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DMP ANNUAL REPORT 2021-2022

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MESSAGE



FROM THE DIRECTOR OF MILITARY PROSECUTIONS

I am pleased to present the Director of Military Prosecutions (DMP) Annual Report for fiscal year 2021-22. This is the first report since my appointment on 29 June 2021. This year has brought many challenges and pressures, both internal and external to the organization. The military justice system experienced significant disruption in the last reporting period as a result of the coronavirus pandemic. While the pandemic still presents challenges, this year has marked a return to a fully functioning military justice system. The collective efforts of all military justice actors have allowed in-person courts martial to resume normally and, to this date, all ongoing cases are expected to be completed within a reasonable time.

Soon after my appointment, I initiated a comprehensive strategic review of our operations and policies. The Canadian Military Prosecution Service (CMPS) is now 22 years old and, with a new leadership team in place, the pending implementation of Bill C-77, and the recommendations of several external reviews, the time was right for a detailed examination of who we are and how we operate. This review is now well underway and I fully expect to begin implementing action plans based on our findings during the next reporting period.

Some things could not wait until we had completed our review. The CMPS took immediate steps to hire three new Reserve Force prosecutors and to speed up the intake process for a previous hire. This process was extremely successful, and the renewal of our Reserve Force military prosecutor cadre will pay significant dividends in the years to come.

Unfortunately, we have had less success in hiring into several civilian support staff vacancies. This has created additional burdens on our existing staff and on our prosecutors, and is something that I have directed must be a priority in the next reporting year. Concurrently, we are committed to finalizing work on job descriptions and classification among our support staff, and providing clarity on management expectations.

On 20 October 2021, Madame Louise Arbour released an interim recommendation as part of her mandate to review sexual misconduct in the Canadian Armed Forces (CAF). On 5 November 2021, The Canadian Forces Provost Marshal and I released a joint statement accepting the interim recommendation and taking immediate steps to begin the transfer of investigation of sexual assault allegations to civilian authorities. We also agreed that any future charges of sexual assault would be laid in the civilian criminal justice system until the CAF has completed its review and consideration of the recommendations of the various external reviews, in particular the Report of the Third Independent Review of the National Defence Act (Fish Report) and the Final Report of the Independent External Comprehensive Review (Arbour Report). On 26 November 2021, I made public my interim direction to military prosecutors in this regard. I look forward to working with the CAF and other stakeholders on this important issue over the coming months.

The CMPS has made significant progress in building our prosecutors' level of experience and knowledge. We have a relatively small, but highly effective and capable team.

This has been due, in large part, to the ongoing support of the Judge Advocate General (JAG) in keeping legal officers posted to the CMPS in their positions for longer than the normal posting cycle. The next challenge will be to make this model sustainable through careful selection and timing of new legal officers into military prosecutor positions, as well as a coordinated return of legal officers to other positions within the Office of the JAG.

I am extraordinarily proud of our excellent team of prosecutors and support staff. I have complete confidence in their ability to meet the challenges that we face over the next several years, and I am very excited about what we can accomplish together over the course of my appointment.

ORDO PER JUSTITIA



Colonel Dylan Kerr, CD
Director of Military Prosecutions



CHAPTER



THE CANADIAN MILITARY PROSECUTION SERVICE: *ORDO PER JUSTITIA*

DUTIES AND FUNCTIONS OF THE DMP

The DMP is the senior military prosecutor in the 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 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 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 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.

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

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.

MISSION AND VISION

Our Mission

The CMPS prosecutes cases competently, fairly, and expeditiously in order to promote the operational effectiveness of the CAF through the maintenance of discipline, efficiency and morale.

Our Vision

The CMPS is an independent prosecution authority serving the needs of military justice, promoting discipline, and enhancing the operational effectiveness of the CAF.

We are a diverse and inclusive organization, committed to the health and well-being of our people.

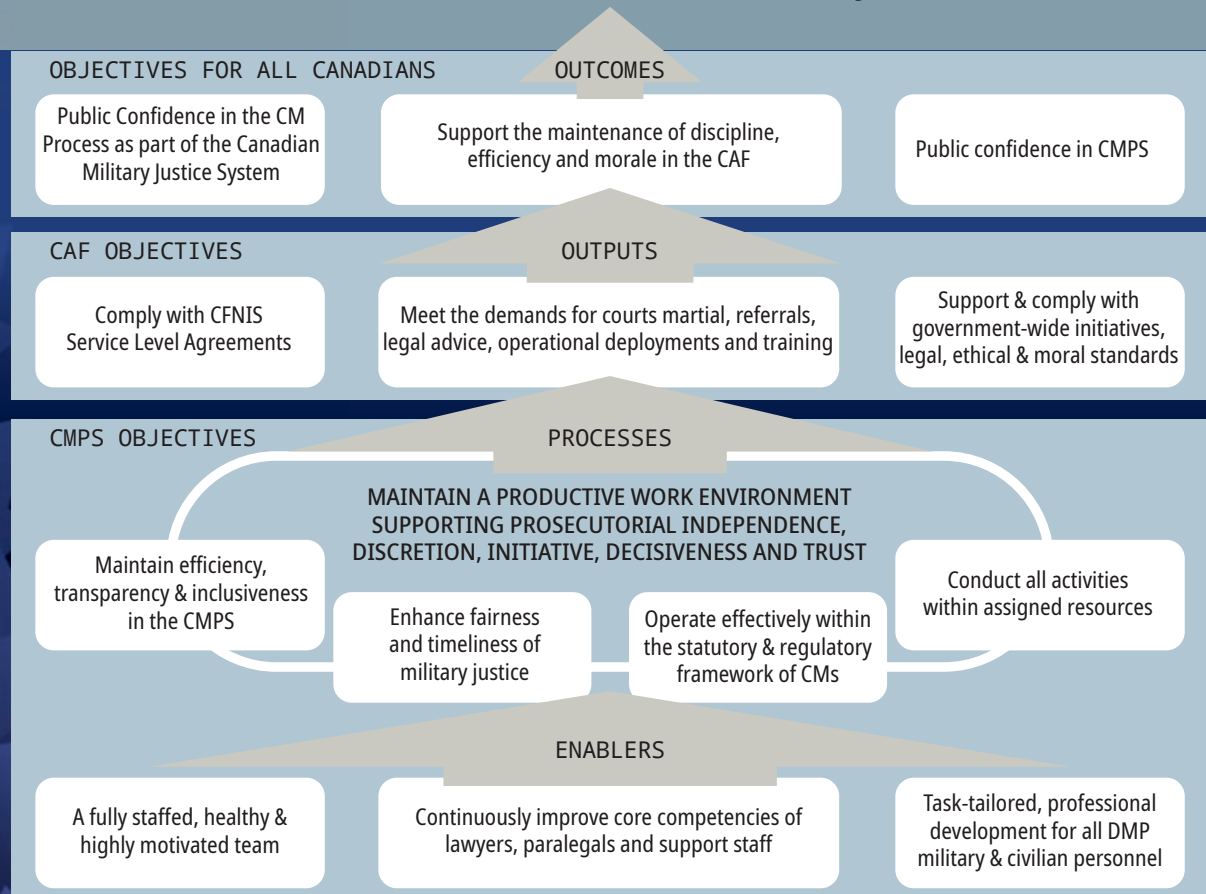
Staffed by dedicated civilian and military professionals, our people hold themselves to a high ethical standard. They have a thirst for learning and constantly strive for excellence.

We are an agile organization, fully capable of operating in any environment, both in Canada and abroad, and are equipped to meet current and future challenges.

Our military officers are leaders who embody the ethos of the profession of arms, uphold the rule of law, and prosecute offences in a fair and transparent manner.

The CMPS is recognized domestically and internationally as a critical and respected partner in the administration of justice, and has the full trust and confidence of the Canadian public, members of the CAF, and the chain of command.

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 CMPS, is headquartered in Ottawa and comprised of several Regional Military Prosecution Offices located across Canada.

CMPS Headquarters

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

ADMP

The ADMP is responsible to assist the DMP in the corporate governance of the CMPS and supervises the Senior Counsel. The ADMP also fulfills the responsibilities of the DMP in his absence.

DDMPs

The CMPS has recently redefined the role of the DDMPs:

- The DDMP Operations (DDMP Ops) is responsible for the management of the court martial calendar and file assignments. DDMP Ops supervises and mentors the Regional Military Prosecutors (RMP);²
- The DDMP Strategic (DDMP Strat) supervises the Appellate Counsel and the CFNIS Legal Advisor. DDMP Strat tracks all matters of national interest occurring at the trial level and develops standardized legal positions on key areas of law;

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

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

Senior Counsel

The Senior Counsel is a senior military prosecutor who is responsible to develop the litigation competencies of RMPs and assist the DMP and the ADMP in the governance of the CMPS, which includes staffing, training, policy review and development, drafting of statutory reports, access to information requests, media inquiries, and budget planning and forecasting.

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

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.

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.

Regional Military Prosecution Offices

Each of the five Regional Military Prosecution offices are managed by a Senior RMP. Offices are located in Halifax, Valcartier, Ottawa, Edmonton and Esquimalt.

Senior RMPs are responsible to manage the day-to-day operations of their offices and to supervise their civilian administrative support staff. Senior RMPs and RMPs are also 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.

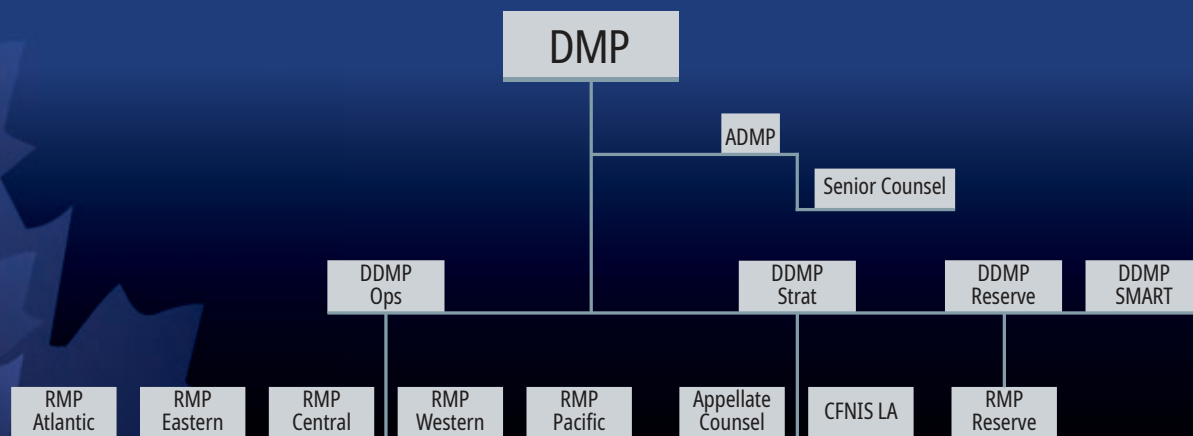
Reserve Force Prosecutors

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

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



FIGURE 1-2: ORGANIZATIONAL CHART FOR THE CMPS



CMPS PERSONNEL UPDATE

Regular Force

On 29 June 2021, Col Kerr was appointed as the new DMP, replacing Col MacGregor who had been the DMP for the previous seven years.

The position of the Appellate Counsel was vacated and filled by the Senior RMP from the Halifax office, leaving a single RMP in that office. A second RMP is expected to be posted to the Halifax office during the next reporting period.

The Senior RMP from the Valcartier office released from the CAF, leaving a single RMP in that office. A second RMP is expected to fill out the empty position remotely during the next reporting period.

The Senior RMP from the Esquimalt office was posted out of the CMPS and replaced by the Senior RMP from the Edmonton office. An experienced legal advisor from the Office of the JAG (OJAG) joined the Edmonton office as an RMP to fill in the vacant position left by the posting of the Senior RMP to Esquimalt.

The Senior RMP for the Ottawa office was moved into the Senior Counsel position and one of the RMPs for that Office took over the role of Senior RMP.

Reserve Force

During this reporting period three Reserve Force prosecution positions have become vacant. A Selection Board was conducted and the three positions are expected to be staffed in the course of the next reporting period.

Civilian Personnel

The Administrative Assistant to the DMP left the CMPS and a new Administrative Assistant was hired in the fall.

The Administrative Assistants for the Esquimalt and the Valcartier offices left the CMPS. A new Administrative Assistant was hired in Valcartier, and the position in Esquimalt is expected to be filled in the next reporting period.



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 the annual Continuing Legal Education (CLE) 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 CLE workshop is usually held concurrently with the JAG CLE workshop. Due to time constraints with the JAG CLE workshop during this reporting period, the CMPS has delayed its annual CLE workshop until the beginning of the next reporting period.



External organizations

During this reporting period, RMPs participated in continuing legal education programs delivered by several organizations. 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.

See Table 1-1 for a breakdown of training provided by external organizations for this reporting period.

Training provided by the CMPS

The CMPS also provides support to the training activities of the OJAG and other CAF entities. During the reporting period, this support included the mentoring and supervision by RMPs of a number of junior legal officers from the OJAG who completed a portion of their “on the job training” 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”.⁴

TABLE 1-1: EXTERNAL TRAINING OPPORTUNITIES

Host Organization	Name of Course	Number of Attendees
Public Prosecution Service of Canada	School for Prosecutors Level 1	2
Public Prosecution Service of Canada	Written Advocacy Course	2
Ministry of Attorney General of Ontario – Sexual Violence Advisory Group	Prosecuting Sexual Assault: Law and Advocacy	10
Direction des poursuites criminelles et pénales du Québec	Cybercriminalité	1
Justice Canada	National Virtual Conference on Language Rights in Prosecutions	1
Nova Scotia Public Prosecution Service	Virtual Fall Conference	1
Siracusa International Institute for Criminal Justice and Human Rights	Specialization Course for Prosecutors	1
Alberta Law Enforcement Response Team	Firearms Crime Investigations and Prosecutions Conference	1
Canadian Bar Association	Myrna McCallum: Trauma Informed Lawyering and Advocacy	1

⁴ The DMP and the Deputy Judge Advocate General Regional Services have an agreement whereby unit legal advisors may participate as second chairs to RMPs in preparation for and conduct of courts martial. Please see DMP Policy Directive #: 009/00 (<https://www.canada.ca/en/department-national-defence/corporate/policies-standards/legal-policies-directives/communications-with-unit-legal-advisors.html>) for further information.

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 564 days. This is a significant increase in comparison to the last reporting period (from 146 to 564). This increase is attributable to the relaxation of travel restrictions associated with the COVID-19 pandemic, thus allowing proceedings to be held in person again.

Table 1-2 shows the breakdown of TD days 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	0	16	37	32	85
Atlantic	53	0	0	0	53
Eastern	93	0	0	0	93
Central	174	0	0	0	174
Western	71	0	0	0	71
Pacific	62	0	0	26	88
Total	479	16	37	32	564⁵

5 The total number of TD days for this reporting period does not account for TD days spent by Regular Force prosecutors while following the Legal Officer Qualification Course (LOQC), which is a necessary training requirement for all legal officers in order to become occupationally qualified and provide legal services as members of the OJAG.

CHAPTER

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*⁶ and *R v Généreux*,⁷ 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.”⁸ 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.”⁹

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

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

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

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

9 *Ibid* at para 54.

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.”¹⁰

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*¹¹ that the authority conferred to the MND over appeals was in compliance with the *Canadian Charter of Rights and Freedoms (Charter)*. This decision was also important for all prosecution services across Canada, as the court touched upon the concept of prosecutorial independence and abuse of process.¹²



This case reinforced that the military justice system is a legitimate and respected partner, working in parallel with the criminal 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*.¹³ 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*.¹⁴ The SCC also reemphasized its decision in *Généreux*, which recognized the uniqueness of the military justice system as an essential mechanism to properly perform the public function of “maintaining discipline and integrity in the Canadian Armed Forces.”¹⁵ Finally, the SCC upheld its decision in *Moriarity*, and refused to require a military nexus when charging a service member under section 130(1)(a) other than “the accused’s military status.”¹⁶

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

11 *R v Cawthorne*, 2016 SCC 32.

12 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.

13 *R v Stillman*, 2019 SCC 40.

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

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

16 *Ibid* at paras 92 and 96.

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.

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.

Statutorily, pursuant to the 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 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. The superior officer may also comment on public interest factors when the matter is referred to the DMP.

An accused person tried by court martial is entitled to legal representation by or under the supervision of the Director of Defence Counsel Services. This legal representation is provided to an accused person at no cost. 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, an appellate 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.



CHAPTER

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 105 files: 91 referrals were received during the reporting period and 14 files were carried over from the previous reporting period.

In addition, the CMPS managed 87 requests for pre-charge advice, twenty (20) appeals to the CMAC and six (6) appeals to the SCC, for a total of 218 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. There were no custody review hearings during this reporting period.

Finally, a total of 48 courts martial were completed.

THE COVID-19 PANDEMIC

The COVID-19 pandemic presented prosecution services across Canada with unprecedented challenges and limitations on bringing matters before the courts. The CMPS 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. In this third year of the pandemic, courts martial continue to proceed safely and efficiently. The physical presence of parties and witnesses at court martial proceedings is starting to return to pre-pandemic levels, requiring RMPs to resume their travel across Canada. 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.

IMPACT OF RECOMMENDATIONS MADE BY REVIEW AUTHORITIES

On 29 April 2021, the MND appointed former Supreme Court Justice, the Honorable Madame Louise Arbour, to conduct an independent and comprehensive review of sexual misconduct in the CAF. The terms of reference provided the authority for Madame Arbour to issue any interim recommendations to address issues for immediate action that may become apparent during the conduct of the review.

On 30 April 2021, The Honorable Mr. Morris J. Fish tabled his Report of the Third Independent Review Authority to the MND, who made a total of 107 recommendations including a number of recommendations regarding the independence of military justice actors and how sexual misconduct should be addressed in the military justice system.

On 20 October 2021, Madame Arbour issued an interim recommendation to implement recommendation 68

of Mr. Morris J. Fish and to immediately transfer to civilian police forces all cases involving sexual assaults and other offences of a sexual nature under the *Criminal Code*, including allegations that were under investigation by the CFNIS, and in all cases, that charges be laid in civilian courts. This interim recommendation focused on cases that were at the pre-charge stage.

On 5 November 2021, the Canadian Forces Provost Marshal (CFPM) and the DMP issued a joint statement indicating their acceptance of Madame Arbour's interim recommendation.

On 26 November 2021, the DMP issued an interim direction to his RMPs regarding the implementation of Madame Arbour's interim recommendation. The DMP provided clear direction as to how to manage cases involving sexual assaults and other offences of a sexual nature under the *Criminal Code* that had already been referred to the DMP for disposal, or were in the process of being referred to the DMP. At the time of Madame Arbour's interim recommendation, the CMPS had a total of 33 such cases.

Meetings with complainants in all of the 33 cases were conducted in accordance with the DMP's interim direction in order to explain the effects of Madame Arbour's interim recommendation and seek their views as to jurisdiction. In all but two cases, complainants indicated their preference for the matters to continue to proceed within the military justice system.

For this reason, while the CMPS has stopped accepting new cases involving sexual assaults and other offences of a sexual nature under the *Criminal Code* since Madame Arbour's interim recommendation, RMPs will nevertheless continue to conduct courts martial involving this type of offence over the course of the next reporting period.

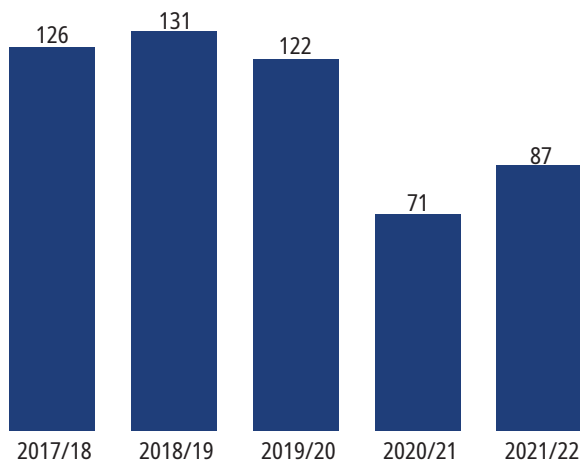
PRE-CHARGE ADVICE

RMPs within the CMPS are responsible to provide pre-charge advice to both the CFNIS¹⁷ and to unit legal advisors.¹⁸ In this reporting period, 91 requests for pre-charge advice were sent to the CMPS and 9 requests had been pending from the previous reporting period. Of the 100 total requests, 87 pre-charge advice files were completed during this reporting period, leaving 13 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 (105). It is likely that the pandemic had a direct impact on the amount of requests for pre-charge received by CMPS during the reporting period. It is anticipated that as pandemic restrictions subside, and the CAF returns to normal operational activities, the number of requests for pre-charge advice will increase.

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

**FIGURE 3-1:
NUMBER OF COMPLETED PRE-CHARGE FILES BY REPORTING PERIOD**



17 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>

18 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.

19 Carried over files are files that were not closed at the end of the previous reporting period, that is, files where one or more charges had already been preferred, but the court martial had not yet commenced, and files that still required a post-charge decision as of the end of the previous reporting period.

REFERRALS AND POST-CHARGE REVIEWS

Number of Referrals Received During the Reporting Period

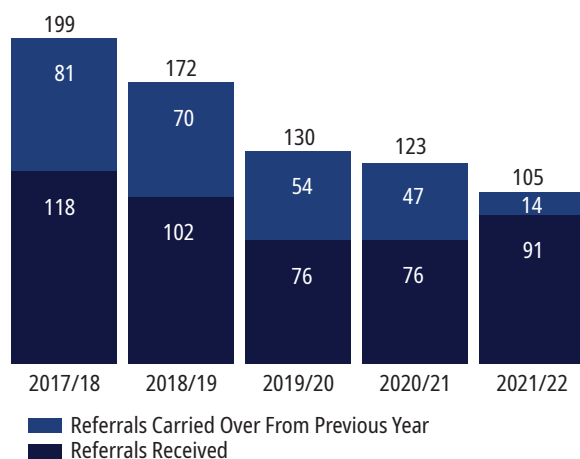
During this reporting period, 91 referrals were received by the DMP. This is an increase of 15 referrals in comparison to the last reporting period (from 76 to 91).

Caseload for the Reporting Period

When combined with the 14 files that were carried over from the previous reporting period, the caseload for this reporting period was 105 files.¹⁹

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

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



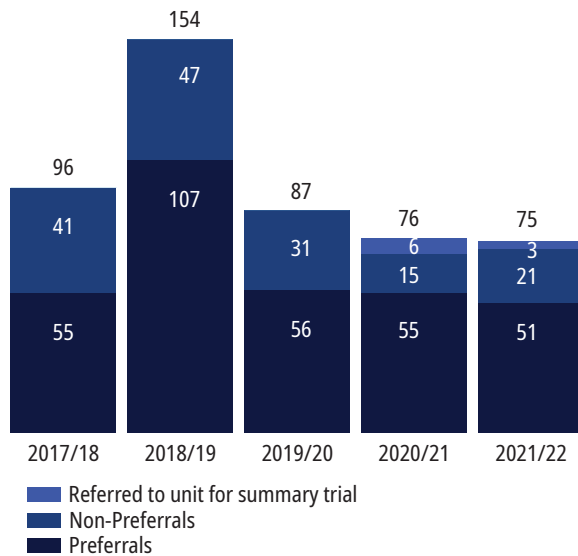
Preferrals, Non-Preferrals and Referral of Charges to Unit for Summary Trial

During this reporting period, post-charge decisions were made by an RMP in 75 files, while 30 files were still pending a prosecutorial decision at the end of the current reporting period.

Of the 75 completed files, 51 files led to one or more charges being preferred for court martial, 21 files were not preferred and three (3) files were referred back to the originating unit to try the accused person by summary trial. The preferal rate for this reporting period is 68%.

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

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



Preferral Rates by Investigative Agency

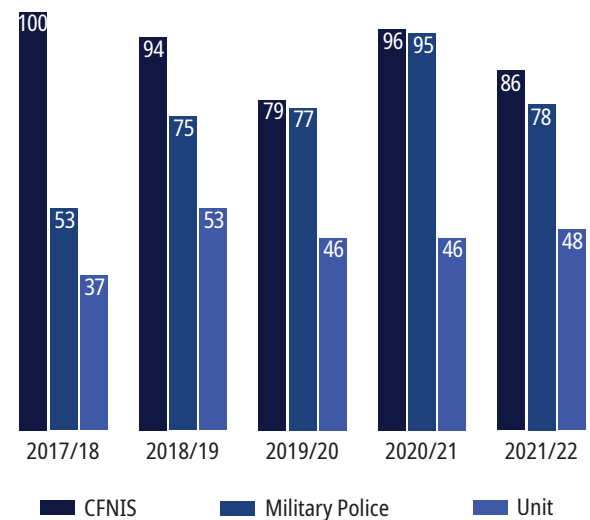
Although all files referred to the DMP are received through a referral authority, the incident giving rise to the charge may be investigated by one of three military investigative agencies: the CFNIS, an investigator with the military police who is not a member of the CFNIS, or a unit investigator. As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

During this reporting period, the preferal rate for those files investigated by the CFNIS was 86%. This preferal rate is slightly higher than that of the regular military police (78%), but is markedly higher than that of unit investigators (48%).²⁰

This divergence of preferal 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.

For a complete overview of preferal rates by investigative agency over the past five reporting periods, please refer to Figure 3-4.

**FIGURE 3-4:
PREFERAL RATES BY INVESTIGATIVE AGENCY AND BY REPORTING PERIOD**



²⁰ The lower preferal rate for the unit investigators this reporting period is slightly skewed by three 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 to section 165.13 of the NDA.

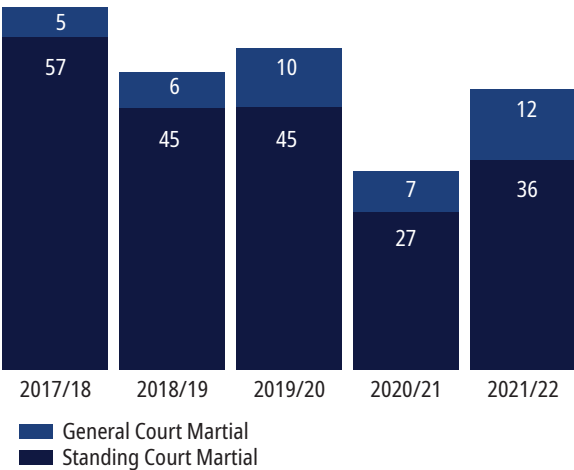
COURTS MARTIAL

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 48 courts martial were completed during this reporting period. Of those, 36 were SCMs and 12 were GCMs. There has been an increase in comparison to the last reporting period and the annual number of courts martial appears to be returning to normal historical levels, likely associated with the relaxation of restrictions associated with the COVID-19 pandemic.

FIGURE 3-5:
NUMBER OF COURTS MARTIAL BY TYPE AND BY REPORTING PERIOD



NOTABLE COURT MARTIAL CASES

This section provides a summary of 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 Pte August

Pte August was charged with three counts of sexual assault and was found guilty of two of the charges. He was ultimately sentenced to imprisonment for six months (the carrying into effect of the punishment of imprisonment has been suspended) following a very long trial, marked by a myriad of adjournments. The trial commenced on 13 August 2018 and was finally concluded on 18 February 2022.

The case for the prosecution was heard during the week of 13 August 2018. At the close of the prosecution case, the accused, through his counsel, presented a motion of no prima facie case on the first charge. The motion was granted and resulted in a finding of not guilty on that charge. This left the court with two charges to deal with instead of three. The case was then adjourned to 22 October 2018 for the presentation of the case for the defence.

Unfortunately, the trial was further delayed following the decision in *R v Beaudry*, 2018 CMAC 4 delivered on 19 September 2018, which declared s. 130(1)(a) of the NDA to be of no force or effect in its application to any civil offence for which the maximum sentence is five years or more. The Supreme Court of Canada overturned *Beaudry* on 26 July 2019 and confirmed the constitutional validity of s. 130(1)(a) of the NDA. While this decision technically allowed the court martial to resume, the case was further adjourned to 20 April 2020 due to unavailability of defence counsel until then. Before the case could resume, the COVID-19 pandemic led to a suspension of all court martial activities from 16 March 2020 to 31 May 2020.

The defence presented its case between 21 and 31 July 2020 and raised a defence of automatism, positing that the accused was in a state of parasomnia during the alleged offence. The defence called expert evidence in support of this claim. A second expert was also called by the prosecution and authorized by the Court to

provide expert opinion evidence on sleep disorders. He concluded that the results of the tests conducted by the expert called by the defence would have been sufficient to make a diagnosis of sleepwalking, but insufficient to reveal anything about what could have occurred on the morning of the incidents or at any other specific time in the past.

The parties delivered their submissions on finding between 5 and 7 August 2020. On 30 April 2021, the court found the accused guilty on the two remaining charges.

As a result of additional requests for adjournments presented by the defence, sentencing was delayed to 14 February 2022. The sentence was pronounced on 18 February 2022.

R v Bdr Cogswell

Bdr Cogswell was found guilty of one charge laid pursuant to s. 93 of the NDA (disgraceful conduct) and of eight charges laid pursuant to s. 130 of the NDA for having administered a noxious thing contrary to s. 245(1)(b) of the *Criminal Code*.

On 21 July 2018, Bdr Cogswell, known as Bdr Fraser at the time of the alleged incident, distributed a dozen cupcakes she had baked and laced with cannabis while she was working at the mobile canteen. Bdr Cogswell was responsible for manning and supporting a mobile canteen that provided snacks and supplies to the soldiers while in the field.

The members who consumed the cupcakes unaware that they contained cannabis were all scheduled to conduct the live fire portion of Exercise COMMON GUNNER at Canadian Forces Base Gagetown, New Brunswick. Shortly after receiving the cupcakes from Bdr Cogswell, the complainants experienced symptoms to varying degrees, all consistent with the ingestion of cannabis.

Bdr Cogswell was sentenced to imprisonment for a period of 30 days, dismissal from Her Majesty's service and a reduction in rank to the rank of Gnr. The court outlined many aggravating factors, including the serious safety risk arising from the surreptitious distribution of cannabis during a live artillery range, the effect on the eight innocent victims, the violation of their personal integrity they felt, the degree of premeditation and the offender's attempt to inculcate other innocent personnel during the investigation to exculpate herself.

R v Pte Waugh

Pte Waugh was found not responsible on account of mental disorder on one charge of sexual assault contrary to s. 271 of the *Criminal Code*, an offence punishable under s. 130 of the NDA. This is a rare case where the evidence in support of the contention that Pte Waugh was in a state of automatism, namely parasomnia, was so compelling that it led the prosecution to not oppose the theory of the defence. The court determined that it should not hold a disposition hearing pursuant to s. 202.15(1) of the NDA, and referred the case to the appropriate review board for disposition.

R v MS Machtmes

MS Machtmes was found guilty of three charges. His unfortunate death following the finding of guilt of the GCM led to an abatement of the proceedings before sentencing could take place.

Two of the charges were laid contrary to s. 130 of the NDA, that is to say, for luring a child, contrary to s. 172.1(1)(b) of the *Criminal Code* and invitation to sexual touching, contrary to s. 152 of the *Criminal Code*. The third charge involved an allegation of disgraceful conduct, contrary to s. 93 of the NDA.

All charges stemmed from a series of sexualized conversations via social media with a fifteen-year old Australian citizen, initiated by MS Machtmes while he was deployed on operations off the coast of Australia.

The court martial proceeded during the COVID-19 restrictions. Following an application by the prosecution, and despite the objection of the defence, the court allowed the four Australian witnesses called by the prosecution to testify via video-link. The court relied on s. 179(1)(a) of the NDA, which provides a court martial with the ability to control its own processes with respect to the attendance, swearing and examination of witnesses.

The court determined that testimony via video-link was the most appropriate means to elicit the truth from the Australian witnesses, in light of the severe restrictions on travel that were in place at the time. The court preferred the video-link to the other option, which would have involved the taking of evidence on commission pursuant to s. 184 of the NDA. The court deemed that the video-link was the means that would more appropriately serve the interests of the accused.

COURT MARTIAL APPEAL COURT

The appeal section of the CMPS was busy during the year. For the complete list of the cases heard and ongoing at the CMAC throughout the year, please consult Annex B. For the list of SCC cases, please consult Annex C.

Two cases were particularly notable given the importance of the issues they raised: *McGregor* and *Edwards et al.*

Decisions Rendered or Appeals Initiated at the CMAC

R v McGregor, 2020 CMAC 8

Following the CMAC decision in *McGregor* on 31 December 2020, Cpl McGregor sought leave to appeal at the SCC. Leave was granted on 14 October 2021.

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

The main issue in this case is whether or not s. 8 of the *Charter* found application with regard to the search of Cpl McGregor's residence in the State of Virginia, USA.

This case is interesting for the military justice system since it highlights its differences from any other Canadian jurisdiction. Normally, the *Charter* does not find application outside Canada since Parliament does not have, in general, the jurisdiction to enforce Canadian laws in foreign states.

This means, for instance, that accused are prohibited, at their trial, to seek the exclusion of evidence seized

outside Canada under s. 24(2) of the *Charter*. Though such accused can nonetheless request for that evidence to be excluded if its admission renders his or her trial unfair pursuant to ss. 7 and 11(d) of the *Charter*.

Since the CSD (which is embedded in the NDA) operates outside Canada, the *Charter* does find application when it is enforced on a foreign territory. Such jurisdiction comes either from the consent of the host nation or under the umbrella of Canada's obligation under international law to maintain control over its forces. It is an example, as alluded to in *R v Hape*, 2017 SCC 26, of a rare instance where the *Charter* will apply abroad with another country's permission or by the action of another permissive rule of international law.

In the case of Cpl McGregor, Canada's enforcement jurisdiction came from the North Atlantic Treaty Organisation – Status of Forces Agreement (NATO SOFA), of which both the US and Canada are signatories. This agreement provided military investigators complete jurisdiction over Cpl McGregor. However, by the terms of the NATO SOFA, Cpl McGregor's residence, by its location, fell outside the reach of the direct enforcement powers of the CAF. Military investigators had to seek assistance, and obtain a warrant, from US authorities.

Cpl McGregor claims that the search of his home in Virginia, US, and the subsequent seizure and search of his electronics devices, though authorized by a US warrant, was unlawful and in breach of s. 8 of the *Charter*. This proposition was dismissed by the Military Judge and the CMAC.

The MND, for Her Majesty in this appeal, claims that while the *Charter* applied to every other investigative step on that file, it did not, and could not, apply to the search of Cpl McGregor's residence since the search, conducted under Virginia law, was not a "matter within the authority of Parliament" (i.e., s. 32 of the *Charter*).

The hearing took place on 19 May 2022 and the SCC reserved its decision.

SUPREME COURT OF CANADA

Decisions Rendered

There were no decisions rendered by the SCC in the course of this reporting period.

Applications for leave to appeal to the

Independence and Impartiality of Military Tribunals

As it was reported last year, a series of court martial decisions pertaining to the independence and impartiality of our military tribunals under s. 11(d) of the *Charter* were appealed by the DMP. These appeals were allowed by the CMAC and new trials were ordered for several accused on 11 June 2021 (*Edwards et al.*, 2021 CMAC 2).

On 10 September 2021, the accused in *Edwards et al.* sought leave to appeal to the SCC. Since then, several other military accused have sought leave from the SCC on the same grounds: *R v Proulx and Cloutier*, 2021 CMAC 3; *R v Christmas*, 2022 CMAC 1; *R v Brown*, 2022 CMAC 2; *R v Thibault*, 2022 CMAC 3.

The SCC has yet to decide if leave will be granted.



CHAPTER

COMMUNICATION AND OUTREACH

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

Over the course of this reporting period, the Senior Counsel, a defence counsel from the DDCS, and the CFNIS Legal Advisor, presented at the CFNIS Indoctrination Course for new investigators, and they also participated in a panel discussion. Their presentations and discussions enhanced the knowledge of the military justice system for the new CFNIS investigators, particularly in relation to the prosecutions of sexual offences.

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.²¹

During this reporting period, the Acting DMP attended virtually the HoP Committee Spring general meeting, which was held from 1-4 May 2021. The DMP attended in person the HoP Committee Fall general meeting, which was held in Charlottetown, PEI, on 17-18 November 2021.

The DMP and his DDMP Ops also attended virtually an ad hoc general meeting on 17 September 2021, for the purpose of establishing a working group to address the exercise of concurrent jurisdiction over offences committed by members of the CAF, in response to recommendations 19 and 20 made by Mr. Morris J. Fish in his Report of the Third Independent Review Authority to the MND.

²¹ <https://www.ppsc-sppc.gc.ca/eng/tra/tr/05.html>.

CMAC EDUCATION SEMINAR

Due to the Omicron wave of the COVID-19 pandemic and a need to reduce the number of attendees accordingly, the DMP did not have the opportunity to present at the CMAC Education Seminar. The CMAC Education Seminar is 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)²² 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, but was canceled due to the COVID-19 pandemic. The 47th Annual NCLP will now be held in Victoria in July 2022 and the DMP, the members of the CMPS HQs, and Senior RMPs from the Regional Prosecution offices will attend in person.



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

CHAPTER

CASE MANAGEMENT SYSTEM

5

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.

The CMS continues to be improved through an iterative development process. The newest version of CMS was released during this reporting period and work continues to be done for additional improvements. The next main effort will involve ensuring that CMS fully adapts to the implementation of Bill C-77, which will change key aspects of the process, including the removal of the referral authority and the referral of charges from the charge layer directly to the DMP.

CHAPTER

FINANCIAL INFORMATION

OPERATING BUDGET

The DMP's operating budget is allocated primarily to operations and is divided into four main categories: Regular Force Operations and Maintenance, Civilian Salary and Wages, Reserve Force Pay, and Reserve Force Operations and Maintenance. Operations and Maintenance includes items such as travel, training costs, general office expenditures, and other costs that support personnel and maintain equipment, but does not include costs associated with a specific court martial. A complete overview of the DMP's budget, including initial allocation and expenditures, can be found at Table 6-1.

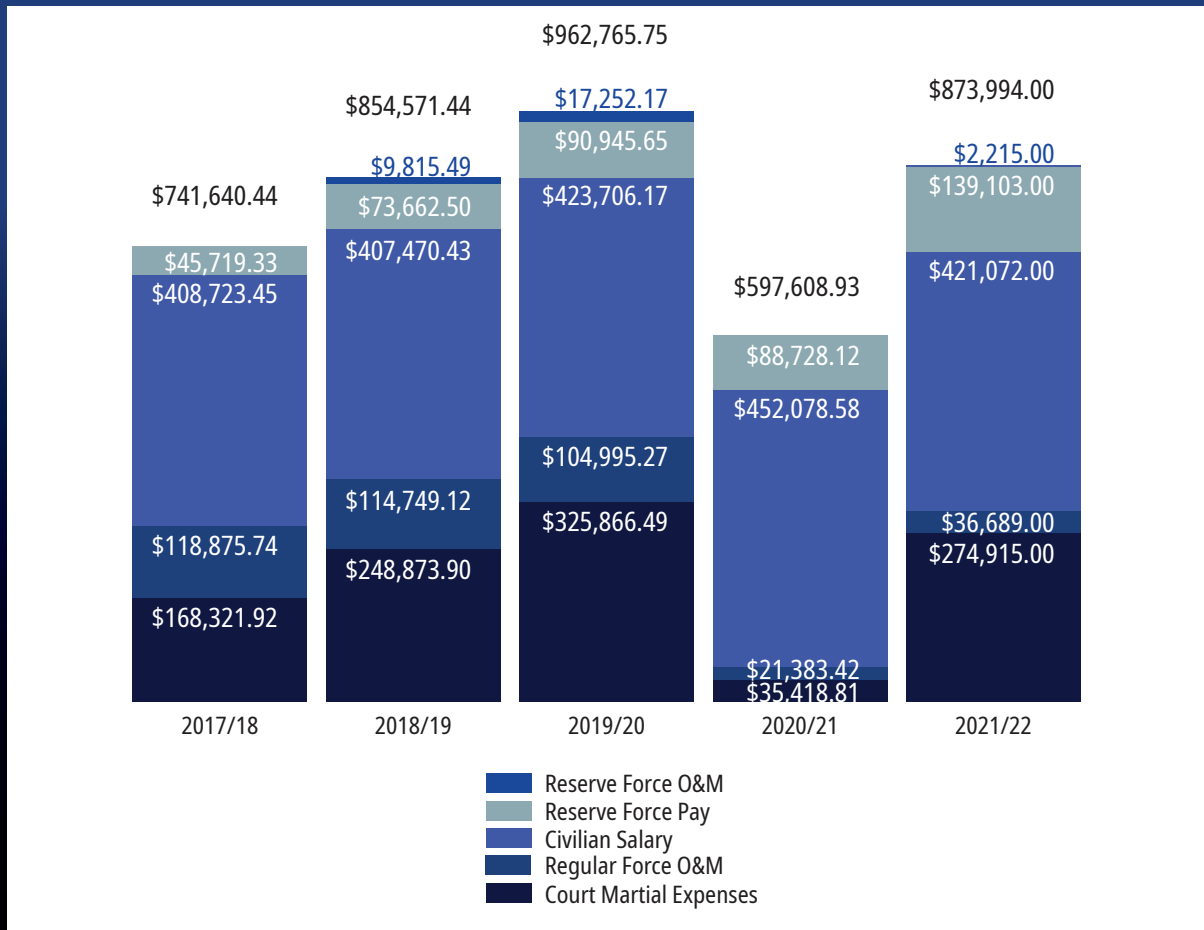
TABLE 6-1: SUMMARY OF DMP'S OPERATING BUDGET

Fund	Initial Allocation	Expenditures	Balance
Regular Force Operations & Maintenance	\$139,000.00	\$36,688.91	\$102,311.09
Civilian Salary & Wages	\$442,000.00	\$421,071.66	\$20,928.34
Reserve Force Pay	\$100,000.00	\$139,103.66	(\$39,103.66)
Reserve Force Operation and Maintenance	\$34,000.00	\$2,214.56	\$31,785.44
Expenditures for courts martial	300,000.00	274,915.27	25,084.73
Totals	\$1,015,000.00	\$873,994.06	\$141,005.94

Courts 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 total amount of CMPS expenditures for courts martial was \$274,915.27.

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

FIGURE 6-1: DMP'S OPERATING BUDGET – 2017/18 TO 2021/22





ANNEXES

ANNEX A: COURTS MARTIAL

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
MCpl Anderson	SCM	114 NDA	Stealing	Not guilty	Reprimand and a fine of \$300	Cold Lake, AB	04 Oct 21	English	
		114 NDA	Stealing	Guilty					
		114 NDA	Stealing	Guilty					
Pte Andrian	SCM	129 NDA	Neglect to the Prejudice of Good Order and Discipline	Guilty	Fine of \$2,500	Hamilton, ON	20 Aug 21	English	
Pte August	SCM	130 NDA (271 CC)	Sexual Assault	Not guilty	Imprisonment for 6 months (suspended)	Gatineau, QC / Gagetown, NB	18 Feb 22	English	
		130 NDA (271 CC)	Sexual Assault	Guilty					
		130 NDA (271 CC)	Sexual Assault	Guilty					
MS Barber	SCM	83 NDA	Disobedience of Lawful Command	Stay of proceedings	Fine of \$600	Victoria, BC	07 Mar 22	English	
		83 NDA	Disobedience of Lawful Command	Stay of proceedings					
		83 NDA	Disobedience of Lawful Command	Not guilty					
		85 NDA	Behaved with Contempt Toward a Superior Officer	Not guilty					
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty					
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty					
OCdt Bobu	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty	Confinement to barracks for 14 days	St-Jean-sur-Richelieu, QC	21 May 21	French	
Cpl Brandt	SCM	129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty	Fine of \$200 and 10 days of extra work and drill	Halifax, NS	28 Mar 22	English	
S1 Brenton	GCM	130 NDA (271 CC)	Sexual Assault	Not guilty		Halifax, NS	03 Aug 21	English	
		130 NDA (271 CC)	Sexual Assault	Not guilty					
		93 NDA	Behaved in a Disgraceful Manner	Withdrawn					
		83 NDA	Disobedience of Lawful Command	Withdrawn					
Lt(N) Brown	SCM	130 NDA (271 CC)	Sexual Assault	Stay of proceedings		Halifax, NS	23 March 2021	English	Yes
		130 NDA (279(2) CC)	Forcible Confinement	Stay of proceedings					

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
Pte Bruyère	GCM	130 NDA (267(b) CC)	Assault Causing Bodily Harm	Guilty of lesser and included offence (s. 266)	Severe reprimand and a fine of \$3,000	Valcartier, QC	25 Feb 22	French	Yes
		130 NDA (266 CC)	Assault	Withdrawn					
		86(a) NDA	Fought with a Person Subject to the Code of Service Discipline	Guilty					
		97 NDA	Drunkenness	Withdrawn					
Sgt Buist	GCM	130 NDA (271 CC)	Sexual Assault	Not guilty		Ottawa, ON	12 Nov 21	English	
Lt(N) Chami	GCM	129 NDA	Neglect to the Prejudice of Good Order and Discipline	Guilty	Severe reprimand and a fine of \$3,600	Gatineau, QC	25 Jan 22	French	
MCpl Chand	GCM	130 NDA (272(2)(b) CC)	Sexual Assault Causing Bodily Harm	Not guilty		Toronto, ON	01 Jun 21	English	
		130 NDA (271 CC)	Sexual Assault	Not guilty					
		130 NDA (279(2) CC)	Forcible Confinement	Not guilty					
		130 NDA (372(3) CC)	Harassing Communications	Withdrawn					
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Withdrawn					

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
Bdr Cogswell	SCM	93 NDA	Behaved in a Disgraceful Manner	Guilty	Imprisonment for 30 days, dismissal and a reduction in rank to Gnr	Gagetown, NB	19 Nov 21	English	Yes
		129 NDA	An Act to the Prejudice of Good Order and Discipline	Stay of proceedings					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		130 NDA (245(1)(b) CC)	Administering Noxious Thing	Guilty					
		Sgt Cousineau	SCM	130 NDA (271 CC)					
93 NDA	Behaved in a Disgraceful Manner			Guilty					

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
Cpl Crouter	SCM	129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty	Fine of \$200 and 7 days of extra work and drill	Halifax, NS	28 Mar 22	English	
Sgt Curativo	SCM	95 NDA	Abuse of Subordinates	Guilty	Detention for 7 days and a fine of \$2,000	Wainwright, AB	05 Oct 21	English	
Capt D'Arcy	SCM	109 NDA	Low Flying	Withdrawn	Reprimand	Comox, BC	27 Apr 21	English	
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty					
Cpl Edmonstone	SCM	130 NDA (430(3) CC)	Mischief	Guilty	Reduction in rank to Pte and a fine of \$3,000	Edmonton, AB	12 Nov 21	English	
		90 NDA	Absence without Leave	Guilty					
Cpl Euler	SCM	93 NDA	Behaved in a Disgraceful Manner	Not guilty		Halifax, NS	29 Apr 21	English	Yes
		95 NDA	Abuse of Subordinates	Not guilty					
Pte Ermine	SCM	130 NDA (266 CC)	Assault	Withdrawn	Confinement to barracks for 15 days	Wainwright, AB	29 Jul 21	English	
		97 NDA	Drunkness	Guilty					
Lt(N) Fields	SCM	130 NDA (271 CC)	Sexual Assault	Withdrawn	Severe reprimand and a fine of \$5,000	Halifax, NS	16 Feb 22	English	
		93 NDA	Behaved in a Disgraceful Manner	Guilty					
Cpl Fortin	SCM	84 NDA	Struck a Superior Officer	Withdrawn	Severe reprimand and a fine of \$200	Bagotville, QC	05 Jul 21	French	
		101.1 NDA	Failure to Comply with Conditions	Withdrawn					
		85 NDA	Used Threatening Language To a Superior Officer	Withdrawn					
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty					
MCpl Herd	SCM	112(b) NDA	Unauthorized Use of Vehicles	Guilty	Fine of \$200	Toronto, ON	21 Sep 21	English	
		112(b) NDA	Unauthorized Use of Vehicles	Withdrawn					
Cpl Howe	GCM	130 NDA (271 CC)	Sexual Assault	Not guilty		Kingston, ON	22 Oct 21	English	
Pte Johnston	GCM	130 NDA (271 CC)	Sexual Assault	Not guilty		Petawawa, ON	25 Nov 21	English	

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
MS Machtnes	GCM	130 NDA (172.1(1) (b) CC)	Luring a Child	Guilty	Abatement to proceedings due to unexpected death of offender	Victoria, BC	12 May 21	English	
		130 NDA (152 CC)	Invitation to Sexual Touching	Guilty					
		93 NDA	Behaved in a Disgraceful Manner	Guilty					
Pte MacKenzie	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty	Fine of \$2790 and confinement to barracks for 21 days	Borden, ON	18 May 21	English	
MWO MacPherson	GCM	130 NDA (271 CC)	Sexual Assault	Stay of proceedings		Gatineau, QC	20 Jul 21	English	Yes
MWO MacPherson	GCM	s.130 (s.266 CC)	Assault	Stay of proceedings	Severe reprimand and fine of \$1,000	Kingston, ON	19 Oct 21	English	
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty					
LCol Mainguy	SCM	130 NDA (266 CC)	Assault	Not Guilty		Borden, ON	11 Feb 22	English	
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Not Guilty					
Bdr Malikov	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty	Fine of \$1,000	Petawawa, ON	31 Aug 21	English	
MS Manuel	SCM	114 NDA	Stealing When Entrusted	Guilty	Severe reprimand and a fine of \$5,000	Halifax, NS	22 Nov 21	English	
		117(f) NDA	An Act of a Fraudulent Nature	Guilty					
S1 Marshall	SCM	130 NDA (271 CC)	Sexual Assault	Withdrawn	Imprisonment for 60 days	Halifax, NS	30 Mar 22	English	
		130 NDA (271 CC)	Sexual Assault	Withdrawn					
		130 NDA (271 CC)	Sexual Assault	Withdrawn					
		130 NDA (271 CC)	Sexual Assault	Withdrawn					
		93 NDA	Behaved in a Disgraceful Manner	Guilty					
		93 NDA	Behaved in a Disgraceful Manner	Guilty					
		93 NDA	Behaved in a Disgraceful Manner	Guilty					
		93 NDA	Behaved in a Disgraceful Manner	Guilty					
		95 NDA	Abuse of Subordinates	Guilty					
Maj Martimbeault	SCM	117(f) NDA	An Act of a Fraudulent Nature	Guilty	Reduction in rank to Capt	Montreal, QC	22 Mar 22	French	

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
Capt Osborne	SCM	129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty	Reprimand and a fine of \$3,500	Moncton, NB	10 May 21	English	
		129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty					
Cpl Palmer	GCM	130 NDA (271 CC)	Sexual Assault	Not guilty		Kingston, ON	10 Dec 21	English	
		130 NDA (271 CC)	Sexual Assault	Not guilty					
		130 NDA (271 CC)	Sexual Assault	Not guilty					
MCpl Pinto	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	Not Guilty		Victoria, BC	30 Jul 21	English	
MCpl Radewych	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	Not guilty		Toronto, ON	23 Feb 22	English	
		95 NDA	Abuse of Subordinates	Not guilty					
Cpl Redmond	SCM	130 NDA (10(1) Cannabis Act)	Selling Cannabis without Authorization	Guilty	Imprisonment for 21 days, severe reprimand and a fine of \$4,000	Halifax, NS	29 Mar 22	English	
		130 NDA (10(2) Cannabis Act)	Possessing Cannabis for the Purpose of Selling	Guilty					
		130 NDA (5(1) CDSA)	Trafficking	Guilty					
		130 NDA (17(1) Cannabis Act)	Promotion of Cannabis	Withdrawn					
		130 NDA (8(1)(b) Cannabis Act)	Possessing Cannabis that They Knew to be Illicit	Withdrawn					
Cpl Reid	SCM	93 NDA	Behaved in a Disgraceful Manner	Not guilty	Reprimand and a fine of \$1,500	Edmonton, AB	04 Feb 21	English	
		95 NDA	Abuse of Subordinates	Guilty					
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Not guilty					
		129 NDA	Conduct to the Prejudice of Good Order and Discipline	Not guilty					

ANNEX A: COURTS MARTIAL

CONTINUATION

Accused	Type	Offence	Description	Disposition	Sentence	Location	Date completed	Language	Appealed
Capt Roney	SCM	124 NDA	Negligent Performance of a Military Duty	Withdrawn	Reprimand and a fine of \$2,000	Gagetown, NB	14 Dec 21	English	
		129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
		129 NDA	Neglect to the Prejudice of Good Order and Discipline	Withdrawn					
MCpl Russell	SCM	129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty	Severe reprimand and a fine of \$2,500	Aldershot, NS	21 Mar 22	English	
		129 NDA	An Act to the Prejudice of Good Order and Discipline	Guilty					
A/Slt Shtepa	SCM	129 NDA	Conduct to the Prejudice of Good Order and Discipline	Guilty	Reprimand and a fine of \$1,000	St-Jean-sur-Richelieu, QC	21 Feb 22	English	
S3 Stewart	SCM	130 NDA (271 CC)	Sexual Assault	Guilty	Imprisonment for 2 years	Kingston, ON	06 Jan 22	English	Yes
		130 NDA (271 CC)	Sexual Assault	Guilty					
Sgt Tait	SCM	130 NDA (271 CC)	Sexual Assault	Not Guilty		Petawawa, ON	13 Jul 21	English	
WO Turner	SCM	130 NDA (271 CC)	Sexual Assault	Guilty	Imprisonment for 9 months and reduction in rank to Sgt	Kingston, ON	28 Jan 22	English	Yes
Cpl Vu	SCM	130 NDA (271 CC)	Sexual Assault	Not guilty		Gatineau, QC	05 Nov 21	English	Yes
		130 NDA (162(1) CC)	Voyeurism	Not guilty					
		130 NDA (162(4) CC)	Publication of Voyeuristic Recordings	Not guilty					
		130 NDA (162.1 CC)	Transmisison of an Intimate Image without Consent	Not guilty					
Pte Waugh	GCM	130 NDA (271 CC)	Sexual Assault	Not responsible on account of mental disorder		Gatineau, QC	10 Dec 21	English	

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

CMAC	Appellant	Respondent	Type of Appeal	Proceedings	Result	Dates	Citation	Appealed
605	Capt Duquette	Her Majesty the Queen	Legality of finding		Partially granted	23 Dec 2021	2021 CMAC 10	Yes
606	Her Majesty the Queen	LS Edwards	Legality of finding		Granted	11 Jun 2021	2021 CMAC 2	Yes
607	Her Majesty the Queen	Capt Crépeau	Legality of finding		Granted	11 Jun 2021	2021 CMAC 2	Yes
608	Her Majesty the Queen	Gnr Fontaine	Legality of finding		Granted	11 Jun 2021	2021 CMAC 2	Yes
609	Her Majesty the Queen	Capt Iredale	Legality of finding		Granted	11 Jun 2021	2021 CMAC 2	Yes
610	Her Majesty the Queen	Cpl Christmas	Legality of finding		Appeal granted; cross-appeal dismissed	15 Dec 2021	2022 CMAC 1	Yes
				Motion to lift the <i>Sine Die</i> adjournment	Granted	26 July 2021		
				Motion to reinstate the stay of proceeding	Dismissed	12 Nov 2021	2021 CMAC 7	
611	S3 Champion	Her Majesty the Queen	Custody Review Hearing		Dismissed	29 Sept 2021	2021 CMAC 4	
612	Her Majesty the Queen	Sgt Proulx	Legality of finding		Granted	17 June 2021	2021 CMAC 3	Yes
613	Cpl Lévesque	Her Majesty the Queen	Legality of finding		Granted	14 Oct 2021	2021 CMAC 6	
614	Her Majesty the Queen	MCpl Cloutier	Legality of finding		Granted	17 June 2021	2021 CMAC 3	Yes
615	Sgt Pépin	Her Majesty the Queen	Legality of finding		Ongoing			
616	Sgt Thibault	Her Majesty the Queen	Legality of finding		Ongoing			
				Motion to allow a new issue to be raised on appeal	Granted	12 Oct 2021	2021 CMAC 5	
				Motion for leave to admit fresh evidence on appeal	Dismissed			
617	Lt(N) Brown	Her Majesty the Queen	Legality of finding		Granted	8 Feb 2022	2022 CMAC 2	Yes
				Motion by the Crown to stay the proceedings	Granted, adjourned <i>sine die</i>	11 June 2021		
				Motion by the Crown to lift the stay	Granted	26 July 2021		
				Motion by Lt(N) Brown to re-instate the stay	Dismissed	12 Nov 2021	2021 CMAC 8	
618	Her Majesty the Queen	Cpl Euler	Legality of finding		Ongoing			
				Motion to quash	Dismissed	17 Nov 2021	2021 CMAC 9	

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

CONTINUATION

CMAC	Appellant	Respondent	Type of Appeal	Proceedings	Result	Dates	Citation	Appealed
619	Her Majesty the Queen	MWO MacPherson	Legality of a termination of proceedings		Ongoing			
620	Bdr Cogswell	Her Majesty the Queen	Legality of finding		Ongoing			
621	Her Majesty the Queen	Pte Vu	Legality of finding		Ongoing			
622	S3 Stewart	Her Majesty the Queen	Legality of finding		Ongoing			
623	Sgt Turner	Her Majesty the Queen	Legality of finding		Ongoing			
624	Her Majesty the Queen	Pte Bruyère	Severity and legality of sentence		Ongoing			

ANNEX C: APPEALS TO THE SUPREME COURT OF CANADA

SCC #	Appellant	Respondent	Type of Appeal	Result
39543	Sgt McGregor	Her Majesty the Queen	Legality of Finding (appeal by leave)	Ongoing
39820	LS Edwards et al.	Her Majesty the Queen	Legality of Finding (application for leave to appeal)	Ongoing
39822	Sgt Proulx, et al.	Her Majesty the Queen	Legality of Finding (application for leave to appeal)	Ongoing
40046	Cpl Christmas	Her Majesty the Queen	Legality of Finding (application for leave to appeal)	Ongoing
40065	Lt(N) Brown	Her Majesty the Queen	Legality of Finding (application for leave to appeal)	Ongoing
40074	Capt Duquette	Her Majesty the Queen	Legality of Finding (application for leave to appeal)	Ongoing