 citing *Mackay v The Queen* at 397.

16 *Ibid* at paras 35, 36 and 55 citing *Généreux* at 293, 295, 297.

17 *Ibid* at paras 92 and 96.

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. An accused person may also choose to retain a lawyer at their own expense.

In most cases, the accused person has the right to choose between trial by GCM or SCM. However, for the most serious offences a GCM will generally be convened while an SCM will be convened for less serious offences.

Both an offender convicted by court martial and the MND have a right to appeal court martial decisions to the 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.

CMAC decisions may be appealed to the SCC on any question of law on which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted by the SCC.

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 CSD. When a person joins the CAF, they remain subject to all Canadian laws but also become subject to the CSD. 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 Judge Advocate General 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 CSD they 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 they are 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	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. In addition, new provisions added to the NDA effective 1 September 2018 allow military judges to grant absolute discharges, an order that the offender serve his or her sentence intermittently as well as an order to suspend the execution of any sentences of imprisonment or detention.



# COURT MARTIAL PROCEEDINGS: YEAR IN REVIEW

# 3

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

## OVERVIEW

The CMPS's total court martial caseload for the reporting period consisted of 130 files: 76 referrals were received during the reporting period and 54 files were carried over from the previous reporting period.

In addition, the CMPS handled 134 requests for pre-charge advice, 11 appeals to the CMAC and two (2) appeals to the SCC, for a total of 277 files over the course of the current reporting period (pre-charge, referral and appeal files combined).

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. No pre-trial custody review hearings were conducted during this reporting period.

Finally, a total of 55 courts martial were completed. Three (3) of those were new trials following appeals and orders made by the CMAC for the conduct of new courts martial: *R v Cpl Cadieux*, *R v Capt Bannister*, and *R v Cpl Thibault*.

## CORONAVIRUS (COVID-19) PANDEMIC

On 12 March 2020, in response to the COVID-19 pandemic and in accordance with CAF directives, the JAG imposed a restriction on all temporary duty travel for members of the OJAG. This led to the cancellation of the JAG CLE workshop. Similarly, the CMPS postponed its portion of the CLE workshop until the next reporting period.

With respect to courts martial, the Court Martial Administrator, acting on direction from the CMJ, canceled convening orders for courts martial that were scheduled to start in the month of March 2020 or in the months following the start of the next reporting period. A total of two (2) courts martial (*R v P02 Breadner* and *R v Bdr Ferguson*) were convened to start before the end of this reporting period, but were canceled by reason of COVID-19. In addition, in the case of two (2) courts martial (*R v Maj Duquette* and *R v Cpl Thibault*), trials were completed and findings were made by the presiding military judge, but sentencing hearings were postponed to the next reporting period because of COVID-19. The latter cases are accounted for in the total number of courts martial completed for this reporting period.

## PRE-CHARGE ADVICE

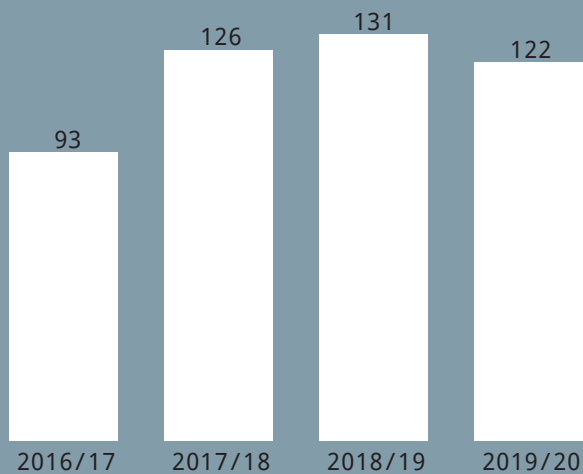
RMPs within the CMPS are responsible to provide pre-charge advice to both the CFNIS<sup>18</sup> and to unit legal advisors.<sup>19</sup> In this reporting period, 129 requests for pre-charge advice were sent to the CMPS and five (5) requests had been pending from the previous reporting period. Of the 134 total requests, 122 pre-charge advice files were completed during this reporting period, leaving 12 files still pending at the end of the current reporting period.

The number of completed pre-charge advice files is consistent with the average number of completed files over the past three reporting periods.

Figure 3-1 shows the number of completed pre-charge files for the last four reporting periods.

FIGURE 3-1:

NUMBER OF COMPLETED PRE-CHARGE FILES BY  
REPORTING PERIOD



## REFERRALS AND POST-CHARGE REVIEWS

### Number of Referrals Received During the Reporting Period

During this reporting period, 76 referrals were received by the DMP. This is a decrease of 26 referrals in comparison to the last reporting period (from 102 to 76). The yearly average for the last five reporting periods is 104.

The 76 referrals represents the lowest number of referrals received over the last five reporting periods. This decrease is explained by the impact of the CMAC decision in *Beaudry* and the subsequent ruling of the SCC, on 14 January 2019, to dismiss the DMP's request for a stay of execution of the CMAC decision in *Beaudry*. This meant that persons accused of criminal offences committed in Canada for which the maximum sentence was five years imprisonment or more could not be tried within the military justice system. Immediately following the SCC's 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 his intentions as to how to proceed with those cases which were impacted by the CMAC decision in *Beaudry*. Consequently, from 19 September 2018 to 26 July 2019, many files involving "offences committed in Canada for which a maximum sentence is five years imprisonment or more" could not be referred to the DMP for lack of jurisdiction. For a detailed discussion of the impact of the CMAC decision in *Beaudry* and the SCC decision in *Stillman*, please refer to Chapter 4.

18 DMP Policy Directive 002/99: 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.



## Caseload for the Reporting Period

When combined with the 54 files that were carried over from the previous reporting period, the caseload for this reporting period was 130 files.<sup>20</sup>

Figure 3-2 shows the number of files handled for the past five reporting periods.

## Preferrals and Non-Preferrals

During this reporting period, post-charge decisions were made by an RMP in 87 files, while seven (7) files were still pending a prosecutorial decision at the end of the current reporting period.

Of the 87 completed files, 56 files led to one or more charges being preferred for court martial and 31 files were not preferred. The referral rate for this reporting period is 64%, which is consistent with the average referral rate for the past five reporting periods (64%).

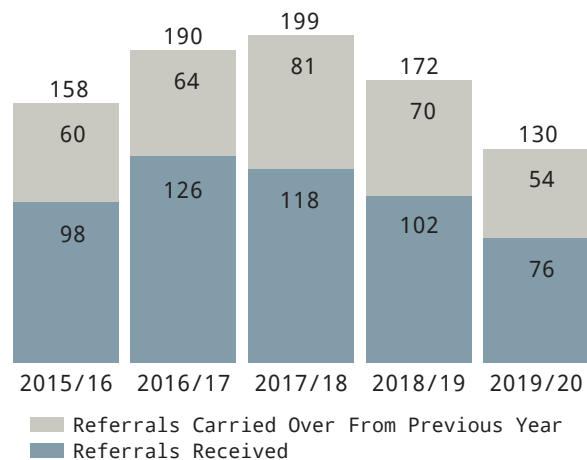
Figure 3-3 shows the number of referrals and non-preferrals for the past five reporting periods.

## Time to Make a Prosecutorial Decision

The average number of days from the time a file was referred to the DMP until a RMP made the post-charge decision was approximately 70 days.<sup>21</sup> This represents a decrease of 18 days from the previous reporting period. It is also significantly below the average number of days for the past five reporting periods, which is 82 days.

Figure 3-4 illustrates the average number of days from referral to a post-charge decision for the past five reporting periods.

FIGURE 3-2:  
CASELOAD BY REPORTING PERIOD



## Preferral Rates by

FIGURE 3-3:  
NUMBER OF PREFERRALS AND NON-PREFERRALS BY REPORTING PERIOD

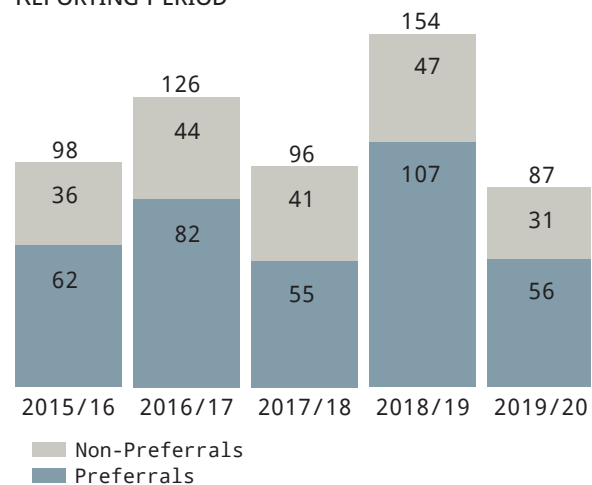
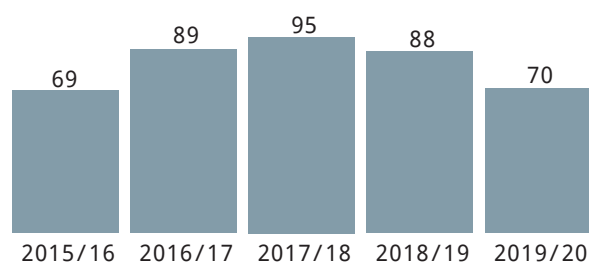


FIGURE 3-4:  
AVERAGE NUMBER OF DAYS FROM REFERRAL TO POST-CHARGE DECISION BY REPORTING PERIOD



<sup>20</sup> Carried over files are files that were not closed at the end of the previous reporting period, that is, files where one or more charge had already been preferred, but the court martial has not yet commenced, and files that still required a post-charge decision by the end of the previous reporting period.

<sup>21</sup> This statistic accounts only for cases where a post-charge decision was made during the current reporting period.

## Investigative Agency

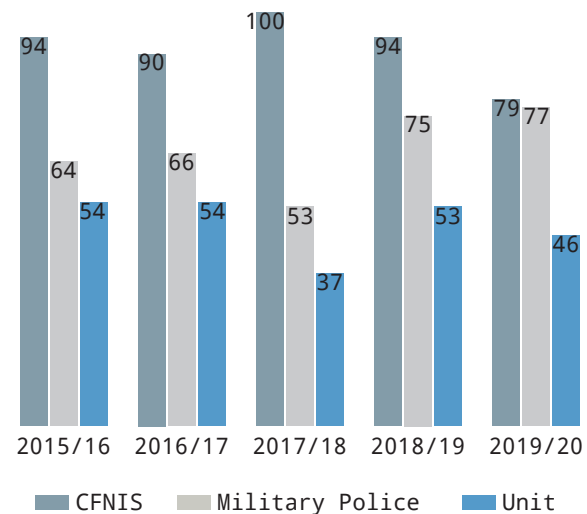
Although all files referred to the DMP are received through a referral authority, the incident giving rise to the charge may be investigated by one of three military investigative agencies: the CFNIS, an investigator with the military police who is not a member of the CFNIS, or a unit investigator. As such, the rate of preferrals varies between investigative agencies as their investigators have different levels of experience, proficiency and training.

During this reporting period, the preferral rate for those files investigated by the CFNIS was 79%.<sup>22</sup> This preferral rate is slightly higher than that of the regular military police (77%), but is markedly higher than that of unit investigators (46%).

This divergence of preferral rates has been consistent over the past several years, with those investigations conducted by the CFNIS being preferred at a higher rate than regular military police and unit investigators. For a complete overview of preferral rates by investigative agency over the past five reporting periods, please refer to Figure 3-5.

The DMP has identified the discrepancy in preferral rates, and in particular the low preferral rate of unit investigations, as an issue and has taken a number of steps to improve the preferral rates of investigative agencies. For example, in the past reporting period, the CMPS amended a number of its policy directives to require RMPs to provide feedback to the investigator both when there is a decision not to prefer a charge and also at the conclusion of a court martial, with the aim of improving the quality of future investigations. The DMP also provided a RMP to attend and assist with the pilot serial of the Canadian Forces Military Police Academy Investigators Course, conducted in Borden in October and November 2019.

FIGURE 3-5:  
PREFERRAL RATES BY INVESTIGATIVE AGENCY AND BY  
REPORTING PERIOD



<sup>22</sup> 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 lower preferral rate for the CFNIS this reporting period is skewed by a lower number of referrals overall. This rate is the result of 4 of 19 referrals from CFNIS investigations not being preferred. The DMP does not view the drop in preferral rate for the CFNIS to be statistically relevant.

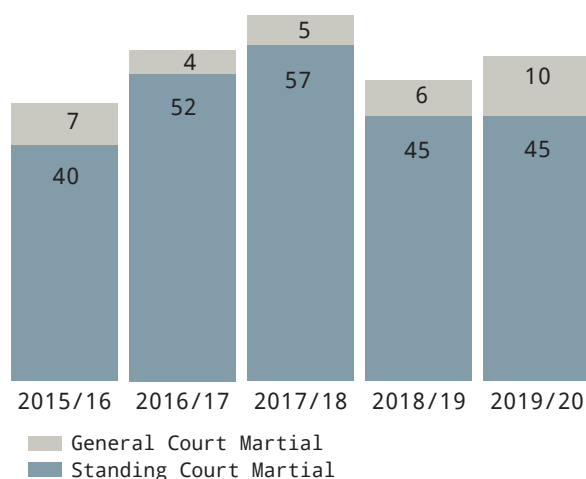
# COURTS MARTIAL

This section provides an overview and analysis of cases heard at a court martial during the reporting period. For a complete list of all courts martial heard during the reporting period, please refer to Annex A.

## Number of Courts Martial

A total of 55 courts martial were completed during this reporting period.<sup>23</sup> Of those, 45 were SCMs and 10 were GCMs. This is consistent with the historical average of courts martial for the past five years (54). In this reporting period, there was a slight increase in the number of GCMs in comparison to the average number of GCMs for the past five reporting periods (6). A complete picture of the number of courts martial for the last five reporting periods, by type, can be found at Figure 3-6.

FIGURE 3-6:  
NUMBER OF COURTS MARTIAL BY TYPE AND BY REPORTING PERIOD



<sup>23</sup> In two courts martial (*R v Maj Duquette* and *R v Cpl Thibault*), trials were completed and findings were made by the presiding military judge, but sentencing hearings were postponed to the next reporting period because of COVID-19. These cases are accounted for in the total number of courts martial completed for this reporting period.

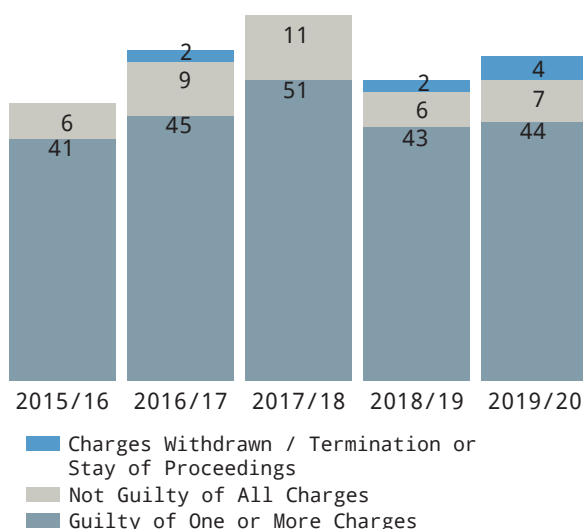
## Court Martial Outcomes

Of the 55 courts martial that were held, accused persons were found guilty of one or more charges in 44 cases, found not guilty of all charges in seven (7) cases, had all charges withdrawn in three (3) cases, and had a termination of proceedings in one (1) case.

In addition, three (3) of the 55 courts martial were new trials following appeals and orders made by the CMAC for the conduct of a new court martial: *R v Cpl Cadieux*, *R v Capt Bannister*, and *R v Cpl Thibault*. For each of those three cases, a finding of guilty on at least one charge was obtained at the completion of the new trial.

Figure 3-7 shows a breakdown of court martial outcomes for the last five reporting periods.

FIGURE 3-7:  
COURTS MARTIAL OUTCOMES BY REPORTING PERIOD



## Punishments at Courts Martial

In this reporting period, a total of 42 sentences were handed down by courts martial, involving a total of 63 punishments.<sup>24</sup> While only one sentence may be given at a court martial, a sentence may involve a combination of more than one punishment.

Again this year, the most common punishment awarded at courts martial was a fine, with a total of 32 fines awarded representing 51% of all punishments. The next most common punishment awarded was a severe reprimand, which accounted for approximately 24% of all punishments. Three (3) custodial punishments were awarded; two of which were suspended by the presiding military judge.

A complete breakdown of all punishments imposed at courts martial for the last five reporting periods can be found in Table 3-1.

TABLE 3-1: PUNISHMENTS AT COURT MARTIAL

Punishment	2015/16	2016/17	2017/18	2018/19	2019/20
Dismissal	2	1	3	2	1
Imprisonment	3	4	7	3	2****
Detention	4	4*	4**	1***	1*****
Reduction in Rank	3	9	9	2	3
Forfeiture of Seniority	0	0	0	0	1
Severe Reprimand	10	6	11	9	15
Reprimand	13	17	20	4	6
Fine	32	39	38	35	32
Minor Punishment	0	0	3	0	0
Absolute Discharge*****	N/A	N/A	N/A	0	2
<b>Total</b>	<b>67</b>	<b>80</b>	<b>95</b>	<b>56</b>	<b>63</b>

\* One of these punishments was suspended by the presiding military judge.

\*\* Three of these punishments were suspended by the presiding military judge.

\*\*\* This punishment was suspended by the presiding military judge.

\*\*\*\* One of these punishments was suspended by the presiding military judge.

\*\*\*\*\* This punishment was suspended by the presiding military judge.

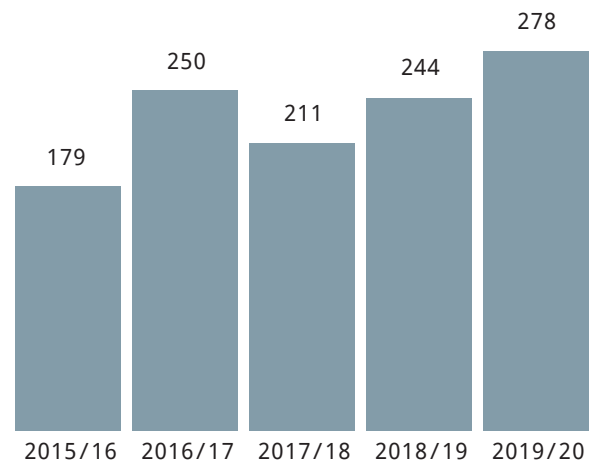
\*\*\*\*\* Absolute discharges became available to presiding military judges as of 1 September 2018 under section 203.8 of the NDA.

<sup>24</sup> In the case of two courts martial (*R v Maj Duquette* and *R v Cpl Thibault*), trials were completed and findings were made by the presiding military judge, but sentencing hearings were postponed to the next reporting period because of COVID-19.

## Time from Preferral of Charge(s) until Commencement of Court Martial

During this reporting period, the average number of days from the preferral of charge(s) until the commencement of the court martial was 278 days.<sup>25</sup> This is an increase of 34 days in comparison to the previous reporting period and is 46 days above the past five year average of 202 days. This increase was due to the CMAC decision in *Beaudry*, as a number of cases already proceeding in the military system could not be heard until jurisdiction over the offences had been restored. Figure 3-8 shows the average number of days from the preferral of charges until the commencement of the court martial for the last five reporting periods.

FIGURE 3-8:  
AVERAGE NUMBER OF DAYS FROM PREFERRAL TO COMMENCEMENT OF COURT MARTIAL BY REPORTING PERIOD



## Offence Categories

All files prosecuted by the DMP are categorized into one of four broad offence categories: sexual misconduct, alcohol and drugs, conduct offences and fraud and other property-related offences. Table 3-2 provides an overview of the number of completed courts martial for each offence category.

TABLE 3-2: COURTS MARTIAL BY OFFENCE CATEGORY

Offence Category	Completed Courts Martial 2016-17	Completed Courts Martial 2017-18	Completed Courts Martial 2018-19	Completed Courts Martial 2019-20
Sexual Misconduct	21	20	20	25
Alcohol and Drugs	7	2	5	1
Conduct	21	34	21	20
Fraud and Property	8	6	5	9
<b>Total</b>	<b>57<sup>26</sup></b>	<b>62</b>	<b>51</b>	<b>55<sup>27</sup></b>

25 This statistic only includes cases where the court martial actually commenced during this reporting period, even if the preferral of charge(s) was completed during previous reporting periods. Two courts martial (*R v PO2 Breadner* and *R v Bdr Ferguson*) were convened to commence during this reporting period, but were canceled by reason of COVID-19. These cases are not included in this statistic.

26 A discrepancy was noted in the DMP Annual Report 2016-17. Figure 21 indicates that 56 courts martial were completed in 2016-17. However, the number of completed courts martial by offence category found at Figure 27 amounts to 57 completed courts martial. The latter number was used in Table 3-2 for uniformity purposes.

27 In the case of two courts martial (*R v Maj Duquette* and *R v Cpl Thibault*), trials were completed and findings were made by the presiding military judge, but sentencing hearings were postponed to the next reporting period because of COVID-19.

# NOTABLE COURT MARTIAL CASES

This section provides a summary of three notable courts martial that were held during this reporting period.

## ***R v Dutil*, 2019 CM 3003**

Col Dutil, the then-Chief Military Judge (CMJ), was charged by a Special Prosecutor appointed pursuant to the DMP Policy Directive #016/17 – *Appointment of Special Prosecutors*. At the beginning of his SCM, which was convened on 10 June 2019, Col Dutil was facing four charges (one count of willfully making false statements contrary to s. 125(a) NDA, one count of fraud contrary to s. 380 of the *Criminal Code* under s. 130 NDA, one count of an act of fraudulent nature contrary s. 117(f) NDA, and one count of conduct to the prejudice of good order and discipline contrary to s. 129 NDA).

At the opening of his trial, Col Dutil made an objection to the constitution of the court martial and requested the recusal of the presiding military judge on the ground of partiality. On 17 June 2019, the presiding military judge recused himself and, as Deputy CMJ, read a letter where he stated his refusal to assign any of the three other eligible military judges ('the non-assignment decision'). The court martial proceedings were adjourned indefinitely.<sup>28</sup>

The DMP applied to the Federal Court for judicial review seeking a writ of *mandamus* to force the Deputy CMJ, under s. 165.25 NDA, to appoint a replacement and alternatively took the position that the decision was unreasonable. On 3 March 2020, the Federal Court dismissed the application for judicial review, finding that the decision was reasonable and stating that the conditions required to issue a writ of *mandamus* had not been met.<sup>29</sup> The Federal Court further noted that, apart from amending the NDA, the assignment of an *ad hoc* judge from a superior court would constitute the best alternative to address the issue.<sup>30</sup>

On 13 March 2020, DMP made the decision to withdraw all charges in this case.

## ***R v Cadieux*, 2019 CM 2011**

Cpl Cadieux was originally charged with one count of an offence contrary to s. 130 NDA, that is, sexual assault contrary to s. 271 of the *Criminal Code*, and one count of drunkenness contrary to s. 97 NDA. This court martial was a new trial following an appeal from the acquittals of Cpl Cadieux at his SCM on 12 May 2017. In a unanimous decision rendered on 10 September 2018, the CMAC granted the appeal, quashed the acquittals and ordered a new trial.<sup>31</sup>

At the conclusion of the new trial the presiding military judge found that the victim was incapable of consenting to the sexual activity of kissing. As for the *mens rea*, the Court found that the defence of honest but mistaken belief was not available to Cpl Cadieux under s. 273.2 of the *Criminal Code* as it was vitiated by his recklessness, willful blindness and his failure to take reasonable steps. On drunkenness, the presiding military judge accepted that Cpl Cadieux's actions were "owing to alcohol", finding that the simple act of getting into the driver's seat of a car, with the keys inside the vehicle, while under the influence of alcohol or a drug is normally sufficient to attract jeopardy in a criminal context and that it meets the disorderly test of the offence of drunkenness.<sup>32</sup>

On 22 May 2019, Cpl Cadieux was convicted on both charges. He was sentenced to detention for a period of 60 days and a severe reprimand. The punishment of detention was suspended.

## ***R v D'Amico* (citation not yet available)**

Cpl D'Amico was charged with neglect to the prejudice of good order and discipline contrary to s. 129 NDA. On 2 October 2019, the CDS issued an order in the form of a letter designating the Deputy Vice Chief of the Defence Staff (DVCDS) as the Commanding Officer (CO) with respect to disciplinary matters involving military judges. Cpl D'Amico brought an application for plea in bar of trial under QR&O 112.24, alleging a breach of his right to a fair and public hearing by an independent and impartial tribunal under s. 11(d) of the *Charter* and seeking a stay of proceedings. The same application was first made in the matter of *R v Pett*.<sup>33</sup>

28 *R v Dutil*, 2019 CM 3003.

29 *Canada (Director of Military Prosecutions) v Canada (Office of the Chief Military Judge)*, 2020 FC 330.

30 *Ibid* at para 182.

31 *R v Cadieux*, 2018 CMAC 3.

32 *Ibid.* at para 216.

33 See the case summary for *R v Pett*, CMAC-603 in the section of "Appeals Initiated at the CMAC".

The presiding military judge found that the CDS order undermined the necessary guarantees of judicial impartiality and that military judges cannot be tried for service offences while holding office, thus the CDS order infringed the rights of Cpl D'Amico protected under s. 11(d) of the *Charter*. However, she declined to stay the proceedings. On 9 March 2020, Cpl D'Amico was found guilty by a panel at a GCM and received an absolute discharge as a sentence.

## APPEALS

This section provides an overview of those cases which were appealed to the CMAC as well as to the SCC. Please refer to Annex B for an overview of the disposition of cases appealed to the CMAC and to Annex C for those cases referred to the SCC.

### Decisions Rendered by the CMAC

#### ***R v Bannister*, 2019 CMAC 2**

Capt Bannister 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 an SCM on 27 February 2018.

The DMP appealed, arguing that the military judge applied a test that is too restrictive, that he failed to consider the risk of harm demonstrated by the evidence, that he erred by conflating the concepts of inferential reasoning and the taking of judicial notice and that he erred in requiring evidence of actual harm to good order and discipline.

The CMAC granted the appeal, quashed the acquittals and ordered a new trial on all charges before a different military judge. The CMAC decided that whether something is disgraceful or prejudicial to good order and discipline shall be analyzed through an objective standard, taking into account the totality of the context in which it occurred and on the basis of the trier of facts' own military experience and general service knowledge. The Court further held that actual harm is not required for proving prejudice to good order and discipline. Conduct that tends to or is likely to cause harm is sufficient.

#### ***R v MacIntyre*, 2019 CMAC 3**

On 27 June 2018, a GCM held in Halifax, Nova Scotia, found Sgt MacIntyre not guilty of one charge of sexual assault. On 26 July 2018, the DMP appealed this case to the CMAC on two grounds: 1) that the military judge erred in law in instructing the panel that they needed to find that the accused knew that the complainant was not consenting despite his previous ruling that the defence of honest but mistaken belief in consent did not apply; and, 2) the military judge erred in law in instructing the panel that they could find the accused not guilty of the offence charged, if they found that the police investigation was inadequate.

The CMAC dismissed the appeal and found that "knowledge, wilful blindness, or recklessness as to the complainant's lack of consent is an essential *mens rea* element of sexual assault and it is not an error of law to simply instruct the trier of fact on the element of knowledge of lack of consent."<sup>34</sup> The CMAC also dismissed the second ground of appeal, finding no error in the military judge's comments regarding the investigation. Leave to appeal to the SCC was denied.

#### ***R v Edwards*, 2019 CMAC 4**

On 16 November 2018, a SCM held in Halifax, Nova Scotia, found LS Edwards not guilty of one charge of prejudice to good order and discipline. The offence alleged that the accused used cocaine, contrary to QR&O 20.04, between 25 September 2015 and 23 July 2016, at or near Halifax, Nova Scotia.

On 11 December 2018, the DMP appealed this case to the CMAC on two grounds: 1) that the military judge erred in requiring specific evidence on elements and matters that were immaterial to the proof of the offence (time and place); and, 2) the military judge erred in his assessment of the confession by analysing the evidence through a piecemeal approach and failing to consider the evidence as a whole.

The CMAC confirmed that "from time immemorial, a date specified in an indictment or information has not been held to be a material matter"<sup>35</sup> and that "courts martial are clothed with unlimited territorial jurisdiction, which extends throughout Canada and the world, but for those alleged offences arising in Canada referred to

<sup>34</sup> *R v MacIntyre*, 2019 CMAC 3 at para 69.

<sup>35</sup> *R v Edwards*, 2019 CMAC 4 at para 12.



in s. 70 of the *NDA*.<sup>36</sup> The CMAC did not consider the second ground of appeal as it was satisfied that the first ground of appeal was determinative of the matter. A new trial was ordered before a different military judge.

### ***R v Banting*, 2019 CMAC 5**

On 4 April 2019, Lt Banting was pronounced not guilty of one charge pursuant to s. 129 NDA for having used inappropriate sexualized language while lecturing military candidates on combat first aid at the Canadian Special Operations Training Centre. The military judge found that no *prima facie* case had been made out by the prosecution.

On 29 April 2019, the DMP appealed on the ground that the military judge erred in law in her determination that no *prima facie* case had been made out in respect of the charge by finding that there was no evidence of prejudice upon which a properly instructed panel could reasonably convict the accused. In a unanimous decision directly from the bench, the CMAC held that the military judge was correct in her finding that there was no evidence of prejudice to good order and discipline.

At the end of the reporting period, a motion for costs by the Respondent was before the CMAC.<sup>37</sup>

### ***R v Darrigan*, 2020 CMAC 1**

At his SCM held in Halifax, Nova Scotia from 14-16 May 2019, Petty Officer 2nd Class (PO2) Darrigan pleaded guilty to one count of stealing when entrusted contrary to s. 114 NDA and to one count of selling the items improperly contrary to s. 116(a) NDA. He was sentenced by the presiding military judge to a severe reprimand, a fine in the amount of \$8,000 and an order for restitution for \$750.

The DMP appealed this case, arguing that the military judge erred in applying the sentencing principles of proportionality and parity, in over-emphasizing the mitigating factors and in imposing a sentence that was demonstrably unfit as stealing from an employer should attract a custodial sentence in the absence of exceptional factors.

The CMAC dismissed the appeal and upheld the sentence imposed by the military judge, as it was of

the view that no error was committed in applying the relevant sentencing principles. The Court found that as a separate system, the military justice system is not bound to follow civilian precedents when it is not in the interest of maintaining discipline, efficiency and morale of the CAF. The Court further rejected the argument that absent exceptional circumstances, a custodial sentence was required for breach of trust offences.

## **Appeals Initiated at the CMAC**

### ***R v McGregor*, CMAC-602**

Following an SCM, Cpl McGregor was found guilty of an offence under s. 130 NDA, that is, sexual assault, contrary to s. 271 of the *Criminal Code*; two counts under s. 130 NDA, that is, voyeurism, contrary to s. 162(1) of the *Criminal Code*; an offence under s. 130 NDA, that is, possession of a device for surreptitious interception of private communications, contrary to s. 191(1) of the *Criminal Code*; cruel or disgraceful conduct, contrary to s. 93 NDA; and, conduct to the prejudice of good order and discipline, contrary to s. 129 NDA. He was sentenced to imprisonment for a period of 36 months and dismissal with disgrace from Her Majesty's service.

At trial, Cpl McGregor made an application under s. 8 of the *Charter*, alleging that the search of his home in Virginia, USA and the subsequent seizure and search of electronics was unlawful. This was dismissed by the military judge after a contested hearing on 13 September 2018. The evidence seized was admitted in evidence.

Cpl McGregor appeals the legality of the finding concerning his application under s. 8 of the *Charter* and further seeks leave to appeal his conviction and sentence.

### ***R v Pett*, CMAC-603**

MCpl Pett was charged with one count of an offence contrary to the NDA s. 85 (insubordinate behaviour) and one count of an offence contrary to the NDA s. 95 (abuse of subordinates).

On 2 October 2019, the CDS issued an order in the form of a letter designating the DVCDS as the CO with respect to disciplinary matters involving military judges. At his SCM, MCpl Pett brought an application for plea in bar of trial alleging a breach of his right to a fair and

<sup>36</sup> *Ibid* at para 18.

<sup>37</sup> Costs were awarded by the CMAC on 22 April 2020, after the current reporting period. See *R v Banting*, 2020 CMAC 2.



public hearing by an independent and impartial tribunal under s. 11(d) of the *Charter* and seeking a stay of proceedings. The application was denied by the military judge and MCpl Pett was found guilty of both charges and sentenced to a reprimand and a \$1,500 fine.

MCpl Pett appealed the legality of the finding concerning his application under s. 11(d) of the *Charter*. However, on 23 April 2020 (during the next reporting period), he abandoned the appeal.

### ***R v Renaud, CMAC-604***

Capt Renaud was found guilty at his SCM of three counts of conduct to the prejudice of good order and discipline, contrary to s. 129 NDA, for inappropriate sexualized comments made during his deployment on Operation REASSURANCE in Romania. He was sentenced to a severe reprimand and a fine in the amount of \$2,500.

Capt Renaud appeals the legality of the military judge's findings on all counts of conduct to the prejudice of good order and discipline.

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

## **Decision Rendered by the SCC**

### ***R v Stillman, 2019 SCC 40***

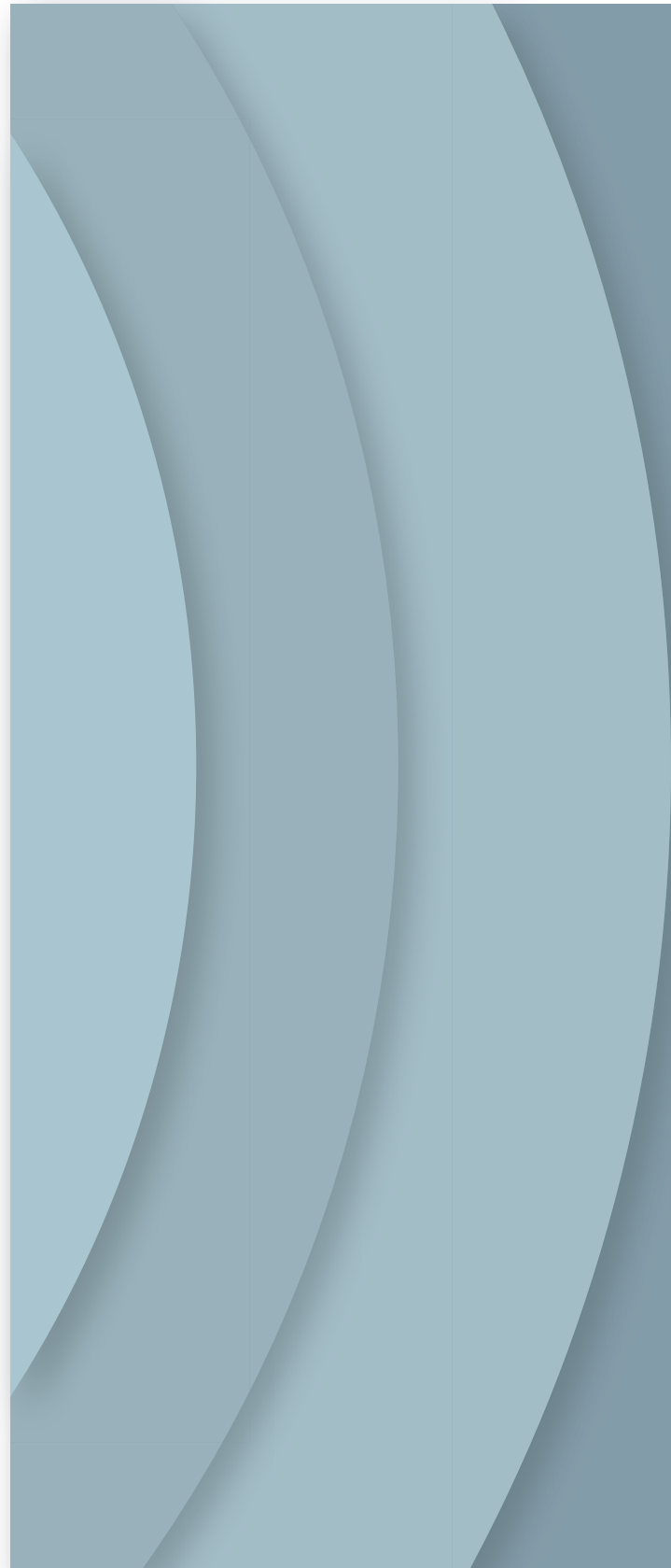
Please refer to Chapter 4 for a summary of the SCC decision in *R v Stillman*.

## **Applications for Leave to Appeal to the SCC**

### ***R v MacIntyre (SCC docket 38838)***

On behalf of the MND, the DMP sought leave to appeal the case of *R v MacIntyre, 2019 CMAC 3* to the SCC. Leave to appeal was denied on 9 January 2020.

Please refer to Annex C for an overview of all appeals at the SCC during the reporting period.





# THE CONCLUSION OF *R v STILLMAN*

# 4

The SCC's decision in *R v Stillman* recognized that section 130(1)(a) of the NDA is constitutional and consistent with section 11(f) of the *Charter*.<sup>38</sup> The *Stillman* decision upheld the CMAC's decision in *R v Déry*<sup>39</sup> and overturned the CMAC's decision in *R v Beaudry*.<sup>40</sup>

## BACKGROUND

On 19 September 2018, in *Beaudry*, the CMAC declared section 130(1)(a) of the NDA to be in violation of section 11(f) of the *Charter*.<sup>41</sup> Specifically, the CMAC declared that section 130(1)(a) "is of no force or effect in its application to any civil offence for which the maximum sentence is five years or more."<sup>42</sup>

The CMAC did not suspend its declaration of invalidity. This had a significant impact on prosecutions since at the time of the *Beaudry* 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. Within 48 hours of the CMAC decision in *Beaudry*, the DMP, on behalf of the MND, 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 section 130(1)(a) of the NDA until the SCC had rendered a decision on the appeal.

On 13 November 2018, the Chief Justice of Canada directed that the cases of *Beaudry* and *Stillman* be heard together in a single hearing set for 26 March 2019, and on 14 January 2019, the SCC dismissed the request for a stay of execution. This meant that the finding of unconstitutionality of section 130(1)(a) 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.

Additionally, 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. At the end of the previous reporting year, ten cases had been transferred to the civilian justice system. An information was laid in eight cases and civilian prosecutors declined to proceed in two cases.

The CMAC's decision in *Beaudry* was not the first time that the CMAC considered this issue. In June 2016, in the case of *R v Royes*, the CMAC unanimously ruled that section 130(1)(a) did not violate section 11(f) of the *Charter*.<sup>43</sup> 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 the *Royes* decision and ruled that section 130(1)(a) did not violate section 11(f) of the *Charter*.<sup>44</sup> Therefore, in *Beaudry*, the CMAC overturned two of its previous decisions on this matter.

38 *Stillman*, *supra* note 14 at para 10.

39 *R v Déry*, 2017 CMAC 2 [Déry].

40 *Beaudry*, *supra* note 4.

41 *Ibid* at para 72.

42 *Ibid*.

43 *R v Royes*, 2016 CMAC 1 at para 61 [Royes].

44 *Déry*, *supra* note 39 at paras 97 and 99.

# THE SCC'S DECISION IN *STILLMAN*

On 26 July 2019, in *Stillman*, the SCC ruled that section 130(1)(a) of the NDA is consistent with section 11(f) of the *Charter*.<sup>45</sup>

The SCC seized the opportunity to summarize and affirm its prior jurisprudence relating to the military justice system. First, the SCC recalled its decision in *Mackay v The Queen* which recognized the constitutionality of section 130(1)(a) as a valid exercise of Parliament's power under section 91(7) of the *Constitution Act, 1867*.<sup>46</sup> The SCC also reemphasized its decision in *R v Généreux*, which recognized the uniqueness of the military justice system as an essential mechanism to properly perform the public function of "maintaining discipline and integrity in the Canadian Armed Forces."<sup>47</sup> Finally, the SCC upheld its decision in *R v Moriarity*, and refused to require a military nexus when charging a service member under section 130(1)(a) other than "the accused's military status."<sup>48</sup>

The central issue for the SCC in *Stillman* was the application of the *Charter*'s 11(f) exception to section 130(1)(a) of the NDA. To answer that question, the SCC first looked at the nature of the 11(f) exception, which involved a detailed comparison between a civilian jury and a military panel. The SCC then considered the objectives of section 130(1)(a) of the NDA, and whether or not offences under this provision were indeed offences under "military law."

In its decision, the SCC clearly distinguished the military panel from the civilian jury. The SCC's analysis is premised on the fact that the military justice system "has never provided for trial by jury."<sup>49</sup> While the SCC did find some similarities between civilian juries and military panels, the Court was clear that a military panel is not a jury.<sup>50</sup> Nevertheless, the SCC explained

that the military panel provides a similar level of *Charter* protection.<sup>51</sup> The SCC explained that military panel members bring military experience and integrity to the military judicial process. They also provide "the input of the military community responsible for discipline and military efficiency."<sup>52</sup> Given the construct of military panels, the SCC found that they provided sufficient protection to an accused, given the unique objectives of the military justice system.

Turning to the section 130(1)(a) analysis, the SCC unequivocally explained that there is no distinction between an offence directly codified in sections 73-129 of the NDA and those offences incorporated by reference under section 130(1)(a).<sup>53</sup> The SCC found that "to reason otherwise would be to privilege form over substance."<sup>54</sup> The SCC reminded us that Parliament has the power to decide what constitutes an offence under military law, by virtue of section 91(7) of the *Constitution Act, 1867*.<sup>55</sup> Also, the SCC explained that the military justice system would not be able to achieve the unique military sentencing objectives listed in section 203.1(2) of the NDA if the CAF were unable to prosecute section 130(1)(a) offences.

In closing, the SCC discussed how prosecutors decide whether a service member's case proceeds through military or civilian courts. The Court explained that the role of deciding whether jurisdiction should be exercised in any particular case – and what factors guide that decision – is properly left to military prosecutors.<sup>56</sup> In this context, the SCC highlighted with approval the policy directive published by the DMP, which guides prosecutorial decisions.<sup>57</sup> Finally, the Court noted the historic and ongoing "cooperation and mutual respect" between military and civilian prosecutors in making those decisions.<sup>58</sup>

In the aftermath of the *Stillman* decision, Cpl Beaudry's conviction was restored. The cases that were transferred to the civilian justice system following the CMAC's decision in *Beaudry* are still proceeding. In some of those cases, military prosecutors have assisted their civilian counterparts in answering unreasonable delay

45 *Stillman*, *supra* note 14 at para 9.

46 *Ibid* at paras 4 and 113 citing *Mackay v The Queen* [1980] 2 SCR 370 at 397.

47 *Ibid* at paras 35, 36, 55 citing *R v Généreux* [1992] 1 SCR 259 at 293, 295, 297.

48 *Ibid* at para 92, 96.

49 *Ibid* at para 77.

50 *Ibid* at para 68.

51 *Ibid* at para 44.

52 *Ibid* at para 66.

53 *Ibid* at para 83.

54 *Ibid*.

55 *Ibid* at para 111.

56 *Ibid* at para 103.

57 *Ibid* at para 102.

58 *Ibid* at para 103.

applications filed by defense counsels under section 11(b) of the *Charter*. In at least two cases where delay applications were filed, provincial court judges from the provinces of Quebec and Ontario have ruled that the delay resulting from the transfer of military cases to the civilian justice system by reason of the CMAC's decision in *Beaudry* constituted "exceptional circumstances" as defined by the SCC in *R v Jordan*.<sup>59</sup>

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<sup>59</sup> *R v Jordan*, 2016 SCC 27 at paras 69-81.





# COMMUNICATION AND OUTREACH

# 5

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 current reporting period.

## CAF CHAIN OF COMMAND

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

Recent amendments to the NDA have expressly recognized principles and purposes of sentencing within the military justice system distinct from the sentencing regime within the criminal justice system, along with unique military factors that must be taken into consideration in sentencing, such as the effect the offence had on the conduct of a military operation. In order for CMPS to fulfil its role, it is important for prosecutors to understand the context in which CAF units and formations are operating, and their needs in relation to the maintenance of discipline, efficiency and morale.

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.

## CFNIS

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 crimes unit of the RCMP 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.

In the course of this reporting period, the DMP, accompanied by his DDMPs or his ADMP, visited numerous CFNIS detachments across the country to discuss prosecution needs and strategic intent. In addition, the DMP presented at the CFNIS Indoctrination Course on topics such as the 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 military prosecutor.

# FEDERAL , PROVINCIAL AND TERRITORIAL HEADS OF PROSECUTIONS COMMITTEE

The Federal, Provincial and Territorial Heads of Prosecutions (HoP) Committee was established in 1995. The Committee is made up of the heads of each of Canada's 12 prosecution agencies. This includes the heads of prosecution for the ten provincial prosecution services, as well as the Director of Public Prosecutions for the Public Prosecution Service of Canada and the DMP. The mandate of the HoP Committee is to serve as a national forum for the discussion of prosecutions and prosecution-related issues, and to facilitate the exchange of information and best practices on legal and managerial issues among the prosecution services of Canada. Since its inception, the Committee has helped promote assistance and cooperation among prosecution services and facilitated the coordination of national prosecution issues and the adoption of consistent prosecution positions on those issues whenever possible. The HoP Committee also serves as a national advisory body on prosecution issues in Canada, providing a venue where stakeholders can consult and seek the views of the Canadian prosecution community.<sup>60</sup>

The Committee meets twice a year. Each prosecution service hosts a meeting on a rotating basis, with the head of the hosting agency acting as co-chair until the next meeting. The Committee may also meet on an *ad hoc* or urgent basis by teleconference or videoconference.

During this reporting period, the HoP Committee held two general meetings, both of which were personally attended by the DMP. The 57th general meeting was held in Quebec City, QC in July 2019 and the 58th general meeting was held in Winnipeg, MB in November 2019. 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 DMP also presented an update regarding the SCC decision in the matter of *Stillman*.

<sup>60</sup> <https://www.ppsc-sppc.gc.ca/eng/tra/tr/05.html>.

# 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 by the United Nations in 1995, in Vienna, 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 24<sup>th</sup> Annual Conference held in Buenos Aires, Argentina from 15-19 September 2019. The main theme of the 24th Annual Conference was "International Cooperation across Different Legal Systems", which explored how different legal systems facilitate international cooperation and overcome the legal and practical challenges of delivering across those different systems.<sup>61</sup> The DMP co-chaired the Network meetings for RMPs and provided various presentations during the conference related to recent decisions on military justice cases in Canada.

<sup>61</sup> <https://www.iap-association.org/Conferences/Annual-Conferences/24th-Annual-Conference-2019>.



## CMAC EDUCATION SEMINAR

The DMP and his ADMP both presented at this year's CMAC Education Seminar, an annual legal education seminar conducted for judges assigned to the CMAC organized by the Canadian Judicial Council and held in February 2020.

## NATIONAL CRIMINAL LAW PROGRAM

The National Criminal Law Program (NCLP)<sup>62</sup> is delivered by the Federation of Law Societies of Canada, and is the largest criminal law conference in Canada. The 46<sup>th</sup> Annual NCLP was held in Ottawa, Ontario in July 2019. The DMP participated as a member of the Faculty, delivering papers and presentations on a number of areas of criminal and military law topics.



<sup>62</sup> <https://flsc.ca/national-initiatives/national-criminal-law-program>.

CELEBRATING  
**TWO DECADES**  
OF OVERSIGHT

CÉLÉBRONS  
**DEUX DÉCENNIES**  
DE SURVEILLANCE



# INFORMATION MANAGEMENT AND TECHNOLOGY

# 6

## CASE MANAGEMENT SYSTEM (CMS)

The CMPS Case Management System (CMS) 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 provides the DMP with statistics in real time about all cases proceeding through the court martial system.

The CMS tracks the status of files and collects data at the pre-charge, referral, post-charge, pre-trial and trial stages. All important dates associated with these files are 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, and key dates in the court martial process. In addition, the CMS 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 CMS continues to be improved through an iterative development process. The newest version of CMS was due to be released at the end of this reporting period. This version would also have included interoperability with the Justice Administration Information Management System (JAIMS), digitizing all aspects of the military justice process from charge laying to final disposition. Due to the CAF response to the COVID-19 pandemic, the release date of this next version of CMS was delayed until summer 2020; the next reporting period.





# FINANCIAL INFORMATION

## OPERATING BUDGET

The 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 the DMP's budget including initial allocation and expenditures can be found at Table 7-1.

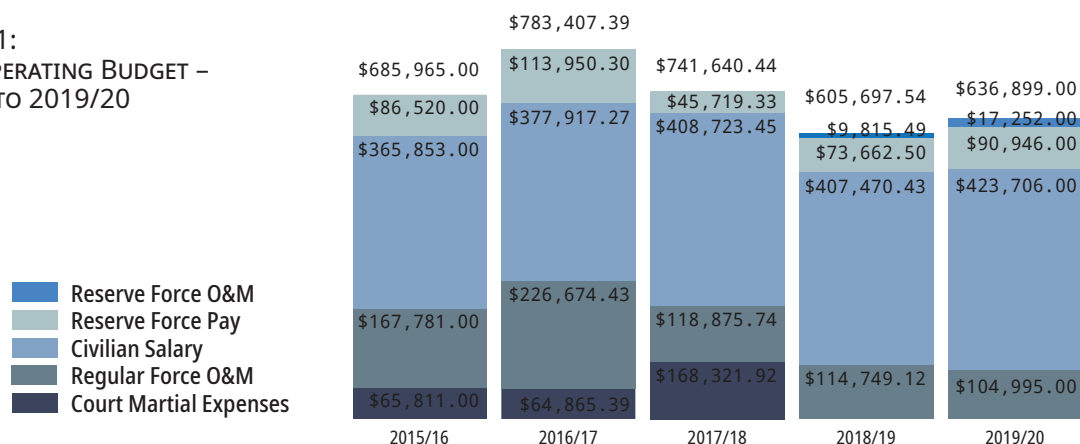
Figure 7-1 shows the DMP's operating budget over the last five reporting periods.

In previous reporting periods, court martial expenses were included as part of the DMP's operating budget. Beginning last fiscal year, court martial expenses have been administered through a centralized fund. Due to various factors such as the number of courts martial, the duration of courts martial, as well as unpredictable expenses such as the requirement for expert witnesses, court martial expenditures can vary greatly from one reporting period to the next. This reporting period, the prosecution's portion of the expenditures for courts martial was \$325,866.49.

TABLE 7-1: SUMMARY OF DMP'S OPERATING BUDGET

Fund	Initial Allocation	Expenditures	Balance
Regular Force Operations & Maintenance	\$129,000.00	\$104,995.27	\$24,004.73
Civilian Salary & Wages	\$423,500.00	\$423,706.17	(\$206.17)
Reserve Force Pay	\$80,000.00	\$90,945.65	(\$10,945.65)
Reserve Force Operation and Maintenance	\$20,000.00	\$17,252.17	\$2,747.83
<b>Totals</b>	<b>\$652,500.00</b>	<b>\$636,899.26</b>	<b>\$15,600.74</b>

FIGURE 7-1:  
DMP'S OPERATING BUDGET –  
2015/16 TO 2019/20



# ANNEXES

# ANNEX A:

## COURTS MARTIAL

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
PO1 Alix	GCM	129 NDA	Conduct to the prejudice of good order and discipline	Not guilty	N/A	Esquimalt, BC	3-13 September 2019	English
		97 NDA	Drunkenness	Withdrawn				
Capt Anderson	SCM	125 NDA	Wilfully made a false entry in a document signed by her that was required for official purposes	Not guilty	N/A	Bagotville, QC	19 December 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
Capt Bannister (Retrial)	SCM	93 NDA	Cruel or disgraceful conduct	Withdrawn	Reduction in rank to the rank of Lt and \$1,500 fine	Charlottetown, PEI	7 January 2020	French
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		93 NDA	Cruel or disgraceful conduct	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
Lt Banting	GCM	129 NDA	Conduct to the prejudice of good order and discipline	Not guilty	N/A	Petawawa, ON	2-5 April 2019	English
MCpl Barrieault	SCM	93 NDA	Cruel or disgraceful conduct	Guilty	Reduction in rank to the rank of Pte	Lazo, BC	4-5 June 2019	English
		129 NDA	An act to the prejudice of good order and discipline	Not guilty				
		93 NDA	Cruel or disgraceful conduct	Not guilty				
		129 NDA	An Act to the prejudice of good order and discipline	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
WO Beemer	SCM	117 NDA	An act of a fraudulent nature not particularly specified in sections 73 to 128 of the NDA	Guilty	Forfeiture of seniority of one year at the acting lacking rank of WO and \$4,000 fine	Petawawa, ON	30 September-3 October 2019	English
		129 NDA	Neglect to the prejudice of good order and discipline	Not guilty				
Sgt Beres	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn	N/A	Gatineau, QC	3 September 2019	English
Cpl Berlasty	SCM	117 NDA	An act of a fraudulent nature not particularly specified in sections 73 to 128 of the NDA	Guilty	Imprisonment for a period of 10 days (suspended) and \$4,000 fine	Windsor, ON	19-24 August 2019	English
SLt Brownlee	SCM	93 NDA	Cruel or disgraceful conduct	Guilty	Severe reprimand and \$3,000 fine	Halifax, NS	29 August 2019	English
		93 NDA	Cruel or disgraceful conduct	Guilty				
		93 NDA	Cruel or disgraceful conduct	Guilty				
Lt(N) Brumwell	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$200 fine	Halifax, NS	10 September 2019	English
Cpl Cadieux (Retrial)	SCM	130 NDA (271 <i>Crim Code</i> )	Sexual Assault	Guilty	Detention for a period of 60 days (suspended) and severe reprimand	Petawawa, ON	6-11 May 2019	English
		97 NDA	Drunkenness	Guilty				
Lt(N) Clancy	SCM	93 NDA	Cruel or disgraceful conduct	Not guilty	Severe reprimand and \$3,000 fine	Toronto, ON	18-27 November 2019	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				
Cpl D'Amico	GCM	129 NDA	Neglect to the prejudice of good order and discipline	Guilty	Absolute discharge	Meaford, ON	3-12 March 2020	English



# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Sgt Dagenais	SCM	112 NDA	Used a vehicle of the Canadian Forces for an unauthorized purpose	Guilty	\$500 fine	Gatineau, QC	4 February 2020	French
PO2 Darrigan	SCM	114 NDA	Stealing	Guilty	Severe reprimand and \$8,000 fine	Halifax, NS	14-16 May 2019	English
		130 NDA (355.2 <i>Crim Code</i> )	Trafficking in property obtained by crime	Withdrawn				
		130 NDA (354 <i>Crim Code</i> )	Possession of property obtained by crime	Withdrawn				
		115 NDA	Receiving	Withdrawn				
		116 NDA	Destruction, damage, loss or improper disposal	Guilty				
WO Deveaux	SCM	117 NDA	An act of a fraudulent nature not particularly specified in sections 73 to 178 of the NDA	Withdrawn	Severe reprimand and \$2,500 fine	Toronto, ON	21 January 2020	English
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		125 NDA	Wilfully made a false entry in a document signed by him that was required for official purpose	Withdrawn				
Cpl Dion	SCM	130 NDA (271 <i>Crim Code</i> )	Mischief in relation to property	Guilty	Reprimand	Valcartier, QC	30 September 2019	French
		129 NDA	Uttering threats	Not guilty				
		95 NDA	Assault	Not guilty				

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Maj Duquette	SCM	130 NDA (271 <i>Crim Code</i> )	Sexual Assault	Guilty	Sentencing hearing suspended until next reporting period because of COVID-19	Bagotville, QC	18-23 November 2019	French
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		95 NDA	Abuse of subordinates	Guilty				
Col Dutil	GCM	125 NDA	Wilfully made a false entry in a document signed by him that was required for official purposes	Withdrawn	N/A	Gatineau, QC	13 March 2020	French
		125 NDA	Wilfully made a false entry in a document signed by him that was required for official purposes					
		130 NDA (380 <i>Crim Code</i> )	Fraud					
		117 NDA	An act of a fraudulent nature not particularly specified in sections 73 to 178 of the NDA					
		129 NDA	Conduct to the prejudice of good order and discipline					
		129 NDA	Neglect to the prejudice of good order and discipline					
		129 NDA	Neglect to the prejudice of good order and discipline					
		129 NDA	Neglect to the prejudice of good order and discipline					

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Cpl Egers-Wood	SCM	129 NDA	Conduct to the prejudice of good order and discipline-	Guilty	Reprimand and \$3,000 fine	Halifax, NS	10 March 2020	English
		101.1 NDA	Failure to comply with a condition	Guilty				
OS Edwards	GCM	85 NDA	Insubordinate behavior	Guilty	\$150 fine	Esquimalt, BC	30 May 2019	English
		83 NDA	Disobedience of lawful command	Withdrawn				
		85 NDA	Insubordinate behavior	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
WO Gagnon	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	\$1,000 fine	Valcartier, QC	21 October 2019	French
Sgt Gauthier	SCM	108 NDA	Signing inaccurate certificate	Guilty	\$600 fine	Esquimalt, BC	4 September 2019	English
MCpl Girard	SCM	86 NDA	Quarrels and disturbances	Guilty	Reduction in rank to the rank of Pte and \$4,000 fine	Saint-Jean-sur-Richelieu, QC	27 January 2020	French
Sgt Hadley	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn	Severe reprimand and \$3,000 fine	Trenton, ON	9 December 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
SLt Havas	GCM	130 NDA (266 <i>Crim Code</i> )	Assault	Withdrawn	Severe reprimand and \$2,000 fine	Vancouver, BC	17 February 2020	English
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
MCpl Hogarth	SCM	114 NDA	Stealing	Guilty	Reprimand and \$1,500 fine	Halifax, NS	29 April – 3 May 2019	English
		130 NDA (356 <i>Crim Code</i> )	Theft from mail	Withdrawn				
		115 NDA	Receiving	Withdrawn				
		130 NDA (354 <i>Crim Code</i> )	Possession of property obtained by crime	Withdrawn				
Capt Hunt	SCM	130 NDA (266 <i>Crim Code</i> )	Assault	Withdrawn	Severe reprimand	Gatineau, QC	7 May 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
LS Hynes	SCM	114 NDA	Stealing	Not guilty	\$2,000 fine	Halifax, NS	4 July 2019	English
		116 NDA	Destruction, damage, loss or improper disposal	Guilty				
Maj Ives	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Absolute discharge	Gander, NL	18 February 2020	English
		95 NDA	Abuse of subordinates	Withdrawn				
Maj Jacques	SCM	117 NDA	An act of a fraudulent nature not particularly specified in sections 73 to 178 of the NDA	Guilty	\$3,500 fine	Valcartier, QC	13 September 2019	French
		90 NDA	Absence without leave	Guilty				
Sgt Kirwin	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Severe reprimand and \$1,000	Edmonton, AB	12 March 2020	English
CWO Lacoste	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Not guilty	\$2,800 fine	Gatineau, QC	17 June 2019	French
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
		97 NDA	Drunkenness	Guilty				
Cpl Lafontaine	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Severe reprimand	Valcartier, QC	5 November 2019	French
Cpl Lewis	SCM	86 NDA	Quarrels and disturbances	Not guilty	N/A	Valcartier, QC	26-28 August 2019	English
		86 NDA	Quarrels and disturbances	Not guilty				
WO Lundy	SCM	108 NDA	Signed inaccurate certificate	Guilty	\$600 fine	Esquimalt, BC	4 November 2019	English
Cpl MacLeod	SCM	93 NDA	Cruel or disgraceful conduct	Guilty	Severe reprimand and \$3,000 fine	Gagetown, NB	14 March 2020	English



# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
WO Malone	GCM	95 NDA	Abuse of subordinates	Withdrawn	Reprimand and \$1,500	Edmonton, AB	24 September 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		97 NDA	Drunkenness	Withdrawn				
Maj Mark	SCM	130 NDA (266 <i>Crim Code</i> )	Assault	Withdrawn	\$2,000 fine	Gatineau, QC	29 May 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Cpl McGregor	SCM	130 NDA (271 <i>Crim Code</i> )	Sexual assault	Guilty	Imprisonment for a period of 36 months and dismissal with disgrace from Her Majesty's service	Esquimalt, BC	10-19 September 2018	English
		130 NDA (162 <i>Crim Code</i> )	Voyeurism	Guilty				
		130 NDA (162 <i>Crim Code</i> )	Voyeurism	Guilty				
		130 NDA (191 <i>Crim Code</i> )	Possession of a device for surreptitious interception of private communication	Not guilty				
		130 NDA (191 <i>Crim Code</i> )	Possession of a device for surreptitious interception of private communication	Guilty				
		93 NDA	Cruel or disgraceful conduct	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
CWO Mercer	SCM	86 NDA	Quarrels and disturbances	Guilty	\$500 fine	Petawawa, ON	29 January 2020	English
LCol Mosher	SCM	117 NDA	An act of a fraudulent nature not particularly specified in sections 73 to 178 of the NDA	Guilty	\$10,000 fine	Gatineau, QC	20 June 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Cpl Olade-hinde	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Not guilty	N/A	Toronto, ON	15-17 July 2019	English
Cpl Parent	SCM	114 NDA	Stealing	Guilty	Reprimand and \$1,400 fine	Valcartier, QC	5 November 2019	French
		130 NDA (354 <i>Crim Code</i> )	Possession of property obtained by crime	Withdrawn				
MCpl Pett	SCM	85 NDA	Insubordinate behaviour	Guilty	Reprimand and \$1,500 fine	Toronto, ON	17 January 2020	English
		95 NDA	Abuse of subordinates	Guilty				
Bdr Poirier	GCM	93 NDA	Cruel or disgraceful conduct	Not guilty	N/A	Petawawa, ON	2-9 April 2019	French
		97 NDA	Drunkenness	Not guilty				
Capt Renaud	SCM	130 NDA (122 <i>Crim Code</i> )	Breach of trust by public officer	Not guilty	Severe reprimand and \$2,500 fine	Bagotville, QC	15 July 2019	French
		130 NDA (139 <i>Crim Code</i> )	Obstructing justice	Not 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				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
MS Rumbolt	SCM	130 NDA (267 <i>Crim Code</i> )	Assault with a weapon or causing bodily harm	Guilty	Severe reprimand and \$5,000 fine	Halifax, NS	23-24 September 2019	English

# ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
MCpl Savard	SCM	85 NDA	Insubordinate behaviour	Guilty	Severe reprimand and \$2,500 fine	Valcartier, QC	14 January 2020	French
		85 NDA	Insubordinate behaviour	Guilty				
Capt Stacey	GCM	129 NDA	Conduct to the prejudice of good order and discipline	Stay of proceedings	N/A	Gatineau, QC	29 November 2019	English
Cpl Thibault (Retrial)	SCM	130 NDA (271 <i>Crim Code</i> )	Sexual assault	Guilty	Sentencing hearing suspended until next reporting period because of COVID-19	Valcartier, QC	10-17 February 2020	French
MCpl Tuckett	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Not guilty	N/A	Borden, ON	15-22 July 2019	English
		129 NDA	Conduct to the prejudice of good order and discipline	Not guilty				
PO1 Thurber	SCM	95 NDA	Abuse of subordinates	Guilty	Severe reprimand and \$1,500 fine	Halifax, NS	10 September 2019	English
		95 NDA	Abuse of subordinates	Withdrawn				
OS Vandal	GCM	93 NDA	Cruel or disgraceful conduct	Withdrawn	N/A	Esquimalt, BC	21 February 2020	English
		93 NDA	Cruel or disgraceful conduct	Withdrawn				
		93 NDA	Cruel or disgraceful conduct	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
OS White	SCM	101.1 NDA	Failure to comply with conditions	Guilty	\$500 fine	Kingston, ON	9 October 2019	English

## ANNEX B:

# APPEALS TO THE COURT MARTIAL APPEAL COURT OF CANADA

CMAC #	Appellant	Respondent	Type Of Appeal	Result
592	Her Majesty the Queen	Capt Bannister	Legality of Finding	Appeal is allowed, the four acquittals are quashed and a new trial on all charges is ordered before a different Military Judge
594	Her Majesty the Queen	Sgt MacIntyre	Legality of Finding	Appeal dismissed
595	Her Majesty the Queen	LS Edwards	Legality of Finding	Appeal allowed, the acquittal is quashed and a new trial is ordered
597	Her Majesty the Queen	Cpl Spriggs	Legality of Finding	Appeal abandoned by the Appellant
598	Her Majesty the Queen	Lt Banting	Legality of Finding	Appeal dismissed and motion for costs ongoing <sup>1</sup>
599	Her Majesty the Queen	PO2 Darrigan	Severity of the sentence	Appeal dismissed
600	Cpl Cadieux	Her Majesty the Queen	Legality of finding	Appeal abandoned by the Appellant
601	WO Malone	Her Majesty the Queen	Severity of the sentence	Appeal abandoned by the Appellant
602	Cpl McGregor	Her Majesty the Queen	Legality of finding and sentence	Ongoing <sup>2</sup>
603	MCpl Pett	Her Majesty the Queen	Legality of finding	Ongoing <sup>3</sup>
604	Capt Renaud	Her Majesty the Queen	Legality of finding	Ongoing

<sup>1</sup> Motion for costs granted on appeal on 22 April 2020; during the next reporting period (see *R v Banting*, 2020 CMAC 2).

<sup>2</sup> The hearing is scheduled for 26 June 2020; during the next reporting period.

<sup>3</sup> Appeal was abandoned by the Appellant on 23 April 2020; during the next reporting period.



# ANNEX C: 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)	Appeals from following CMAC cases dated June 23 <sup>rd</sup> 2017 are dismissed:  CMAC-567, CMAC-574, CMAC-577, CMAC-580, CMAC-581, CMAC-583, CMAC-584,  2017 CMAC 2
38308	Her Majesty the Queen	Cpl Beaudry	Legality of Finding (appeal as of right)	Included in the MCpl Stillman et al. file
38838	Her Majesty the Queen	Sgt MacIntyre	Legality of Finding (appeal by leave)	Leave to appeal denied