National Defence / Défense nationale

JUDGE ADVOCATE GENERAL

JAG ANNUAL REPORT ON THE ADMINISTRATION OF MILITARY JUSTICE 2024-2025

Canada

The Annual Report of the Judge Advocate General to the Minister of National Defence on the Administration of Military Justice from 1 April 2024 to 31 March 2025.

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Cat. No. D1-16

ISSN 1497-7192

Cover illustration: "*Summary Hearing after 'Slip of the Mind'*" by Richard Johnson, depicting a summary hearing aboard HMCS Charlottetown in October 2024. Faces have been obscured. Artwork reproduced with permission.

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THE YEAR IN REVIEW

Pursuant to subsection 9.3(2) of the *National Defence Act*,[1] the Judge Advocate General is required to report annually to the Minister of National Defence (the Minister) on the administration of military justice in the Canadian Armed Forces. This report covers the period from 1 April 2024 to 31 March 2025.

Highlights from the Year in Military Justice

The 2024/2025 reporting period saw a number of notable developments in the military justice system, including the introduction of updated military justice system time standards to improve efficiency, transparency, and accountability, ongoing work on military judges' compensation, the rollout of the new version of the Justice Administration and Information Management System (JAIMS) and an updated Military Justice System Performance Monitoring Framework (PMF) to report objective data on the effectiveness, efficiency, and legitimacy of the military justice system. The reporting period also saw the appointment of two new military judges and the designation of a new Chief Justice of the Court Martial Appeal Court, as well as crucial steps taken toward the implementation of the recommendations contained in several external review reports.[2] This included work with respect to the Permanent Military Court Working Group and Bill C-66, *Military Justice System Modernization Act* (Bill C-66).[3] The discussions of each of these developments are arranged chronologically below, concluding with the ongoing work regarding the implementation of the recommendations of the various military justice external reviews.

Updated Military Justice System Time Standards

Time standards for every phase of the military justice system were developed in 2019. These enhance the efficiency of the military justice system by ensuring each step in the process is conducted in a timely manner. The Office of the JAG updated the Military Justice System Time Standards in collaboration with various military justice actors following the coming into force of Bill C-77, *An Act to amend the*

[1] RSC 1985, c N-5 [*National Defence Act*].
[2] Such as the *Report of the Third Independent Review Authority to the Minister of National Defence* by the Honorable Morris J Fish as well as the *Report of the Independent External Comprehensive Review* by the Honorable Louise Arbour, among others.
[3] Bill C-66, *Military Justice System Modernization Act*, 1st Sess, 44th Parl, 2024, (first reading 21 March 2024).

National Defence Act and to make related and consequential amendments to other Acts (Bill C-77).[4] Work culminated in April 2024 with the publication of an updated policy that applies to the administration of both alleged service infractions and service offences.

Justice Administration and Information Management System

Joint Readiness Training Center – Corporal Sarah Morley, Canadian Armed Forces Photo

As part of the effort to modernize the military justice system by leveraging new technology, the Department of National Defence and the Canadian Armed Forces began the implementation of the new version of JAIMS, updated to reflect the changes to the military justice system introduced by Bill C-77. JAIMS is an electronic case management tool designed by the Digital Services Group with subject matter expertise from the Office of the JAG. Launched in a phased approach since January 2025, the new version of JAIMS now serves as the primary means to administer military justice at the unit level, from the reporting of an alleged infraction, through to investigation, charge laying, summary hearing disposition, and the review of a file when applicable. By electronically tracking the entire lifecycle of military justice cases at the unit level, JAIMS provides accessible, accurate and timely information on case status to commanders, improving the administration of military justice at the unit level and ensuring cases progress efficiently and also assists the Judge Advocate General in fulfilling their statutory duty as superintendent of the administration of military justice. JAIMS' implementation is supported by the JAIMS Centre of Excellence which is comprised of regional contacts who assist with the onboarding of every unit with a disciplinary case.

[4] Bill C-77, *An Act to amend the National Defence Act and to make related and consequential amendments to other Acts*, 1st Sess, 42nd Parl, 2019 (assented to 21 June 2019) [*Bill C-77*].

Updated Military Justice System Performance Monitoring Framework

The PMF is a performance measurement system capable of delivering quantitative and measurable qualitative data. The PMF uses a robust series of justice indicators which will report objective data on the effectiveness, efficiency, and legitimacy of the military justice system. The indicators will enable the Judge Advocate General, as superintendent of the administration of military justice, to monitor the performance of the military justice system, draw attention to potential issues, assist with the development of benchmarks for future performance, and monitor the impact of changes to the military justice system. The indicators will provide valuable feedback to policymakers and will ultimately make the military justice system more transparent. Originally reported on in the 2019/2020 Annual Report, the PMF was comprehensively updated to account for the changes to the military justice system introduced by Bill C-77.[5] The updated PMF is expected to be approved by the Judge Advocate General and published in the near future.

Military Judges Compensation Committee

The Military Judges Compensation Committee is a body created by Parliament to ensure an independent, objective, and depoliticized process for inquiring into the adequacy of military judicial compensation. The Committee, mandated under the *National Defence Act*[6] to submit recommendations to the Minister every four years, performs a similar role and operates according to similar legal principles as its civilian counterpart, the Judicial Compensation and Benefits Commission. In making recommendations on the remuneration level for military judges, the Committee considers such factors as the need to attract highly qualified candidates to the Bench, the necessity of ensuring judicial independence, and the prevailing economic conditions in Canada.

On 31 July 2024, the Minister accepted the recommendations of the Military Judges Compensation Committee for the period from 2019 to 2023, which included that military judges be remunerated in parity with other federally appointed judges and receive a new annual incidental allowance.[7] Since then, work has been underway to ensure that the necessary regulatory amendments regarding military judicial compensation are implemented in a timely manner. Work has also been ongoing to support the

[5] *Ibid.*
[6] *National Defence Act*, *supra* note 1, s 165.33.
[7] Canada, Military Judges Compensation Committee, *Report of the Military Judges Compensation Committee 2019 – 2023* (Ottawa, 2024).

establishment of the next Military Judges Compensation Committee, tasked with making recommendations regarding military judges' compensation for the period from 2023 to 2027.

The Appointment of New Military Judges

On 28 August 2024, the Governor in Council appointed two new military judges: Colonel Nancy Isenor and Colonel Steven Strickey. Both Colonels Isenor and Strickey, who have extensive experience working in the field of military justice as legal officers with the Office of the JAG, were formally sworn in as military judges on 15 November 2024. Captain (Navy) Catherine Julie Deschênes, who had been designated as the new Chief Military Judge in March 2024, was formally sworn in to that position at the same ceremony.

Designation of a New Chief Justice of the Court Martial Appeal Court

On 11 October 2024, the Prime Minister announced that the Governor in Council had designated the Honourable Mary J.L. Gleason as the new Chief Justice of the Court Martial Appeal Court of Canada (CMAC). Prior to her appointment to the Federal Court in 2011, Chief Justice Gleason had been recognized as one of Canada's leading labour and employment law practitioners, taking an active part in professional organizations and legal academia. She served on the Canada Industrial Relations Board's client consultation committee and was involved with the Federal Court's labour law, human rights, privacy, and access review liaison group. She was appointed to the CMAC in 2013 and to the Federal Court of Appeal in June 2015. Her swearing in ceremony as Chief Justice of the CMAC took place on 19 November 2024.

Under Chief Justice Gleason's leadership, the CMAC is expected to continue shaping military justice jurisprudence while also enhancing awareness and understanding of the military justice system within the broader legal community. Notably, Chief Justice Gleason initiated a new Bench and Bar forum to promote dialogue between the judiciary and legal practitioners engaged in military justice. At its inaugural meeting on 13 June 2024, participants raised concerns about resourcing pressures facing the Courts Administration Service. The Judge Advocate General will continue to monitor this issue closely to assess any potential impacts on the administration and effectiveness of the military justice system.

The service of Chief Justice Gleason's predecessor, the Honourable Elizabeth Bennett, as Acting Chief Justice following the retirement of former Chief Justice Richard Bell in October 2023 must also be recognized. During Justice Bennett's time as Acting Chief Justice, the CMAC was involved in a number of important decisions, including *R v Ellison*,[8] which clarified the application of the test for no *prima facie* case, and *R v Crouch*,[9] which considered the threshold to overturn an acquittal when inferences are made concerning impermissible myths and stereotypes surrounding sexual assault.

Implementation of External Review Recommendations

Military Training – Corporal Djalma Vuong-De Ramos, Canadian Armed Forces Photo

Throughout the 2024/2025 reporting period, work continued on the analysis and implementation of the recommendations contained in the *Report of the Third Independent Review Authority to the Minister of National Defence* (IR3)[10] by former Supreme Court Justice Morris J. Fish, the *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces* (IECR)[11] by former Supreme Court Justice Louise Arbour and other external review reports. This effort is tracked using the Department of National Defence and Canadian Armed Forces' Comprehensive Implementation Plan 2023 – 2028 (CIP). The CIP is a multi-year plan that prioritizes, structures, and harmonizes work happening across the organization to modernize the military justice system.[12] It aims to create a more open, transparent, and accountable approach to culture change and military justice modernization initiatives. The CIP incorporates recommendations from four key external

[8] 2024 CMAC 3.
[9] 2023 CMAC 11.
[10] Canada, *Report of the Third Independent Review Authority to the Minister of National Defence*, by Hon Morris J Fish (Ottawa, 2021) [*IR3*].
[11] Canada, *Report of the Independent External Comprehensive Review*, by Hon Louise Arbour (Ottawa, 2022) [IECR].
[12] Canada, Minister of National Defence, *Comprehensive Implementation Plan 2023-2028* (Ottawa, 2024).

review reports: the IR3,[13] IECR,[14] the Minister's *Advisory Panel on Systemic Racism and Discrimination Report*,[15] and the *National Apology Advisory Committee Report*.[16]

As part of the CIP, the Office of the JAG is the lead organization for the implementation of 77 recommendations across all phases and supports other organizations for the advancement of numerous other recommendations. During the 2024/2025 reporting period, five recommendations scheduled for implementation in the 2024 phase of the CIP were either substantially or fully implemented and one recommendation scheduled for the 2025 phase was fully implemented ahead of schedule.[17]

Two major highlights of the ongoing work towards analyzing and implementing the external review recommendations include the work of the Permanent Military Court Working Group and Bill C-66, which died on the order paper.

Permanent Military Court Working Group

In order to increase the perception of independence, improve efficiency and reduce delays associated with the *ad hoc* nature of courts martial, the IR3 recommended the creation of a permanent military court for the Canadian Armed Forces. The Permanent Military Court Working Group was established in late 2022 to identify the most effective framework for the creation of such a court under section 101 of the *Constitution Act, 1867*.[18] The Working Group is a joint endeavour between the Office of the JAG and the Department of Justice Canada and includes an Independent Authority, whose background is in court administration. Its work consists of undertaking consultations, developing legal opinions, considering options for the establishment of the new court, and producing a report to the Minister and the Minister of Justice. During the 2024/2025 reporting period, it met three times, produced a consultation paper, and commenced the consultation process, starting with the military chain of command.

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[13] *IR3 supra* note 10.
[14] *IECR supra* note 11.
[15] Canada, *Minister of National Defence Advisory Panel on Systemic Racism and Discrimination with a focus on Anti-Indigenous and Anti-Black Racism, LGBTQ2+ Prejudice, Gender Bias, and White Supremacy, Final Report* (Ottawa, 2022).
[16] Canada, *National Apology Advisory Committee Report* (Ottawa, 2022).
[17] The recommendations that were fully or substantially implemented include: allowing for electronic disclosure of evidence in courts martial; requiring Officers Conducting Summary Hearings to provide written reasons; the establishment of the Permanent Military Court Working Group; providing direction on the implementation of the Declaration of Victims Rights; providing formal training for Assisting Officers at Summary hearings and updating certain policies and directions.
[18] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5.

Bill C-66, Military Justice System Modernization Act

Throughout the 2024/2025 reporting period, the Office of the JAG was engaged in supporting Parliament's consideration of Bill C-66. Tabled in the House of Commons in March 2024, Bill C-66 proposed changes to the *National Defence Act* aimed at modernizing the military justice system by responding to a number of recommendations made by the IR3 and the IECR. The Bill was at second reading in the House of Commons when it died on the order paper as a result of the prorogation of Parliament on 6 January 2025.

Major Chelsea Flintoff deployed for Operation HORIZON (2024) aboard HMCS Vancouver during a Replenishment at Sea with HMNZS Aotearoa, Assistant to the Judge Advocate General (Pacific)

Military Justice in Support of Deployed Operations

As global tensions rise, the Canadian Armed Forces' role supporting Canada's foreign policy objectives and international security commitments through its deployed operations grows ever more important. One aspect of deployed operations that should not be overlooked is the critical role that the military justice system plays in ensuring the discipline, efficiency, and morale of the Canadian Armed Forces in these operations.

In recent years, the Canadian Armed Forces have been engaged in a wide range of deployed operations both within Canada and internationally. In all of these operations, the military justice system has a crucial role to play. Even when not deployed, different demands are required of the military justice system compared to its civilian counterpart. As the Supreme Court of Canada observed in *R v Généreux*, "breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. [...] There is thus a need for separate tribunals to enforce special disciplinary standards in the military."[19] In the challenging environment of an operational theatre, the need for an efficient, decisive, and fair system of justice highlighted in *Généreux* is all the more pressing. In such circumstances, time and resources may be scarce, and the need to maintain unit cohesion and operational effectiveness is paramount.

[19] [1992] 1 SCR 259 at para 293 [*Généreux*].

The military justice tool most readily available to commanders in the field is the summary hearing system, specifically designed to provide a fast, flexible, and fair process to address service infractions covering a wide variety of minor disciplinary misconduct. Compared to courts martial, summary hearings require little in the way of administrative or logistical support and can be completed relatively quickly, making them ideally suited for use in an operational environment.

Operation NEON – Corporal Alisa Strelley, Canadian Armed Forces Photo

While the overall trend in the modernization of the court martial system has been an evolution towards something closer to Canada's civilian system, the military justice system possesses certain attributes that civilian courts do not have, and that are essential to fulfilling its military purpose. One of those essential attributes is the ability to conduct courts martial anywhere in the world. Achieving a balance between a constitutionally compliant, procedurally robust court martial system, and one that has the flexibility to be deployed in the austere environment of a theatre of operations is an ongoing challenge. Given the complexity, time, and resources involved, court martial proceedings are not frequently held outside of Canada, including in theatres of operations. Despite these challenges, it is vital to ensure the deployability of courts martial; as the Supreme Court of Canada remarked recently in *R v Edwards*, "Canadians expect [...] an operationally ready and portable courts martial system."[20]

The use of technology provides some assistance in addressing these challenges. The availability and operability of communications technology means that physical presence in a courtroom is no longer an absolute requirement for participation in a proceeding. However, the most effective and durable response to these challenges may be found in our people rather than technology, through the cultivation and maintenance of an operational mindset with respect to the military justice system. Without sacrificing the important gains that have been made in recent years to align Canadian military justice with the country's civilian legal and cultural norms, it is important not to lose sight of the reason why a separate military

[20] 2024 SCC 15 at para 134 [*Edwards*].

justice system exists: to ensure the readiness and operational effectiveness of the Canadian Armed Forces by maintaining discipline, efficiency, and morale.[21] This underlying purpose should serve as a guide for the continued evolution of the military justice system, ensuring that it has the right people, procedures, and resources in place so that it will always be ready for service when the need arises.

Conclusion

As Canada's role in the world evolves, its military justice system must also evolve and adapt to the challenges and opportunities this change brings. The Judge Advocate General remains dedicated to supporting this process, ensuring that it unfolds in a way that both upholds the rule of law and meets the unique needs of the Canadian Armed Forces.

[21] *Généreux, supra* note 19 at para 293.

1 THE OFFICE OF THE JUDGE ADVOCATE GENERAL

The Judge Advocate General

Operation REASSURANCE – Camp Ādaži – ROTO 2402 – Summary Hearing – Picture by Major Jean-François Gosselin

Pursuant to section 9 of the *National Defence Act*, the Judge Advocate General is appointed by the Governor in Council and acts as the legal advisor to the Governor General, the Minister, the Department of National Defence, and the Canadian Armed Forces in matters relating to military law. The Judge Advocate General also has the statutory duty to superintend the administration of military justice in the Canadian Armed Forces pursuant to section 9.2(1) of the *National Defence Act*. The Judge Advocate General is responsible to the Minister in the performance of these duties and functions.

Command of the Office of the Judge Advocate General

The Judge Advocate General has command over all officers and non-commissioned members posted to a position established within the Office of the JAG. The Judge Advocate General is assisted in this role by the Vice Judge Advocate General who provides strategic leadership support and assists the Judge Advocate General in the execution of their responsibilities. This position was created in June 2023 as part of a broader initiative to modernize and streamline the provision of legal services within the Canadian Armed Forces.

The duties of a legal officer are determined by, or under the authority of, the Judge Advocate General and in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer. This is to ensure that legal officers provide independent legal services. All qualified legal officers serving in the Office of the JAG are members in good standing at the bar of a province or territory in Canada.[22]

The Office of the Judge Advocate General

The Office of the JAG supports the Judge Advocate General in carrying out their statutory duties and functions. It is composed of Canadian Armed Forces Regular and Reserve Force legal officers, civilian members of the Public Service, and Canadian Armed Forces members from other military occupations. For instance, there are 10 Chief Warrant Officer / Petty Officer First Class positions across the regional offices throughout the country. They provide critical leadership to support the Assistant Judge Advocates Generals and units administering military justice. During the 2024/2025 reporting period, there was a 20 percent vacancy rate for the available Chief Warrant Officers / Petty Officer First Class positions within the Office of the JAG.

The Judge Advocate General's Strategic Guidance for the Office of the JAG defines the Office's overall mission as consisting of three principal lines of effort.[23] The first is delivering client-focused, timely, options-oriented, and operationally driven military legal services in support of the Government of Canada, Department of National Defence, and Canadian Armed Forces' priorities and objectives. The second is superintending the administration of the military justice system and promoting the maintenance of discipline, efficiency, and morale in the Canadian Armed Forces by enabling the proper operation of the military justice system. The third line of effort is leading by example, inspiring excellence, and empowering Office of the JAG team members to reach their full potential. The Strategic Guidance also identifies the four values that guide those who serve in the Office of the JAG: respect, courage, creativity and accountability.

[22] Canada, Department of National Defence, *Queen's Regulations and Orders for the Canadian Forces* (Ottawa: 20 June 22), [*Queen's Regulations and Orders for the Canadian Forces*] art 4.081 and Ministerial Organization Order 96-082, dated 1 August 1996.
[23] Canada, Office of the Judge Advocate General, *Strategic Guidance for the Office of the JAG,* (Ottawa, 2024).

The Office of the JAG is composed of six divisions and two directorates, all led by legal officers of the Colonel/ Captain(N) rank.

The divisions are the Chief of Staff and Corporate Services Division, the Military Justice Division, the Military Justice Modernization Division, the Operational and International Law Division, the Administrative Law Division, and the Regional Services Division.

The Office of the JAG also includes the Director of Defence Counsel Services and the Director of Military Prosecutions. The Director of Defence Counsel Services, assisted by legal officers who act as defence counsel, is responsible for providing, supervising, and directing legal services to persons who are liable to be charged, dealt with, and tried under the Code of Service Discipline, at no cost to the member. The Director of Defence Counsel Services is appointed by the Minister for a renewable term of four years and acts independently from the Department of National Defence and Canadian Armed Forces authorities when exercising their powers, duties, and functions.

The Director of Military Prosecutions is the senior military prosecutor in the Canadian Armed Forces. It is the responsibility of the Director of Military Prosecutions, with the assistance of legal officers appointed to act as military prosecutors, to prefer charges to be tried by court martial, to conduct all prosecutions at court martial, and to act as counsel for the Minister in respect of appeals to the CMAC and the Supreme Court of Canada. The Director of Military Prosecutions is also responsible for providing advice in support of investigations conducted by the Canadian Forces National Investigation Service and Military Police.

The Director of Military Prosecutions and the Director of Defence Counsel Services submit annual reports to the Judge Advocate General. Their reports for the 2024/2025 reporting period are available online here:

https://www.canada.ca/en/department-national-defence/corporate/reports-publications/military-law.html

2 THE STRUCTURE OF CANADA'S MILITARY JUSTICE SYSTEM

Canada's Military Justice System

Operation REASSURANCE – Lieutenant Commander Jean-Francois Morin, Major Jean-François Gosselin, Captain Bénédicte Dupuis, Captain Cédrick Bérard, Lieutenant (Navy) Nicolas Groulx, Commander Marc-Andre Vary

Canada's military justice system operates in parallel with its civilian criminal justice counterpart and forms an integral part of the Canadian legal mosaic. It shares many of the same underlying principles as the civilian criminal justice system and is subject to the same constitutional framework, including the *Canadian Charter of Rights and Freedoms* (*Charter*).[24] On several occasions, the Supreme Court of Canada has recognized the requirement for a separate, distinct military justice system to meet the specific needs of the Canadian Armed Forces[25] and has recognized the military justice system as a "full partner in administering justice alongside the civilian justice system."[26] The military justice system differs from its civilian counterpart with respect to some of its objectives. As the Supreme Court of Canada stated in *R v Edwards:* "Canada's system of military justice […] takes account of the military context, and specifically of the legislative policies of maintaining 'discipline, efficiency and morale' in the Forces and 'public trust in […] a disciplined armed

[24] *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [Charter].*
[25] *Généreux*, *supra* note 19; *MacKay v The Queen*, 1980 CanLII 217 (SCC) [*MacKay*]; *R v Moriarity*, 2015 SCC 55 [*Moriarity*].
[26] *R v Stillman*, 2019 SCC 40 at para 20 [*Stillman*].

force.'"[27] These different purposes give rise to many of the substantive and procedural differences that properly distinguish the military justice system from the civilian justice system.

Operation REASSURANCE – ROTO 2402 – Commander Marc-André Vary and Major Jean-François Gosselin

The Code of Service Discipline

The Code of Service Discipline, contained in Part III of the *National Defence Act*, is "[t]he foundation of Canada's military justice system."[28] It is "an essential ingredient of service life"[29] that "defines the standard of conduct to which military personnel and certain civilians are subject and provides for a set of military tribunals to discipline breaches of that standard."[30] It has also been recognized as serving a public function "by punishing specific conduct which threatens public order and welfare."[31] The Code of Service Discipline sets out the procedures and organization of summary hearings and courts martial, the jurisdiction of various actors in the military justice system, the scale of punishment, and the post-trial review and appeal mechanisms.

The Two Types of Military Justice Procedure

The military justice system is comprised of two types of procedures for addressing misconduct. The Code of Service Discipline and the *Queen's Regulations and Orders for the Canadian Forces*[32] outline procedures for the disposal of a charge. The following sections describe each type of military justice procedure: summary hearings and courts martial. Courts martial are military courts, presided over by military judges, which try service offences under the Code of Service Discipline. Summary hearings are non-penal, disciplinary proceedings based on principles of administrative law that are designed to address minor breaches of military discipline at the unit level. Characterizing a disciplinary incident as either a

[27] *Edwards*, *supra* note 20 at para 10.
[28] *Ibid,* para 55.
[29] *MacKay*, *supra* note 25 at p. 398.
[30] *Généreux*, *supra* note 19 at para 297.
[31] *Stillman*, *supra* note 27 at para 55.
[32] *Queen's Regulations and Orders for the Canadian Forces*, *supra* note 22.

service infraction or a service offence depends on an analysis of several factors, including the impact on operations, the complexity of the matter and other public interest considerations.

The Summary Hearing System

The summary hearing system provides commanders with a fair and efficient means to address minor breaches of military discipline at the unit level. While still ensuring that persons charged benefit from a procedurally fair process, investigations and hearings require relatively little in the way of time and resources. By minimizing the impact on operational tempo, the summary hearing system is more efficiently employed by units both in garrison and when deployed, improving their operational readiness.

Service Infractions

Service infractions are breaches of military discipline as defined in the *Queen's Regulations and Orders for the Canadian Forces*[33] and are generally less serious than the misconduct covered by service offences. There are currently three categories of service infractions. The first category of infractions relates to property and information and covers acts or omissions such as unauthorized possession of public property and failure to disclose a conflict of interest.[34] The second category is composed of infractions related to military service. These cover breaches of discipline such as unauthorized discharge of a firearm and other behaviours that adversely affects the discipline, efficiency, or morale of the Canadian Armed Forces.[35] The final category deals with infractions related to drugs and alcohol. This includes behaviour such as the possession of an intoxicant or use of a drug, such as cannabis, while on duty.[36]

Summary Hearings

Summary hearings can only be held to deal with service infractions[37] and may be held anywhere that the Canadian Armed Forces operate.[38] They are conducted by an officer who must be at least one rank

[33] *Ibid*, arts 120.02–120.04.
[34] *Ibid*, art 120.02.
[35] *Ibid*, art 120.03.
[36] *Ibid*, art 120.04.
[37] *National Defence Act*, *supra* note 1, s 162.4.
[38] *Ibid*, s 163.5.

above the member charged with the infraction.[39] However, officers may be precluded from conducting a hearing in certain circumstances which are listed in the *National Defence Act*.[40]

The Officer Conducting the Summary Hearing (OCSH) may be a superior commander, a commanding officer, or a delegated officer. Where it is determined that the member has committed a service infraction, the status of the OCSH conducting the hearing will impact the range of sanctions that are available.[41] In order to conduct a summary hearing, an OCSH must successfully complete the Military Justice at the Unit Level training course and exam and be certified by the Judge Advocate General.

Confirmatory Training – Master Corporal Justin Roy, Canadian Armed Forces

Summary hearings are generally open to the public to attend. However, in certain circumstances, they may be closed if classified information will form part of the evidence, or if information that may impact an individual's safety or security arises as part of the evidence.[42] At the start of the hearing, the OCSH will take an oath or make a solemn affirmation[43] before asking the member charged with the infraction three preliminary questions: did the member have adequate time to prepare, does the member wish to challenge the capacity of the OCSH to conduct the summary hearing, and does the member wish to admit to any of the details of the charge.[44]

Summary hearings are conducted in accordance with the principles of Canadian administrative law, particularly the principles of procedural fairness and natural justice.[45] As such, a member charged with a service infraction must be given the opportunity to request the presence of witnesses, present evidence, and make representations at all stages of the hearing.[46] Unlike at a court martial, the standard of proof at a summary hearing is on a balance of probabilities.[47] A member will, therefore, be deemed to have committed

[39] *Ibid*, s 163.
[40] *Ibid.*
[41] *National Defence Act, supra* note 1, s 163.1.
[42] *Queen's Regulations and Orders for the Canadian Forces*, *supra* note 22, art 122.02.
[43] *Ibid*, art 122.06.
[44] *Ibid*, art 122.07.
[45] *Ibid*, art 122.08.
[46] *Ibid.*
[47] *National Defence Act*, *supra* note 1, s 163.1.

a service infraction if "it is more likely than not that the alleged event occurred."[48] However, it is insufficient for the OCSH to simply state that it is more likely than not that the member committed the infraction. To be a valid determination, the decision of the OCSH must be "transparent, intelligible, and justified."[49] As such, the OCSH must provide in writing the reasons underpinning their determination.

Should the member be found to have committed a service infraction, the OCSH must impose one, or a combination of, the authorized sanctions. Prior to doing so, the OCSH must allow the member to make representations regarding the sanction to be imposed.[50] Finally, after imposing a sanction, the OCSH must provide written reasons to the member and to their commanding officer.[51]

Sanctions

The *National Defence Act* enumerates the sanctions available when a member is found to have committed a service infraction. These sanctions are (from most severe to least severe): reduction in rank, severe reprimand, reprimand, deprivation of pay and allowances for no more than 18 days, and minor sanctions.[52]

Minor sanctions are defined in the *Queen's Regulations and Orders for the Canadian Forces* and include confinement to ship or barracks for no more than 14 days, extra work and drill for no more than 14 days, and the withholding of leave for no more than 30 days.[53] Sanctions may be combined so that, for example, a member may be sanctioned to both a reprimand and a deprivation of pay and allowances.[54]

Reviews of Summary Hearing Decisions

A member who has been found to have committed a service infraction may request a review of the decision by applying in writing to a review authority within 14 days following receipt of the written reasons.[55] A review authority is normally the superior in matters of discipline of the officer who conducted

[48] *FH v McDougall*, 2008 SCC 53 at para 49.
[49] *Vavilov v Canada (Minister of Citizenship and Immigration)*, 2019 SCC 65 at para 15.
[50] *Queen's Regulations and Orders for the Canadian Forces*, *supra* note 22, art 122.09.
[51] *Ibid.*
[52] *National Defence Act*, *supra* note 1, s 162.7. Subsection 162.7(d) of the *National Defence Act* provides for the deprivation of pay and any allowances prescribed in regulations. However, there are currently no allowances prescribed in regulations. Therefore, this sanction is currently limited to only deprivation of pay.
[53] *Queen's Regulations and Orders for the Canadian Forces*, *supra* note 22, art 123.02.
[54] *Ibid,* art 122.09(3).
[55] *Ibid*, art 124.03.

the hearing.[56] Alternatively, a review authority may undertake a review of the decision on their own initiative.[57] In both cases, a review authority must obtain legal advice from a legal officer of the Office of the JAG prior to conducting the review.[58] Following the review, the review authority may leave the decision unchanged, quash it entirely or in part,[59] substitute one or more findings,[60] substitute one or more sanctions,[61] or commute, mitigate, or remit the sanction(s).[62] A member who is unsatisfied with the outcome of the review can seek further redress by filing an application for judicial review before the Federal Court of Canada.

The Court Martial System

A court martial is a formal military court presided over by a military judge who possesses all the constitutional hallmarks of judicial independence. It is designed to deal with service offences, and a military judge has powers of punishment up to and including imprisonment for life. Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts, while taking into account the unique operational requirements of the Canadian Armed Forces. They exercise the same rights, powers, and privileges as a superior court of criminal jurisdiction with respect to all "matters necessary or proper for the due exercise of [their] jurisdiction."[63]

Courts martial may take place anywhere in Canada or abroad. The *National Defence Act* provides for two types of court martial: General and Standing. A General Court Martial is composed of a military judge and a panel of five Canadian Armed Forces members. The panel serves as the trier of fact and decides on any finding of guilt while the military judge makes any required legal findings. In the event of a guilty finding, the military judge determines the sentence or directs that the offender be discharged absolutely. At a Standing Court Martial, the military judge sits alone, makes any required findings of fact and law and, if the accused person is found guilty, imposes a sentence or directs that the individual be discharged absolutely.

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[56] *Ibid*, art 124.02(1).
[57] *National Defence Act*, *supra* note 1, s 163.6(2).
[58] *Queen's Regulations and Orders for the Canadian Forces*, *supra* note 22, art 124.02(2).
[59] *Ibid*, art 124.04.
[60] *Ibid*, art 124.05.
[61] *Ibid*, art 124.06.
[62] *Ibid*, art 124.07.
[63] *National Defence Act*, *supra* note 1, s 179(1)(d).

At court martial, the prosecution is conducted by a military prosecutor under the authority of the Director of Military Prosecutions. The accused is entitled to be represented by defence counsel assigned by the Director of Defence Counsel Services, at no cost to the member, or by civilian counsel at their own expense.[64]

Service Offences

The term "service offence" is defined in the *National Defence Act* as "an offence under this Act, the *Criminal Code*,[65] or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline."[66] Thus, service offences include many offences that are unique to the profession of arms, such as disobedience of a lawful command,[67] absence without leave,[68] and conduct to the prejudice of good order and discipline,[69] as well as more conventional offences such as those found in the *Criminal Code,*[70] and other Acts of Parliament. Members of the Regular Force of the Canadian Armed Forces are always subject to the Code of Service Discipline, whereas members of the Reserve Force and some civilians are subject to the Code of Service Discipline only in the circumstances specified by section 60 of the *National Defence Act*.

Appeals of Court Martial Decisions

Decisions made at a court martial may be appealed to the CMAC.[71] The CMAC is composed of civilian judges from the Federal Court of Appeal, the Federal Court, from the superior courts, or courts of appeal of the provinces and territories who are appointed by the Governor in Council.[72] CMAC decisions may be appealed to the Supreme Court of Canada on any question of law on which a judge of the CMAC dissents, or on any question of law when leave to appeal is granted by the Supreme Court of Canada.[73]

[64] In some cases, civilian counsel can be provided at no cost to the member by the Director of Defence Counsel Services.
[65] RSC 1985, c C-46.
[66] *National Defence Act*, *supra* note 1, s 2.
[67] *Ibid*, s 83.
[68] *Ibid*, s 90.
[69] *Ibid*, s 129.
[70] *Criminal Code*, *supra* note 65.
[71] The Minister of National Defence has instructed the Director of Military Prosecutions to act on their behalf for appeals to the Court Martial Appeal Court of Canada and the Supreme Court of Canada pursuant to section 165.11 of the *National Defence Act*.
[72] *National Defence Act*, *supra* note 1, s 234(2).
[73] *Ibid*, s 245.

3 MILITARY JUSTICE SYSTEM STATISTICS

The Office of the JAG is committed to collecting the most accurate quantitative data available on the military justice system. The 2024/2025 reporting period marks the first time since the summary hearing system was introduced in June 2022 that enough data exists to support a meaningful year-over-year comparison[74].

Summary Hearings

During this reporting period, 518 summary hearings were conducted. This represents close to a 15% increase over the number of summary hearings conducted during the previous reporting period and an even larger increase over the number of summary trials conducted during the 2021/2022 and the 2022/2023 reporting periods (the last two reporting periods when the summary trial procedure was in use). The increased use of summary hearings suggests that the summary hearing process is being readily adopted at the unit level as a fast and flexible tool for addressing minor misconduct. Having said that, it is also worth noting that the number of summary hearings remains below the number of summary trials in the 2018/2019 reporting period, the last full reporting period before the imposition of COVID 19 restrictions that generally reduced the number of disciplinary proceedings. Figure 3.1 shows the number of summary hearings and courts martial held over the reporting period compared with the last one. Figure 3.2 shows the number of summary hearings or summary trials held each reporting period since 2018/2019.

[74] Statistics from the 2023/2024 reporting period may differ from those appearing in the 2023/2024 Annual Report of the Judge Advocate General as a result of late reporting by various units across the Canadian Armed Forces.

Figure 3.1: Distribution of Proceedings

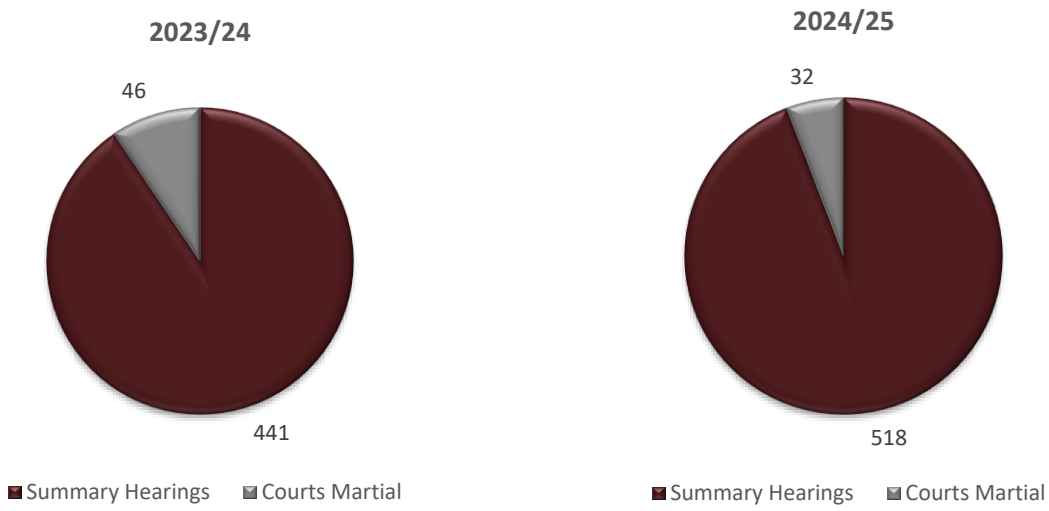
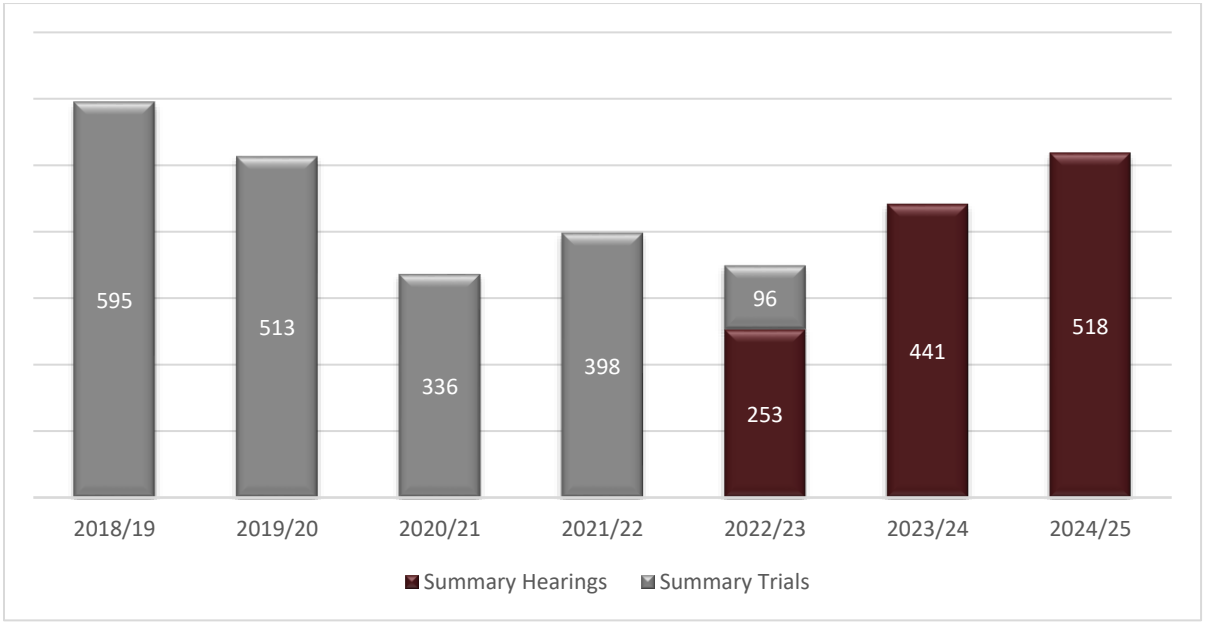


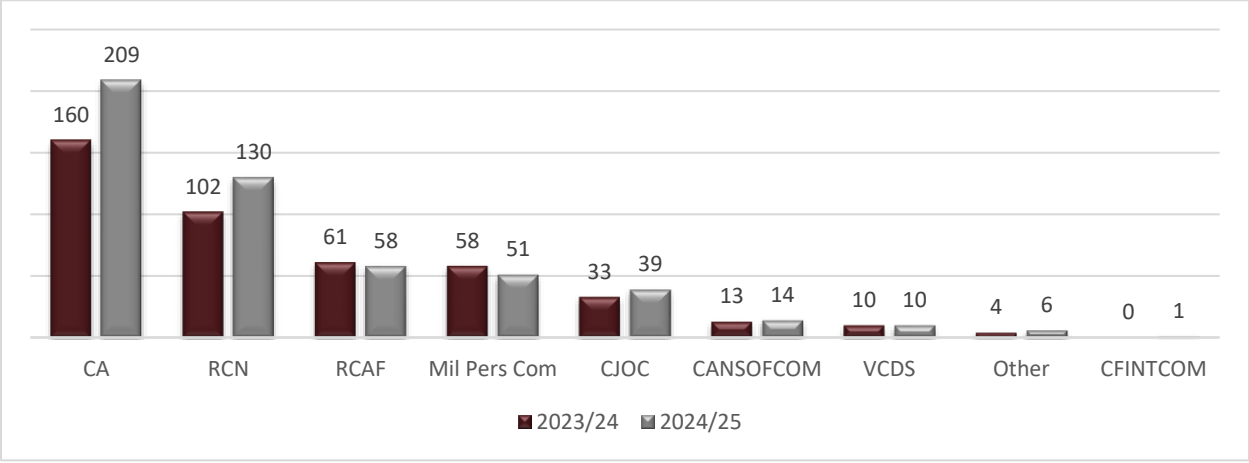
Figure 3.2: Summary Procedures for the Past Seven Reporting Periods



Summary Hearings by Organization

In 2024/2025, eight organizations were responsible for nearly 99% of the summary hearings. Figure 3.3 shows the total number of summary hearings held over the reporting period within these organizations (Canadian Army (CA), Royal Canadian Navy (RCN), Royal Canadian Air Force (RCAF), Military Personnel Command (MilPersCom), Canadian Joint Operations Command (CJOC), Canadian Special Operations Forces Command (CANSOFCOM), Vice Chief of Defence Staff (VCDS), Canadian Forces Intelligence Command (CFINTCOM)) as well as the combined number for all other organizations. The distribution of summary hearings across organizations, with the CA accounting for the highest number of hearings (209 or 40.3%) followed by the RCN (130 or 25.09%), aligns with the distribution of summary proceedings in previous reporting periods back to 2018/2019, including reporting periods when the summary trial procedure was still in use.

Figure 3.3: Summary Hearings by Organization



Charges Disposed of at Summary Hearing

During this reporting period, 903 charges for service infractions were disposed of at summary hearing. There were 823 charges disposed of at summary hearing for infractions in relation to military service under article 120.03 of the *Queen's Regulations and Orders for the Canadian Forces*, accounting for over 91% of the total number of charges. There were 46 charges disposed of for service infractions in relation to drugs and alcohol under article 120.04, accounting for approximately 5% of the total and 34

charges disposed of for service infractions in relation to property and information under article 120.02, accounting for nearly 4% of the total. Figure 3.4 provides the number of charges for each category of service infraction disposed of at summary hearing during the 2023/2024 and 2024/2025 reporting periods. A more detailed list of each infraction disposed of at summary hearing in the last two reporting periods is provided at Annex A.

Figure 3.4: Charges Disposed of at Summary Hearing

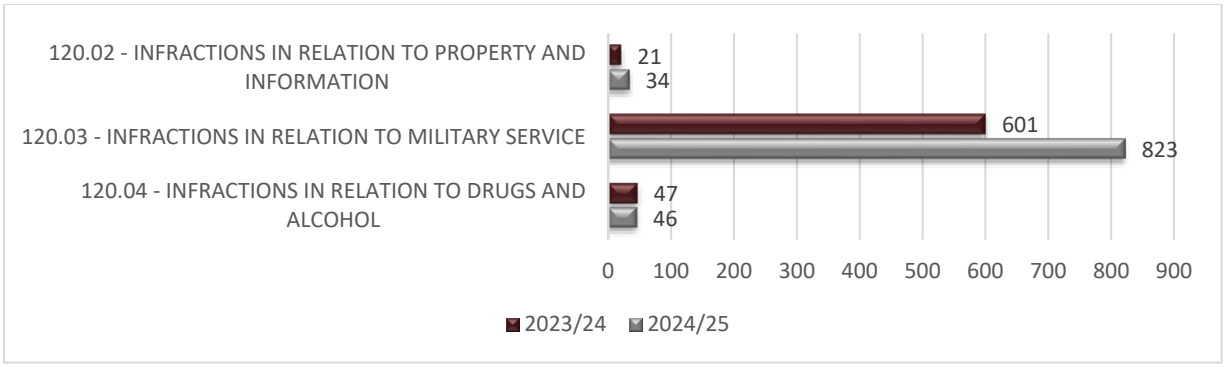
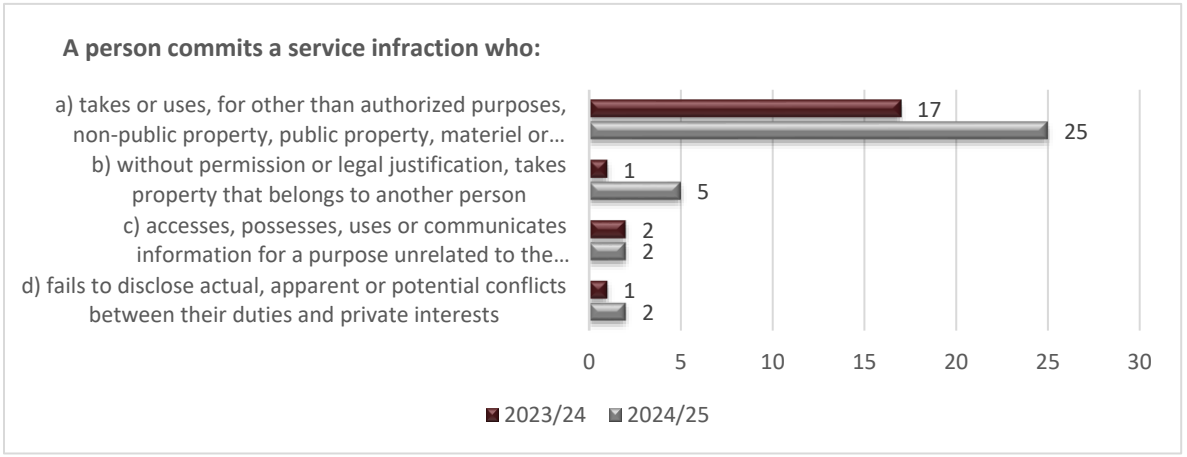


Figure 3.5 sets out the breakdown of the charges disposed of at summary hearing for infractions in relation to property and information under article 120.02 during the 2023/2024 and 2024/2025 reporting periods.

Figure 3.5: Charges Disposed of under QR&O 120.02 (Infractions in Relation to Property and Information)



Of the 34 charges disposed of for infractions in relation to property and information under article 120.02, by far the most common was paragraph 120.02(a) (takes or uses, for other than authorized purposes, non-public property, public property, materiel or government-issued property or damages that property or materiel), which accounted for over 73% of all charges under article 120.02. As a percentage of charges, this is a decrease from the previous reporting period, though in terms of the number of charges, it marks a small increase.

Of the three categories of service infractions, the most frequently charged was service infractions in relation to military service, under article 120.03 of the *Queen's Regulations and Orders for the Canadian Forces*. Article 120.03 includes nine individual service infractions, the highest number of the three categories. It also includes the two most common infractions disposed of at summary hearing: paragraph 120.03(f) (without reasonable excuse, fails to attend or is tardy to their place of duty) and paragraph 120.03(i) (behaves in a manner that adversely affects the discipline, efficiency, or morale of the Canadian Forces). These two infractions apply to misconduct that previously would have been dealt with under the summary trial system as the service offences of Absence without Leave and Conduct to the Prejudice of Good Order and Discipline (sections 90 and 129 of the *National Defence Act,* respectively). The number of charges for these infractions during the past two reporting periods are broadly similar to the number of charges that had been laid for the analogous service offences in previous reporting periods when the summary trial procedure was in use. Figure 3.6 sets out the breakdown of the charges disposed of at summary hearing for infractions in relation to military service under article 120.03 of the *Queen's Regulations and Orders for the Canadian Forces* during the 2023/2024 and 2024/2025 reporting periods. Figures 3.7 and 3.8 show the comparison between the number of charges under paragraphs 120.03(f) and 120.03(i) of the *Queen's Regulations and Orders for the Canadian Forces* and sections 90 and 129 of the *National Defence Act,* respectively, from the 2018/2019 reporting period until the present one.

Figure 3.6: Charges Disposed of under QR&O 120.03 (Infractions in Relation to Military Service)

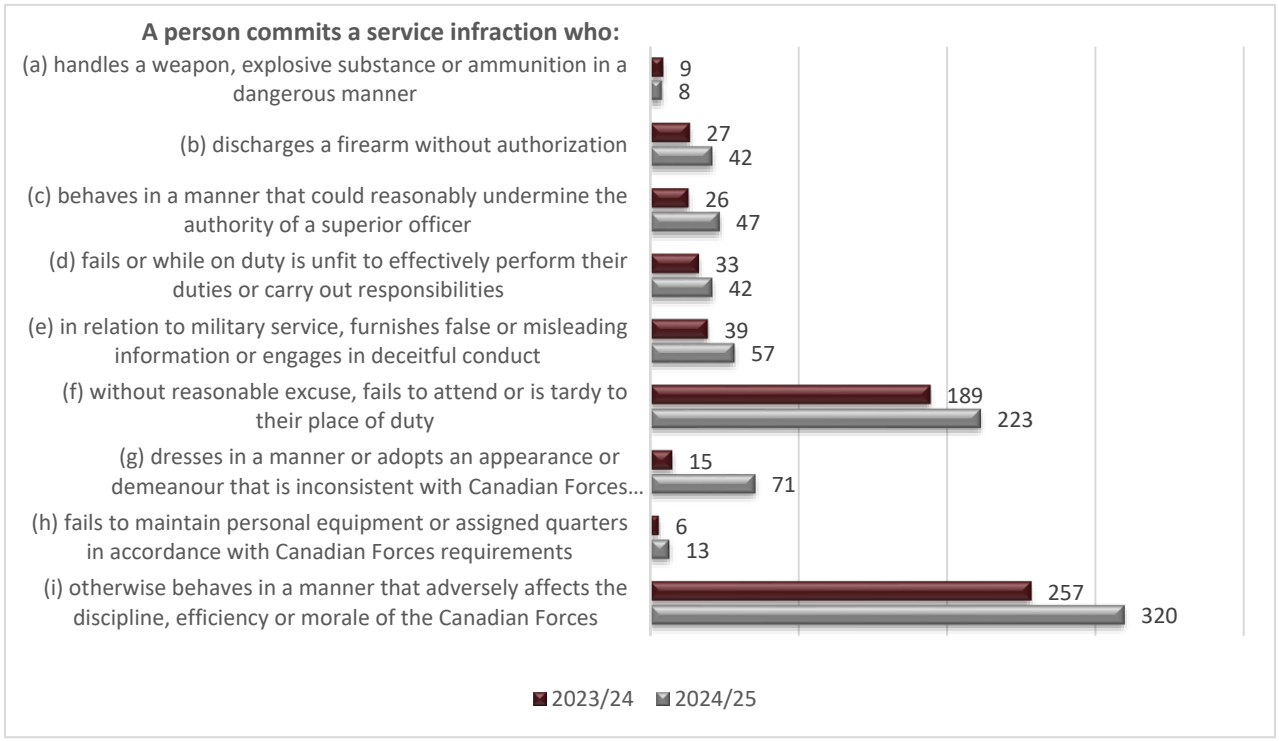


Figure 3.7: Comparisons of National Defence Act s.90 and QR&O 120.03(f)

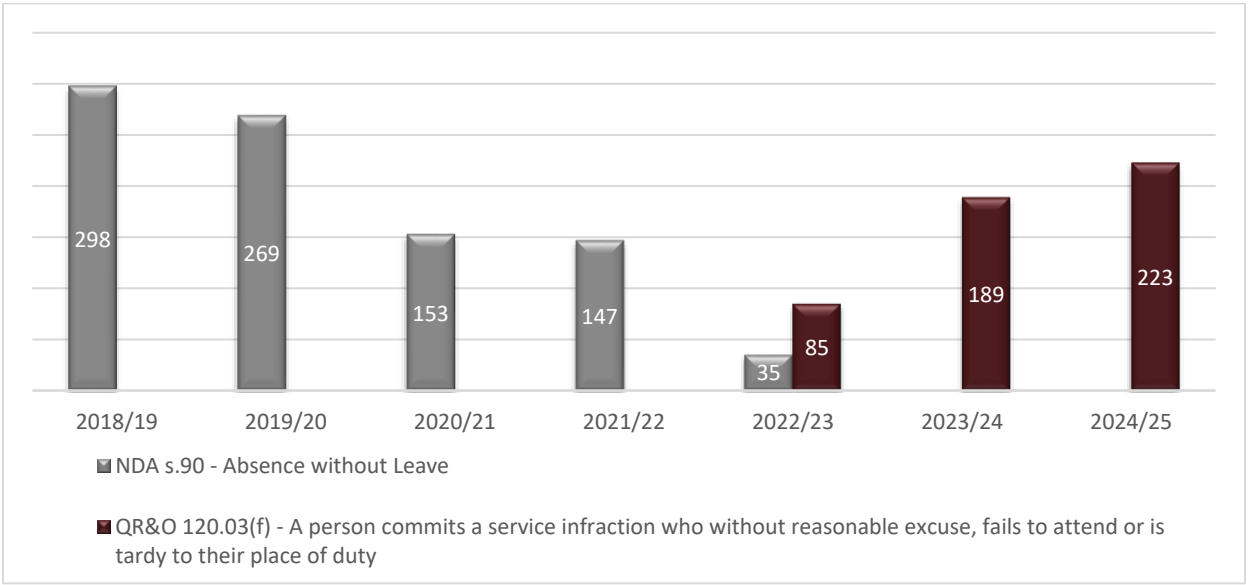
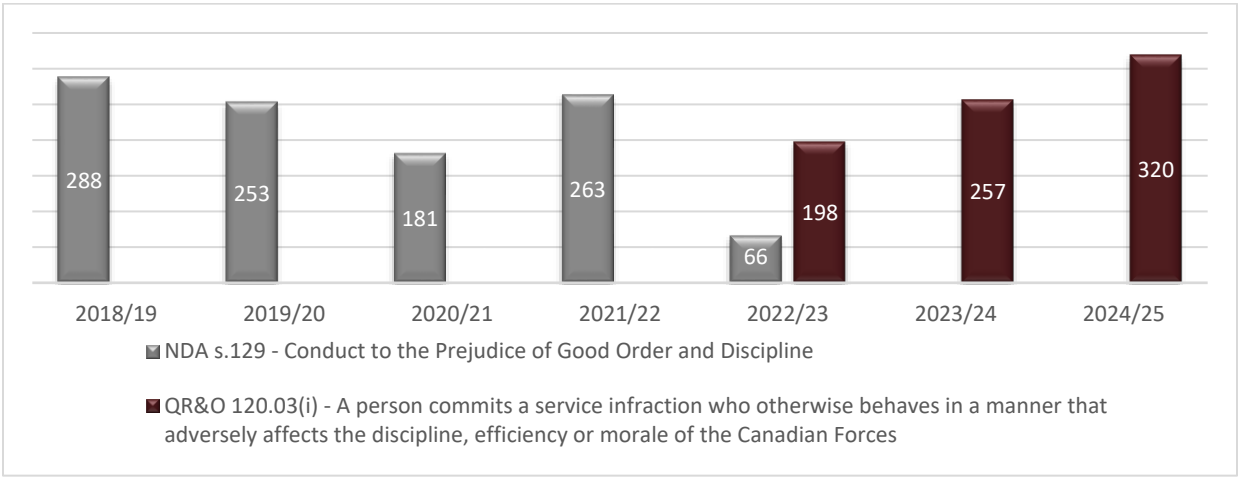
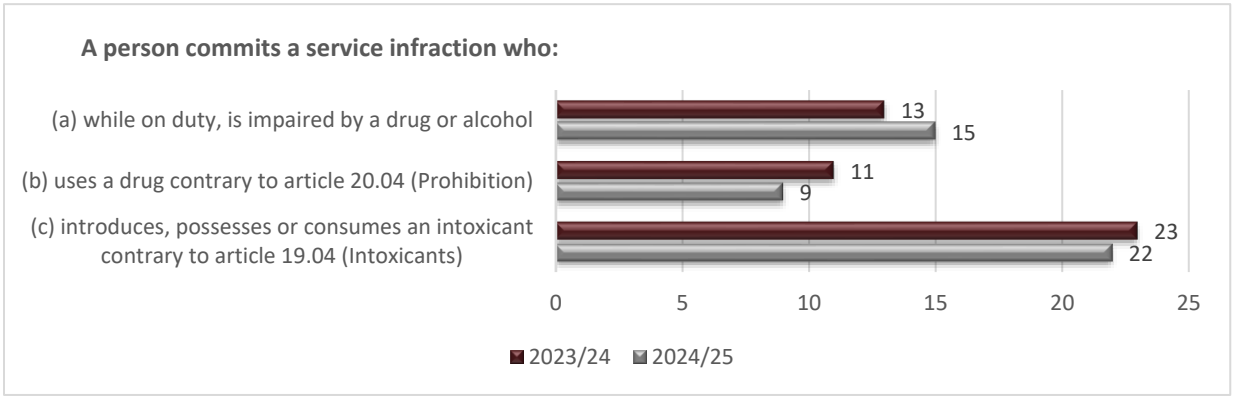


Figure 3.8: Comparisons of National Defence Act s.129 and QR&O 120.03(i)



The total number of charges disposed of during this reporting period for infractions in relation to drugs and alcohol under article 120.04 of the *Queen's Regulations and Orders for the Canadian Forces* is very close to the number of charges disposed of during the previous reporting period (46 and 47, respectively) as is their distribution. The most commonly charged infraction under this article was paragraph 120.04(c) (introduces, possesses or consumes an intoxicant contrary to article 19.04 of the *Queen's Regulations and Orders for the Canadian Forces* (Intoxicants)), accounting for nearly 48% of all charges under this article. Figure 3.9 sets out the breakdown of the charges disposed of at summary hearing for infractions in relation to drugs and alcohol under article 120.04 of the *Queen's Regulations and Orders for the Canadian Forces* during the 2023/2024 and 2024/2025 reporting periods.

Figure *3.9: Charges Disposed of under QR&O 120.04 (Infractions in Relation to Drugs and Alcohol)*



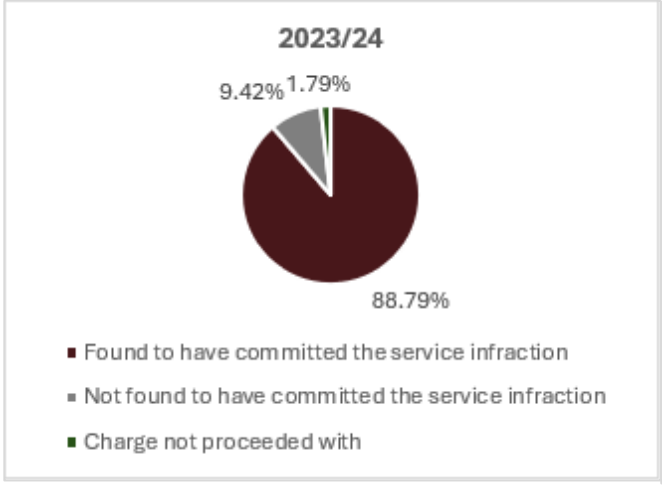
Findings at Summary Hearing

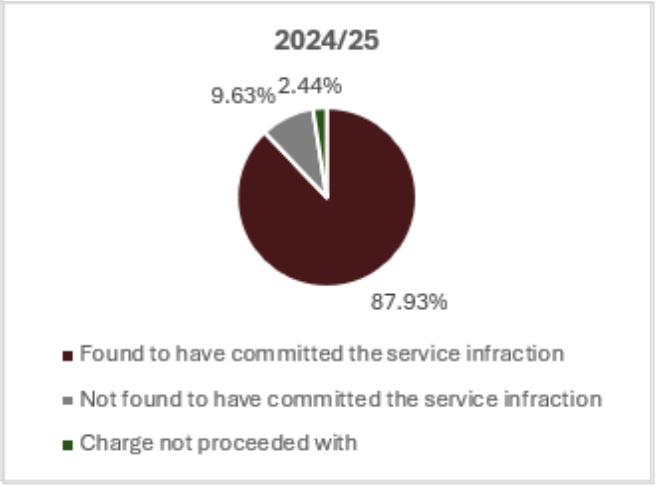
During the reporting period, 794 charges resulted in a finding that the alleged service infraction was committed, representing approximately 88% of charges. 87 charges resulted in a finding that the alleged service infraction was not committed, representing nearly 10% of charges. 22 charges were not proceeded with at summary hearing. These percentages are similar to the 2023/2024 reporting period, when 89% of charges resulted in a finding that the service infraction had been committed, and 9% of charges resulted in a finding that the infraction had not been committed. The statistics for findings at summary hearing for both the 2023/2024 and the present reporting period are set out at Figure 3.10.

Figure 3.10: Findings at Summary Hearing

Sanctions at Summary Hearing

OCSHs are limited in the types of sanctions they may impose on a member found to have committed a service infraction. Arranged from the most severe to the least severe, the available sanctions are: reduction in rank, severe reprimand, reprimand, deprivation of pay and allowances for no more than 18 days, and minor sanctions, which include confinement to ship or barracks for no more than 14 days, extra work and drill for no more than 14 days, and the withholding of leave for no more than 30 days. Reflecting the non-penal nature of the summary hearing system, OCSHs do not have authority to impose detention as a sanction.

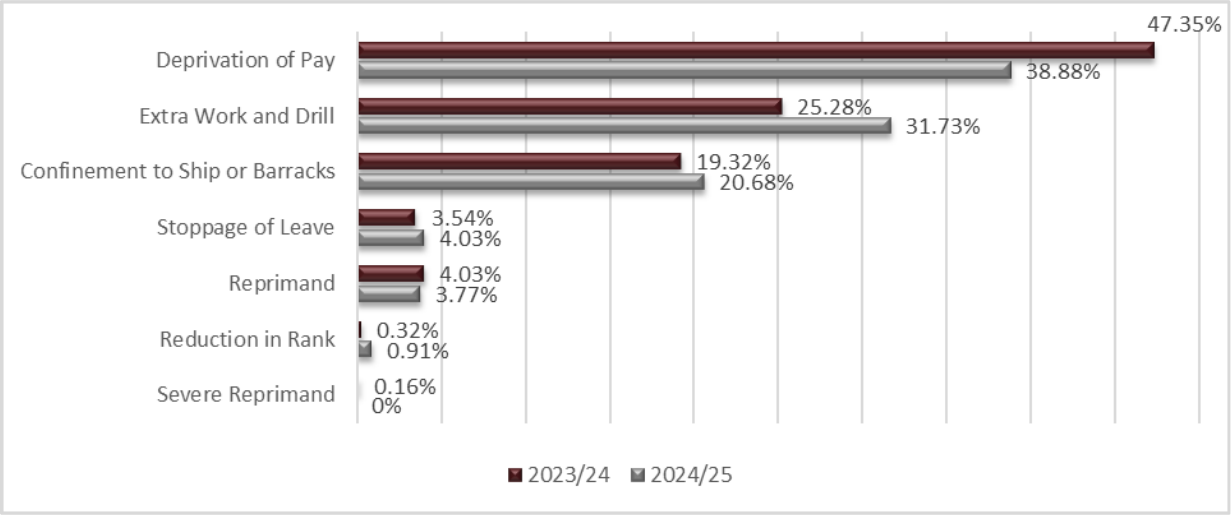




Deprivation of pay was the most common sanction imposed at summary hearing during this reporting period, accounting for over 38% of sanctions. This is similar to the 2023/2024 reporting period when it accounted for over 47% of sanctions. Extra work and drill was the second most frequently imposed sanction, accounting for over 31% of sanctions, while confinement to ship or barracks accounted for over 20% of sanctions imposed. During the previous reporting period, extra work and drill accounted for over 25% of sanctions imposed, while confinement to ship or barracks accounted for nearly 20%. Figure 3.11 shows the relative number of each type of sanction that was imposed at summary hearing during the 2023/2024 and 2024/2025 reporting periods.

As reported in the 2023/2024 annual report, the processing of the sanction of deprivation of pay was placed on hold in the Canadian Armed Forces pay system by the Director of Human Resources and Business Management and the Director of Military Pay and Allowances Processing in the summer of 2023. The processing hold was put in place to ensure that a uniform method of administering the sanction was being used at the unit level. During this reporting period, key organizations continued to collaborate on the development of the policy required to implement the sanction. At the time of writing this report, the Chief of the Defence Staff had issued a direction on that matter, and the processing hold had already been lifted. Work continues on the correction of cases where this sanction was implemented incorrectly.

Figure 3.11: Sanctions at Summary Hearing



Summary Hearings by Rank

Jurisdiction of the summary hearing system over members of the Canadian Armed Forces is not dependent on rank. During the reporting period, there were a total of 366 summary hearings for junior non-commissioned members (between Private (Basic)/Sailor 3rd Class and Master Corporal/Master Sailor) and 75 for senior non-commissioned members (between Sergeant/Petty Officer 2nd Class and Chief Warrant Officer/Chief Petty Officer 1st Class). For officers, there were 19 summary hearings for subordinate officers (officer cadets/naval cadets), 54 hearings for junior officers (between Second Lieutenant/Acting Sub-Lieutenant and Captain/Lieutenant (Navy)), and four hearings for senior officers (Major/Lieutenant Commander and above). There were no summary hearings for any officers above the rank of Major/Lieutenant Commander. Figure 3.12 sets out the number and percentage of summary hearings organized by the rank of the person alleged to have committed the service infraction.

Figure 3.12: Summary Hearings by Rank

	2023/24		2024/25	
	#	%	#	%
Private (Basic) / Sailor 3rd Class	*41*	*9.30*	*49*	*9.46*
Private / Aviator / Sailor 2nd Class	*67*	*15.19*	*82*	*15.83*
Corporal / Sailor 1st Class	*152*	*34.47*	*170*	*32.82*
Master Corporal / Master Sailor	*45*	*10.20*	*65*	*12.55*
Sergeant / Petty Officer 2nd Class	*41*	*9.30*	*47*	*9.07*
Warrant Officer / Petty Officer 1st Class	*20*	*4.54*	*22*	*4.25*
Master Warrant Officer / Chief Petty Officer 2nd Class	*9*	*2.04*	*6*	*1.16*
Chief Warrant Officer / Chief Petty Officer 1st Class	*2*	*0.45*	*0*	*0*
Officer Cadet / Naval Cadet	*17*	*3.85*	*19*	*3.67*
Second Lieutenant / Acting Sub-Lieutenant	*14*	*3.17*	*7*	*1.35*
Lieutenant / Sub-Lieutenant	*7*	*1.59*	*12*	*2.32*
Captain / Lieutenant (Navy)	*22*	*4.99*	*35*	*6.75*
Major / Lieutenant-Commander	*4*	*0.91*	*4*	*0.77*
Total	*441*	*100.00*	*518*	*100.00*

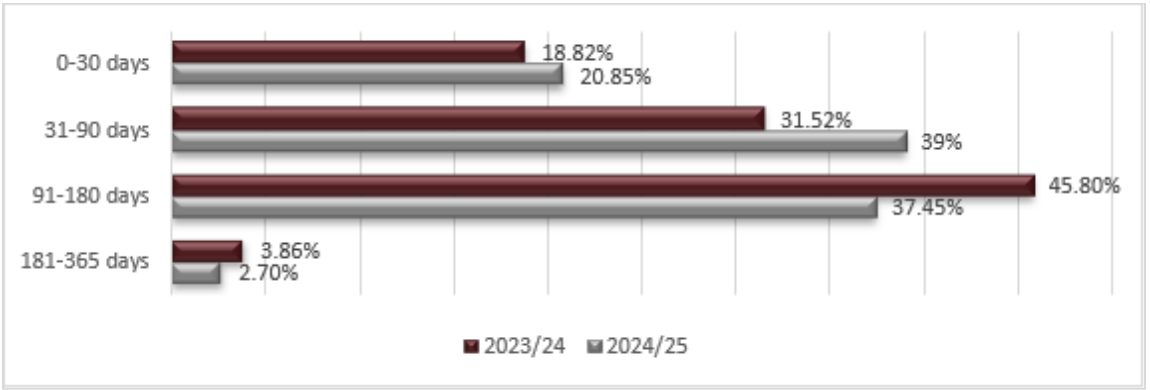
Timeline for Summary Hearings

An essential feature of the summary hearing system is that they are required to commence within six months of the alleged commission of the service infraction. Summary hearings are intended to allow Canadian Armed Forces units to address misconduct as promptly as possible, while still maintaining a fair process. Delays in addressing disciplinary issues allow problems to persist and adversely impact a unit's morale and efficiency. In this regard, the summary hearing system appears to be functioning as intended. The average number of days between an alleged infraction and the conclusion of the summary hearing during the reporting period was 81 days. These numbers suggest that the summary hearing process was more efficient during this reporting period than in 2023/2024, when the average number of days between an alleged infraction and the conclusion of the summary hearing during the reporting period was 93.5 days. Statistics for other stages of the summary hearing process also show signs that the system is becoming more

efficient and timelier as familiarity with the system grows. In the previous reporting period, there was an average of 65 days between the commission of an alleged service infraction and the laying of charges, and approximately 28 days between the laying of charges and commencement of a summary hearing. In the current reporting period, the number of days had been reduced to 56 days and 27 days, respectively.

Figure 3.13 shows the percentage of cases completed within each tier of elapsed days between the date of an alleged service infraction and the completion of a summary hearing during the 2023/2024 and 2024/2025 reporting periods.

Figure 3.13: Elapsed Days between Alleged Service Infraction and Completion of Summary Hearing by Percentage of Cases



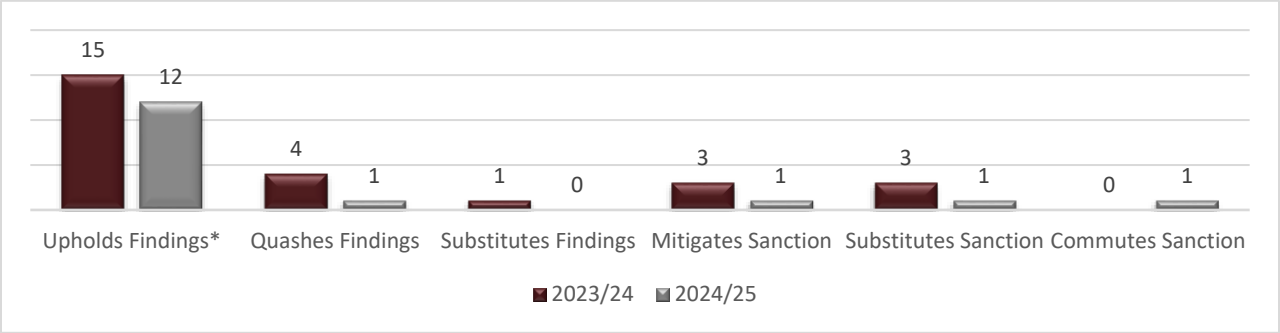
Reviews of Summary Hearings

The review of a summary hearing can be initiated at the request of the member who was found to have committed a service infraction or on the initiative of a review authority. During the 2024/2025 reporting period, there were 16 reviews, representing approximately 3% of summary hearings. These numbers are lower than for the 2023/2024 reporting period, when there were 26 reviews, representing approximately 5% of summary hearings.

Review authorities for summary hearings can uphold the finding that the member committed the service infraction, quash the finding, or substitute a finding. During this reporting period, review authorities upheld 12 findings, quashed one finding, and did not substitute any findings. With respect to sanctions imposed at summary hearing, review authorities substituted one sanction, commuted one sanction and

mitigated one sanction. A breakdown of all decisions by review authorities for the 2023/2024 and 2024/2025 reporting periods may be found at Figure 3.14.

Figure 3.14: Decisions of Review Authorities



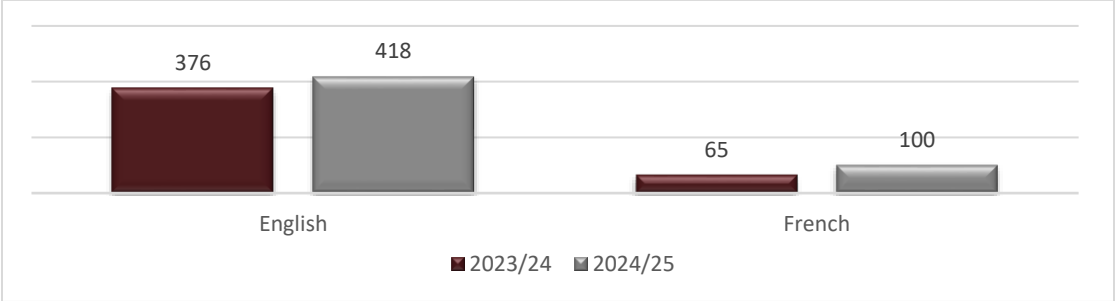
*In one case during the 2023/2024 reporting period, the review authority made multiple decisions.

Language of Summary Hearings

Persons charged with having committed a service infraction have the right for the hearing to be conducted in the official language of their choice. An OCSH must be able to understand the language in which a summary hearing is to be conducted without the assistance of an interpreter.

In this reporting period, 418 summary hearings were conducted in English, and 100 summary hearings were conducted in French. These numbers are broadly consistent both with the previous reporting period and the proportion of anglophones to francophones in the Canadian Armed Forces (77% and 23%, respectively). Figure 3.15 shows the total number of summary hearings conducted in English and French for the 2023/2024 and 2024/2025 reporting periods.

Figure 3.15: Language at Summary Hearing

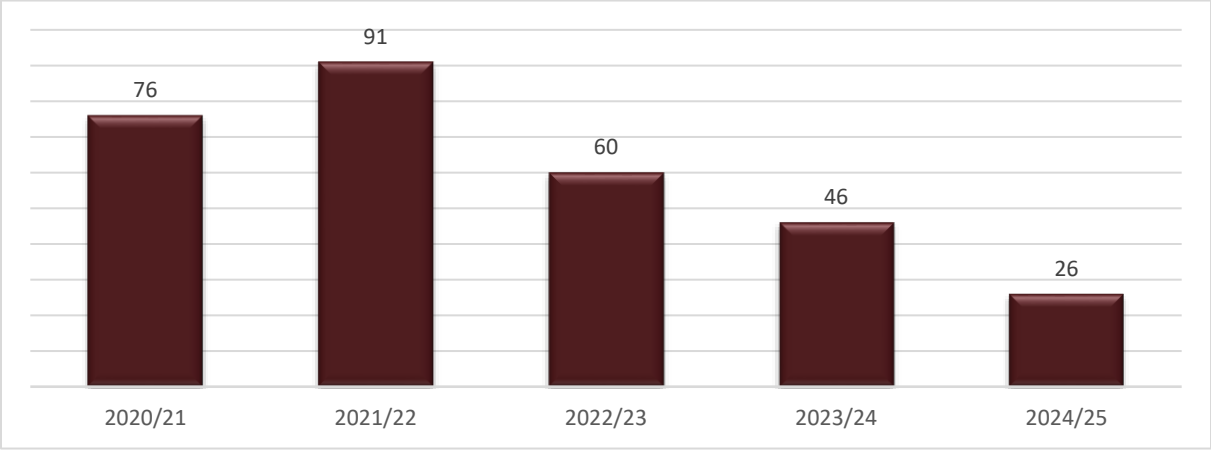


Courts Martial

Referrals to the Director of Military Prosecutions

Since the coming into force of Bill C-77 in June 2022, all service offences are referred directly to the Director of Military Prosecutions. During this reporting period, the Director of Military Prosecutions received a total of 26 new referrals or requests for charges to proceed to trial by court martial, a decrease of 20 cases from the 2023/2024 reporting period. This number does not include referrals carried over from the previous reporting period. Figure 3.16 shows the number of referrals received by the Director of Military Prosecutions over the last five reporting periods.

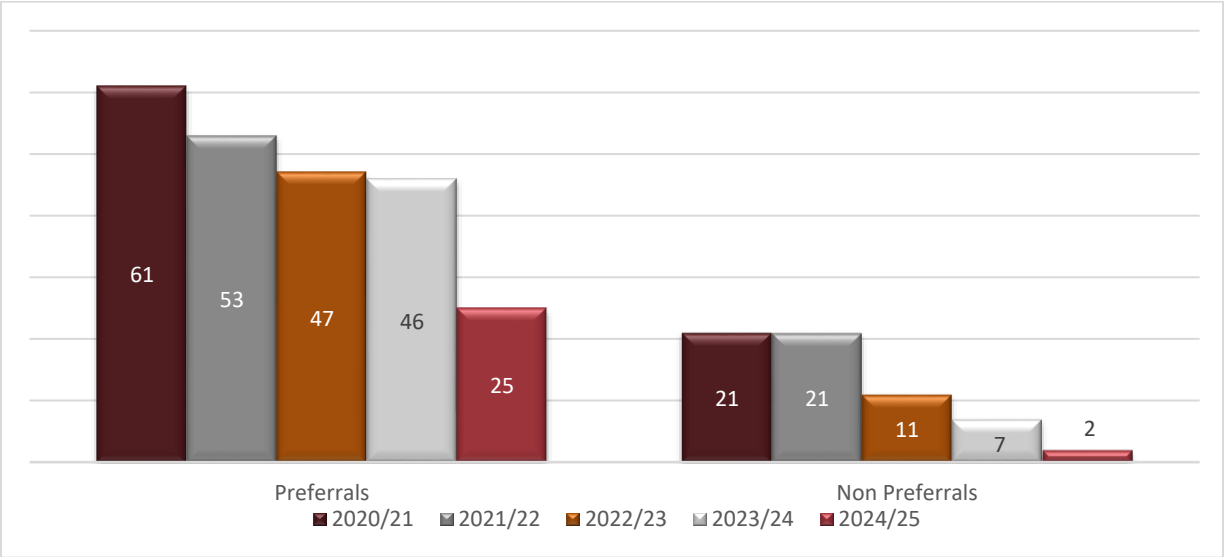
Figure 3.16: Referrals to the Director of Military Prosecutions



Charges Preferred by the Director of Military Prosecutions

During this reporting period, the Director of Military Prosecutions proceeded with charges or preferred charges in 25 cases for trial by court martial. There were two cases where the Director of Military Prosecutions did not proceed with or prefer any charges. Figure 3.17 illustrates the number of cases preferred by the Director of Military Prosecutions and the number of files where no charges were preferred over the past two reporting periods.

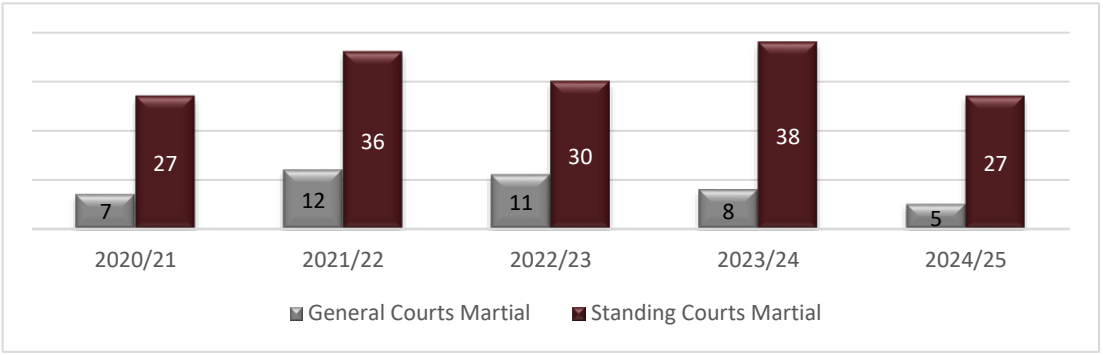
Figure 3.17: Cases Preferred by the Director of Military Prosecutions



Number of Courts Martial

During this reporting period, 32 courts martial were conducted, a decrease from the 46 courts martial held during the previous reporting period. Of the 32 courts martial, nine involved contested trials, 19 were guilty pleas with joint submissions on sentencing, and four were guilty pleas where the sentence was contested. The most common service offence disposed of at court martial during this reporting period was conducted to the prejudice of good order and discipline under section 129 of the *National Defence Act*, which accounted for over 19.72% of offences. This is an increase from the previous reporting period when conduct to the prejudice of good order and discipline charges accounted for 14% of service offences. Figure 3.18 sets out the number of courts martial for the past five reporting periods. Annex B contains a summary of all service offences disposed of at court martial in the last two reporting periods.

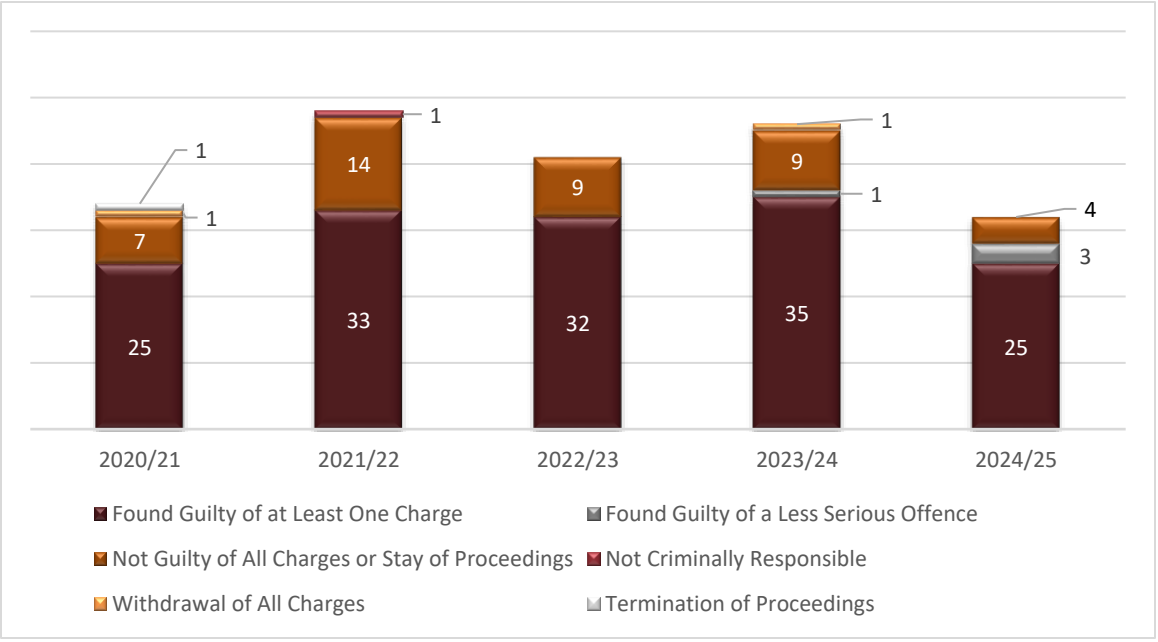
Figure 3.18: Number of Courts Martial



Dispositions of Cases at Court Martial

Of the 32 completed courts martial during this reporting period, 25 resulted in a finding of guilty on at least one charge, four resulted in a finding of not guilty on all charges or a stay of proceedings, and in three cases the accused was found guilty of a less serious offence. Figure 3.19 shows the disposition of cases over the past two reporting periods.

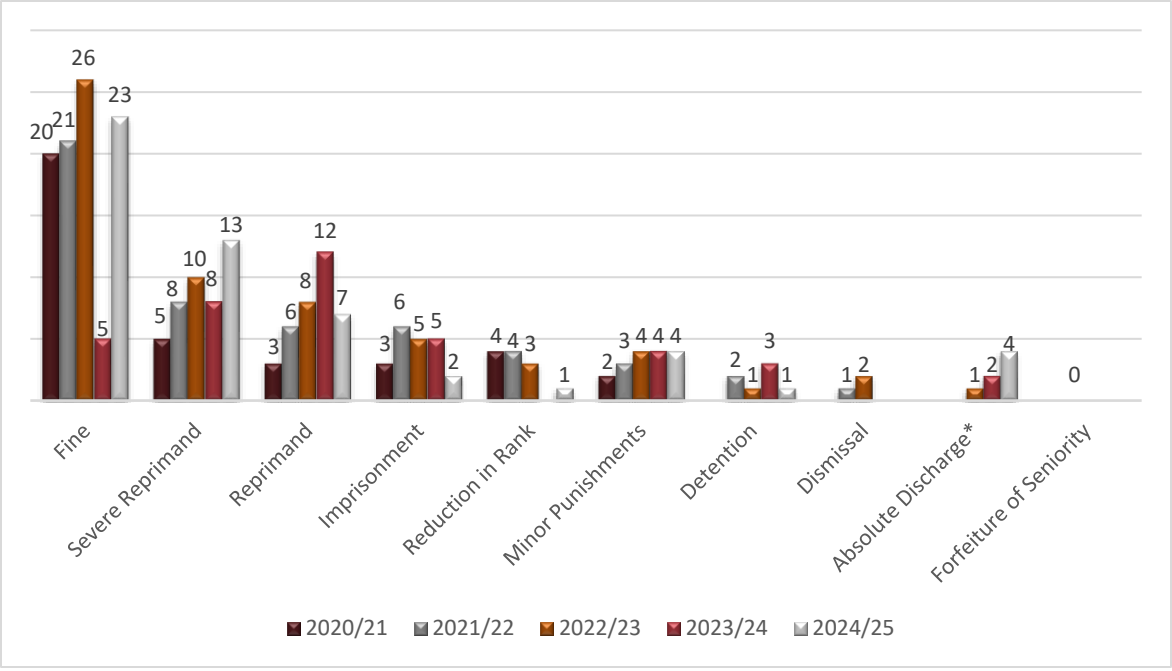
Figure 3.19: Disposition of Cases at Court Martial



Punishments at Court Martial

The most common punishments imposed at court martial are fines, followed by reprimands. Figure 3.20 breaks down the punishments imposed by court martial over the last five reporting periods.

Figure 3.20: Punishments at Court Martial



* An absolute discharge is not a punishment. If a court martial, finding that it is in the best interests of the offender and not contrary to the public interest, directs that an offender be discharged absolutely of an offence, the offender is deemed not to have been convicted of the offence except with respect to appeals and pleas in subsequent proceedings in which the offender has already been tried for and convicted of the same offence.

4 MILITARY JUSTICE JURISPRUDENCE

Operation NANOOK-NUNALIVUT 2025 – Master Corporal Alana Morin, Joint Task Force – North, Yellowknife

This chapter examines key military justice jurisprudence from the 2024/2025 reporting period. These decisions, from courts martial, the CMAC, the Federal Court of Canada, and the Supreme Court of Canada will have a significant impact in guiding the military justice system's future development.

Notably, this is the first full reporting period during which a new framework has been in effect to further clarify which cases should be managed by the military justice system and which should proceed through the civilian system. In response to recommendations of the IR3,[75] the Director of Military Prosecutions, in collaboration with 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* (the Statement) to guide the exercise of prosecutorial authority and jurisdiction relating to offences where both the military and civilian justice systems have concurrent jurisdiction.[76] The Director of Military Prosecutions also issued the *Direction Regarding the Implementation of the Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities*, which, along with the Statement, supports a consistent national approach to managing concurrent jurisdiction and helps to inform Canadians about the evolving relationship between the military and civilian criminal justice systems.

[75] *Supra* note 10, recommendations 19 and 20.
[76] Federal-Provincial-Territorial Heads of Prosecution Committee, *Statement of Principles and Presumptions for the Exercise of Concurrent Jurisdiction by Canadian Prosecuting Authorities*, (Ottawa, 2023).

In line with recommendation 5 of the IECR[77] and his interim direction,[78] the Director of Military Prosecutions informed the Federal-Provincial-Territorial Heads of Prosecution Committee that it would no longer prosecute *Criminal Code* sexual offences in the military justice system. It is important to note that although this recommendation was implemented by both the Director of Military Prosecutions and the Canadian Forces Provost Marshal in 2021, it did not apply retroactively to cases already within the military justice system at that time. For these cases, military prosecutors consulted with victims to determine whether they preferred that the matter proceed in the military justice system or be referred to the civilian criminal justice system, notwithstanding the fact that the IECR raised concerns about whether asking victims to make such a decision would serve the public interest.[79] In all remaining cases, victims expressed a clear preference for prosecution to be continued within the military system and as a result, several courts martial involving *Criminal Code* sexual offences continued under military jurisdiction. The few remaining courts martial involving *Criminal Code* sexual offences are expected to conclude during the next reporting period.

Courts Martial

The Power to Impose Driving Prohibitions under the *Criminal Code*

R v Calderon[80]

R v Calderon considered the question of whether a military judge has the power to impose punishments that were not expressly included in the *National Defence Act*. The case involved the sentencing of a member who had pleaded guilty to two charges: dangerous operation of a motor vehicle and driving a Canadian Armed Forces vehicle in a manner that was dangerous to any person or property. Counsel for the defence and prosecution presented a joint submission recommending a sentence of reduction in rank, a reprimand, and a driving prohibition order for one year pursuant to section 320.24 of the *Criminal Code*.

[77] *Supra* note 11.
[78] Canada, Director of Military Prosecutions, *Interim Direction Regarding the Implementation of Madame Arbour's Interim Recommendation* (Ottawa, 26 November 2021).
[79] IECR, *supra* note 11, at page 93.
[80] 2024 CM 7001.

This was the first time that a *Criminal Code* driving prohibition had been recommended as an ancillary order at court martial. Counsel argued that the powers available to superior and provincial court judges to issue driving prohibition orders are also available to military judges. The Court disagreed that military judges could issue driving prohibition orders under the *Criminal Code* provision and determined that the powers of civilian and military judges were comparable, but not equal. The Court pointed to jurisprudence from the CMAC and the Supreme Court of Canada highlighting that Parliament has legislated a sentencing scheme for those subject to the Code of Service Discipline that is different from the scheme applicable in civilian courts. Ultimately, the military judge concluded that the range of punishments a court martial could impose is limited to those set out in section 139 of the *National Defence Act*. As a result, the military judge determined the court could not impose a driving prohibition and did not order this as an ancillary order. The prosecution has appealed this decision, and it is scheduled to be heard in the next reporting period.

Exercise Gander Skein – Corporal Djalma Vuong-De Ramos, Canadian Armed Forces Photo

The Meaning of "Fighting" in the Code of Service Discipline

R v Lawless[81]

In *R v Lawless*, the defendant was charged with one count of having fought with another person subject to the Code of Service Discipline, contrary to section 86 of the *National Defence Act*. The defendant argued that their participation in a wrestling match with a colleague was consensual and, as such, did not constitute "fighting" for the purposes of section 86.

The military judge took the view that subjective factors like consent and lack of intent to injure the other person were not essential elements of the offence of quarrels and disturbances. Rather, the military judge noted that fighting in the context of a *National Defence Act* section 86 offence requires conduct that threatens discipline in a military environment and that an assessment of whether such conduct exists must

[81] 2024 CM 3006.

be made on an objective basis. The military judge reviewed the circumstances of the case and determined that a reasonable person could conclude that the wrestling match was a disruptive event that could cause a disturbance within the military quarters. Moreover, the military judge found that the evidence established that the defendant had met the mental element of the offence by intentionally engaging in the wrestling match. The result was a finding of guilt.

The Consequences of Late Disclosure

R v Turner[82]

Under the principle established by the Supreme Court of Canada in *R. v. Stinchcombe,* the prosecution must disclose all relevant information to the accused in a criminal case, including both evidence the prosecution intends to use and evidence it does not, regardless of whether that evidence is favorable or unfavorable to the accused.[83]In that context, *R v Turner* involved the question of whether a military judge should grant leave to withdraw charges because the prosecution was late in fulfilling its obligation to disclose relevant information to the defendant.

In this case, the prosecution did not disclose certain key evidence to the defendant, who had been charged with one count under section 86 of the *National Defence Act* arising from an altercation with another Canadian Armed Forces member while deployed in Latvia, until after the court martial had commenced. Prior to the commencement of the court martial, defence counsel had sought disclosure of additional military police notes from the prosecution and had been informed that no such notes existed. After the trial commenced and following the closing of the prosecution's case, the prosecution indicated that military police had found the notes along with other relevant evidence. The court martial was adjourned to allow the prosecution to collect and review the newly discovered evidence. After doing so, the prosecution sought leave to withdraw the charges.

The military judge noted that the law only gives two options to a court martial faced with a request for leave to withdraw charges: either accept or refuse to grant leave. If the court martial agreed to grant leave and the prosecution withdrew the charges, the proceedings would come to an end, although the

[82] 2024 CM 4003.
[83] [1991] 3 SCR 326.

charges could be proceeded with at a later date. However, if the court martial refused to grant leave, the only possible outcome would be that the trial would continue, even though there may no longer be a reasonable prospect of conviction.

EX JAGUAR HÉLOCASTE – Corporal Sébastien Lauzier-Labarre, Valcartier Imaging Section, Canadian Armed Forces

In light of the late disclosure of potentially exculpatory information, the military judge disagreed with the position of the prosecution that the rules of procedure required the defence to complete its case and final arguments before a verdict could be reached. The military judge instead found that based on defence testimony already heard, no outcome other than a finding of not guilty would meet the ends of justice, thereby ensuring that the charges could not be proceeded with at a later date. In handing down his reasons, the military judge also voiced concerns about the way the case unfolded. They highlighted the unfairness that late disclosure can cause and the need for participants in the military justice system to take steps to prevent it from occurring.

Military Justice Jurisdiction over Civilians

R v Allison[84]

The case of *R. v. Allison* concerns the issue of the military justice system's jurisdiction over civilians outside of Canada. The defendant was a civilian living in Belgium with their spouse, a Canadian Armed Forces member. In 2022, the defendant was allegedly found asleep in their vehicle by the Belgian Federal Police, who suspected that they were impaired. Although no charges were laid under Belgian law, the defendant was charged under section 130 of the *National Defence Act* for impaired operation of a conveyance. A Standing Court Martial was convened in September 2024, in Geilenkirchen, Germany.

The defendant filed a notice of application for a plea in bar of trial in May 2024, seeking to terminate the proceedings, arguing that the Court Martial lacked jurisdiction. The defendant claimed that

[84] 2024 CM 5013.

prosecution in the military justice system was arbitrary and disproportionate, infringing their section 7 rights under the *Charter* not to be deprived of life, liberty or security of the person except in accordance with the principle of fundamental justice. The defendant argued the lack of connection with Parliament's objectives in subjecting civilians to the Code of Service Discipline. The prosecution conceded that the right to liberty was at stake and argued that the military justice system was the only jurisdiction capable of exercising authority due to the Belgian authorities ceding jurisdiction to Canada. The prosecution further contended that it was in the best interest of the applicant to be tried by a court martial to avoid disrupting their family's life abroad.

The military judge began their analysis by clarifying that the issue at stake was not whether the military justice system had jurisdiction over the defendant – section 60 of the *National Defence Act* expressly makes a person accompanying any unit or other element of the Canadian Armed Forces that is on service or active service, in any place, subject to the Code of Service Discipline. This includes dependants of Canadian Armed Forces members posted outside of Canada. Rather, the military judge identified the issue as being whether the exercise of jurisdiction by the military justice system over the defendant was arbitrary or disproportionate. Ultimately, the military judge concluded that the exercise of jurisdiction was not arbitrary, as it aligned with the overarching principles of ensuring justice and maintaining order within the Canadian Armed Forces community abroad. The judge further elaborated that exercise of jurisdiction by the military justice system was essential in upholding the integrity of the Canadian Armed Forces and its members, including their families, who are posted internationally. Prosecuting under the *National Defence Act* ensures that dependants remain subject to Canadian laws, thereby preventing any legal vacuum that could arise from this type of unique living situation. This approach safeguards the interests of both the accused and the Canadian Armed Forces community, ensuring that legal accountability is maintained. The accused was subsequently convicted at court martial on one count of operating a conveyance while impaired and has appealed this decision. It is scheduled to be heard by the CMAC in the next reporting period.

Court Martial Appeal Court of Canada

Stay of Proceedings for Abuse of Process

R v Brousseau[85]

Operation REASSURANCE – Corporal Nathan Moulton, Land Task Force Imagery

In *R v Brousseau*, the CMAC considered an appeal from the Crown of a military judge's order granting the respondent's abuse of process motion to end their court martial. The respondent, who had been charged with sexual assault, sought to bring evidence regarding their prior sexual history with the complainant.[86] In a series of preliminary hearings, the military judge determined that this evidence was admissible. The military judge directed the prosecution to inquire of the complainant about their history with the respondent and to present this evidence through an agreed statement of facts. The prosecution indicated that they would not communicate with the complainant about their past sexual history and would seek a judicial review of any order from the military judge requiring them to do so. The prosecution took the position that the information sought was neither relevant nor necessary to establish the context of the complainant's relationship with the respondent or whether consent had been given.

In response, the respondent brought a motion for abuse of process that was heard prior to the commencement of the court martial. At the end of the hearing, the military judge concluded that the prosecution's conduct constituted an abuse of process, interpreting the prosecution's position as a refusal to accept a court judgment on the admissibility of the past sexual relations.

[85] 2024 CMAC 2 [*Brousseau*].
[86] Charges were laid prior to the release of the interim report of the IECR on 20 October 2021. The Director of Military Prosecution's *Interim Direction Regarding the Implementation of Madame Arbour's Interim Recommendations* states that for cases already in the system, prosecutors are directed to meet with every victim complainant to make them aware of the interim recommendation and to seek their views on jurisdiction for the case to proceed.

The military judge concluded that holding the trial would undermine the integrity of the justice system and that the prosecution, in refusing to accept the court's decision, [translation] "adopted the attitude of a privileged litigant party for whom court decisions are optional or negotiable"[87] and that the prosecution's conduct was contrary to the interests of the complainant. The military judge found the appropriate remedy was to end the court martial as opposed to staying in the proceedings.

SPRING STORM – Corporal Sébastien Lauzier-Labarre, Canadian Forces Combat Camera

The CMAC allowed the appeal, finding that the military judge had erroneously interpreted the prosecution's position as a refusal to comply with his decision on the admissibility of the evidence and found that the prosecution's conduct did not amount to an abuse of process. The CMAC found that the military judge had erred as regards the scope of his trial management power when he compelled the prosecution to present their case in a specific way. The Court also found that the military judge's decision to end the proceedings before the court martial had taken place was an extreme remedy, equivalent to a stay of proceedings. The possibility that proceedings could have been instituted in the civilian criminal system did not change that fact. Finally, the CMAC found that the military judge made a palpable and overriding error when he underestimated the effect on the complainant of an interruption of the proceedings days before trial. While the Court did refrain from ruling on the admissibility of the complainant's past sexual misconduct due to being insufficiently linked to an approved ground of appeal, it did also state that its reasons should not be construed as endorsing in any way the military judge's reasoning on the issue. The CMAC ordered that the court martial be recommenced before a different military judge. Leave to appeal this decision to the Supreme Court of Canada was sought, but the application was dismissed.

[87] *Brousseau, supra* note 85 at para 37.

The Application of the Code of Service Discipline to Young Offenders

R v JL[88]

In *R v JL*, the CMAC considered the application of the Code of Service Discipline to young offenders. The appellant had been found guilty at court martial of one count of sexual assault[89] and one count of behaving in a disgraceful manner. The defendant was a seventeen-year-old member of the Canadian Armed Forces at the time of the commission of the offences. At trial and sentencing, defence counsel brought applications arguing that certain provisions of the *National Defence Act* violated section 7 of the *Charter* because those sections were inconsistent with the principle of fundamental justice that entitles young persons to a presumption of diminished moral culpability. At sentencing, the military judge found that section 60 of the *National Defence Act* only provides jurisdiction to try young persons for summary infractions and those 'uniquely' military service offences that do not result in the offender having mandatory penalties.

In its decision, the CMAC recognized the importance of a separate youth criminal justice system and reemphasized that the Supreme Court of Canada has recognized a presumption of diminished moral blameworthiness for young offenders as a principle of fundamental justice. Unlike the *Youth Criminal Justice Act,*[90] the *National Defence Act* does not contain provisions that give recognition to this principle and does not explicitly enhance procedural rights for young persons charged with or convicted of military service offences.

The CMAC found the failure of the *National Defence Act* to recognize the presumption of diminished moral responsibility did not lead to the conclusion that the military justice system is wholly unconstitutional as it applies to young persons, as the discretionary powers of military judges largely allow for the presumption to be put into effect. However, the CMAC found that where the *National Defence Act* imposes non-discretionary consequences following conviction, such as mandatory minimum sentences,

[88] 2024 CMAC 10.
[89] Charges were laid against the appellant prior to the release of the interim report of the IECR on 20 October 2021. The Director of Military Prosecution's *Interim Direction Regarding the Implementation of Madame Arbour's Interim Recommendations* states that for cases already in the system, prosecutors are directed to meet with every victim complainant to make them aware of the interim recommendation and to seek their views on jurisdiction for the case to proceed.
[90] SC 2002, c 1.

criminal records, sexual offender registry orders, and DNA production orders, the *Act* is unconstitutional as it applies to young persons and cannot be saved under section 1 of the *Charter*.[91] Sentencing options for such offenders are now limited to a severe reprimand, reprimand, fine, or minor punishment, as any more severe punishment would result in a mandatory criminal record. The punishments of forfeiture of seniority, reduction in rank, detention, dismissal from His Majesty's service and imprisonment are no longer available.

The practical impact of this decision on the military justice system is likely to be limited, as a review of reported court martial decisions suggests that *J.L.* is the only case, over at least the past ten years, where a young person charged with a *Criminal Code* or Code of Service Discipline offence has faced a court martial. Moreover, the decision should have no impact on Canadian Armed Forces international operations, given that the *National Defence Act* and internal policy prohibits a person who is under the age of 18 years from being deployed to a theatre of operations.[92]

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Fit Sentences for Administratively Released Members

R v Meeks[93]

In *R v Meeks*, the CMAC considered an appeal concerning the 30-day detention sentence imposed on a member of the Canadian Armed Forces convicted of assault causing bodily harm. After the conviction, the individual was administratively released from the military. Relying on the precedent set in *R v Tupper,*[94] the appellant argued that detention was no longer an appropriate punishment. In *Tupper,* the Court found that a member who had been administratively released from military service could no longer be subject to punishment reserved for soldiers. The appellant in *Meeks* claimed that the sentence should be deemed

[91] *Charter, supra* note 24.
[92] *National Defence Act, supra* note 1, s 34; *Canadian Joint Operations Command Directive for International Operations*, para 1.2-6.A.
[93] 2024 CMAC 9.
[94] 2009 CMAC 5.

inoperative. In response, the prosecution contended that the *Tupper* decision was flawed and invited the CMAC to revisit the decision for correctness.

In allowing the appeal, the CMAC declined to revisit the *Tupper* decision but did find that the decision should be read narrowly. According to the Court, the decision in *Tupper* did not limit the jurisdiction of the military justice system or allow a valid sentence to be overturned by an administrative decision. Instead, the court found that *Tupper* should be read as standing for the limited proposition that an appellate court may consider a post-sentence administrative discharge when considering the fitness of the sentence. The Court concluded that, while the original sentence was fit at the time it was imposed, the appellant's subsequent administrative release warranted suspending the remainder of the detention.

The Constitutionality of Sex Offender Registration

R v O'Dell[95]

R v O'Dell is one of a number of cases in recent years involving the application of *National Defence Act* provisions requiring a mandatory *Sex Offender Information Registration Act* (*SOIRA*)[96] order in relation to certain offences. These cases follow the Supreme Court of Canada's decision in *R v Ndhlovu*[97] that found equivalent *Criminal Code* provisions requiring mandatory lifetime *SOIRA* registration for designated offences violated section 7 of the *Charter*, which guarantees the right to life, liberty, and security of the person.

The appellant in *R v O'Dell* had been convicted by a General Court Martial of sexual assault and was sentenced to 42 days of detention. A *SOIRA* order was also imposed by the military judge. At sentencing, the appellant challenged the mandatory *SOIRA* order and sought a personal remedy under section 24 of the *Charter*. The military judge concluded that although they had the discretion to grant a personal remedy, they did not have a sufficient evidentiary base to do so. Specifically, the military judge noted that the appellant had failed to meet their burden to establish that the risk of reoffending was low. The military judge imposed the mandatory order, requiring the appellant to register as a sex offender for 20 years.

[95] 2024 CMAC 5.
[96] SC 2004, c 10.
[97] 2022 SCC 38.

The CMAC granted the appeal with respect to the *SOIRA* order, finding that the military judge approached the test in section 24 of the *Charter* too narrowly. According to the Court, the risk of reoffending was only one of the factors the military judge should have considered. The judge was also required to consider the impact the *SOIRA* order would have on the appellant and whether this would be grossly disproportionate. The CMAC noted that, among other things, *SOIRA* orders can impose rigorous restrictions on travel, which are likely to have considerable consequences for the appellant's ability to fulfill duties within the Canadian Armed Forces. The Court found the military judge had failed to take this into account in denying the appellant's application for a personal remedy and that the evidentiary record and the appellant's submissions satisfied the requirements of the section 24 test. Accordingly, the Court allowed the appeal against the sentence and set aside the *SOIRA* order.

Master Corporal Genevieve Lapointe, Canadian Forces Combat Camera, Canadian Armed Forces Photo

The Law of Eyewitness Identification

R v Sutherland[98]

In *R v Sutherland*, the CMAC considered an appeal of a conviction at court martial for sexual assault. The Defendant had been convicted by a Standing Court Martial of sexual assault in May 2022. Although all parties acknowledged at trial that the complainant was sexually assaulted while deployed aboard one of His Majesty's Canadian Ships, the appellant claimed that the military judge had improperly applied the law in relation to eyewitness identification and made palpable and overriding errors of fact.

The CMAC dismissed the appeal. On the question of whether the military judge made a palpable and overriding error of fact regarding the identity of the perpetrator, the Court found the military judge had considered both the eyewitness testimony of the complainant and the circumstantial evidence surrounding the deployment and the offence. The Court concluded there was sufficient evidence for the military judge to draw the inference that the complainant recognized the appellant as the person who had assaulted them.

[98] 2024 CMAC 4.

On the question of whether the military judge misapplied the law in relation to eyewitness identification, the appellant claimed the military judge failed to account for the way the complainant's identification evidence had been tainted by being shown a Facebook photo of the appellant and then a limited photo pack lineup in the course of the investigation. The CMAC acknowledged difficulties in the way the identification evidence was developed, noting that the Facebook photo amounted to a one-person lineup, and that the subsequent photo pack lineup only included pictures of the ship's air crew. The Court noted these difficulties created a risk of tainting the identification evidence. However, the CMAC found that the military judge was alive to these risks with the identification evidence, carefully assessed the evidence and the relevant jurisprudence, and that the judge made no error of law.

Operation PRESENCE – Canadian Forces Combat Camera

Federal Court of Canada

The Reasonableness of a Summary Hearing Review

Wiome v Canada (Attorney General)[99]

In *Wiome v Canada (Attorney General)*, the Federal Court of Canada considered an application for judicial review of the decision of a Review Authority for a summary hearing. An OCSH found the applicant had committed two service infractions arising from their conduct at a mess dinner and imposed a sanction of reduction in rank. The applicant requested a review of the OCSH's decision on the grounds that insufficient written reasons were provided to justify the sanction and that the reduction in rank had adversely affected their mental health and infringed their right to security of the person guaranteed by section 7 of the *Charter*. The Review Authority found the sanction was reasonable and the applicant then applied for judicial review.

[99] 2025 FC 257.

The Federal Court reviewed the Review Authority's decision against a standard of reasonableness, meaning that the Court would not interfere with the decision unless it contained "sufficiently serious shortcomings […] such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency."[100] The Court found the Review Authority's decision to be unreasonable as the Review Authority mistakenly applied a reasonableness standard to their review of the OCSH's decision when the appropriate standard of review should have combined elements of an appeal and a *de novo* hearing of the matter. Moreover, the Review Authority's analysis departed significantly from the OCSH's written reasons and supplemental submissions and appeared to consider evidence that had not been in the record. The Court concluded that the Review Authority's decision did not comply with the applicable legislative and policy framework and lacked the requisite degree of justification, intelligibility and transparency. The Court allowed the application, remitting the matter to a different Review Authority for redetermination.

Supreme Court of Canada

The Independence of Military Judges

R v Edwards[101]

In April 2024, the Supreme Court released its decision in *R v Edwards* and several related cases[102] involving Canadian Armed Forces members who had either appealed their convictions at court martial or had their proceedings stayed. The ground of appeal which united these cases was that the military status of the judge that had presided over their respective court martial violated their rights under section 11(d) of the *Charter* to be tried by a fair and impartial tribunal.

As covered in the last year's annual report, the Supreme Court reaffirmed that the status of military judges as both judges and military officers who are subject to legitimate military laws does not undermine their judicial independence. The Supreme Court's decision is important because it clarifies that, while individuals who are subject to courts martial in the military justice system are entitled to the same *Charter* guarantee of judicial independence and impartiality as those tried in the civilian system, this does not mean

[100] *Ibid,* at para 37.
[101] *Edwards*, *supra* note 20.
[102] *R v Crépeau* (*Crépeau*); *R v Fontaine* (*Fontaine*); *R v Iredale* (*Iredale*) 2021 CMAC 2; *R v Proulx* (*Proulx*); *R v Cloutier* 2021 CMAC 3 (*Cloutier*); *R v Christmas*, 2022 CMAC 1; *R v Thibault*, 2022 CMAC 3 (*Thibeault*); and *R v Brown*, 2022 CMAC 2 (*Brown*). Several of the cases involve charges for offences under the *Criminal Code* that were laid prior to the Director of Military Prosecution indicating in its *Interim Direction Regarding the Implementation of Madame Arbour's Interim Recommendation* that he would not exercise jurisdiction over sexual offences under the *Criminal Code*.

that the two systems must be identical in all respects. The Supreme Court recognized that section 11(d) does not require absolute or ideal independence and that the different purpose of the military justice system may require it to depart from its civilian counterpart in some respects while still maintaining the same level of procedural safeguards.

In reaching its conclusion, the Supreme Court noted the myriad safeguards of judicial independence set out in the *National Defence Act.* Some examples include the fact that military judges enjoy security of tenure, have a separate regime for grievances and have protection against relief from performance of military duty. The Supreme Court also noted that military judges can only be removed for cause by the Governor in Council upon recommendation of the Military Judges Inquiry Committee and that their pay is set by an independent Military Judges Compensation Committee. Regarding the impartiality of military judges, the Supreme Court was satisfied that military judges' dual roles as both officers and judges does not automatically create a conflict of interest. In support of this, the Court cited section 165.23 of the *National Defence Act,* noting that "when acting as judges, military judges can be assigned other duties by the Chief Military Judge in addition to their judicial tasks, 'but those other duties may not be incompatible with their judicial duties.'"[103] The Supreme Court also found that there was insufficient evidence to establish that the culture of respect for hierarchical authority in the military created a reasonable apprehension of bias on the part of military judges.[104]

Operation REASSURANCE-ATF – Aviator Avery Philpott, 4 Wing Imaging, Canadian Armed Forces Photo

Furthermore, the Supreme Court found that military judges do not lack impartiality by virtue of the fact that they can be held accountable for failing to comply with lawful orders issued by superior officers for any actions taken outside of their judicial functions. Any disciplinary action taken by the executive towards a military judge for an improper purpose would be unlawful and would be either prevented or remediated by further safeguards in the *National Defence Act,* such as the independence of the Director of Military Prosecutions and the necessity to obtain pre-charge legal advice.

[103] *Edwards, supra* note 20 at para 123.
[104] *Ibid,* at para 125.

Following the Supreme Court's decision, the Director of Military Prosecutions reassessed the reasonable prospect of conviction and public interest in recommencing the prosecutions that had been stayed by military judges.[105] In five cases, it was decided to withdraw charges[106] and in three cases prosecution was recommended. Of those latter cases, one court martial has been completed[107] and two are scheduled for the fall of 2025.[108]

[105] *Thibault*, *supra* note 102. It involved an appeal of a conviction, not a stay of proceedings.
[106] *Edwards; Crépeau*; *Fontaine*; *Proulx* and *Cloutier*, *Ibid.*
[107] *R v Christmas*, 2025 CM 7003; Cpl Christmas was convicted of drunkenness but found not guilty of sexual assault and behaving in a disgraceful manner.
[108] *Brown* and *Iredale, supra* note 102.

CONCLUSION

The 2024/2025 reporting period marked a pivotal chapter in the evolution of Canada's military justice system. Building on foundational reforms and guided by independent reviews and legislative developments, new steps were taken to support the system's mandate to uphold discipline, efficiency, and morale across the Canadian Armed Forces. Key milestones included updates to the military justice system time standards, the implementation of the updated version of JAIMS and work to identify the most effective framework for the creation of a permanent military court. Each of these initiatives reflects a strong commitment to modernization, accountability, and judicial independence. Equally significant were key personnel developments, such as the appointment of two new military judges and the designation of a new Chief Justice of the CMAC. These leadership transitions reflect an ongoing dedication to judicial excellence and continuity.

Looking ahead, the military justice system will continue to evolve to meet the needs of commanders operating in increasingly complex and dynamic environments. Future developments will look towards enhancing efficiency, transparency, and accessibility, ensuring that commanders are equipped with the tools necessary to maintain discipline and operational effectiveness. The summary hearing system itself offers a rapid, fair, and resource-efficient means of addressing minor infractions at the unit level, even in deployed settings. JAIMS exemplifies this evolution, by providing real-time, digital oversight of disciplinary cases, streamlining processes from start to finish. Together, the summary hearing system and JAIMS demonstrate how modernization can directly support commanders in preserving morale, discipline, and cohesion. These advancements ensure that justice is delivered swiftly and fairly, without compromising operational readiness. As the system continues to develop, the focus will remain on ensuring the evolution of the military justice system aligns with the Canadian Armed Forces' operational needs at home and abroad.

ANNEX A: Summary of Service Infractions Disposed of at Summary Hearing

		2023/24		2024/25	
QR&O Section	**Description**	**#**	**%**	**#**	**%**
120.02 (a)	Takes or uses, for other than authorized purposes, non-public property, public property, materiel or government-issued property or damages that property or materiel	17	2.54%	25	2.77%
120.02 (b)	Without permission or legal justification, takes property that belongs to another person	1	0.15%	5	0.55%
120.02 (c)	Accesses, possesses, uses or communicates information for a purpose unrelated to the performance of their duties	2	0.30%	2	0.22%
120.02 (d)	Fails to disclose actual, apparent or potential conflicts between their duties and private interests	1	0.15%	2	0.22%
120.03 (a)	Handles a weapon, explosive substance, or ammunition in a dangerous manner	9	1.35%	8	0.89%
120.03 (b)	Discharges a firearm without authorization	27	4.04%	42	4.65%
120.03 (c)	Behaves in a manner that could reasonably undermine the authority of a superior officer	26	3.89%	47	5.20%
120.03 (d)	Fails or while on duty is unfit to effectively perform their duties or carry out responsibilities	33	4.93%	42	4.65%
120.03 (e)	In relation to military service, furnishes false or misleading information or engages in deceitful conduct	39	5.83%	57	6.31%
120.03 (f)	Without reasonable excuse, fails to attend or is tardy to their place of duty	189	28.25%	223	24.70%
120.03 (g)	Dresses in a manner or adopts an appearance or demeanor that is inconsistent with Canadian Forces requirements	15	2.24%	71	7.86%
120.03 (h)	Fails to maintain personal equipment or assigned quarters in accordance with Canadian Forces requirements	6	0.90%	13	1.44%

		2023/24		2024/25	
QR&O Section	**Description**	**#**	**%**	**#**	**%**
120.03 (i)	Otherwise behaves in a manner that adversely affects the discipline, efficiency, or morale of the Canadian Forces	257	38.41%	320	35.44%
120.04 (a)	While on duty, is impaired by a drug or alcohol	13	1.94%	15	1.66%
120.04 (b)	Uses a drug contrary to article 20.04 (Prohibition)	11	1.64%	9	1.00%
120.04 (c)	Introduces, possesses, or consumes an intoxicant contrary to article 19.04 (Intoxicants)	23	3.44%	22	2.44%
Total		**669**	**100%**	**903**	**100%**

ANNEX B: Summary of Service Offences Disposed of at Court Martial

		2023/24		2024/25	
NDA Section	**Description**	**#**	**%**	**#**	**%**
81	Offences related to mutiny	0	0%	0	0%
83	Disobedience of lawful command	1	1.01%	1	1.40%
84	Striking a superior officer	3	3.03%	0	0%
85	Insubordinate behaviour	1	1.01%	0	0%
86	Quarrels and disturbances	8	8.08%	4	5.64%
88	Desertion	1	1.01%	0	0%
90	Absence without leave	2	2.02%	0	0%
92	Scandalous conduct by officers	0	0%	0	0%
93	Cruel or disgraceful conduct	2	2.02%	0	0%
95	Abuse of subordinates	3	3.03%	5	7.04%
97	Drunkenness	8	8.08%	4	5.64%
101.1	Failure to comply with conditions	2	2.02%	0	0%
108	Signing inaccurate certificate	1	1.01%	0	0%
111	Improper driving of vehicles	0	0%	2	2.81%
112	Improper use of vehicles	1	1.01%	1	1.40%
114	Stealing	1	1.01%	2	2.81%
117 (f)	Miscellaneous offences	4	4.04%	2	2.81%
124	Negligent performance of duties	0	0%	1	1.40%

125	Offences in relation to documents	3	3.03%	2	2.81%
127	Injurious or destructive handling of dangerous substances	1	1.01%	0	0%
129	Conduct to the prejudice of good order and discipline	14	14.15%	14	19.70%
130 (4(1) CDSA*)	Possession of a substance included in schedule III	0	0%	1	1.40%
130 (91(2) CC**)	Unauthorized possession of prohibited weapon	1	1.01%	0	0%
130 (93 CC)	Possession of a firearm at unauthorized place	0	0%	1	1.40%
130 (122 CC)	Fraud by public officer	1	1.01%	1	1.40%
130 (173 CC)	Indecent acts	0	0%	0	0%
130 (264(1) CC)	Uttering threats	3	3.03%	1	1.40%
130 (266 CC)	Assault	9	9.09%	4	5.63%
130 (267 CC)	Assault causing bodily harm	6	6.06%	8	11.26%
130 (268 CC)	Aggravated assault	1	1.01%	0	0%
130 (271 CC)	Sexual assault	11	11.11%	1	1.40%
130 (272 CC)	Sexual assault causing bodily harm	0	0%	1	1.40%
130 (279(2) CC)	Forcible confinement	0	0%	1	1.40%
130 (320.13 CC)	Offences related to conveyance	1	1.01%	3	4.22%
130 (320.14(1) CC)	Operation of a conveyance while impaired	0	0%	2	2.81%
130 (334(a) CC)	Theft (value stolen exceeds $5000)	0	0%	0	0%

130 (334(b) CC)	Theft (value stolen under $5000)	0	0%	3	4.22%
130 (342.1 CC)	Unauthorized use of a computer	0	0%	0	0%
130 (346 CC)	Extortion	0	0%	1	1.40%
130 (354 CC)	Possession of stolen property	3	3.03%	1	1.40%
130 (367 CC)	Forgery	1	1.01%	0	0%
130 (368 CC)	Making use of a forged document	0	0%	2	2.81%
130 (374) CC)	Drawing a document without authority	1	1.01%	0	0%
130 (380(1) CC)	Fraud	5	5.05%	2	2.81%
Total		**99**	**100%**	**71**	**100%**

* *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

** *Criminal Code*, R.S.C., 1985, c. C-46.