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# DMP ANNUAL REPORT 2023-2024

Canada 

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## MESSAGE FROM THE DIRECTOR OF MILITARY PROSECUTIONS

I am pleased to present the third Annual Report since my appointment on 29 June 2021. This reporting period marked a return to normal staffing levels among Regular and Reserve Force members, and of civilian support staff in the Canadian Military Prosecution Service (CMPS).

The combination of the implementation Bill C-77 in June 2022 with my decision to implement Madame Louise Arbour's interim recommendation in November 2021 has created a temporary reduction in the number of cases being referred to the CMPS and prosecuted by court martial. I expect that this temporary reduction will continue over the next two years before we see a return to historical case loads.



In November 2023, the Federal-Provincial-Territorial Heads of Prosecution Committee adopted the Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities in response to recommendations 19 and 20 of the Report of the Third Independent Review of the *National Defence Act*. The statement standardizes the approach to concurrent jurisdiction decisions among the various prosecution services across Canada and will contribute to better cooperation between the military and criminal justice systems.

I continue to be exceptionally proud of my team of dedicated, professional military prosecutors and support staff. The CMPS is a highly effective service that is fully capable of meeting the demands of the Canadian Armed Forces and the Canadian public now and in the years to come.

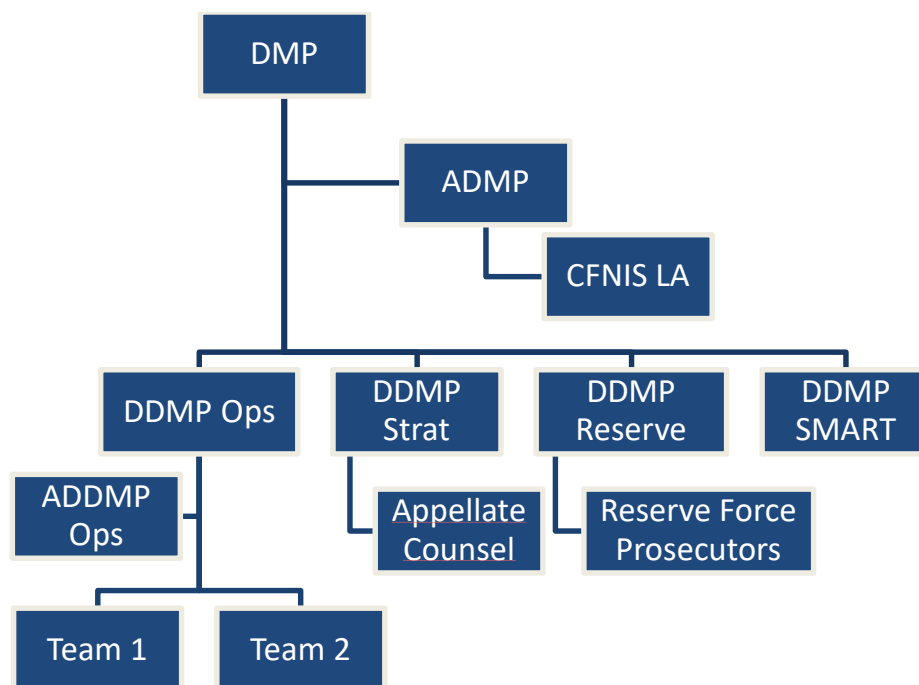
*Ordo per Justitia*

A handwritten signature in blue ink that reads "Dylan Kerr".

Colonel Dylan Kerr, CD  
Director of Military Prosecutions

## 1.1 Structure of the Canadian Military Prosecution Service

1. The CMPS structure changed during the reporting period. Previously, Regional Military Prosecutors (RMPs) were assigned to one of five Regional Offices. As of July 2023, RMPs are now titled Military Prosecutors, and the Regional Office structure has been removed. All Military Prosecutors are now divided into two teams (Team One and Team Two). Prosecutors and administrative legal assistants were divided between the two teams and a prosecutor has been identified in each team to act as the team lead. The organisational chart is now as follows:



### DMP

2. The Director of Military Prosecutions (DMP) is the senior military prosecutor in the Canadian Armed Forces (CAF). He is appointed by the Minister of National Defence (MND) for a fixed term, pursuant to subsection 165.1(1) of the *National Defence Act* (NDA).<sup>1</sup> Under the NDA, the DMP is responsible for preferring 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 Military Police. The DMP represents the CAF at custody review hearings before military judges and the CMAC.

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

3. 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 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 CMPS, is headquartered in Ottawa.

### **ADMP**

4. The Assistant Director of Military Prosecutions (ADMP) is responsible to assist the DMP in the corporate governance of the CMPS. The ADMP also fulfils the responsibilities of the DMP in his absence and supervises the CFNIS Legal Advisor.

### **DDMPs**

5. The roles of the Deputy Directors of Military Prosecutions (DDMPs) are:

- a. The DDMP Operations (DDMP Ops) is responsible for the management of the court martial calendar and file assignments. DDMP Ops supervises and mentors the Military Prosecutors;
- b. The DDMP Strategic (DDMP Strat) supervises the Appellate Counsel. DDMP Strat tracks all matters of national interest occurring at the trial level and develops standardized legal positions on key areas of law. DDMP Strat may also appear as counsel on behalf of the MND for matters at the CMAC and SCC;
- c. The DDMP Reserves (DDMP Res) is responsible for the overall supervision and management of Reserve Force prosecutors; and
- d. The DDMP for the Sexual Misconduct Action Response Team (DDMP SMART) is an experienced Reserve Force prosecutor and is primarily responsible for mentoring Military Prosecutors in the performance of their duties related to serious sexual misconduct prosecutions.

### **ADDMP Ops**

6. The Assistant DDMP Ops (ADDMP Ops) supports the DDMP Ops in supervising and mentoring the Military Prosecutors. The ADDMP Ops acts as DDMP Ops during absences.

### **Appellate Counsel**

7. 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.

## **CFNIS Legal Advisor**

8. 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.

## **Military Prosecutors**

9. Military Prosecutors are divided between Team 1 and Team 2. Each team has one prosecutor acting as the Team Lead. Team Leads are responsible to manage the day-to-day operations of their group and to supervise the civilian administrative support staff assigned to their team. The CMPS establishment provides for 9 Regular Force Military Prosecutors.

10. Military Prosecutors 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 the military police. From time to time, they may participate in appellate work.

## **Reserve Force Prosecutors**

11. The CMPS relies on 9 experienced civilian prosecutors who are members of the Reserve Force. These members consist of the DDMP Reserves, the DDMP SMART, and seven prosecutors who assist their Regular Force counterparts in the prosecution of cases at courts martial.

## **1.2 CMPS Personnel Update**

### **Regular Force**

12. The CMPS integrated two new Regular Force legal officers as Military Prosecutors this reporting period, both posted in the National Capital Region. One Military Prosecutor retired and released from the CAF.

13. For a significant portion of the year, the CMPS operated with seven Military Prosecutors due to two prosecutors being on extended leave.

### **Reserve Force**

14. One new prosecutor joined the Reserve Force team this reporting period.

## Civilian Personnel

15. CMPS continued to rely on a term contract to fill one long term vacancy that commenced during the last reporting period and lasted for most of this year. As a result, the CMPS operated with a full complement of civilian staff during this reporting period.

### 1.3 Training and Continuing Legal Education

16. As in previous years, the DMP maintained the training of members of the CMPS as one of the top priorities. Aside from the annual JAG Continuing Legal Education (CLE) workshop, the CMPS continues to rely heavily on external organizations to fulfill most of its training requirements.

17. During this reporting period, CMPS legal officers participated in legal education programs delivered by several organizations. The table provides an overview of the training received this year:

Course title	Provider	Number of Attendees
Artificial Intelligence (online)	The Advocates' Society	1
Dealing with Difficult Counsel (online)	The Advocates' Society	1
Objection! (online)	The Advocates' Society	2
Pozner on Cross (online)	The Advocates' Society	3
Taking the Surprise Out of Trial (online)	The Advocates' Society	1
Assises criminelles (22e édition de l'École des poursuivants)	Director of Criminal and Penal Prosecutions (Quebec)	1
28 <sup>th</sup> Annual Conference	International Association of Prosecutors	2
National Criminal Law Program	Federation of Law Societies of Canada	9
Plaidoyer en français (online)	Law Society of Ontario	1
C-46 and Drug Impairment (online)	Le Barreau du Québec	1
Search and Seizure	Ontario Crown Attorneys' Association	1
Sentencing	Ontario Crown Attorneys' Association	2
27 <sup>th</sup> Annual Course on Written Advocacy	Osgoode Hall Law School	2
Drafting and Reviewing Search Warrants (online)	Osgoode Hall Law School	1
Evidence Law Update (online)	Osgoode Hall Law School	4
Intensive Trial Advocacy Workshop	Osgoode Hall Law School	1
The Civil Litigator's Guide to Evidence (online)	Osgoode Hall Law School	1



Course title	Provider	Number of Attendees
Search and Seizure Law in Canada (online)	Osgoode Hall Law School	1
Tech Crime and Electronic Evidence (online)	Osgoode Hall Law School	2
Strangulation Education/Prevention	Ottawa Police Service	2
Technological Evidence: Its Use and Developments (online)	Quebec Legal Information Society	1
Thinking, Fast and Slow (online)	University of Zurich	2

18. The CMPS also provides training to the Military Police, the OJAG and other CAF entities. During the reporting period, this included the mentoring and supervision by Military Prosecutors 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 OJAG legal officers and to other members of the CAF. Finally, the CMPS provided an instructor to teach on the Military Police Investigator Course at the Military Police Academy.

#### 1.4. Temporary Duty (TD)

19. Military Prosecutors are called upon to travel for significant periods of time to conduct courts martial and appeals, or to attend training events. This year, members of the CMPS were on TD for a total of 651 days. Here is a breakdown of the types of TD:<sup>2</sup>

	Court Martial Related TD	Appeal Related TD	Training Related TD	Other TD	Total TD
HQ (8 officers)	10	4	69	54	137
Reg F Prosecutors (10 officers)	379	14	72	0	465
Res F Prosecutors (7 officers)	38	0	11	0	49
<b>Total</b>	<b>427</b>	<b>18</b>	<b>152</b>	<b>54</b>	<b>651</b>

<sup>2</sup> The total number of TD days for this reporting period does not account for TD days spent by Military Prosecutors while attending the Legal Officer Qualification Course (LOQC), which is a necessary training requirement for all legal officers to become occupationally qualified and provide legal services as members of the OJAG.



## CHAPTER 2 • YEAR IN REVIEW

### 2.1 Overview

20. The CMPS provided legal advice in response to 100 requests for pre-charge advice. The DMP received 46 new referrals during the reporting period and completed a total of 46 courts martial. Nine appeals were completed at the CMAC and one appeal was concluded at the SCC. One custody review hearing took place during this reporting period.

### 2.2 Evolution of the Military Justice System

21. The implementation of Bill C-77, brought into force on 20 June 2022, led to significant changes to the military justice system. The enactment of service infractions, dealt with through summary hearings, has had an impact on the number and types of cases referred to courts martial. There is now a much clearer divide between those matters that can be appropriately dealt with at the unit level and those that warrant a court martial. The new system also reduces the post-charge delay, as cases no longer transit through a referral authority. The charge layer now refers charges directly to the DMP.

22. Since the implementation of Bill C-77, the CMPS now provides pre-investigation advice pursuant to the new requirement contained at QR&O 102.02(2) to all members of the military police and to the CFNIS. Since July 2022, all intake for requests for any type of CMPS legal advice is performed electronically through a centralized e-mailbox. This reporting period marks the first year where all new cases received by the CMPS operated under the new regime.

23. Under the new intake process, incoming requests for advice are first reviewed by the DDMP Ops, or a delegate (hereafter DDMP Ops), who either deals with the matter directly, or assigns a prosecutor to handle the request.

24. Whenever possible and appropriate, DDMP Ops will reorient the case toward the Summary Hearing System. To do so, DDMP Ops reviews the summary of the facts provided by the investigator making the request and evaluates whether there is a possibility that the case would proceed at court martial. If it would not, then DDMP Ops clearly indicates that if the case was to be referred by a charge layer, the DMP would not prefer it for trial by court martial. This screening effort has proven to be very effective in ensuring that cases that can adequately be handled at the unit level are not unnecessarily pursued at court martial. This measure promotes the expeditious handling of alleged misconduct at the lowest possible level, while ensuring the maintenance of discipline, efficiency, and morale of the CAF.

## 2.3 Agreement on Principles and Presumptions for the Exercise of Concurrent Jurisdiction

25. In response to recommendations #19 and 20 of the Report of the Third Independent Review of the *National Defence Act* (NDA), and in collaboration with the Federal-Provincial-Territorial Heads of Prosecution, the DMP adopted the Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities.<sup>3</sup>

26. Notwithstanding this Statement, and consistent with the DMP's interim direction implementing Madame Arbour's interim recommendation to no longer prosecute *Criminal Code* sexual offences in the military justice system,<sup>4</sup> the DMP informed the Federal-Provincial-Territorial Heads of Prosecution Committee of his approach related to those offences.<sup>5</sup>

27. The DMP then issued the Direction regarding the implementation of the Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities.<sup>6</sup> This direction, along with the Statement, will contribute to a consistent approach to military-civilian jurisdictional issues and help to inform the Canadian public on the relationship between the military and criminal justice systems.

## 2.4 Case Management System (CMS)

28. 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 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. CMS continues to be improved periodically.

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<sup>3</sup> Federal-Provincial-Territorial Heads of Prosecution Committee - Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities, 1 November 2023

<sup>4</sup> 0160-8-06520-00 (DMP) Interim Direction Regarding the Implementation of Madame Arbour Interim Recommendation, 26 November 2021

<sup>5</sup> DMP Letter - Re: Interim Handling of Sexual Assault and Other Criminal Offences of a Sexual Nature Subject to Concurrent Jurisdiction, 18 January 2024

<sup>6</sup> 0160-8-1243-01-0001 (DMP) Direction regarding the implementation of the Statement of Principles and Presumptions for the exercise of concurrent jurisdiction by Canadian Prosecuting Authorities, 29 February 2024

## 2.5 Files in Numbers

### Requests for pre-investigation legal advice and for legal advice required in the course of an ongoing investigation

29. The CMPS received 119 requests for pre-investigation legal advice. Of those, DDMP Ops reoriented 44 for handling at the unit level either through the summary hearing system or by other available means. A further 4 requests were redirected toward the civilian justice system as they involved allegations of *Criminal Code* sexual offences.

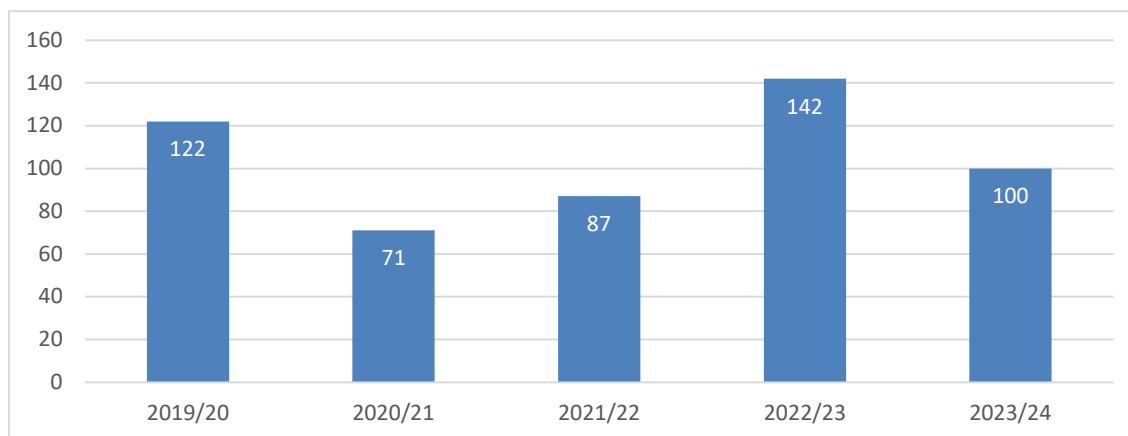
30. The CMPS received 56 requests for legal advice required in the course of an ongoing investigation. Of those, DDMP Ops reoriented 13 for handling at the unit level either through the summary hearing system or other available tool. A further 2 requests were redirected toward the civilian justice system as they involved allegations of *Criminal Code* Sexual Offences.

### Pre-charge Advice

31. The CMPS received 210 requests for pre-charge advice. Of those, DDMP Ops reoriented 90 requests for handling at the unit level upon intake. A further 12 files were redirected toward the civilian justice system as they involved allegations of *Criminal Code* sexual offences. The remaining 98 files were assigned to a Military Prosecutor for full pre-charge review.

32. In addition to the 98 new requests for pre-charge advice assigned to Military Prosecutors, an additional 13 requests were carried over from the previous reporting period. Of the 111 total requests, 100 pre-charge advice files were completed during this reporting period, leaving 11 files still pending at the end of the current reporting period.

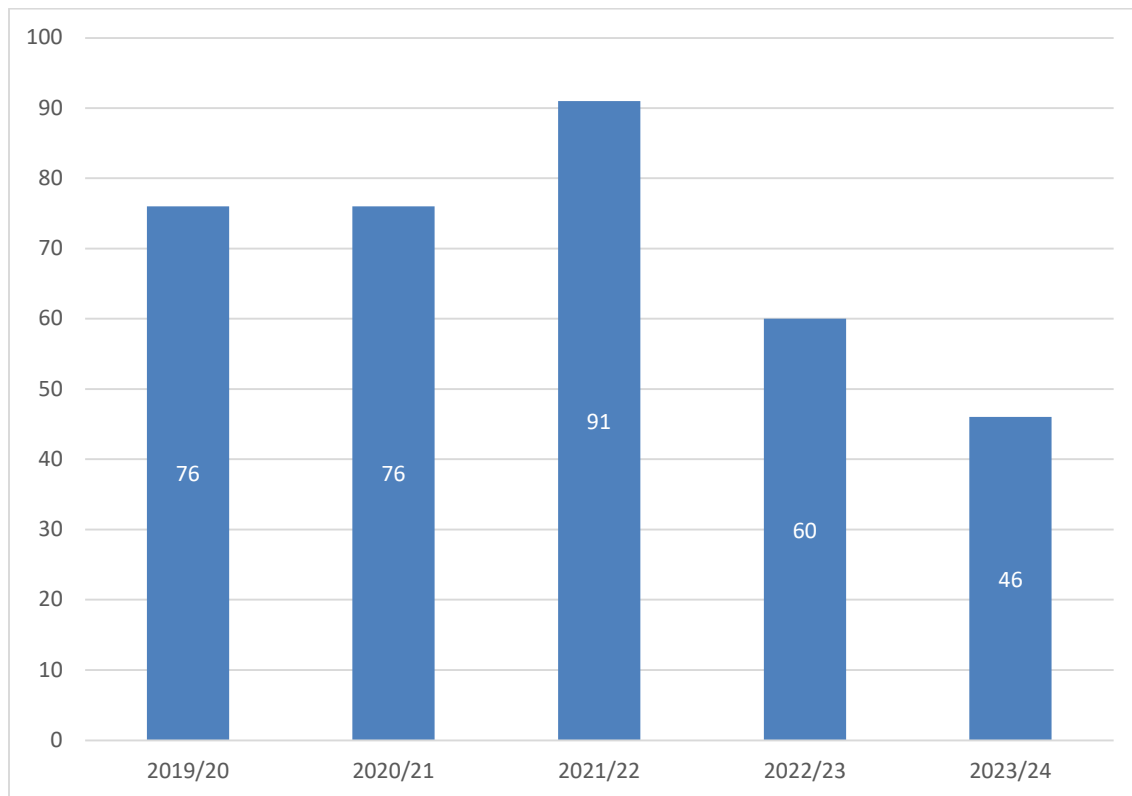
33. The following chart shows the number of completed pre-charge requests for the last five reporting periods:



### Number of Referrals received during the reporting period

34. During this reporting period the DMP received 46 new referrals.

35. The following chart shows the number of new referrals received by CMPS for the past five reporting periods:

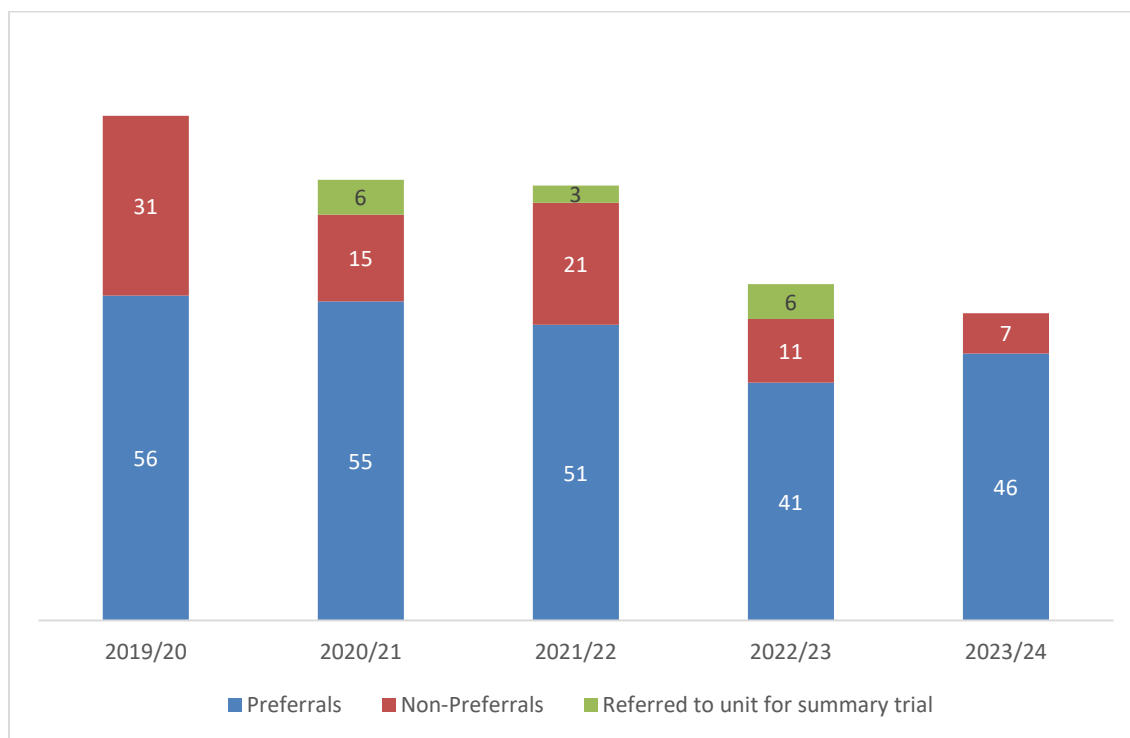


### Preferrals and Non-Preferrals

36. During this reporting period, prosecutors made post-charge decisions in 53 files. Fifteen (15) of those decisions were made on files received before the commencement of this reporting period. As a result, from the 46 referrals received this year, 8 files were still pending a prosecutorial decision at the end of this reporting period.

37. Of the 53 post-charge reviews completed this reporting period, prosecutors preferred at least one charge in 46 files. 7 files were not preferred. The referral rate for this reporting period is therefore 87%.

38. The next figure shows the number of preferrals and non-preferrals for the past five reporting periods. Previous years also show the number of referral of charges to the unit for summary trial, an option that no longer exists post C-77:



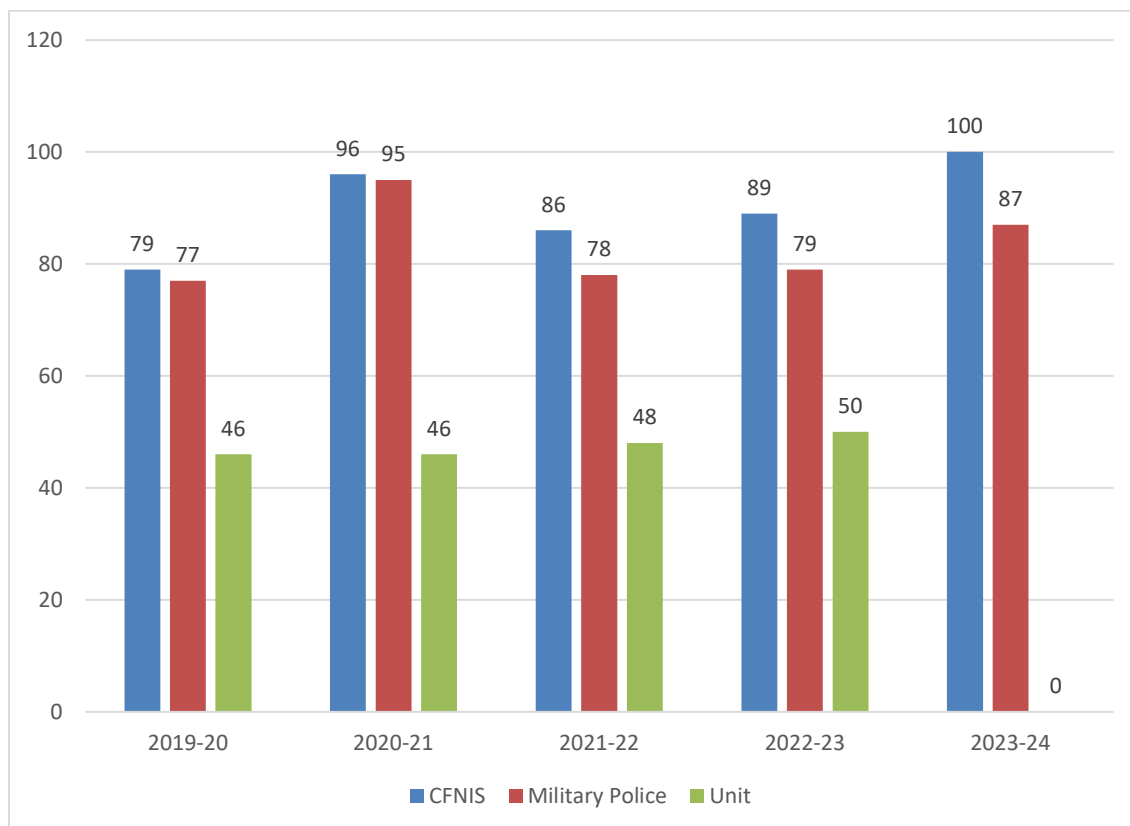
### Preferral Rates by Investigative Agency

39. The incident giving rise to the charge(s) may technically 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. Post Bill C-77, unit investigations are rarely appropriate for incidents that warrant a court martial. While the military police may investigate service infractions in certain circumstances,<sup>7</sup> it should be extremely rare for a unit investigation to lead to the laying of service offence charges. If the allegation is serious enough to potentially warrant a court martial, then it should be investigated by a professionally trained police investigator.

40. The rate of preferrals varies between investigative agencies as their investigators have different levels of experience, proficiency, and training. Non-preferrals may also occur from material changes related to the case that arise between the laying of the charges and the completion of the post-charge review.

<sup>7</sup> E.g.: It may be preferable for the military police to investigate certain allegations of a service infraction committed by a senior officer to ensure an actual and perceived independent investigation.

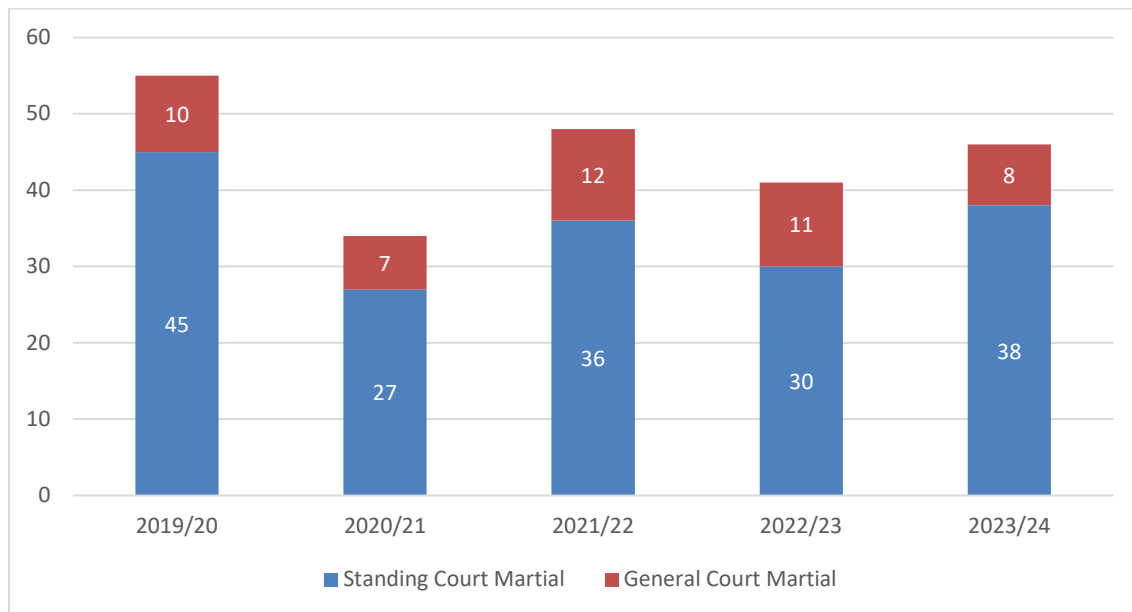
41. During this reporting period, the preferral rates by investigative agency were as follows:
- a. Files investigated by the CFNIS: 100% (5 of 5 files were preferred);
  - b. Files investigated by the regular military police: 87% (41 of 47 files were preferred); and
  - c. Files investigated by a unit investigator: 0% (0 of 1 file was preferred).
42. The next figure provides an overview of preferral rates by investigative agency over the past five reporting periods:



### Completed Courts Martial

43. 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.
44. A total of 46 courts martial were completed during this reporting period. Of those, 38 were Standing Courts Martial and 8 were General Courts Martial. Additionally, in 4 cases, all charges that had originally been preferred were completely withdrawn before the commencement of the trial, resulting in the conclusion of the case.

45. The next figure illustrates the number of completed courts martial by type for the last five reporting periods:



## 2.6 Court Martial Cases

46. Annex A provides an overview of all the courts martial completed during this reporting period.

## 2.7 Notable Appeals

47. The complete list of cases completed at the CMAC is included at Annex B. The list of SCC cases is found at Annex C.

### ***R v Crouch, 2023 CMAC 11***

48. The Prosecution appealed Corporal Crouch's acquittal by General Court Martial on two charges of indecent acts pursuant to s. 130 of the NDA and s. 173 of the *Criminal Code*. Corporal Crouch was alleged to have exposed himself and masturbated in front of a female friend and colleague. The only witnesses to testify were the complainant and Corporal Crouch. The latter denied the allegations.

49. The Appellant asserted the military judge erred by: (1) allowing impermissible evidence of myths and stereotypes in relation to the conduct of the complainant; (2) failing to correct a statement made by defence counsel in closing submissions; and, (3) failing to properly instruct the panel in relation to the evidence and the closing submissions.



50. The CMAC dismissed the appeal and upheld the acquittals. The Court did not find the questions posed to the complainant engaged impermissible stereotypes. The military judge correctly instructed the panel that these questions were irrelevant and that questions are not evidence.

51. The CMAC did agree with the position of the Prosecution that defence counsel invited impermissible stereotypical reasoning in their closing submissions, and that the panel instructions as to how to treat these comments could have been more complete. Yet, the Court found that, cumulatively, these errors did not have a material impact on the verdict.

### ***R v Ellison, 2024 CMAC 3***

52. Major Ellison was charged with four fraud-related offences. While acting as Wing Surgeon and Detachment Commander of a CAF Health Services Department in North Bay, ON, he was alleged to have written controlled drug prescriptions in the names of third parties for the benefit of his wife.

53. Major Ellison was acquitted of all charges (*R v Ellison, 2023 CM 5002*) at the conclusion of his Standing Court Martial, held in April 2023. The military judge found that no *prima facie* case had been made out on each charge on the basis that the prosecution had failed to present evidence on some or all essential elements of each offence.

54. The Prosecution appealed this decision arguing that the military judge failed to properly apply the test for a *prima facie* case on each of the charges before the Court, particularly in regard to the element of deprivation, as it applies to fraud offences.

55. The CMAC allowed the appeal, set aside the acquittals, and ordered a new trial. The Court found that the military judge made significant errors in the application of the *prima facie* test. For fraud, the essential elements include proof of dishonest deprivation. Contrary to the position of the military judge, the CMAC reiterated that evidence of risk of deprivation, without evidence of actual deprivation is sufficient to meet the burden of proof required for fraud-related charges. The CMAC determined there was some evidence of risk of deprivation, and that, as a consequence, the military judge was wrong in concluding that the Prosecution had failed to meet the *prima facie* threshold.

### ***R v Vu*, 2024 SCC 1**

56. Private Vu was charged with one count of sexual assault and three voyeurism-related charges. All charges related to a sexual act he performed on an extremely intoxicated complainant. The capacity of the complainant to consent was central to the case.

57. Private Vu was acquitted of all charges at his Standing Court Martial. The Prosecution appealed to the CMAC, arguing that the military judge failed to consider all of the evidence cumulatively and assessed the evidence on the wrong legal principles. A majority of the CMAC dismissed the appeal.

58. The Crown then appealed to the SCC. The hearing took place on 16 January 2024 and focused on two central issues: (1) whether the military judge failed to consider all of the evidence cumulatively in relation to capacity to consent to a sexual act; and, (2) whether the military judge improperly speculated.

59. The appeal was dismissed from the Bench. A majority of six justices found there was no basis to interfere with the military judge's assessment of the evidence. While they agreed that the speculation the military judge engaged in was improper, they were not convinced that it had an impact on the acquittal. This decision highlights the high degree of deference that will be given to trial judges by appellate courts.

60. In her dissent, Justice O'Bonsawin expressed that she would have allowed the appeal, as she was of the view that the military judge did not assess the evidence cumulatively.

### ***R v Edwards et al.*, 2024 SCC 15**

61. The SCC heard this appeal on 16 October 2023. Judgment was rendered on 26 April 2024. The decision affirmed the status of military judges as independent and constitutional.

62. As the date of the SCC decision falls outside of this reporting period, the case summary will be included in the next Annual Report.

## CHAPTER 3 • COMMUNICATION AND OUTREACH

### 3.1 Overview

63. Communication and outreach activities continue to play a vital role in building public confidence in Canada's military justice system. Building on previous years' work, the DMP has pursued engagements with different organizations to further enhance the confidence in Canada's military justice system. These involve key stakeholders in the military justice process, as well as national and international strategic partners and organizations. This Chapter sets out communications and outreach activities pursued by the DMP over the course of the reporting period.

### 3.2 CAF Chain of Command

64. The military justice system exists 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 to advance these objectives, it is imperative that the DMP, and Military Prosecutors within the CMPS, actively and effectively engage the chain of command throughout the court martial process.

65. This reporting period, the DMP, accompanied by a DDMP, visited commanders and commanding officers in Kingston ON, Halifax NS, Greenwood NS, Gagetown NB and Toronto ON. Key discussions during these visits touched upon the investigation and prosecution of service offences post C-77 implementation and the use of the summary hearing process to further unit disciplinary needs.

### 3.3 Military Police

66. It is crucial for CMPS 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 cooperatively, and help to maximize the effectiveness and efficiency of the CMPS as a prosecution service.

67. Over the course of this reporting period, members of CMPS gave presentations for the Military Police Investigator Course at the Military Police Academy, at the annual review for CFNIS detachment commanders, and for the indoctrination course for new CFNIS investigators. These presentations enhanced the knowledge of the military justice system and developments in the law of policing for investigators. The ADMP and DDMP Ops also had regular and meaningful engagement with the Deputy Provost Marshal and other key leaders in the Canadian Forces Military Police Group.

### **3.4 Federal-Provincial-Territorial Heads of Prosecution Committee**

68. The Federal-Provincial-Territorial Heads of Prosecution (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 10 provincial prosecution services, as well as the Director of Public Prosecutions for the Public Prosecution Service of Canada, and the DMP. The mandate of the HoP Committee is to serve as a national forum for the discussion of prosecutions and prosecution-related issues, and to facilitate the exchange of information and best practices on legal and managerial issues among the prosecution services of Canada. Since its inception, the Committee has helped promote assistance and cooperation among prosecution services and facilitated the coordination of national prosecution issues and the adoption of consistent prosecution positions on those issues whenever possible. The HoP Committee also serves as a national advisory body on prosecution issues in Canada, providing a venue where stakeholders can consult and seek the views of the Canadian prosecution community.<sup>8</sup>

69. During this reporting period, the DMP attended the Spring session of the committee in Halifax NS and the Fall session in Yellowknife NWT.

### **3.5 International Association of Prosecutors**

70. The DMP and the ADMP attended the 28<sup>th</sup> International Association of Prosecutors (IAP) Annual Conference and General Meeting from 24-27 September 2023 in London, UK. This Conference also served as the venue for the 5<sup>th</sup> Specialist Network of Military Prosecutors (NMP) Session. This Session provided an opportunity to revitalize the NMP following the COVID-19 pandemic. The Session included three keynote speakers, including the DMP. The DMP discussed how concurrent jurisdiction between civilian and military prosecuting authorities is exercised in Canada and highlighted some of the current challenges that the CMPS faces.

71. The next IAP Annual Conference and General Meeting will be held from 29 September to 2 October 2024 in Baku, Azerbaijan.

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<sup>8</sup> <https://www.ppsc-sppc.gc.ca/eng/tra/tr/05.html>.

## CHAPTER 4 • FINANCES

72. The DMP's operating budget is allocated primarily to operations and is divided into five main categories:

- a. Regular Force Operations and Maintenance;
- b. Civilian Salary and Wages;
- c. Reserve Force Pay;
- d. Reserve Force Operations and Maintenance; and
- e. Court Martial Expenses.

73. Operations and Maintenance includes items such as travel, training costs, general office expenditures, and other costs that support personnel and maintain equipment, but does not include costs associated with a specific court martial. Court Martial Expenses are comprised mainly of the travel costs associated with prosecutors, investigators and prosecution witnesses.

74. 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.

75. The following table provides an overview of the DMP's expenditures for this fiscal year:

Fund	Expenditures
Regular Force Operations & Maintenance	\$139,095
Civilian Salary & Wages	\$439,765
Reserve Force Pay	\$150,592
Reserve Force Operation and Maintenance	\$8,222
Court Martial Expenses	\$264,337
Total	\$1,002,011

76. The next figure illustrates the evolution of the DMP's Operating Budget over the last five reporting periods:



## ANNEX A • COURTS MARTIAL CONCLUDED

Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
Pte Banerjee	SCM	114 NDA	Stealing	NG		Contested trial		Kingston, ON	15-Sep-23	English	
LCol Besemann	SCM	130 NDA (266 Cr. C.)	Assault	NG	Reprimand	Guilty plea / joint submission		Gatineau, QC	12-Jun-23	English	
		129 NDA	An Act to the Prejudice of Good Order and Discipline	G							
PO2 Borys	SCM	95 NDA	Abuse of Subordinates	G	Reprimand; Fine of \$400	Guilty plea / joint submission		Regina, SK	04-May-23	English	
MWO Dacey	SCM	95 NDA	Abuse of Subordinates	G	Reprimand; Fine of \$1000	Guilty plea / joint submission		Edmonton, AB	10-May-23	English	
Cpl Daly	SCM	88 NDA	Desertion	G	Imprisonment for 7 days; Severe Reprimand	Guilty plea / joint submission		Gagetown, NB	30-Jun-23	English	
Cpl Daniel-Awong	SCM	101.1 NDA	Failure to Comply with Conditions	NG		Contested trial		Kingston, ON	18-Nov-23	English	
MS DeMontmorency	SCM	130 NDA (266 Cr. C.)	Assault	NG	Reprimand; Fine of \$2000	Guilty plea / joint submission		Halifax, NS	31-Aug-23	English	
		97 NDA	Drunkenness	G							
Cpl Dolan	SCM	130 NDA (266 Cr. C.)	Assault	G	Reprimand; Fine of \$2500	Guilty plea / contested sentencing		Edmonton, AB	24-Oct-23	English	

<sup>9</sup> Guilty = G; Guilty of related or less serious offence = G (RLSO); Not Guilty = NG; Withdrawn = WD



Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
MCpl Dondaneau	SCM	130 NDA (380(1) Cr. C.)	Fraud	NG	Severe Reprimand; Minor Punishment – 14 days Extra Work and Drill	Contested trial / contested sentencing		Esquimalt, BC	27-Jul-23	English	
		125 NDA	Offences in Relation to Documents	WD							
		125 NDA	Offences in Relation to Documents	G							
		125 NDA	Offences in Relation to Documents	G							
		117(f) NDA	Other Act of a Fraudulent Nature	G							
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	G							
LS Donos	SCM	84 NDA	Striking or Offering Violence to a Superior Officer	WD	Severe Reprimand; Fine of \$2250	Guilty plea / joint submission		Montreal, QC	15-Jan-24	French	
		86 NDA	Quarrels and Disturbances	G							
		130 NDA (266 Cr. C.)	Assault	NG							
Maj Ellison	SCM	130 NDA (374 Cr. C.)	Drawing a Document Without Authority	NG		Contested trial		North Bay, ON	17-Apr-23	English	Yes
		130 NDA (380(1) Cr. C.)	Fraud	NG							
		130 NDA (122 Cr. C.)	Breach of Trust by Public Officer	NG							
		117(f) NDA	Other Act of a Fraudulent Nature	NG							
Cpl Emond	SCM	84 NDA	Striking or Offering Violence to a Superior Officer	NG	Reprimand; Fine of \$1500	Guilty plea / joint submission		Québec City, QC	29-Aug-23	French	
		97 NDA	Drunkenness	G							

Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
Pte Forbes	SCM	130 NDA (267 Cr. C.)	Assault with a Weapon Causing Bodily Harm	G	Severe Reprimand; Fine of \$2500	Guilty plea / joint submission		Gagetown, NB	16-Jan-24	English	
		130 NDA (264.1(1) Cr. C.)	Uttering Threats	NG							
Sgt Garnett	SCM	130 NDA (380(1) Cr. C.)	Fraud	WD	Reprimand; Fine of \$1200	Guilty plea / joint submission		Trenton, ON	06-Feb-24	English	
		130 NDA (367 Cr. C.)	Forgery	WD							
		117(f) NDA	Other Act of a Fraudulent Nature	G							
Pte Gilson	SCM	130 NDA (267 Cr. C.)	Assault Causing Bodily Harm	WD	Reprimand; Fine of \$900	Guilty plea / joint submission		Valcartier, QC	29-Nov-23	French	
		86 NDA	Quarrels and Disturbances	G							
MCpl Gorman	SCM	112 NDA	Improper Use of Vehicles	G	Fine of \$200	Guilty plea / joint submission		Petawawa, ON	23-Jun-23	English	
MCpl Goulding	GCM	130 NDA (271 Cr. C.)	Sexual Assault	WD	Severe Reprimand; Fine of \$4800	Contested trial / contested sentencing		Halifax, NS	10-Nov-23	English	
		130 NDA (271 Cr. C.)	Sexual Assault	G (RLSO) <sup>10</sup>							
		130 NDA (266 Cr. C.)	Assault	WD							
		130 NDA (266 Cr. C.)	Assault	G							
		130 NDA (267 Cr. C.)	Assault	G							
		97 NDA	Drunkenness	G							
WO Guinot	SCM	129 NDA	An Act to the Prejudice of Good Order and Discipline	WD		Contested trial		Bagotville, QC	15-Dec-23	French	
		97 NDA	Drunkenness	NG							
Capt(N) Haley	SCM	90 NDA	Absence Without Leave	G	Fine of \$750	Guilty plea / joint submission		Gatineau, QC	30-Oct-23	English	

<sup>10</sup> Guilty of Assault

Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
MCpl Houde	SCM	130 NDA (271 Cr. C.)	Sexual Assault	NG	Imprisonment for 42 Months	Contested trial / contested sentencing	DNA Sample	Bagotville, QC	29-Feb-24	French	Yes
		130 NDA (271 Cr. C.)	Sexual Assault	NG							
		130 NDA (271 Cr. C.)	Sexual Assault	G							
		130 NDA (271 Cr. C.)	Sexual Assault	G							
Pte Ironeagle	SCM	86 NDA	Quarrels and Disturbances	G	Minor Punishment – 15 days confined to barracks	Guilty plea / joint submission		Edmonton, AB	27-Feb-24	English	
		97 NDA	Drunkenness	WD							
Pte JL	SCM	130 NDA (271 Cr. C.)	Sexual Assault	G	Absolute discharge	Contested trial / contested sentencing		Charlottetown, PEI	03-Apr-23	English	Yes
		93 NDA	Cruel or Disgraceful Conduct	G							
Sgt Kohlsmith	SCM	130 NDA (271 Cr. C.)	Sexual Assault	G	Imprisonment for 36 Months	Contested trial / contested sentencing	DNA Sample	Gatineau, QC / Winnipeg, MB	09-Feb-24	English	Yes
Cpl Laflamme	SCM	130 NDA (380(1) Cr. C.)	Fraud	G	Imprisonment for 45 days	Guilty plea (change mid-trial) / contested sentencing	Restitution in the Amount of \$45,450	St-Jean, QC	25-Oct-23	French	
		83 NDA	Disobedience of a Lawful Command	WD							
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	WD							
Cpl Lavoie	GCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	WD	Severe Reprimand; Fine of \$2000	Guilty plea / contested sentencing		Halifax, NS	01-Jun-23	French	
		90 NDA	Absence Without Leave	G							
Cpl Lirette	SCM	86 NDA	Quarrels and Disturbances	G	Fine of \$500	Contested trial / joint submission		Petawawa, ON	21-Mar-24	French	
Cpl McBride	SCM	108 NDA	Signing Inaccurate Certificate	G	Fine of \$600	Guilty plea / joint submission		Halifax, NS	28-Jun-23	English	

Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
WO McKie	SCM	130 NDA (354 Cr. C.)	Possession of Stolen Property	NG	Absolute discharge	Contested trial / contested sentencing		Edmonton, AB	12-May-23	English	
		130 NDA (354 Cr. C.)	Possession of Stolen Property	NG							
		130 NDA (354 Cr. C.)	Possession of Stolen Property	WD							
		130 NDA (91(2) Cr. C.)	Unauthorized Possession of Prohibited Weapon	G							
Sgt Meeks	SCM	130 NDA (268 Cr. C.)	Aggravated Assault	G (RLSO) <sup>11</sup>	Detention for 30 days	Contested trial / contested sentencing	DNA Sample	Petawawa, ON	27-Oct-23	English	Yes
		130 NDA (266 Cr. C.)	Assault	NG							
		86 NDA	Quarrels and Disturbances	NG							
Pte Mentel	SCM	130 NDA (267 Cr. C.)	Assault Causing Bodily Harm	G	Severe Reprimand; Fine of \$2500	Guilty plea / joint submission		Gagetown, NB	25-Apr-23	English	
Lt(N) Michaud	SCM	130 NDA (266 Cr. C.)	Assault	G	Severe Reprimand; Fine of \$1000	Contested trial / contested sentencing		Halifax, NS	07-Jun-23	French	
		95 NDA	Abuse of Subordinates	G							
		97 NDA	Drunkenness	NG							
Cpl Michel	GCM	127 NDA	Injurious Handling of Dangerous Substances	WD	Reprimand; Fine of \$1200	Guilty plea / joint submission		Montreal, QC	15-Jan-24	French	
		129 NDA	An Act to the Prejudice of Good Order and Discipline	G							
Tpr Nixdorf	SCM	97 NDA	Drunkenness	G	Fine of \$200; Minor Punishment - 14 days Extra Work and Drill	Guilty plea / joint submission		Edmonton, AB	18-Apr-23	English	

<sup>11</sup> Guilty of Assault Causing Bodily Harm

Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
Pte NongQayi	GCM	130 NDA (267 Cr. C.)	Assault with a Weapon	G	Imprisonment for 1 Day; Fine of \$2000	Contested trial / contested sentencing	DNA Sample; Weapons Prohibition for a Period of Three Years	Kingston, ON	20-Oct-23	English	Yes
		130 NDA (264.1 Cr. C.)	Uttering Threats	G							
		130 NDA (264.1 Cr. C.)	Uttering Threats	NG							
		86 NDA	Quarrels and Disturbances	G							
		101.1 NDA	Failure to Comply with Conditions	WD							
Cpl O'Dell	GCM	130 NDA (271 Cr. C.)	Sexual Assault	G	Detention for 42 days	Contested trial / joint submission	SOIRA; DNA Sample	Gagetown, NB	26-Apr-23	English	Yes
Cpl Robertson	SCM	130 NDA (320.14(1)(a) Cr. C.)	Operation of a conveyance while impaired	WD	Reprimand; Fine of \$1000	Guilty plea / joint submission		Toronto, ON	27-Jun-23	English	
		97 NDA	Drunkenness	G							
Pte Sarkar	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	G	Reprimand; Fine of \$1500	Guilty plea / joint submission		Gatineau, QC	20-Jul-23	English	
		85 NDA	Insubordinate Behaviour	G							
S3 Stewart	GCM	130 NDA (271 Cr. C.)	Sexual Assault	NG		Contested trial		Kingston, ON	09-Nov-23	English	Yes
		130 NDA (271 Cr. C.)	Sexual Assault	NG							
S1 Thoo	SCM	130 NDA (266 Cr. C.)	Striking or Offering Violence to a Superior Officer	G	Detention for 14 days	Guilty plea / joint submission		Esquimalt, BC	30-Jan-24	English	
		84 NDA	Assault	NG							

Accused	Type	Offence	Description	Finding <sup>9</sup>	Sentence	Nature of proceedings	Ancillary Orders	Location	Date Completed	Language	Appeal
WO Topp	GCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	G	Severe Reprimand; Fine of \$4000	Guilty plea / contested sentencing		Vancouver, BC	17-Nov-23	English	
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	G							
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	WD							
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	WD							
Cpl Turner	SCM	86 NDA	Quarrels and Disturbances	NG		Contested trial		Edmonton, AB	23-Feb-24	English	
LGen Whelan	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	WD		Contested trial		Gatineau, QC	02-Oct-23	English	
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	WD							
MCpl White	SCM	93 NDA	Cruel or Disgraceful Conduct	NG		Contested trial		Halifax, NS	26-Feb-24	English	
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	NG							
Pte White	SCM	86 NDA	Quarrels and Disturbances	G	Fine of \$500	Guilty plea / joint submission		Shilo, MB	13-Feb-24	English	
Cpl Wilson	GCM	130 NDA (380(1) Cr. C.)	Fraud	WD	Reprimand; Fine of \$800; Minor Punishment – 14 days Extra Work and Drill	Guilty plea / joint submission		Wainwright, AB	09-Jan-24	English	
		117(f) NDA	Other Act of a Fraudulent Nature	G							
Bdr Wolf	SCM	130 NDA (267 Cr. C.)	Assault with a Weapon	NG	Reprimand; Fine of \$3000	Guilty plea / joint submission		Petawawa, ON	11-Oct-23	English	

**ANNEX B • APPEALS CONCLUDED AT THE  
COURT MARTIAL APPEAL COURT**

<b>JUDGEMENTS</b>						
<b>CMAC #</b>	<b>Appellant</b>	<b>Respondent</b>	<b>Type of Appeal</b>	<b>Result</b>	<b>Date of Decision</b>	<b>Citation</b>
623	Sgt Turner	His Majesty the King	Legality of Finding	Dismissed	9 Jun 23	2023 CMAC 6
625	NCdt Remington	His Majesty the King	Legality of Finding	Dismissed	10 Mar 23	2023 CMAC 3
626	Cpl El Zein	His Majesty the King	Legality of Finding	Dismissed	3 Aug 23	2023 CMAC 9
627	Cpl Zapata-Valles	His Majesty the King	Legality of Finding	Dismissed	4 Apr 23	2023 CMAC 4
628	His Majesty the King	Cpl Crouch	Legality of Finding	Dismissed	8 Nov 23	2023 CMAC 11
632	Cpl (Ret'd) Cookson	His Majesty the King	Legality of Finding	Dismissed	27 Jun 23	2023 CMAC 8
633	His Majesty the King	MCpl Brousseau	Legality of Finding	Granted	22 Apr 24	2024 CMAC 2
637	His Majesty the King	Maj (Ret'd) Ellison	Legality of Finding	Granted	27 Mar 24	2024 CMAC 3
639	Cpl Daniel-Awong	His Majesty the King	Service of Detention Review Application	Dismissed	25 Jul 23	Unreported

<b>MOTIONS WITHIN AN APPEAL</b>						
<b>CMAC#</b>	<b>Appellant</b>	<b>Respondent</b>	<b>Type of Motion or Application</b>	<b>Result</b>	<b>Date of Decision</b>	<b>Citation</b>
623	Sgt Turner	His Majesty the King	Stay of Execution	Granted	16 Jun 23	2023 CMAC 7
625	NCdt Remington	His Majesty the King	Stay of Execution	Granted	13 Apr 23	2023 CMAC 5
631	MCpl Houde	His Majesty the King	Extension of Time to File Memorandum of Fact and Law	Dismissed	24 Oct 23	2023 CMAC 10
631	MCpl Houde	His Majesty the King	Request to Reject Appeal	Dismissed	30 Jan 24	2024 CMAC 1
631	MCpl Houde	His Majesty the King	Request to Restart the Appeal	Granted	30 Jan 24	2024 CMAC 1



ANNEX C • APPEALS CONCLUDED AT THE  
SUPREME COURT OF CANADA

SCC#	Appellant	Respondent	Type of Appeal	Result	Date completed	Citation
40655	His Majesty the King	Pte Vu	Legality of Finding	Dismissed	16 Jan 24	2024 SCC 1

## ANNEX D • CUSTODY REVIEW HEARINGS

Person Arrested	Offence	Description	Decision	Date of Decision
Cpl Daniel-Awong	101.1 NDA	Failure to Comply with Conditions	Retained in Custody	14 Jun 2023