



National
Defence

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nationale

DMP

ANNUAL REPORT
2020-2021



Canada



National Defence

Défense nationale

Director of Military Prosecutions

Directeur des poursuites militaires

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23 June 2021

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

Rear Admiral 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 2020-2021 Annual Report of the Director of Military Prosecutions. The report covers the period from 1 April 2020 to 31 March 2021.

Yours sincerely,

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

CONTENTS

MESSAGE FROM THE DIRECTOR OF MILITARY
PROSECUTIONS III

1
THE CANADIAN
MILITARY
PROSECUTION
SERVICE: *ORDO
PER JUSTITIA*

Duties and Functions of the DMP.....	1
Mission and Vision	2
Canadian Military Prosecution Service.....	3
CMPS Headquarters	3
Regional Military Prosecutor Offices	3
Sexual Misconduct Action Response Team	4
Reserve Force Prosecutors	4
CMPS Personnel Update	5
Training and Continuing Legal Education	5
Temporary Duty	7

2
MILITARY
JUSTICE AND
THE COURT
MARTIAL
SYSTEM

Introduction	9
Courts Martial	10

3
COURT MARTIAL
PROCEEDINGS:
YEAR IN
REVIEW

Overview	13
The COVID-19 Pandemic	13
Pre-Charge Advice	14
Referrals and Post-Charge Reviews.....	14
Courts Martial	16
Notable Court Martial Cases	19
Appeals.....	20

4

COMMUNICATIONS AND OUTREACH

CAF Chain of Command	25
CFNIS	25
Federal, Provincial and Territorial Heads of Prosecutions Committee	26
CMAC Education Seminar	26
National Criminal Law Program	26

5

INFORMATION MANAGEMENT AND TECHNOLOGY

Case Management System (CMS).....	29
-----------------------------------	----

6

FINANCIAL INFORMATION

Operating Budget.....	31
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ANNEXES

Annex A: Courts Martial
Annex B: Appeals to the CMAC
Annex C: Appeals to the SCC
Annex D: Custody Review Hearings

MESSAGE FROM THE DIRECTOR OF MILITARY PROSECUTIONS



As the Commanding Officer of the Canadian Military Prosecution Service, I am honoured to present publicly the Director of Military Prosecutions Annual Report for the 2020/21 reporting period. It is my seventh and final Annual Report as I will release from the Canadian Armed Forces (CAF) in September 2021.

The CAF has been faced with unprecedented challenges in this reporting period due to the COVID-19 pandemic, failures of leadership, and further victimization of CAF members and non-members by those in uniform who choose to disrespect the rights of others and disregard the Rule of Law.

In March 2020, courts martial and appeals were understandably disrupted for health and safety reasons. This resulted in the significant delays of trials and impeded the goal of ensuring that justice is done fairly and expeditiously. With input and sincere efforts by independent Military Justice System participants, courts martial and appeals got back on track earlier than many of our civilian counterparts in the civilian criminal and civil justice systems. Fortunately, these challenges have contributed to improved uses of technology and efficiencies to reduce delay within the court martial and appeal processes as well as making trials and appeals more available to the public.

This reporting period has publicly exposed remarkable failures of leadership at all levels within the CAF. These failures have existed for years. Military leaders wield great power for good reason. Used appropriately, that power is effective in fulfilling the responsibilities and obligations of a functional and professional armed force. Allegations related to failures of leadership to respect the Rule of Law and exercise self-discipline erodes trust in the institution and dangerously undermines operational effectiveness and national and international security.

As a military prosecution service, we have had to remain focussed on prosecuting cases, seeking to protect the rights of individuals, and upholding the Rule of Law in accordance with the *Charter of Rights* regardless of the rank of a suspect or accused. No one is above the law. While public interest continues to factor into our prosecutorial decision making, political partisan sentiment will never influence our quasi-judicial duties. Since the creation of the CMPS in 1999 this fundamental principle has been reinforced daily within our military prosecution service, in keeping with the Supreme Court of Canada's 2016 decision in *Cawthorne*. Under our watch, military prosecutors are not and will not be unlawfully influenced by the senior chain of command or persons in power with partisan interests. We have fought hard for our prosecutorial independence and Canadians can have confidence that we will fulfill our duties independently and ethically.

Public sentiment and discourse has intensified this reporting period with respect to sexual misconduct and victimization. Since 2014, support to victims throughout the military justice process has been a priority for the Canadian Military Prosecution Service. Fully accepting Madame Justice Deschamps' report of 2015, we quickly updated our prosecution policies to better support victims, significantly augmented our training to include trauma informed prosecution perspectives, and intensified our communications efforts with victims throughout the court martial process. Recognizing early that the legislative and regulatory process might be slow to implement the protections of the Victims' Bill of Rights, we immediately incorporated them into our own prosecution policies and practices. Support to victims in both the military and civilian systems still has a long way to go, but military prosecutors will continue to provide support without waiting for legislative and regulatory top-cover.

In closing, I want to say that it has been a privilege to have served as your Director of Military Prosecutions for almost seven years. I have been fortunate to have had an extremely strong and dedicated team of military prosecutors and civilian support staff. They understand and implement our independent mandate to promote discipline, efficiency and morale of the CAF through open and fair processes. I have also been supported by an extremely professional Judge Advocate General who recognizes that her duties as the Superintendent of the administration of military justice include steadfast protection of the independence of military prosecutors from unlawful influence. Rear Admiral Bernatchez's support has been crucial to ensuring that our service remains legitimate and consistent with the expectations and values of Canadians. Despite this level of cooperation, however, legislative changes must be made to crystallize the independence of the Canadian Military Prosecution Service. We hope to work closely with Mr. Justice Fish in establishing a way forward to make this happen in a military context.

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 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).¹ Under the NDA, the DMP is responsible for the preferral of 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, with respect to 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 regarding a particular prosecution. The DMP must ensure that these instructions or guidelines are 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 of the 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 of 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.

¹ *National Defence Act*, RSC 1985, c N-5.

MISSION AND VISION

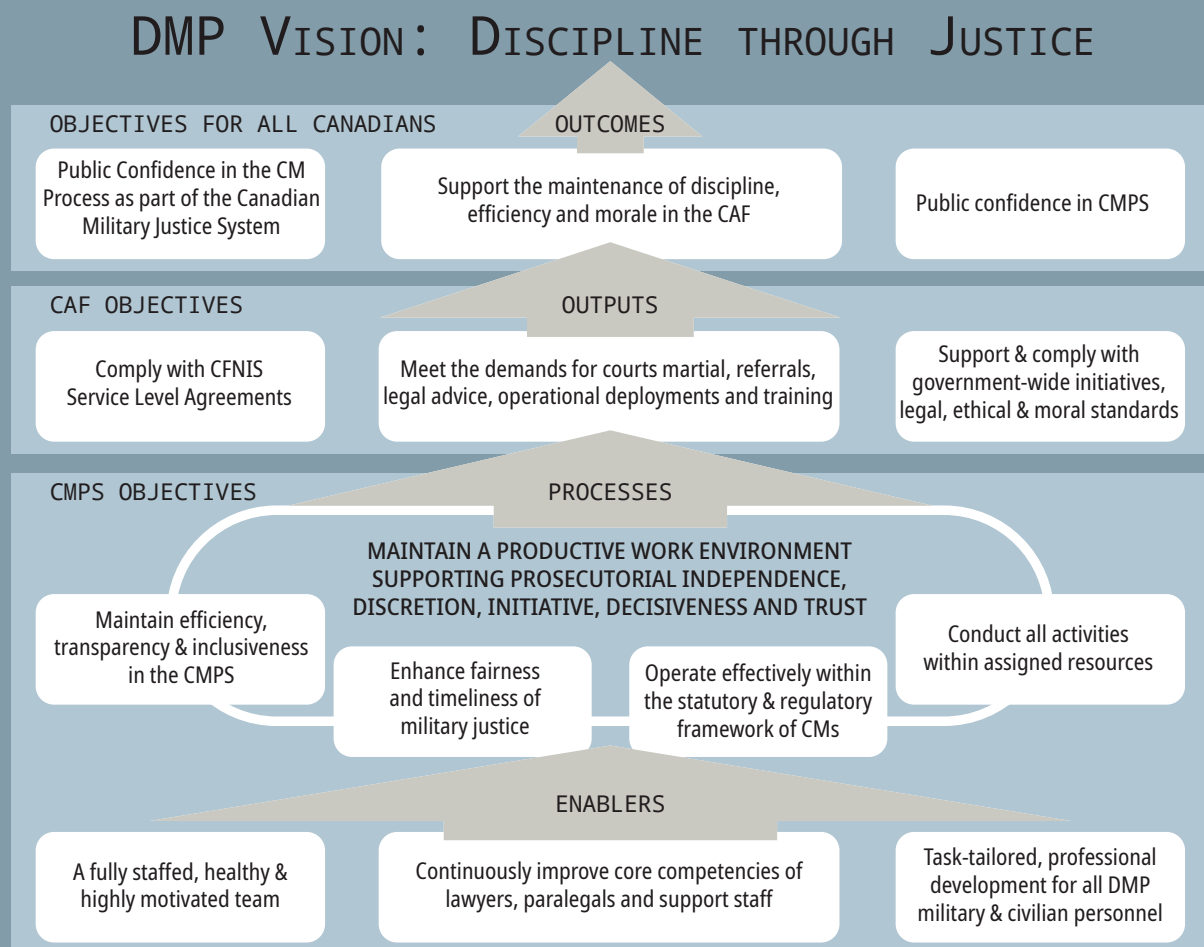
Our Mission

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 Senior Counsel – Policy & Training.

DDMPs

During this reporting period, CMPS has redefined the role the DDMPs. DDMP Operations (DDMP Ops) is responsible to supervise and mentor all of the RMPs.² DDMP Strategic (DDMP Strat) supervises the Appellate Counsel and the CFNIS Legal Advisor. DDMP Strat is also in charge of all the matters of national interest at trial level.

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.³

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 investigations, 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. The Halifax office, the Valcartier office and the Edmonton office each have two RMPs and one civilian administrative support staff. The Ottawa office has five RMPs and one civilian administrative support staff, while the Esquimalt office has one RMP and one civilian administrative support staff. 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.

² The DDMP Ops also supervises prosecutions which occur outside of Canada.

³ 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

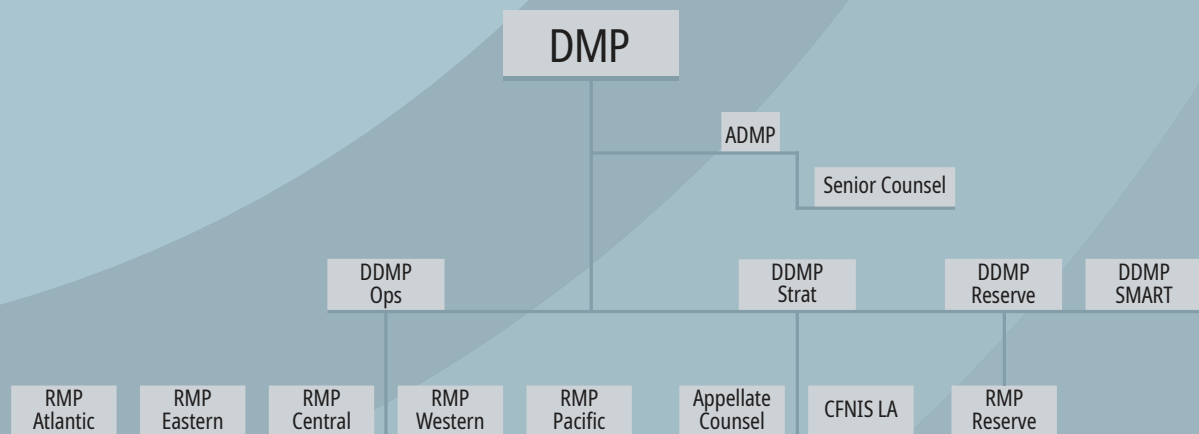
The DDMP for the Sexual Misconduct Action Response Team (SMART) is primarily responsible for mentoring prosecutors in the performance of their duties related to serious sexual misconduct prosecutions. The DDMP SMART is an experienced Reserve Force prosecutor who holds the rank of Lieutenant-Colonel.

Reserve Force Prosecutors

The CMPS relies on eight experienced civilian prosecutors who are members of the Reserve Force. These members consist of a DDMP Reserve, at the rank of Lieutenant-Colonel, 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

During this reporting period, CMPS went through an organizational transformation by redefining the role of the DDMPs. This reorganisation of roles was done in order to ensure a better standardisation at the national level.

Also during this reporting period, a new RMP with a solid knowledge of the military justice system was posted to the Halifax office, following the posting of one RMP from the Atlantic region to another position within the Office of the JAG (OJAG). In Central Region, a RMP who had articulated with CMPS was called to the Ontario Bar in February 2021. Prior to joining the legal branch, this prosecutor brought a wealth of operational experience to the office through his prior service as a member of Canada's elite Special Forces.

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 another OJAG posting. Before this instruction, Regular Force members of the OJAG were normally considered for postings 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 coming to fruition. During this reporting period, the JAG renewed her commitment to this five-year minimum posting approach.

Reserve Force

During this reporting period two Reserve Force prosecution positions have become vacant and are expected to be staffed in the next fiscal year.

Civilian Personnel

During this reporting period the civilian administrative support staff position for the Pacific Region was filled on a part-time basis, from January to July 2020. The civilian member who occupied the position of Office Manager/Administrative Assistant for the Pacific Region

office, who took a year of leave without pay during the last reporting period, left the organisation after her leave in September 2020. In November 2020, the civilian member who had occupied the part-time position in 2020 was permanently hired to fill the position.

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 prosecutors. Criminal law is constantly evolving 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 held its annual Continuing Legal Education (CLE) workshop from 14 to 18 December 2020 for its Regular Force and Reserve Force military prosecutors. In response to the COVID-19 pandemic, the CLE workshop was held remotely. During this training, RMPs heard presentations on a variety of topics, including from civilian counsel who represent victims of sexual assault in criminal proceedings.

Partnership with the Directeur des poursuites criminelles et pénales du Québec

During the last reporting year, the CMPS continued its 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. This 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*.⁴

These exchanges are invaluable for fostering relationships with other Canadian prosecution services, developing well-rounded advocates, and providing an experiential opportunity that help further advance our practices and policies.

External organizations

During this reporting period, RMPs participated in continuing legal education programs delivered by a number of organizations, including the Advocates' Society, Public Prosecution Service of Canada, the Ontario Crown Attorneys' Association, le Barreau du Québec, the Government of Canada, Ombudsman for Victims of Crime, and Osgoode Professional Development. These programs benefited the CAF not only through the knowledge imparted and skills developed, but also through the professional bonds developed by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

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

TABLE 1-1: EXTERNAL TRAINING OPPORTUNITIES

Host Organization	Name of Course	Number of Attendees
Public Prosecution Service of Canada	PPSC School for Prosecutions – Major Case Presentation Series	2
Public Prosecution Service of Canada	PPSC School for Prosecutions – Written Advocacy Course	1
Osgoode Professional Development	National Symposium on Sexual Assault Cases in the Criminal Court	5
Osgoode Professional Development	Written Advocacy Course	1
Osgoode Professional Development	Intensive Trial Advocacy Workshop	2
Osgoode Professional Development	Drafting and Reviewing Search Warrants	2
Ontario Crown Attorneys' Association	Crown Law (Summer School)	1
Advocates' Society	Pozner on Cross: Advanced Techniques	5
Barreau du Québec	Les relations Poursuivant-Défense sous l'angle de la déontologie	3
Barreau du Québec	Le droit criminel et la personne atteinte de troubles mentaux	1
Barreau du Québec	Séquelles d'un passage à la cour criminelle	1
Barreau du Québec	Comment négocier avec les personnalités difficiles : le coffre à outils	1
Barreau du Québec	L'obligation de confidentialité imposée à l'avocat n'est pas limitée à l'application du principe du secret professionnel	2
Barreau du Québec	Éthique et courtoisie se comporter professionnellement en tout temps	1
Government of Canada	Diversity and Inclusion Conference 2020	1
Government of Canada	Powers of the UNGA to prevent and respond to Atrocities	1
Ombudsman for Victims of Crime	Moving towards enforceable rights for victims of crime in Canada	1

⁴ *R v Beaudry*, 2018 CMAC 4.

Training provided by the CMPS

CMPS also provides support to the training activities of the OJAG and other CAF entities. During the reporting period, this support included the mentoring and supervision by RMPs of a number of junior legal officers from the OJAG who completed a portion of their “on the job training” 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.

From time to time legal officers serving outside the CMPS may, with the approval of their supervisor and the DMP, participate in courts martial as “second chair” prosecutors. The objective of this program is “to contribute to the professional development of unit legal advisors as well as to improve the quality of prosecutions through greater local situational awareness”.⁵

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, military prosecutors 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 146 days. This is a significant decrease in comparison to the last reporting period (from 806 to 146). The decrease in total number of TD days for this reporting period is attributable to the COVID-19 pandemic, which resulted in greater use of technological innovations, allowing legal proceedings and training activities to take place remotely.

Table 1-2 shows the breakdown of temporary duty for CMPS personnel by Region for this reporting period.

TABLE 1-2: CMPS TEMPORARY DUTY

Region	Court Martial Related TD	Appeal Related TD	Training Related TD	Other TD	Total TD
CMPS HQ	16	0	19	5	40
Atlantic	7	0	0	0	7
Eastern	49	0	0	5	54
Central	42	0	0	0	42
Western	5	0	0	0	5
Pacific	14	0	0	0	14
Total	133	0	19	10	162⁶

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

⁶ The total number of TD days for this reporting period does not account for TD days spent by two Regular Force prosecutors while following the Legal Officer Qualification Course (LOQC). The LOQC, which was held from 9 September to 10 October 2020 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*⁷ and *R v Généreux*,⁸ 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.”⁹ 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.”¹⁰

These views were directly in line with earlier comments by Chief Justice Lamer in *Généreux*, which noted 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.”¹¹

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*¹² 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.¹³ 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*.¹⁴ In its decision, the SCC seized the opportunity to summarize and affirm its prior jurisprudence relating to the military justice system. Among other things, the SCC referred to 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*, 1867.¹⁵ The SCC also

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.

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

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.”¹⁶ 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) of the NDA other than “the accused’s military status.”¹⁷

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. Courts martial 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 the guilt of the accused 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 notified. 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 or not 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, military prosecutors must conduct a two-stage analysis. They must consider whether there is a reasonable prospect of conviction should the matter proceed to trial and whether the public interest requires that a prosecution be pursued. This test is consistent with those applied by Attorneys General throughout Canada and by prosecution agencies elsewhere in the Commonwealth.

In contrast with the public interest analysis applied elsewhere, the military justice system must take additional factors into account, such as:

- 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 commanding officer of the accused, 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.

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

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

¹⁷ *Ibid* at paras 92 and 96.

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	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. 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 OJAG 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.
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 evidence, whether or not the prosecution intends to introduce it at court martial.
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, allowed 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 123 files: 76 referrals were received during the reporting period and 47 files were carried over from the previous reporting period.

In addition, the CMPS handled 87 requests for pre-charge advice, 16 appeals to the CMAC and one (1) appeal to the SCC, for a total of 227 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. One pre-trial custody review hearing was conducted during this reporting period and the member was released with conditions. Please refer to Annex D for an overview of the disposition of this custody review hearing.

Finally, a total of 34 courts martial were completed. Two (2) of those were new trials following appeals and orders made by the CMAC for the conduct of new courts martial: *R v LS Edwards* and *R v Cpl Thibault*.

THE COVID-19 PANDEMIC

The COVID-19 pandemic presented prosecution services across Canada with unprecedented challenges and limitations on bringing matters before the courts. While the CMPS was not spared, it was able to quickly adapt to the new reality of prosecuting cases in the pandemic environment and has proven itself to be operationally focused and responsive. Courts martial, including those involving a panel, have proceeded safely and efficiently, sometimes virtually where necessary, to fulfil the requirement that our prosecutors be globally deployable in any environment. Under CMPS leadership, the entire team met regularly to discuss ongoing matters, engage with the chain of command and victims, and conducted weekly training sessions to ensure that the interest of justice and discipline were advanced. Successfully prosecuting cases in the new COVID-19 environment has demonstrated that the CMPS is a small, but highly adaptable and agile component of the military justice system which can achieve desired outcomes in any environment.

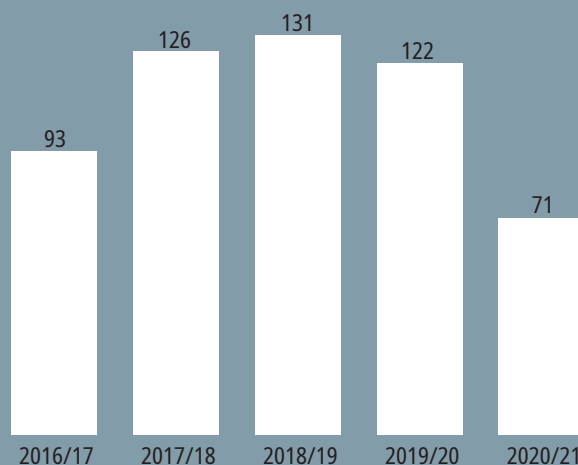
PRE-CHARGE ADVICE

RMPs within the CMPS are responsible to provide pre-charge advice to both the CFNIS¹⁸ and to unit legal advisors.¹⁹ In this reporting period, 82 requests for pre-charge advice were sent to the CMPS and 5 requests had been pending from the previous reporting period. Of the 87 total requests, 71 pre-charge advice files were completed during this reporting period, leaving 16 files still pending at the end of the current reporting period.

The number of completed pre-charge advice files is lower than the average number of completed files over the past four reporting periods (118). It is likely that the pandemic had a direct impact on the number of requests for advice received by CMPS during the reporting period. It is anticipated that as pandemic restrictions subside, and the Canadian Armed Forces returns to normal operational activities, the number of requests for pre-charge advice will increase in the next reporting year.

Figure 3-1 shows the number of completed pre-charge files for the last five 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

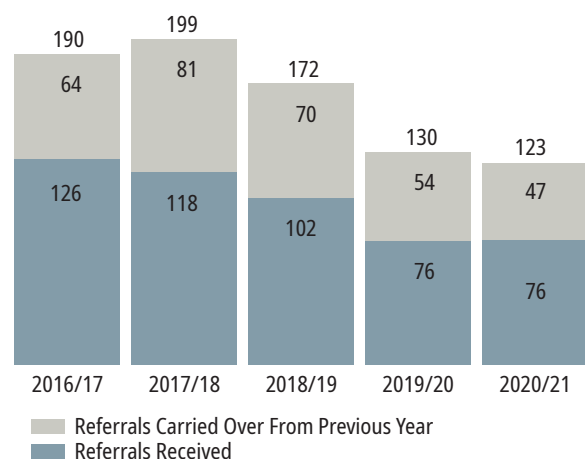
During this reporting period, 76 referrals were received by the DMP. This number represents the same number of cases referred to the DMP during the last reporting period.

Caseload for the Reporting Period

When combined with the 47 files that were carried over from the previous reporting period, the caseload for this reporting period was 123 files.²⁰

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

**FIGURE 3-2:
CASELOAD BY REPORTING PERIOD**



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.

20 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.

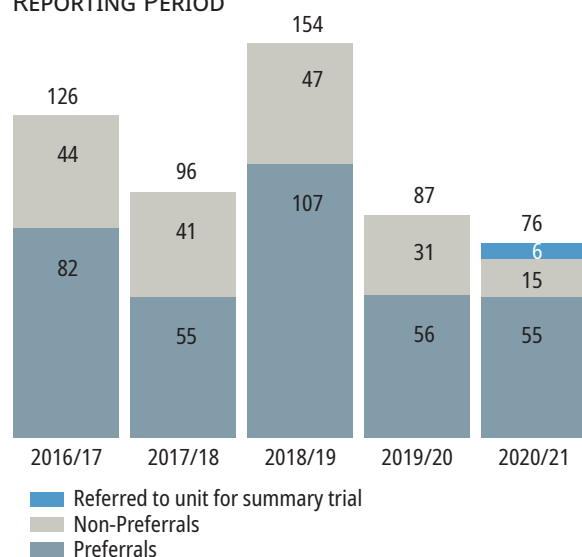
Preferrals, Non-Preferrals and Referral of charge to unit for summary trial

During this reporting period, post-charge decisions were made by an RMP in 76 files, while eleven (11) files were still pending a prosecutorial decision at the end of the current reporting period.

Of the 76 completed files, 55 files led to one or more charge being preferred for court martial, 15 files were not preferred and 6 files were referred back to the originating unit to try the accused person by summary trial. The referral rate for this reporting period is 72%.

Figure 3-3 shows the number of referrals, non-referrals and referral of charge to unit for summary trial for the past five reporting periods.²¹

**FIGURE 3-3:
NUMBER OF PREFERRED AND NON-PREFERRED BY
REPORTING PERIOD**



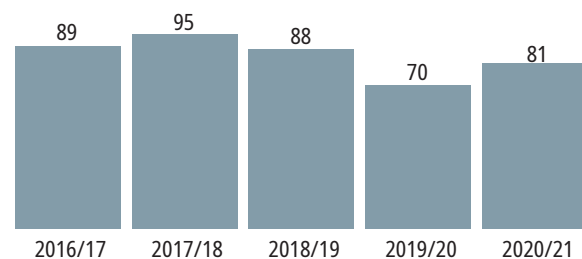
²¹ Cases where a decision has been made to refer the charge for disposal by an officer who has jurisdiction to try the accused person by summary trial pursuant section 165.13 of the NDA are only tracking for this reporting period.

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 a post-charge decision was approximately 81 days.²² This represents an increase of 11 days from the previous reporting period. It is also below the average number of days for the past five reporting periods, which is 85 days.

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

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



Preferral Rates by Investigative Agency

Although all files referred to the DMP are received through a referral authority, the incident giving rise to the charge may be investigated by one of three 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 referrals varies between investigative agencies as their investigators have different levels of experience, proficiency and training.

During this reporting period, the referral rate for those files investigated by the CFNIS was 96%. This referral rate is slightly higher than that of the regular military police (95%), but is markedly higher than that of unit investigators (46%).

This divergence of referral rates has been consistent over the past several years, with those investigations conducted by the CFNIS being preferred at a higher rate than unit investigators. However, the referral

²² This statistic accounts only for cases where a post-charge decision was made during the current reporting period.

rates by military police has increased significantly when compared to previous reported periods.

The DMP has identified the discrepancy in preferal rates, and in particular the low preferal rate of unit investigations, as an issue and has taken a number of steps to improve the preferal 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 two RMP's to attend and assist with the CFMPA Military Police Investigators Course, conducted in Borden in October 2020.

For a complete overview of preferal rates by investigative agency over the past five reporting periods, please refer to Figure 3-5.

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

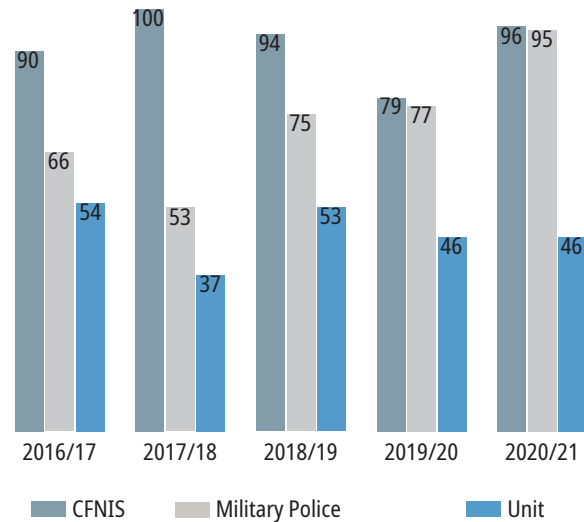
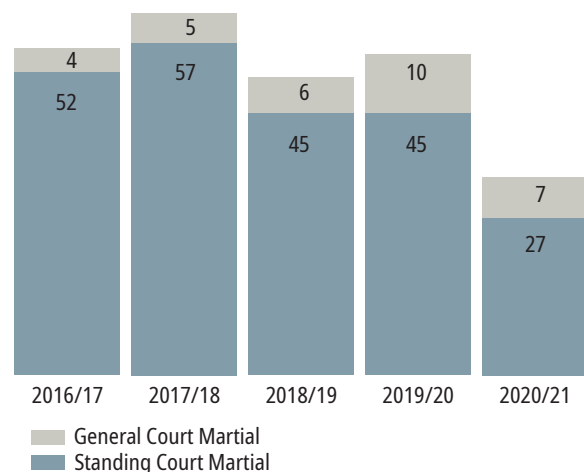


FIGURE 3-6:
NUMBER OF COURTS MARTIAL BY TYPE AND BY REPORTING PERIOD



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 34 courts martial were completed during this reporting period. Of those, 27 were SCMs and 7 were GCMs. This number is lower than the historical average of courts martial for the past five years (52).

This difference is due to the fact that the Court Martial Administrator, acting on direction from the Chief Military Judge and the Acting Chief Military Judge, canceled convening orders for courts martial that were scheduled from 16 March to 31 May 2020.

Court Martial Outcomes

Of the 34 courts martial that were held, accused persons were found guilty of one or more charges in 25 cases, had all charges withdrawn in one (1) case,²³ had a stay

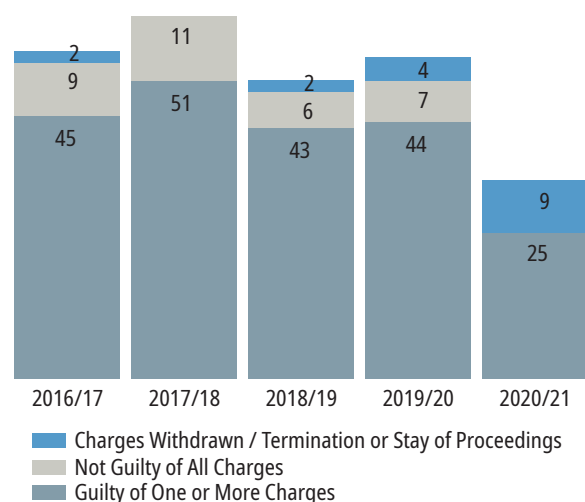
of proceedings in seven (7) and had a termination of proceedings in one (1) case.

In addition, two (2) of the 34 courts martial were new trials following appeals and orders made by the CMAC for the conduct of a new court martial: *R v LS Edwards* and *R v Cpl Thibault*. In *R v Cpl Thibault*, the accused was found guilty following a new court martial while a stay of proceeding was ordered in *R v LS Edwards*.

²³ The seven cases which resulted in a stay and the one case which resulted in a termination of proceedings were all related to military judges finding breaches of the 11d Charter rights of the accused due to a lack of judicial independence. All of these cases were appealed by the DMP on behalf of the MND.

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 25 sentences were handed down by courts martial, involving a total of 37 punishments. 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 20 fines awarded representing 54% of all punishments. The next most common punishment awarded was a severe reprimand, which accounted for approximately 8% of all punishments. Three (3) custodial punishments were awarded.

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	2016/17	2017/18	2018/19	2019/20	2020/21
Dismissal	1	3	2	1	0
Imprisonment	4	7	3	2****	3
Detention	4*	4**	1***	1*****	0
Reduction in Rank	9	9	2	3	4
Forfeiture of Seniority	0	0	0	1	0
Severe Reprimand	6	11	9	15	5
Reprimand	17	20	4	6	3
Fine	39	38	35	32	20
Minor Punishment	0	3	0	0	2
Absolute Discharge*****	N/A	N/A	0	2	0
Total	80	95	56	63	37

* 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.

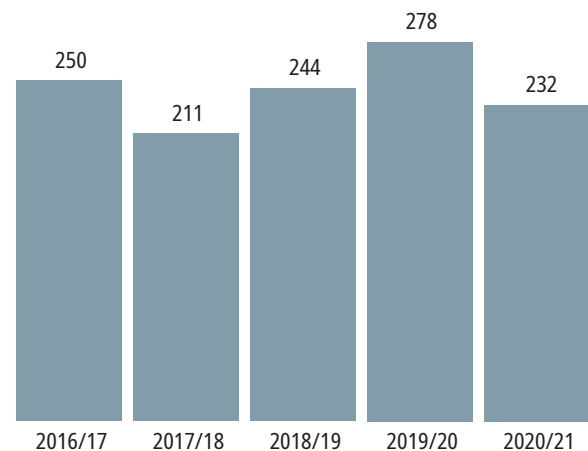
***** Absolute discharges became available to presiding military judges as of 1 September 2018 under section 203.8 of the NDA.

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 232 days.²⁴ This is a decrease of 46 days in comparison to the previous reporting period and is 12 days above the past five year average of 244 days.

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	2017/18	2018/19	2019/20	2020/21
Sexual Misconduct	21	20	20	25	14
Alcohol and Drugs	7	2	5	1	3
Conduct	21	34	21	20	13
Fraud and Property	8	6	5	9	4
Total	57²⁵	62	51	55²⁶	34

²⁴ 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.

²⁵ 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 of this reporting period.

²⁶ In the DMP Annual Report 2019-20, two courts martial (*R v Maj Duquette* and *R v Cpl Thibault*) were considered completed because the accused persons were found guilty but the sentencing hearings had not yet started. However, the two courts martial (*R v Maj Duquette* and *R v Cpl Thibault*) were completed during this reporting period. These two courts martial are then counted as completed during this reporting period.

NOTABLE COURT MARTIAL CASES

This section provides a summary of three notable courts martial that were held during this reporting period. Please refer to Annex A for an overview of all the courts martial held during this reporting period.

R v Thibault, 2020 CM 5005

Sergeant Thibault was originally charged in 2014 with one count of an offence contrary to the section 130 of the NDA, that is, sexual assault, contrary to section 271 of the *Criminal Code*. This court martial was a new trial following appeals that proceeded to the SCC. After the decision in *R v Stillman*, 2019 SCC 40, the new trial order made by the CMAC in 2017 was reinstated.

On 18 February 2020, Sergeant Thibault was convicted. The defence requested an adjournment to obtain a pre-sentencing report for the purposes of the sentencing hearing. In March 2020, the COVID-19 pandemic caused further delays to the sentencing hearing. In the intervening time, Sergeant Thibault changed counsel and filed an application alleging a breach of his right to be tried by a fair and independent tribunal protected under section 11d) of the *Charter* and a motion for recusal. Before the hearing on these applications could be held, Sergeant Thibault also filed an application for judicial review and a motion for a provisional writ of prohibition at the Federal Court, seeking to preclude the presiding military judge to decide on the motion for recusal and to order the designation of another military judge to preside over his court martial.

On 14 December 2020, in the decision *Thibault c Canada (Directeur des poursuites militaires)*, 2020 CF 1154, the Federal Court denied Sergeant Thibault's motion for a writ of prohibition. On 21 December 2020, the presiding military judge heard the motion for recusal and the DMP's motion to quash the *Charter* application. On 3 February 2021, Sergeant Thibault withdrew his application for judicial review at the Federal Court. On 12 January 2021, Sergeant Thibault filed a motion to adduce new evidence as part of the motion for recusal, which was denied on 20 January 2021. Finally, on 27 January 2021, the presiding military judge denied the motion for recusal and quashed the application alleging a breach of Sergeant Thibault's rights protected under section 11d) of the *Charter*.

On 26 February 2021, Sergeant Thibault was sentenced to imprisonment for a term of 18 months, but was released pending appeal. On 29 March 2021, Sergeant Thibault filed a notice of appeal to the CMAC.

R v Lévesque, (citation not yet available)

Sergeant Lévesque was charged with ten offences for incidents that took place while he was deployed as part of a military operation in Senegal. These incidents involved pointing his service weapon towards children; uttering threats towards his subordinates; dangerous driving of a military vehicle; mischief; and uttering racist and sexualized comments about the local population.

He pleaded guilty to 4 counts: one for having pointed a firearm at another person under section 130 of the NDA contrary to section 87 of the *Criminal Code*; one count of having driven a vehicle of the Canadian Forces in a dangerous manner under section 111 of the NDA; and two counts of conduct to the prejudice of good order and discipline under section 129 of the NDA. As part of the resolution, the other six counts were withdrawn.

A sentencing hearing took place at the Valcartier Garrison (Québec) from 2 to 6 November 2020. An expert witness testified as to the impact a custody sentence would have on the mental health of Sergeant Lévesque. While she did recognize that rehabilitation was an important factor, the military judge felt that the principles of denunciation and deterrence, in this case, required a custodial sentence.

Sergeant Lévesque was sentenced to three months of imprisonment in military prison and a reduction in rank to corporal. He appealed the legality of the sentence as it pertains to the location of his imprisonment.

R v Duquette, 2019 CM 3016

Major Duquette was charged under section 130 of the NDA for sexual assault contrary to section 271 of the *Criminal Code*; under section 129 of the NDA for conduct prejudicial to good order and discipline for sexual harassment; and for ill-treating a person that was subordinate to him under section 95 of the NDA.

The incidents took place in CFB Bagotville during a Christmas party. On the dance floor, Major Duquette touched the buttocks of his subordinate without her consent while rubbing his torso on hers. He also whispered sexualized comments in her ears. The scene was observed by two civilian witnesses.

Following his trial, which took place in November 2019, he was found guilty on all counts.

Because of the pandemic, the sentencing hearing only took place in June of 2020. After a contested hearing, Major Duquette was sentenced to a reduction in rank to Captain. It was also ordered he be registered on the sex offender registry for 10 years and that a sample of his DNA be collected.

Captain Duquette appealed this decision and it will be heard by the CMAC on 29 June 2021.

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 Banting*, 2020 CMAC 2**

On 7 November 2019, Lieutenant Banting filed a motion seeking costs at trial and on appeal, on a solicitor-client basis. The total amount claimed was \$61,155.00. The motion followed the decision of the Court, rendered on 6 November 2019, to dismiss DMP's appeal of the no *prima facie* determination made by the military judge at trial, who found that there was no evidence of prejudice to good order and discipline.

On 22 April 2020, party-and-party costs in the amount of \$10,000 were awarded by the CMAC after a determination that the Respondent should not bear the costs of what the CMAC referred to as a test case with major implications across the whole of the military justice system pertaining to what constitutes prejudice to good order and discipline.

***R v Duquette*, 2020 CMAC 4**

On 23 November 2019, a military judge found Major Duquette guilty of sexual assault under section 130 of the NDA (contrary to section 271 of the *Criminal Code*), of conduct to the prejudice of good order and discipline contrary to section 129 of the NDA, and of ill treatment of a person who by reason of rank was subordinate to him contrary to section 95 of the NDA.

The military judge imposed a sentence of reduction in rank to the rank of captain and ordered his registration on the sex offender registry. Captain Duquette appealed the legality of the findings of guilty and of the sentence imposed on him on 26 June 2020. He also filed an application on 23 July 2020, requesting a stay of execution of the reduction in rank pending appeal.

On 29 October 2020, the Court dismissed Captain Duquette's motion for a stay of execution of the sentence pending appeal. The appeal is scheduled to be heard on 29 June 2021.

***R v Renaud*, 2020 CMAC 5**

Captain Renaud was charged with five offences and was found guilty by the SCM of two counts (fourth and fifth counts on the charge sheet) of conduct to the prejudice of good order and discipline, contrary to section 129 of the 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.

Captain Renaud appealed the legality of the military judge's findings on both counts of conduct to the prejudice of good order and discipline.

In relation to the fourth count, the Court held that the issue was purely one of fact and that the military judge did not err and considered the entirety of the evidence. On the fifth count, the Court confirmed that the military judge had correctly applied the principles previously set out in *R v Golzari*, 2017 CMAC 3 and *Canada v Bannister*, 2019 CMAC 2 pertaining to the proof of prejudice to good order and discipline.

***R v Duquette*, 2020 CMAC 6; 2020 CMAC 7**

The Court, having initially dismissed a motion for an extension of time within which to serve and file the Appellant's Memorandum of Fact and Law after Captain

Duquette had failed to meet the deadline imposed by the CMAC rules, reinstated the appeal on 10 December 2020 after receiving a motion to reconsider from the Appellant. The hearing of the appeal is set for 29 June 2021.

R v McGregor, 2020 CMAC 8

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

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

Corporal McGregor appealed the legality of the finding concerning his application under section 8 of the *Charter*.

The appeal was heard on 26 June 2020. The Court, on the basis of the previous decision of the SCC in *R v Hape*, 2017 SCC 26, held that the *Charter* did not apply in this case as the issuance and execution of the search warrant in Virginia was an exercise of American sovereign authority. The Court further stated that this does not end the matter as the trial judge retains the residual discretion to exclude evidence that would render a Canadian trial unfair. However, in this case, the Court found that the search was properly authorized under Virginia law, including for the search and seizure of electronic devices, that it was conducted reasonably and that it would have been in compliance with *Charter* standards had the search been wholly conducted in Canada under Canadian warrants.

Corporal McGregor is seeking leave to appeal to the SCC.

R v Champion, 2021 CMAC 1

Sailor third class Champion was arrested for drunkenness on 13 November 2020 and released on conditions by his unit Custody Review Officer (CRO) the following day. On 15 November 2020, Sailor third class Champion was arrested again for breach of conditions. This time, the CRO decided not to release him and Sailor third class Champion was taken before a military judge for a Custody Review Hearing on 17 November 2020. At the hearing, and despite the fact that no charges had been laid, the military judge ordered the release of Sailor third class Champion but chose to impose conditions aimed at insuring that Sailor third class Champion would remain under military authority and report for duty as required.

On 23 November 2020, Sailor third class Champion applied to the CMAC under paragraph 159.9(1) NDA for a review of the military judge's direction to release with conditions. On the same day, Sailor third class Champion was charged with one count of absence without leave contrary to section 90 of the NDA and one count of drunkenness contrary to section 97 of the NDA. On 24 November 2020, Sailor third class Champion's Commanding Officer decided not to proceed with the charges and, as a result, all conditions imposed were cancelled in accordance with article 105.303(1)(a) of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O).

On 19 February 2021, the Court decided to hear the application despite its mootness to consider the law applicable on whether it is open to a military judge to impose conditions upon release in instances where the member has not yet been charged.

Appeals Initiated at the CMAC

R v Edwards et al, CMAC-606, 607, 608 and 609

The DMP appealed decisions rendered by military judges holding that the right to be tried by an independent and impartial tribunal under section 11(d) of the *Charter* was breached by an order issued by the Chief of the defence staff (CDS) designating a commanding officer for matters of discipline involving military judges (CDS Order, Designation of Commanding Officers with respect to officers and non-commissioned members on

the strength of the Office of the Chief Military Judge DEPT ID 3763, 19 January 2018), and subsequently by the Canadian Forces Organization Order 3763 (Canadian Forces Organization Order 3763 Office of the Chief Military Judge, 27 February 2008). The military judges have concluded that they are not liable to be charged, dealt with and tried by court martial. They held that it would be to interfere with the role of the Military Judges Inquiry Committee (MJIC) and would affect the independence and impartiality of the military judges in a way that would violate an accused's rights under section 11(d) of the *Charter*.

The appeal was heard on 29 January 2021. The judgment of the Court is under reserve.

***R v Christmas*, CMAC-610**

This appeal raises the same issues as in *R v Edwards et al.*, CMAC-606, 607, 608 and 609. It has been adjourned *sine die* until the decision in *R v Edwards et al.* is rendered.

***R v Proulx*, CMAC-612 and *R v Cloutier*, CMAC-614**

These appeals raise the same issues as in *R v Edwards et al.*, CMAC-606, 607, 608 and 609 as well as the constitutionality of sections 12, 18, 17 and 60 of the NDA. The appeal was heard on 11 March 2021 and the Court has reserved judgment.

***R v Lévesque*, CMAC-613**

Corporal Lévesque pleaded guilty to one count of having pointed a firearm at another person under section 130 of the NDA contrary to section 87 of the *Criminal Code*, one count of an act to the prejudice of good order and discipline under section 129 of the NDA, one count of having driven a vehicle of the Canadian Forces in a dangerous manner under section 111 of the NDA and one count of conduct to the prejudice of good order and discipline under section 129 of the NDA. He was sentenced to imprisonment for three months and to a reduction in rank from sergeant to corporal. The military judge decided that the exigencies of service required that the imprisonment sentence be served at the military prison, having regard to the COVID-19 situation and the requirement for Corporal Lévesque to receive treatment for a post-traumatic stress disorder condition resulting from military service.

Corporal Lévesque is appealing the legality of the committal order, alleging that the military judge erred in her interpretation of the “exigencies of service” requirement under article 114.06(2) of the QR&Os and failed to consider the legal obligation for civilian prisons to abide by specific norms pertaining to the provision of healthcare to prisoners.

A hearing date has not been set.

Decision Rendered by the SCC

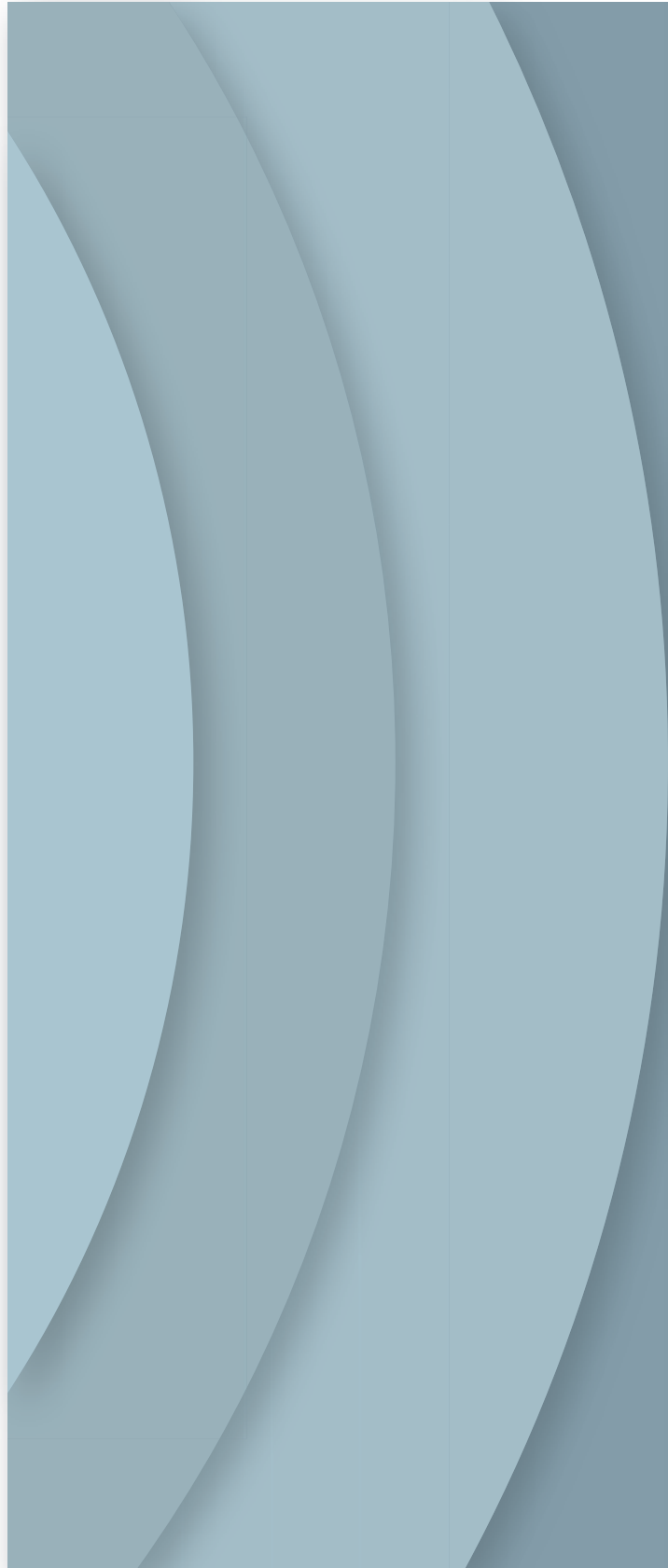
No decision was rendered by the SCC during this reporting period.

Applications for Leave to Appeal to the SCC

R v McGregor

Corporal McGregor sought leave to appeal the case of *R v McGregor*, 2020 CMAC 8 to the SCC on 11 February 2021. A decision of the SCC is pending.

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





COMMUNICATION AND OUTREACH

4

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 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 civilian 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 ensure that both entities work together to strengthen discipline and operational efficiency through a robust military justice system. Despite the constraints related to the COVID-19 pandemic, RMPs made sure to keep regular communication with senior members of the chain of command on the various military bases in Canada when required during this reporting period, in accordance with the instructions of the DMP.

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 effectiveness and efficiency of the CMPS as a prosecution service.

Over the course of this reporting period, the DMP, along with the CFNIS Legal Advisor, participated in the training of new CFNIS investigators during the CFNIS Indoctrination Course. Their presentations enhanced the knowledge of the military justice system for the new CFNIS investigators particularly in relation to disclosure obligations.

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.²⁷

During this reporting period, the DMP and the Acting DMP attended the HoP Committee general meetings during the months of April and December 2020. The HoP Committee general meetings were held virtually, due to the COVID-19 pandemic.

The DMP and the Acting DMP were active participants during the discussions, ensuring that the interests of the military justice system remain at the forefront of criminal law in Canada. Moreover, the Acting DMP also presented an update regarding the constitutional challenges relating to the independence of military judges.

CMAC EDUCATION SEMINAR

The DMP and the 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.

NATIONAL CRIMINAL LAW PROGRAM

The National Criminal Law Program (NCLP)²⁸ is delivered by the Federation of Law Societies of Canada, and is the largest criminal law conference in Canada. The 47th Annual NCLP was supposed to be held in Victoria, British Columbia, in July 2020. As a full member of the NCLP faculty, the DMP has prepared articles and made presentations on a number of areas of criminal and military law topics at previous iterations of the conference. Unfortunately, the NCLP was canceled in 2020, due to the COVID-19 pandemic.

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

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





INFORMATION MANAGEMENT AND TECHNOLOGY

5

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 a continual development process. The newest version of CMS was due to be released during 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 was delayed. The newest version of CMS will be launched during the next reporting period.



FINANCIAL INFORMATION

6

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 personnel and maintain equipment. A complete overview of the DMP's budget, including initial allocation and expenditures, can be found at Table 6-1.

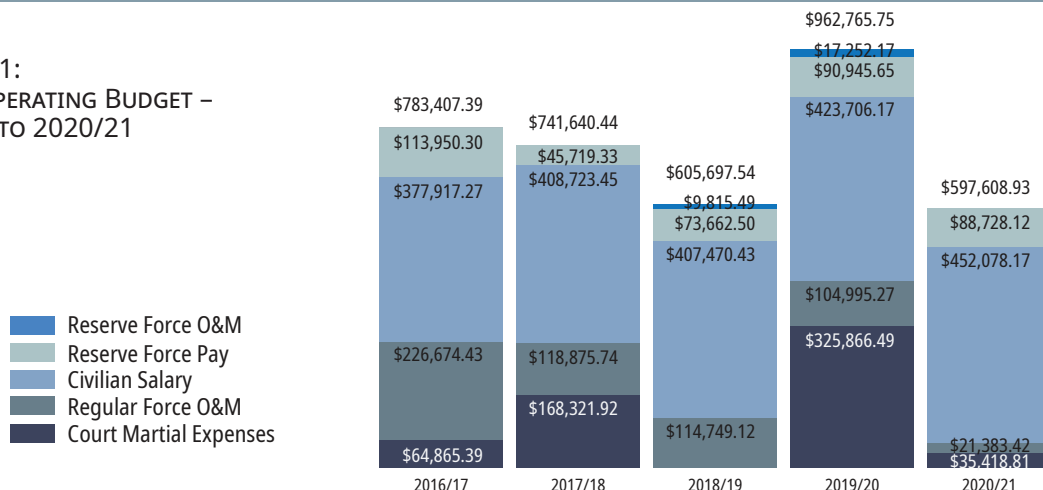
Figure 6-1 shows the DMP's operating budget over the last five reporting periods.

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, including 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 \$35,418.81.

TABLE 6-1: SUMMARY OF DMP'S OPERATING BUDGET

Fund	Initial Allocation	Expenditures	Balance
Regular Force Operations & Maintenance	\$25,250.00	\$21,383.42	\$3,866.58
Civilian Salary & Wages	\$425,233.00	\$452,078.17	(\$26,855.58)
Reserve Force Pay	\$109,600.00	\$88,728.12	\$20,871.88)
Reserve Force Operation and Maintenance	\$7,500.00	\$0	\$7,500.00
Totals	\$567,573.00	\$562,190.12	\$5,382.88

FIGURE 6-1:
DMP'S OPERATING BUDGET –
2016/17 TO 2020/21



ANNEXES

ANNEX A:

COURTS MARTIAL

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
A/Slt Bankasingh	SCM	130 NDA (271 CCC)	Sexual Assault	Not guilty	N/A	Halifax, NS	08 Feb 2021	English
		93 NDA	Behaved in a disgraceful manner	Guilty	60 days imprisonment			
Cpl Bolger	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Fine of \$600	Trenton, ON	01 March 2021	English
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
Maj Bourque	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Fine of \$200	Gatineau, QC	13 July 2020	French
PO2 Breadner	SCM	83 NDA	Disobeyed a lawful command of a superior officer	Withdrawn	Fine of \$200	Esquimalt, BC	22 June 2020	English
		85 NDA	Behaved with contempt toward a superior officer	Guilty				
LS Brinton	SCM	114 NDA	Stealing	Withdrawn	Severe reprimand and a fine of \$3000	Halifax, NS	05 Feb 2021	English
		130 NDA (355.2 CCC)	Trafficking in property obtained by crime	Withdrawn				
		129 NDA	An act to the prejudice of good order and discipline	Withdrawn				
		116(a) NDA	Sold improperly public property	Guilty				
Lt(N) Brown	SCM	130 NDA (271 CCC)	Sexual assault	Stay of proceedings		Halifax, NS	23 March 2021	English
		130 NDA (279(2) CCC)	Forcible confinement					
Pte Bruce	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and fine of \$3000	Saint-Jean-sur-Richelieu, QC	06 Oct 2020	English
Maj Castagner	SCM	86 NDA	Quarrelled with a person subject to the Code of Service Discipline	Guilty	Reduction in rank to Captain and fine of \$3500	Trenton, ON	31 July 2020	English
		97 NDA	Drunkenness	Guilty				

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
WO Chauhan	SCM	130 NDA (271 CCC)	Sexual assault	Withdrawn	N/A	Petawawa, ON	14 Oct 2020	English
		93 NDA	Behaved in a disgraceful manner					
PO2 Chiasson	SCM	97 NDA	Drunkenness	Guilty	Severe reprimand and a fine of \$2000	Gatineau, QC	08 July 2020	English
Cpl Christmas	GCM	130 NDA (271 CCC)	Sexual assault	Stay of proceedings		Sydney, NS	10 Nov 2020	English
		93 NDA	Behaved in a disgraceful manner					
		97 NDA	Drunkenness					
Sgt Cloutier	SCM	93 NDA	Behaved in a disgraceful manner	Proceeding terminated without adjudication		Bagotville, QC	09 Dec 2020	French
		129 NDA	Conduct to the prejudice of good order and discipline					
		97 NDA	Drunkenness					
Pte Coulter	SCM	90 NDA	Absented himself without leave	Guilty	Fine of \$500	Trenton	09 Sept 2020	English
Capt Crépeau	SCM	83 NDA	Disobeyed to a lawful command of a superior officer	Stay of proceedings		Québec, QC	14 Aug 2020	French
		129 NDA	Conduct to the prejudice of good order and discipline					
		85 NDA	Behaved with contempt toward a superior officer					
A/Slt Demers	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Fine of \$1500	Esquimalt, BC	09 Dec 2020	French
Maj Duquette	SCM	130 NDA (271 CCC)	Sexual assault	Guilty	Reduction in rank to Capt	Valcartier, QC	18 June 2020	French
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		95 NDA	Abuse of subordinate	Guilty				
LS Edwards (Retrial)	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Stay of proceedings		Halifax, NS	14 August 2020	English
Pte Fischl	SCM	90 NDA	Absented himself without leave	Guilty	Fine of \$200	Gatineau, QC	08 July 2020	English

ANNEX A:

COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Gnr Fontaine	GCM	130 NDA (5(1) of the CDSA)	Traffic.	Stay of proceedings		Gagetown, NB	10 Sept 2020	French
		130 NDA (5(2) of the CDSA)	Possession for the purpose of traffic					
		130 NDA (5(2) of the CDSA)	Possession for the purpose of traffic					
Sgt Holt	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Fine of \$200	Red Deer, AB	26 Oct 2020	English
Capt Iredale	GCM	130 NDA (271 CCC)	Sexual assault	Stay of proceedings		Esquimalt, BC	11 Sept 2020	English
		130 NDA(271 CCC)	Sexual assault					
		130 NDA (271 CCC)	Sexual assault					
		129 NDA	Conduct to the prejudice of good order and discipline					
		129 NDA	Conduct to the prejudice of good order and discipline					
		129 NDA	Conduct to the prejudice of good order and discipline					
PO2 Isabelle	GCM	Charges 1 to 12: 130 NDA (366(1) CCC)	Forgery	Guilty of charge 1	Severe reprimand and fine of \$3000	Esquimalt, BC	29 May 2020	English
		Charges 13 to 24: 130 NDA (368(1) CCC)	Uttering forged document	Guilty of charge 13				
		Charge 25: 129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
				All other charges were withdrawn				

ANNEX A:

COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
Pte Kanaar	SCM	90 NDA	Absented himself without leave	Guilty	Reprimand and a fine of \$300	Edmonton, AB	21 July 2020	English
		90 NDA	Absented himself without leave	Withdrawn				
		90 NDA	Absented himself without leave	Withdrawn				
Pte Koutsogiannis	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Severe reprimand and fine of \$4000	Gatineau, QC	13 July 2020	English
Sgt Lévesque	GCM	77(f) NDA	Offence against the property or person of any inhabitant or resident of a country in which he is serving	Withdrawn	Imprisonment for 3 months and reduction in rank to Cpl	Valcartier, QC	02-06 Nov 2020	French
		130 NDA (87 CCC)	Pointed a firearm at another person	Guilty				
		93 NDA	Behaved in a disgraceful manner	Withdrawn				
		130 NDA (264.1 CCC)	Uttering threats	Withdrawn				
		129 NDA	An act to the prejudice of good order and discipline	Guilty				
		130 NDA (320(13) CCC)	Dangerous operation of a conveyance	Withdrawn				
		111 NDA	Improper driving of vehicle	Guilty				
		130 NDA (430 CCC)	Mischief	Withdrawn				
		93 NDA	Behaved in a disgraceful manner	Withdrawn				
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
Pte MacDonald	SCM	86(a) NDA	Quarrelled with a person subject to the Code of Service Discipline	Guilty	15 days confined to barracks	Meaford, ON	10 March 2021	English
Sgt Morissette	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Guilty	Severe reprimand and a fine of \$2000	Valcartier, QC	03 July 2020	French

ANNEX A:

COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
MCpl Penner	SCM	87 NDA	Broke out of barracks	Guilty	Reduction in rank to Pte and a fine of \$1500	Edmonton, AB	07 Dec 2020	English
		97 NDA	Drunkenness	Guilty				
		97 NDA	Drunkenness	Guilty				
Sgt Pépin	GCM	114 NDA (alternate to charges 2, 3)	Stealing when entrusted by reason of his employment, with the custody, control or distribution of the thing stolen	Guilty	Reprimand and a fine of \$300	Montréal, QC	03 Feb 2021	French
		115 NDA (alternate to charges 1, 3)	Received property obtained by the commission of a service offence, knowing the property to have been so obtained	Withdrawn				
		129 NDA (alternate to charge 1, 2)	An act to the prejudice of good order and discipline	Stay of proceedings				
		124 NDA	Negligently performed a military duty imposed on him	Withdrawn				
Sgt Proulx	GCM	83 NDA	Disobedience of a lawful command of a superior officer	Stay of proceedings	N/A	Gatineau, QC	24 Nov 2020	French
		83 NDA	Disobedience of a lawful command of a superior officer					
		85 NDA	Behaved with contempt toward a superior officer					
		129 NDA	Conduct to the prejudice of good order and discipline					
Pte Robertson	SCM	130 NDA (271 CCC)	Sexual assault	Not guilty	21 days confinement to barracks and a fine of \$1900	Petawawa, ON	13 Oct 2020	English
		93 NDA	Behaved in a disgraceful manner	Guilty				

ANNEX A:

COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location (CM)	Dates	Language
OCdt Sangha	SCM	129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn	Fine of \$3000	Toronto, ON	06 Oct 2020	English
		129 NDA	Conduct to the prejudice of good order and discipline	Guilty				
		129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn				
		85 NDA	Behaved with contempt towards a superior officer	Guilty				
		85 NDA	Behaved with contempt towards a superior officer	Withdrawn				
Sgt Thibault (Retrial)	SCM	130 NDA (271 CCC)	Sexual assault	Guilty	Imprisonment of 18 months	Valcartier, QC	10-18 Feb 2021	French
Cpl Watson	SCM	85 NDA	Insubordinate behaviour	Guilty	Fine of \$500	Petawawa, ON	13 Oct 2020	English
		85 NDA	Insubordinate behaviour	Guilty				
		86 NDA	Fought with a person subject to the code of service discipline	Guilty				

ANNEX B:

APPEALS TO THE COURT MARTIAL APPEAL COURT OF CANADA

CMAC	Appellant	Respondent	Type of Appeal	Proceedings	Result	Dates	Citation
598	Her Majesty the Queen	Lt Banting	Legality of finding		Appeal dismissed	06 Nov 2019 ¹	2019 CMAC 5
				Motion for cost	Award of party-and-party costs	22 Apr 2021	2020 CMAC 2
602	Cpl McGregor	Her Majesty the Queen	Legality of finding and sentence		Appeal dismissed	31 Dec 2020	2020 CMAC 8
603	MCpl Pett	Her Majesty the Queen	Legality of finding		Appeal abandoned by Appellant	23 Apr 2020	
604	Capt Renaud	Her Majesty the Queen	Legality of finding		Appeal dismissed	17 Nov 2020	2020 CMAC 5
605	Capt Duquette	Her Majesty the Queen	Legality of finding and sentence		Ongoing		
				Motion for a stay of the order to reduce rank	Dismissed	29 Oct 2020	2020 CMAC 4
				Motion for an extension of time within which to serve and file the Appellant's Memorandum of Fact and Law	Dismissed	17 Nov 2020	2020 CMAC 6
				Motion seeking leave to file a Memorandum of Fact and Law in excess of 30 pages	Moot	17 Nov 2020	
				Motion seeking rescission of the Court's Order from 17 Nov 2020	Granted	10 Dec 2020	2020 CMAC 7
606	Her Majesty the Queen	LS Edwards	Legality of finding		Ongoing		
				Motion for consolidation of Court files CMAC-606, CMAC-607, CMAC-608 and CMAC-609	Granted ²	19 Oct 2020	2020 CMAC 3
607	Her Majesty the Queen	Capt Crépeau	Legality of finding		Ongoing		
				Motion for consolidation of Court files CMAC-606, CMAC-607, CMAC-608 and CMAC-609	Granted	19 Oct 2020	2020 CMAC 3
608	Her Majesty the Queen	Gunner Fontaine	Legality of finding		Ongoing		
				Motion for consolidation of Court files CMAC-606, CMAC-607, CMAC-608 and CMAC-609	Granted	19 Oct 2020	2020 CMAC 3

¹ As reported in previous Annual report of 2019-2020.

² CMAC 606, 607, 608 and 609 are now referred to as *R v Edwards et al.*

ANNEX B: APPEALS TO THE COURT MARTIAL APPEAL COURT OF CANADA

CONTINUATION

CMAC	Appellant	Respondent	Type of Appeal	Proceedings	Result	Dates	Citation
609	Her Majesty the Queen	Capt Iredale	Legality of finding		Ongoing		
				Motion for consolidation of Court files CMAC-606, CMAC-607, CMAC-608 and CMAC-609	Granted	19 Oct 2020	2020 CMAC 3
610	Her Majesty the Queen	Cpl Christmas	Legality of finding		Ongoing		
				Motion for consolidation of files CMAC-610, CMAC-612 and CMAC 614.	Order expediting the proceedings and adjourning CMAC-610 Sine Die	19 Jan 2021	
					Considering the stay in the proceedings of CMAC-610, it is to be excluded in all further Court filings in relation to the appeals CMAC-612 and CMAC-614	26 Jan 2021	
611	S3 Champion	Her Majesty the Queen	Custody Review Hearing		Ongoing		2021 CMAC 1
				Motion to proceed despite mootness	Granted	19 Feb 2021	
612	Her Majesty the Queen	Sgt Proulx	Legality of finding		Ongoing		
				Motion for consolidation of files CMAC-610, CMAC-612 and CMAC 614.	Partially granted		
					Order expediting the proceedings and adjourning CMAC-610 Sine Die	19 Jan 2021	
613	Cpl Lévesque	Her Majesty the Queen	Legality of finding		Ongoing		
614	Her Majesty the Queen	MCpl Cloutier	Legality of finding		Ongoing		
				Motion for consolidation of files CMAC-610, CMAC-612 and CMAC 614.	Partially granted		
					Order expediting the proceedings and adjourning CMAC-610 Sine Die	19 Jan 2021	
615	Sgt Pépin	Her Majesty the Queen	Legality of finding		Ongoing		
616	Sgt Thibault	Her Majesty the Queen	Legality of finding		Ongoing		

ANNEX C:

APPEALS TO THE SUPREME COURT OF CANADA

SCC #	Appellant	Respondent	Type of Appeal	Result
39543	Cpl McGregor	Her Majesty the Queen	Legality of Finding (appeal by leave)	Ongoing

ANNEX D

CUSTODY REVIEW HEARINGS

Accused	Date	Offences		Decision
S3 Champion	13 Nov 2020	97 NDA	Drunkenness	Released with conditions
	15 Nov 2020	101.1 NDA	Breach of conditions	