

Director of Military Prosecutions
National Defence Headquarters
Major-General George R. Pearkes Building
101 Colonel By Drive
Ottawa ON K1A 0K2

0160-8-1243-01-0001 (DMP)

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**DIRECTION REGARDING THE IMPLEMENTATION OF
THE STATEMENT OF PRINCIPLES AND PRESUMPTIONS
FOR THE EXERCISE OF CONCURRENT JURISDICTION
BY CANADIAN PROSECUTING AUTHORITIES**

References: A. Report of the Third Independent Review of the *National Defence Act* (NDA), 30 April 2021 – recommendations #19 and 20
B. Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities, Federal-Provincial-Territorial Heads of Prosecution Committee, 1 November 2023
C. DMP Letter - Re: Interim Handling of Sexual Assault and Other Criminal Offences of a Sexual Nature Subject to Concurrent Jurisdiction, 18 January 2024
D. 0160-8-06520-00 (DMP) Interim Direction Regarding the Implementation of Madame Arbour Interim Recommendation, 26 November 2021

Context

1. In response to recommendations #19 and 20 of the Report of the Third Independent Review of the *National Defence Act* (NDA) (reference A), and in collaboration with the Federal-Provincial-Territorial Heads of Prosecution, I have adopted the Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities (reference B).
2. Notwithstanding reference B, and consistent with my interim direction at reference D implementing Madame Arbour's interim recommendation to no longer prosecute *Criminal Code* sexual offences in the military justice system, I have informed the Federal-Provincial-Territorial Heads of Prosecution Committee of my approach related to those offences (reference C).
3. This is my direction to the Canadian Military Prosecution Service (CMPS) regarding the implementation of reference B.

Direction

4. All military members of the CMPS must read and familiarize themselves with references B-D.

Initiation of Consultations between Prosecuting Authorities

5. Except for files falling within references C and D, all files sent to the CMPS for legal advice, or charges laid and referred to the Director of Military Prosecutions (DMP) for prosecution by court martial, will be assessed against the principles and presumptions contained at reference B at the first available opportunity.

6. Paragraphs 15 and 17 of reference B provide for specific instances where a consultation between prosecuting authorities must be initiated before the DMP exercises jurisdiction over cases that involve an offence subject to concurrent jurisdiction.¹ Those paragraphs read as follows:

15. Unless otherwise agreed following a consultation between prosecuting authorities, the appropriate civilian prosecution service will assume jurisdiction to prosecute the following offences:

- a. an offence committed in Canada which impacted any civilian or their property;
- b. an offence committed outside Canada which impacted any Canadian civilian or their property;
- c. a family violence offence;
- d. an offence committed with the collaboration of a civilian; and,
- e. an offence committed by a civilian who is subject to the CSD by operation of section 60(1)(f) or 60(1)(j) of the NDA.^[2]

[...]

17. A representative of the DMP will initiate a consultation between prosecuting authorities whenever a military victim has expressed a preference for the case to proceed in the civilian justice system.

7. All files that fall within paragraphs 15 or 17 of reference B will be brought to the attention of the Deputy Director of Military Prosecutions – Operations (DDMP Ops) as soon as possible.

¹ See the definitions contained at reference B for the expressions “consultation between prosecuting authorities” and “offence subject to concurrent jurisdiction”.

² 60(1) The following persons are subject to the Code of Service Discipline: [...]

(f) a person, not otherwise subject to the Code of Service Discipline, who accompanies any unit or other element of the Canadian Forces that is on service or active service in any place; [...]

(j) a person, not otherwise subject to the Code of Service Discipline, while serving with the Canadian Forces under an engagement with the Minister whereby the person agreed to be subject to that Code.

8. The DDMP Ops will either:
 - a. redirect the file to allow the appropriate civilian prosecution service to assume jurisdiction; or
 - b. initiate a consultation between prosecuting authorities, if they believe the case should proceed in the military justice system.

9. In addition to the instances covered in paragraphs 15 and 17, paragraph 19 of reference B provides for a consultation whenever a prosecuting authority is unsure about which jurisdiction (civilian or military) is best suited to deal with the matter. The DDMP Ops will initiate a consultation between prosecuting authorities in such cases.

10. All consultations between prosecuting authorities initiated by a civilian prosecution service will be referred to the DDMP Ops as soon as possible.

Conduct of Consultations between Prosecuting Authorities

11. Unless otherwise directed by me, all consultations between prosecuting authorities will be conducted by, or under the direction of, the DDMP Ops.

12. The DDMP Ops may delegate a military prosecutor to conduct any consultations between prosecuting authorities in a specific case.

13. All consultations between prosecuting authorities will be guided by the factors laid out at paragraph 20 of reference B. Paragraph 20 reads as follow:

20. Decisions about assuming prosecutorial jurisdiction over offences subject to concurrent jurisdiction should be guided by the following non-exhaustive list of factors:
 - a. the degree of public interest in a potential prosecution as assessed by the civilian prosecuting authority;
 - b. the degree of public interest in a military prosecution as assessed by the military prosecution service;
 - c. the views of any victim;
 - d. whether the accused, the victim, or both, are members of the Canadian Armed Forces;
 - e. geographic considerations, such as the location of necessary witnesses;
 - f. differences in sentencing consequences, e.g., mandatory sentencing provisions;

- g. differences in the availability of alternatives to prosecution; and
- h. the potential impact that an assumption of prosecutorial jurisdiction may have on public confidence in the administration of justice.

14. Any disagreement will be resolved in accordance with paragraph 21 of reference B. Paragraph 21 provides that whenever there is a disagreement over which prosecuting authority (civilian or military) is best suited to deal with the case that is not resolved through a consultation between prosecuting authorities, the appropriate civilian prosecution service's decision about whether to assume jurisdiction over the prosecution will govern.

Restrictions on Recommendations to Lay Charges and on Preferring Charges

15. For any files that fall within paragraphs 15 or 17 of reference B, military prosecutors may only recommend the laying of charges, or prefer charges, if:

- a. the file contains a written record that a consultation between prosecuting authorities has occurred; and
- b. the consultation has led to a determination that the DMP will assume jurisdiction.



Dylan Kerr
Colonel
Director of Military Prosecutions

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