National Defence / Défense nationale

JUDGE ADVOCATE GENERAL

2017-2018 ANNUAL REPORT of the JUDGE ADVOCATE GENERAL

to the Minister of National Defence on the Administration of Military Justice from 1 April 2017 to 31 March 2018

1918 2018

FIAT JUSTITIA

100

centenaire centennial

La Branche des services juridiques des Forces armées canadiennes

Canadian Armed Forces Legal Branch

HONOURING OUR PAST EMBRACING THE PRESENT SHAPING OUR FUTURE

Canada



Office of the Judge Advocate General
National Defence Headquarters
101 Colonel By Drive
Ottawa, ON K1A 0K2
Telephone: (613) 992-3019
CSN: 992-3019
Fax: (613) 992-5678

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Judge Advocate General | Juge-avocat général

National Defence Headquarters
Major-General George R. Pearkes Building
101 Colonel By Drive
Ottawa, Ontario
K1A 0K2

Quartier général de la Défense nationale
Édifice Major-général George R. Pearkes
101, promenade Colonel By
Ottawa (Ontario)
K1A 0K2

Minister of National Defence
National Defence Headquarters
101 Colonel By Drive
Ottawa ON K1A 0K2

Dear Minister,

I am pleased to present you the 19th Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Armed Forces, made pursuant to section 9.3 of the *National Defence Act*. This report covers the period of 1 April 2017 to 31 March 2018.

Yours Truly,

Commodore Geneviève Bernatchez
Judge Advocate General

Canada



Commodore
Geneviève Bernatchez
CD
since 2017



Major-General
Blaise Cathcart
OMM, CD, Q.C.
2010-2017



Brigadier-General
Kenneth Watkin
OMM, CD, Q.C.
2006-2010



Major-General
Jerry S. T. Pitzul
CMM, CD, Q.C.
1998-2006



Brigadier-General
Pierre Boutet
CMM, CD
1993-1998



Commodore
Peter R. Partner
CD
1990-1993



Brigadier-General
Robert L. Martin
OMM, CD, Q.C.
1986-1990



Brigadier-General
Frank Karwandy
CD, Q.C.
1982-1986



Major-General
John Patterson Wolfe
CD, Q.C.
1976-1982



Brigadier-General
James Megarry Simpson
CD, Q.C.
1972-1976



Brigadier-General
Harold Alexander McLearn
CD, Q.C.
1968-1972



Brigadier-General
William J. Lawson
CD, Q.C.
1950-1968



Brigadier-General
Reginald J. Orde
1920-1950



Colonel
Olivier Mowat Biggar
KC
1918-1920



Major-General
Henry Smith
1911-1918

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Communiqué

I am pleased to deliver my first annual report to the Minister of National Defence on the administration of military justice since my appointment as Judge Advocate General of the Canadian Armed Forces on 27 June 2017. This report covers the period from 1 April 2017 to 31 March 2018 and is made pursuant to section 9.3 of the *National Defence Act*.

In my role as the Judge Advocate General, I have two primary functions mandated by the *National Defence Act*. First, the Judge Advocate General is the legal adviser to the Governor General, the Minister of National Defence, the Canadian Armed Forces and the Department of National Defence in matters relating to military law. Second, the Judge Advocate General is responsible for the superintendence of the administration of military justice in the Canadian Armed Forces.

I began fulfilling my duties as the Judge Advocate General during this reporting period and was also entrusted with the responsibility of leading the team of dedicated professionals that forms the Office of the Judge Advocate General.

The 2018-2021 Office of the JAG Strategic Direction — *"Excellence Through Service"*

One of my first priorities was to develop and issue a strategic direction early in my mandate in order to guide our efforts and clearly state the priorities and main tasks of the Office of the Judge Advocate General. The position of Deputy Judge Advocate General Strategic was created to develop and facilitate strategic initiatives that ensure the provision of legal services by the Office of the Judge Advocate General which fully integrates and supports the Government of Canada, Departmental and Canadian Armed Forces objectives and priorities.

The first stage of our strategic review and analysis culminated in February 2018 when I issued the 2018-2021 Office of the JAG Strategic Direction which provides our mission statement:[1]

> **Mission**
> To deliver client-focused, timely, options-oriented and operationally-driven military legal services in support of Government of Canada, Department of National Defence and Canadian Armed Forces priorities and objectives; and, to superintend the administration of military justice in the Canadian Armed Forces while respecting the independent roles of each statutory actor within the military justice system.

The overarching theme my senior leadership team and I have chosen for the Office of the JAG Strategic Direction is *"Excellence Through Service."* This Direction will shape the activities of the Office of the Judge Advocate General for the next three years. It clearly articulates our Mission, Priorities, Relevance Proposition and what the Office of the Judge Advocate General will do to deliver concrete results in priority areas. It is a roadmap that will ensure we remain focused on our clients, team and values as we fulfill our mission.

Strong, Secure, Engaged

Included in the Office of the JAG Strategic Direction is a commitment to plan and deliver all our activities and processes in a manner that fully integrates and supports Governmental, Departmental and Canadian Armed Forces objectives and priorities found in the *Strong, Secure, Engaged*: Defence Policy; Defence Plan (2018-2023); Force Posture and Readiness; Defence Results Framework; and Defence Program Analytics.

Based on current assessments, the Office of the Judge Advocate General is directly supporting 84 of 133 Initiatives and Initiative Activities set out in *Strong, Secure, Engaged*. Within the Defence

1 Please refer to Annex A for the complete 2018-2021 Office of the JAG Strategic Direction – *"Excellence Through Service"* accessible online at: http://www.forces.gc.ca/en/about-org-structure/judge-advocate-general-strategic-direction-2018-2021.page

Results Framework, "Military Law Services/Military Justice Superintendence" has been identified as a specific program. This is a significant recognition of the importance of the services delivered by the Office of the Judge Advocate General on a daily basis, activities which are conducted in support of a statutory framework and responsibilities.

Canada's Military Justice System in Motion

Parliament and the Supreme Court of Canada have both long recognized the requirement for a Code of Service Discipline supported by a military justice system which forms an integral part of the Canadian legal mosaic and that is designed to promote the operational effectiveness of the Canadian Armed Forces by contributing to the maintenance of discipline, efficiency and morale, as well as to a heightened respect for the rule of law.[2]

Canada's military justice system continues to evolve in order to ensure that it meets the needs of those who use it and who are impacted by it, while meeting all applicable Canadian legal requirements. It is my role as superintendent of the administration of military justice to ensure that the Canadian military justice system operates efficiently, effectively and in accordance with the rule of law, while continuing to be responsive to the unique needs of the Canadian Armed Forces.

One example of how the military justice system evolves to meet the unique needs of the Canadian Armed Forces is through the Canadian Armed Forces Discipline Advisory Council. This Council is mandated to discuss and provide input on matters pertaining to the maintenance of discipline and policies related to the continued effective functioning of the Code of Service Discipline. It is co-chaired by the Canadian Armed Forces Chief Warrant Officer and the Judge Advocate General Chief Warrant Officer and its membership includes the most senior non-commissioned members from each command and from other key organizations within the Canadian Armed Forces. The Council met four times during this reporting period and addressed a number of topics including proposed legislative, regulatory and policy changes impacting the military justice system, as well as current initiatives in development aimed at now improving the administration of military justice.

The military justice system supports the commitment made within *Strong, Secure, Engaged* to provide a workplace within the Canadian Armed Forces free from harassment and discrimination. It furthers the direction of the Chief of the Defence Staff given in Operation HONOUR by providing a critical resource for the chain of command to ensure that harmful and inappropriate sexual misconduct is appropriately dealt with. *Strong, Secure, Engaged* commits to enhancing the investigation and prosecution of sexual offences and identifies several initiatives to further this commitment, including new directives for military prosecutors and additional training.

In support of this commitment, the Director of Military Prosecutions has issued new directives to ensure offences of a sexual nature are prosecuted in the appropriate justice system, civilian or military, and that the views of complainants are solicited, considered and addressed in all phases of the court martial process. Also of note is the creation within the Canadian Military Prosecution Service of the Sexual Misconduct Action Response Team, which identifies and facilitates regular training to ensure military prosecutors are well trained to deal with the unique aspects of sexual misconduct cases; works to ensure continuity of expertise within the Canadian Military Prosecution Service; provides mentorship and support for military prosecutors in dealing with sexual misconduct cases at all stages of the process; liaises with other prosecution services in Canada to ensure best practices are identified and followed for sexual misconduct cases; and participates in the Coordinating Committee of Senior Officials Working Group on Access to Justice for Adult Victims of Sexual Assault – which explores, analyzes and provides recommendations to Federal, Provincial and Territorial Ministers Responsible for Justice and Public Safety.

Continuing to build on the Office of the Judge Advocate General tradition of excellence through service, there are a number of important initiatives currently being developed to address key challenges within the military justice system. These include working towards the implementation of victims' rights within the military justice system; supporting the Canadian Forces Provost Marshal's review of historic sexual misconduct

2 *R v Moriarity* [2015] 3 SCR 485

files; ensuring that the consideration of indigenous circumstances in sentencing at court martial and summary trial are adequately implemented; and working towards the development of processes to measure the performance of the system, to include well thought out metrics and analytics that will support evidence-based decision making in future modernization efforts.

An important initiative was launched this year to improve the collection of information on the military justice system and the management of cases progressing through the system. This initiative will assist greatly in addressing delay and inefficiencies within the military justice system. The design and development of an electronic workflow management system, named the Justice Administration and Information Management System (JAIMS), which will track military justice cases from the time an allegation is made that an offence was committed to the disposition of a matter, is expected to significantly reduce delays and address some of the inefficiencies within the system by providing military justice stakeholders with real-time access to military justice cases as they progress through the system and by prompting them when they need to take action in support of the timely and efficient administration of military justice. JAIMS' trial phase is scheduled to begin in early 2019 and a Canadian Armed Forces-wide launch is planned for September 2019.

JAIMS will be integrated to a military justice performance measurement system that is expected to be developed during the next reporting period. These two initiatives combined together will assist greatly in implementing necessary time standards, in collecting the measureable data essential to superintend the administration of military justice and in assessing the performance of the military justice system. They will assist in identifying emerging challenges and trends, including the sources of delay, while informing the measures needed to address them.

Finally, there was significant progress made towards the completion of the regulatory amendments necessary for the coming into force of the military justice provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*[3], which are expected to be approved and to take effect during the next reporting period.

These are, amongst others, important developments and initiatives of this reporting period which contributed to the continued progress made to further strengthen a military justice system which is part of the broader Canadian legal system and in which Canadians, including members of the Canadian Armed Forces, can have confidence. The military justice system is robust and designed to evolve with the times in order to meet the needs and expectations of the Canadian Armed Forces and Canadians. The conclusions and recommendations of the audit of the military justice system that was conducted by the Office of the Auditor General of Canada during this reporting period will guide our actions in the next reporting period. The Office of the Judge Advocate General will continue to do the important work required to improve and modernize the military justice system.

The Legal Branch Centennial

This past year was historically important for the Office of the Judge Advocate General as we celebrated on February 28th the 100th Anniversary of the establishment of the Legal Branch and the first Canadian organization dedicated to the delivery of military legal services by Canadian officers to the Government of Canada, the Department of National Defence and the Canadian Armed Forces.

From two world conflicts, the Cold War, various United Nations Missions, including peace-keeping missions, to asymmetrical conflicts to the emerging operating environments of space and cyber, over the last 100 years, the Government of Canada, the Department of National Defence and the Canadian Armed Forces have relied on the Legal Branch to provide client-focused, timely, options-oriented and operationally-driven legal services.

Our centennial motto is "Honouring our Past; Embracing the Present; and, Shaping our Future." Recognizing that we stand on the shoulders of giants, this rich history of service has enhanced democratic institutions and traditions in Canada

3 http://www.parl.ca/DocumentViewer/en/41-1/bill/C-15/royal-assent

and abroad, and in doing so has significantly contributed to the rule of law. Members of the Office of the Judge Advocate General continue this tradition of excellence through service in the delivery of military legal services.

On March 1st, the Minister of National Defence approved the appointment of the former Chief Justice of Canada, the Right Honourable Beverley McLachlin, P.C., as Honorary Colonel of the Office of the Judge Advocate General. Honorary Captain (Navy) McLachlin, given her wealth of experience, will provide invaluable counsel to the Judge Advocate General and the senior leadership of the Office of the Judge Advocate General. Honorary Captain (Navy) McLachlin will succeed Honorary Colonel John Hoyles who has fulfilled those duties since 2014.

We, in the Office of the Judge Advocate General, support democracy, the rule of law and the belief that Canada makes a difference in world affairs. Our service is centered on the confidence that we can help Canadian Armed Forces sailors, soldiers as well as air women and men to do what they do best: protect freedom and justice. This is what I believe - and this is what drives the entire Office of the Judge Advocate General. I look forward to more achievements and to the continuation of the important work we are doing during the next reporting period.

Fiat Justitia

Geneviève Bernatchez, CD
Commodore



CHAPTER ONE

Who We Are: The Office of the Judge Advocate General



THE JUDGE ADVOCATE GENERAL

In accordance with section 9 of the *National Defence Act* the Judge Advocate General is appointed by the Governor in Council for a renewable term of four years and acts as legal adviser to the Governor General, the Minister of National Defence, the Department of National Defence and the Canadian Armed Forces in matters relating to military law. The Judge Advocate General also has the statutory mandate to superintend the administration of military justice in the Canadian Armed Forces pursuant to section 9.2 of the *National Defence Act*. The Judge Advocate General is responsible to the Minister of National Defence in the performance of her 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 Judge Advocate General. The duties of a legal officer posted to a position established within the Office of the Judge Advocate General 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 legal officers provide independent legal services. All qualified legal officers serving in the Office of the Judge Advocate General are members in good standing at the bar of a province or territory.

100 YEARS OF THE LEGAL BRANCH: HONOURING OUR PAST; EMBRACING THE PRESENT; AND, SHAPING OUR FUTURE

In 1911, Sir Frederick Borden, the Minister of Militia and Defence in the Laurier Government, was concerned that his only source of advice on military law issues was the British Judge Advocate General. Borden remedied this by appointing the first Canadian Judge Advocate General, Colonel Henry Smith, on 1 October 1911. However, the Legal Branch was not formally established until 28 February 1918 when Colonel Oliver Biggar, K.C. was appointed as the second Judge Advocate General.

The past hundred years have witnessed enormous changes both in Canadian law and in the way this country employs its armed forces. On the one hand, we have seen the legislative evolution and development which led to the *National Defence Act*, the adoption of the *Canadian Charter of Rights and Freedoms*, the growing primacy of individual rights, and the increasing use of international agreements to regulate state action. On the other hand, our military has gone from fighting world wars to serving as peacekeepers, to engaging in asymmetric conflicts. Throughout all this, it has been the job of the Legal Branch to translate the requirements of one sphere into the other; helping to ensure that military action complies with the law, and that the law is sufficient to meet the needs of the military.

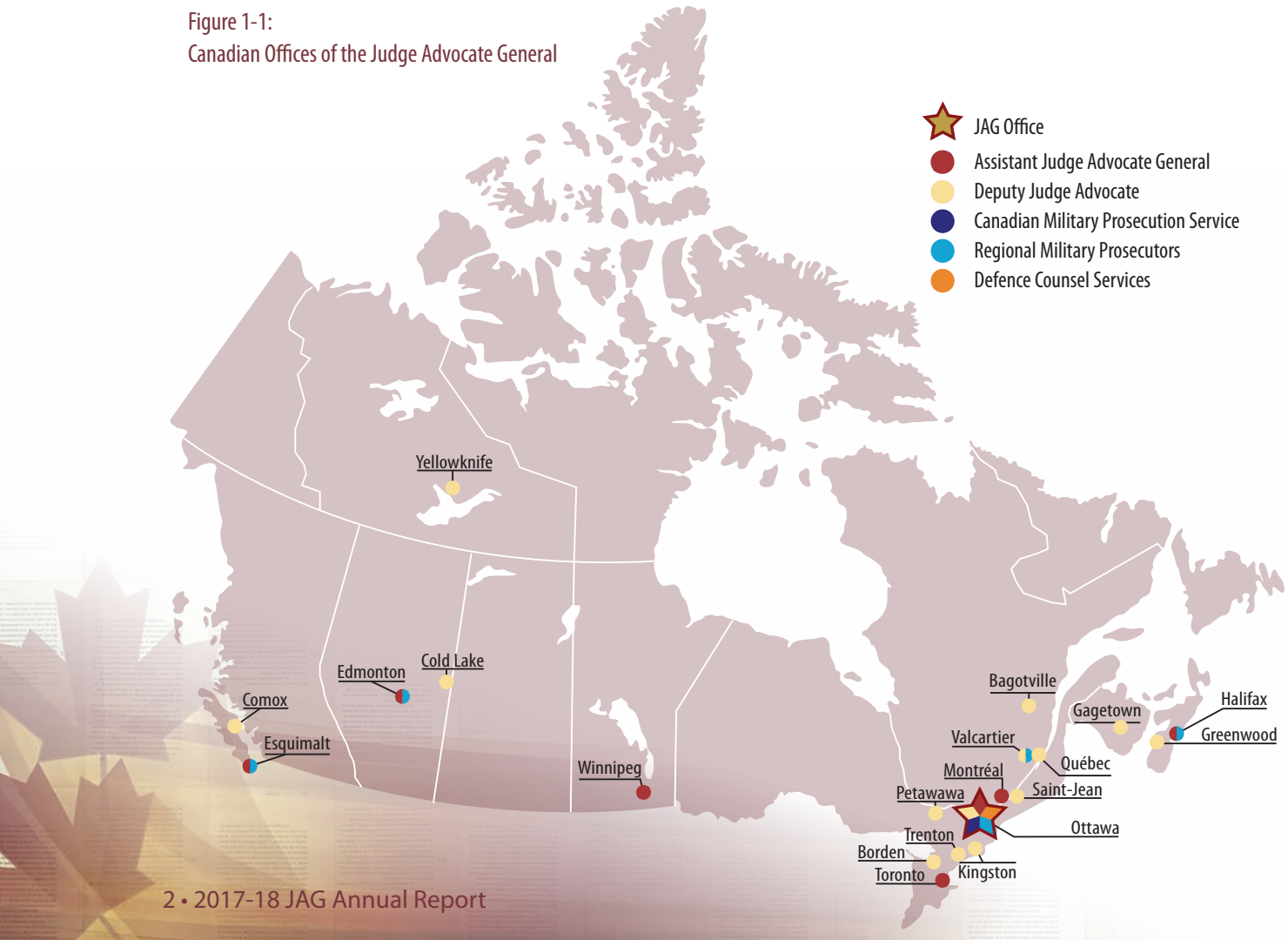
Since its founding, the Legal Branch has provided the Canadian Armed Forces and the Department of National Defence with client-focused, timely, options-oriented and operationally driven legal services. These legal services have directly contributed to the successes of Canadian military operations, both at home and abroad.

OFFICE OF THE JUDGE ADVOCATE GENERAL

The Office of the Judge Advocate General supports the Judge Advocate General in carrying out her duties and functions. It is currently composed of 227 Canadian Armed Forces Regular and Reserve Force legal officers, 76 civilian members of the Public Service, and 16 Canadian Armed Forces members from other military occupations.

The Office of the Judge Advocate General is composed of the Canadian Military Prosecution Service, Defence Counsel Services, the Deputy Judge Advocate General Strategic, and the following Divisions: Military Justice, Administrative Law, Operational and International Law, Regional Services, and the Chief of Staff. The Office of the Judge Advocate General has regional offices located across Canada and internationally. Figure 1-1 shows a map of all the different Canadian offices of the Office of the Judge Advocate General.

Figure 1-1:
Canadian Offices of the Judge Advocate General







OFFICE OF THE JUDGE ADVOCATE GENERAL CHIEF WARRANT OFFICER

The Judge Advocate General Chief Warrant Officer serves as the senior non-commissioned member advisor to the Judge Advocate General. Based on the command team concept, the Judge Advocate General Chief Warrant Officer provides perspective to the Judge Advocate General and her senior leadership team on strategic issues related to the Judge Advocate General's statutory roles, the Canadian Armed Forces and the Office of the Judge Advocate General.

Together with the Canadian Armed Forces Chief Warrant Officer, the Judge Advocate General Chief Warrant Officer also co-chairs the Canadian Armed Forces Discipline Advisory Council. This Council includes the most senior non-commissioned members from each command, and from other key level one organizations. The Council meets to discuss strategic issues relevant to the maintenance of discipline, and provides input to both the Armed Forces Council and the Judge Advocate General.

Other experienced Chief Warrant Officers and Chief Petty Officers First Class are posted to positions in the Assistant Judge Advocate General offices within Canada and in some Deputy Judge Advocate offices. The Assistant Judge Advocate General and Deputy Judge Advocate Chief Warrant Officers/Chief Petty Officers First Class provide an invaluable link between senior non-commissioned members at the unit, base and formation level and the local legal office in addressing disciplinary and administrative matters.

DIRECTOR OF MILITARY PROSECUTIONS

The Director of Military Prosecutions, the senior military prosecutor in the Canadian Armed Forces, is appointed by the Minister of National Defence for a renewable term of four years pursuant to subsections 165.1(1) and (2) of the *National Defence Act*. The Director of Military Prosecutions acts independently from Canadian Armed Forces and Department of National Defence authorities when exercising his prosecutorial powers, duties and functions. Only the Minister may remove the Director of Military Prosecutions from office for cause, and only on the recommendation of an inquiry committee. In accordance with section 165.15 of the *National Defence Act*, the Director of Military Prosecutions may be assisted and represented, to the extent determined by the Director of Military Prosecutions, by officers who are barristers or advocates with standing at the bar of a province or territory. In this regard the Director of Military Prosecutions is assisted by a number of Regular and Reserve Force legal officers appointed to represent the Director of Military Prosecutions, along with a civilian paralegal and support staff. In instances where there is a risk of conflict of interest, the Director of Military Prosecutions may also appoint special prosecutors who are not legal officers but who are nevertheless Canadian Armed Forces officers and barristers or advocates with standing at the bar of a province or territory. The office of the Director of Military

Prosecutions, known as the Canadian Military Prosecution Service, is organized regionally with Regional Military Prosecutors located in Halifax, Valcartier, Ottawa, Edmonton and Esquimalt.

It is the responsibility of the Director of Military Prosecutions, with the assistance of those legal officers appointed to act as military prosecutors, to prefer all charges to be tried by court martial, to conduct all prosecutions at court martial and for acting as counsel for the Minister of National Defence in respect of appeals to the Court Martial Appeal Court and the Supreme Court of Canada. The Director of Military Prosecutions is also responsible to provide advice in support of investigations conducted by the Canadian Forces National Investigation Service, a military police service that reports to the Canadian Forces Provost Marshal. The Director of Military Prosecutions also acts as counsel for the Canadian Armed Forces during custody review hearings.

The Director of Military Prosecutions is under the general supervision of the Judge Advocate General and, in this regard, the Judge Advocate General may issue general instructions or guidelines in writing in respect of prosecutions, which the Director of Military Prosecutions must ensure are made available to the public. The Judge Advocate General may also issue instructions or guidelines in writing in respect of a particular prosecution. The Director of Military Prosecutions must ensure that these instructions or guidelines are also available to the public, unless the Director of Military Prosecutions considers that doing so would not be in the best interest of the administration of military justice. The Office of the JAG Strategic Direction highlights the importance of respecting the independent roles of statutory actors in the military justice system such as the Director of Military Prosecutions. During this reporting period, no general or specific instructions were issued to the Director of Military Prosecutions by the Judge Advocate General.

In accordance with the *Queen's Regulations and Orders for the Canadian Forces* article 110.11 the Director of Military Prosecutions annually reports to the Judge Advocate General on the execution of his duties and functions. A copy of the 2017-2018 Director of Military Prosecutions Annual Report is attached as Annex D to this report.



DIRECTOR OF DEFENCE COUNSEL SERVICES

The Director of Defence Counsel Services is appointed by the Minister of National Defence for a renewable term of four years pursuant to subsections 249.18(1) and (2) of the *National Defence Act*. The Director of Defence Counsel Services acts independently from Canadian Armed Forces and Department of National Defence authorities when exercising his powers, duties and functions. Only the Minister may remove the Director of Defence Counsel Services from office for cause, and only on the recommendation of an inquiry committee. In accordance with section 249.21 of the *National Defence Act*, the Director of Defence Counsel Services may be assisted in his duties and functions by persons who are barristers or advocates with standing at the bar of a province or territory. In this regard the Director of Defence Counsel Services, located in the National Capital Region, is assisted by a number of Regular and Reserve Force legal officers who act as defence counsel, along with a civilian paralegal and support staff.

In accordance with section 249.19 of the *National Defence Act*, it is the responsibility of the Director of Defence Counsel Services to provide, supervise and direct the legal services available, at no cost, under the *Queen's Regulations and Orders for the Canadian Forces* article 101.11 to persons who are liable to be charged, dealt with and tried under the Code of Service Discipline. This includes:

- the provision of legal advice to persons arrested or detained in respect of a service offence;

- the provision of legal counsel to an accused person where there are reasonable grounds to believe that the accused person is unfit to stand trial;
- the provision of legal advice of a general nature to an assisting officer or accused person on matters relating to summary trials;
- the provision of legal advice with respect to the making of an election to be tried by court martial;
- the provision of legal counsel to an accused person in respect of whom an application to a referral authority has been made;
- the provision of legal counsel to the respondent on an appeal or an application for leave to appeal;
- the provision of legal counsel to a person on an appeal or an application for leave to appeal with the approval of the Appeal Committee; and
- the provision of legal advice to a person who is the subject of an investigation under the Code of Service Discipline, a summary investigation or a board of inquiry.

The relationship between the Director of Defence Counsel Services and the Judge Advocate General is statutorily structured at section 249.2 of the *National Defence Act* such that the Director of Defence Counsel Services acts under the general supervision of the Judge Advocate General. The Judge Advocate General may issue general instructions or guidelines in writing in respect of defence counsel services and the Director of Defence Counsel Services must ensure that any such instructions or guidelines are available to the public. The Office of the JAG Strategic Direction highlights the importance of respecting the independent roles of statutory actors in the military justice system such as the Director of Defence Counsel Services. Unlike with the Director of Military Prosecutions, the Judge Advocate General has no authority to issue instructions or guidelines in respect of a particular case. During this reporting period no general instructions or guidelines were issued by the Judge Advocate General in respect of defence counsel services.

In accordance with the *Queen's Regulations and Orders for the Canadian Forces* paragraph 101.11(4) the Director of Defence Counsel Services is required to report annually to the Judge Advocate General on the provision of legal services prescribed by regulations and the performance of any other duties that are not incompatible with the duties as defence counsel and which have been undertaken. A copy of the Annual Report 2017-2018 Director Defence Counsel Services is attached as Annex E to this report.

DEPUTY JUDGE ADVOCATE GENERAL STRATEGIC

The Judge Advocate General authorized the position of Deputy Judge Advocate General Strategic to develop and facilitate strategic initiatives to ensure that the provision of statutorily mandated legal services fully integrates, aligns with and supports the Government of Canada, Departmental and Canadian Armed Forces objectives and priorities promulgated in the *Strong, Secure, Engaged*: Defence Policy; Defence Plan (2018-2023); the Defence Results Framework initiative; as well as the Force Posture and Readiness and Defence Program Analytics directives. The mandate of the Deputy Judge Advocate General Strategic includes the renewal of a performance measurement system and support to the development and implementation of personnel management and professional practice policies and directives.



MILITARY JUSTICE DIVISION

The Military Justice Division assists the Judge Advocate General in superintending the administration of military justice and ensuring its responsible development within the Canadian justice system. It is comprised of four directorates: Military Justice Strategic, Military Justice Policy, Military Justice Operations, and Canadian Forces Provost Marshal Legal Services.

The Directorate of Law/Military Justice Strategic supports the Judge Advocate General in the development of her strategic vision for military justice. This enables the Office of the Judge Advocate General and the Canadian Armed Forces to anticipate and respond to external and internal challenges and support ongoing development of the military justice system. The other directorates support the Judge Advocate General in the implementation of her vision for military justice in three convergent ways. The Directorate of Law/Military Justice Policy plays a key role in the development of legislation and regulation related to the military justice system. These initiatives arise from projects seeking comprehensive reform of the *National Defence Act* as well as from legislative proposals led by other government departments. The Directorate of Law/Military Justice Operations is responsible to provide direct operational support to the Judge Advocate General as the superintendent of the administration of military justice in the Canadian Armed Forces. This includes providing support on military justice issues to all legal officers within the Office of the Judge Advocate General, formulating Office of the Judge Advocate General policy on military justice issues and providing the necessary support for the appointment of individuals to the various military justice committees. This Directorate is also responsible for the production of the Judge Advocate General's Annual Report to the Minister of National Defence. Finally, the Directorate of Canadian Forces Provost Marshal Legal Services is responsible to provide legal advice and services to the Canadian Forces Provost Marshal and the Canadian Forces Military Police Group. This Directorate enables the efficient and effective lawful conduct of policing operations, investigations, custody and mandated security tasks. This Directorate also acts as a principle liaison between the Office of the Judge Advocate General and the Canadian Forces Provost Marshal.



ADMINISTRATIVE LAW DIVISION

The Administrative Law Division provides legal advice to Canadian Armed Forces leaders at the strategic level on matters pertaining to the administration of the Canadian Armed Forces such as military personnel policies, administrative investigations, compensation, benefits, pensions and estates as well as on matters relating to the governance, organization and command structure of the Canadian Armed Forces and the operation of the military grievance system. Given the size and complexity of the Canadian Armed Forces and the multitude of administrative decisions made each day, one of the objectives of providing legal advice in the military administrative law realm is to ensure that these decisions are made in accordance with the applicable legislation, the rule of law and procedural fairness requirements.



The Administrative Law Division is composed of three directorates: Military Personnel; Administrative Law; and Compensation, Benefits, Pensions and Estates. The Military Personnel Directorate provides legal advice on the development and application of personnel policies spanning recruitment to release, including such topics as universality of service, remedial measures and terms of service. The Administrative Law Directorate provides legal advice and support in relation to military grievances, grievance-related litigation, administrative investigations, and the Canadian Armed Forces organization and command structure. The Compensation, Benefits, Pensions and Estates Directorate provides legal advice and support on the full spectrum of financial and compensation policies and instructions that support the military human resources management framework, as well as legal and administrative support in relation to Service Estates and Elections.

OPERATIONAL AND INTERNATIONAL LAW DIVISION

The Operational and International Law Division is responsible for the provision of legal support for all domestic and international operations. Additionally, this Division oversees all legal officers deployed on operations. These legal officers provide legal support to deployed Canadian Armed Forces elements in all aspects of military law, including the military justice system.

The Operational and International Law Division is comprised of five directorates: Strategic Operational Law, Directorate of Law International, the Canadian Joint Operations Command Legal Adviser, the Canadian Special Operations Forces Command Legal Adviser, and the Directorate of Law, Intelligence and Information Operations. In addition, during this reporting period five legal officers were deployed in direct support of two overseas operations: Operation IMPACT and Operation REASSURANCE. Five legal officers were also deployed in support of Operation LENTUS (Canadian Armed Forces response to natural disasters in Canada).

The Strategic Operational Legal Adviser provides legal advice on all strategic level operational issues affecting Canadian Armed Forces operations around the world such as domestic and international legal authorities, rules of engagement and use of force. The Directorate of Law International provides strategic legal support and advice on the international legal framework for Canadian Armed Forces activities. This includes advice on international authorities, prospective legal instruments as well as areas such as the law of armed conflict, international human rights law and international criminal law. The Directorate of Law International is a principal liaison with Global Affairs Canada Legal Services, the Department of Justice and the Privy Council Office Legal Operations. The Directorate of Law International also works closely with partners and allies as well as non-governmental organizations like the Canadian Red Cross and the International Committee of the Red Cross. The Canadian Joint Operations Command Legal Adviser provides legal advice to the Commander of the Canadian Joint Operations Command on all legal matters related to the conduct of conventional military operations at the operational level, in both continental and expeditionary contexts. Deployed legal officers report to the Canadian Joint Operations Command Legal Adviser. The Canadian Special Operations Forces Command Legal Adviser provides legal advice in all aspects of military law related to the conduct of Canadian Special Operations Forces Command operations including its mandated response to all domestic and international terrorist attacks, international crisis and associated threats. The Directorate of Law, Intelligence and Information Operations is the primary legal adviser to the Canadian Forces Intelligence Command and provides legal advice on strategic, operational and tactical level issues relating to both domestic and internal matters of an intelligence nature.



REGIONAL SERVICES DIVISION



The Regional Services Division, the largest of the Divisions within the Office of the Judge Advocate General, delivers legal services principally to Canadian Armed Forces commanders in Canada, Europe and the United States. It has legal offices located across and within various regions, and each region is led by an Assistant Judge Advocate General. Regular and Reserve Force legal advisers in the Regional Services Division provide legal advice to Regular and Reserve Force commands, formations and units on many aspects of military justice including at the pre-charge and pre-trial phases, to referral authorities when charges are referred to the Director of Military Prosecutions, to presiding officers during the course of a summary trial and to review authorities where there is a request for review by an accused or a review has been independently initiated by a review authority. In support of the Judge Advocate General's role as superintendent of the administration of military justice, legal advisers in the Regional Services Division have conducted 70 two-day Presiding Officer Certification Training sessions during this reporting period, 10 of which were delivered in French, with a total of 1084 candidates completing the course.

Legal advisers in the Regional Services Division also provide legal advice to Canadian Armed Forces commanders on administrative law and operational law matters and support Canadian Armed Forces expeditionary and domestic operations.

The Regional Services Division is the principal source for generating legal officers for Canadian Armed Forces exercises, training, and operational deployments in Canada and abroad.

There are nine Assistant Judge Advocate General offices located in Ottawa, Halifax, Montreal, Toronto, Winnipeg, Edmonton, Esquimalt, Geilenkirchen (Germany) and Colorado Springs (United States of America). In addition, there are 14 Deputy Judge Advocate offices located across Canada which report directly to their respective regional Assistant Judge Advocate General.

CHIEF OF STAFF DIVISION

The Chief of Staff Division is composed of legal officers, other Canadian Armed Forces officers and non-commissioned members along with civilian staff. This division is responsible for providing internal support and administrative services to the Office of the Judge Advocate General. This includes access to information and privacy requests, recruiting and development of new legal officers from all entry programs (Direct Entry Officer, Component Transfer, and Military Legal Training Plan), military personnel management including staffing requirements, occupational training and professional development, the administration of the Judge Advocate General primary reserve list, library services and training, information services, Central Registry, as well as overseeing all civilian staff in the Office of the Judge Advocate General. The non-legal military and civilian personnel are an essential part of this division and key contributors to Office of the Judge Advocate General administrative and financial tasks.

LEGAL OFFICERS SERVING OUTSIDE THE OFFICE OF THE JUDGE ADVOCATE GENERAL

In addition to the legal officers serving in the above-mentioned organizations, a number of legal officers serve outside the Office of the Judge Advocate General. They include those working at the Privy Council Office, Global Affairs Canada, the Canadian Forces Military Law Centre and the Department of National Defence and Canadian Armed Forces Legal Advisor with the Department of Justice.

CIVILIAN PERSONNEL OF THE OFFICE OF THE JUDGE ADVOCATE GENERAL

Civilian personnel form an integral and essential part of the Office of the Judge Advocate General and contribute greatly to its continued success. They occupy positions located throughout Canadian Armed Forces bases and wings in Canada and abroad to provide key support to legal officers and their non-legal military personnel through their work in administrative, analytical and technical tasks.



CHAPTER TWO

Service Tribunals Statistics

Canada's military justice system is a unique, self-contained system that forms an integral part of the Canadian legal mosaic. This separate, constitutionally valid system consists of a two-tier tribunal structure comprised of summary trials and courts martial.[4]

In partnership with the Assistant Deputy Minister (Information Management), the Office of the Judge Advocate General is developing the Justice Administration and Information Management System, as part of the Superintendence Enhancement and Assessment Project for Military Justice, which will electronically track military justice files. This tracking system will provide a means for commanders at all levels with real time information regarding military justice matters, including statistical information such as those discussed in this chapter.

The statistics provided in this chapter are a reflection of currently collected data on the military justice system. Given the current limitations of the information collected, it is not possible to provide definitive explanations for increases or decreases from one reporting period to another. In future reporting periods, it is anticipated the Superintendence Enhancement and Assessment Project will provide the necessary metrics to assist in conducting statistical and trend analysis.

Figure 2-1: Distribution of Service Tribunals

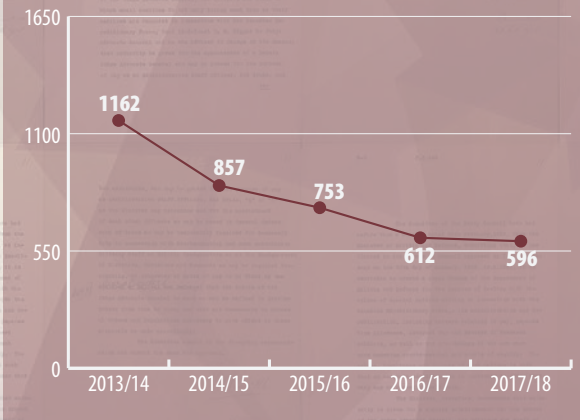
	2016-2017[5]		2017-2018	
	#	%	#	%
Number of Courts Martial	56	8.38	62	9.42
Number of Summary Trials	612	91.62	596	90.58
Total	**668**	**100**	**658**	**100**

SUMMARY TRIALS

Number of Summary Trials

Although there has been a consistent decline in the number of summary trials held since 2013/14, summary trials continue to be the most widely used form of service tribunal in the Canadian Armed Forces to deal with service offences under the Code of Service Discipline. During this reporting period there were 596 summary trials in comparison to 62 courts martial. The overall percentage of all cases disposed of at summary trial was approximately 91% of trials held before service tribunals. Figure 2-1 shows the number of summary trials and courts martial for the last two reporting periods as well as the corresponding percentage of cases tried by each type of service tribunal and Figure 2-2 shows the total number of summary trials by reporting period since 2013/14.

Figure 2-2:
Number of Summary Trials



4 Further information concerning the military justice system and its structure can be found at http://www.forces.gc.ca/en/about-reports-pubs-military-law/military-justice-overview.page.

5 All summary trial statistics from the 2016/17 reporting period and which are reported in this report may differ from those statistics reported in the 2016/17 Annual Report of the Judge Advocate General as a result of late reporting by various units across the Canadian Armed Forces.

Figure 2-3: Number of Summary Trials by Organization

	2016-2017		2017-2018	
	#	%	#	%
Canadian Army	299	48.86	227	38.09
Royal Canadian Navy	142	23.20	141	23.66
Chief of Military Personnel	57	9.31	100	16.78
Royal Canadian Air Force	87	14.22	60	10.07
Canada Joint Operations Command	14	2.29	48	8.05
Canada Special Operations Forces Command	4	0.65	11	1.85
Vice Chief of the Defence Staff	5	0.82	3	0.50
Assistance Deputy Minister (Material)	2	0.33	2	0.34
Assistance Deputy Minister (Infrastructure and Environment)	0	0.00	2	0.34
Assistance Deputy Minister (Information Management)	1	0.16	1	0.17
Canadian Forces Intelligence Command	1	0.16	1	0.17
Total	**612**	**100**	**596**	**100**

Figure 2-4:
Number of Summary Trials for the Canadian Army, the Royal Canadian Navy, the Chief of Military Personnel, the Canadian Joint Operations Command and the Royal Canadian Air Force

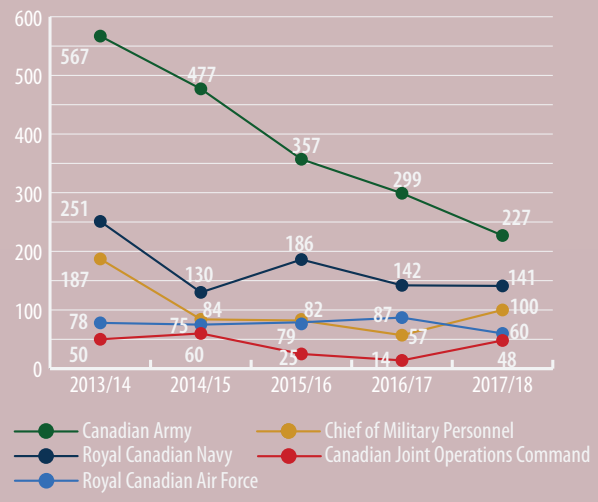


Figure 2-3 shows the total number of summary trials for the last two reporting periods by organization and Figure 2-4 illustrates the number of summary trials specifically for the Canadian Army, the Royal Canadian Navy, the Chief of Military Personnel, the Canadian Joint Operations Command, and the Royal Canadian Air Force from 2013/14.

For the Canadian Army, in this reporting period there were a total of 227 summary trials as opposed to 299 for the previous reporting period. That is a decrease of 72 summary trials which represents a decrease of approximately 24% in comparison to the previous reporting period. Since 2013/14 there has consistently been a decrease in the number of summary trials within the Canadian Army for each reporting period.

The Royal Canadian Navy saw a fluctuation in the total number of summary trials between the reporting periods 2013/14 and 2015/16, while the last two reporting periods have remained consistent.

For this reporting period, the Canadian Joint Operations Command had an increase of 34 summary trials in comparison to the previous reporting period, representing an increase of approximately 243%. A contributing factor may have been the increased number of Canadian Armed Forces personnel deployed on operations.

In 2016/17, Operation REASSURANCE held two summary trials, compared to 20 in 2017/18. A total number of two charges were heard in 2016/17, compared to 21 charges in 2017/18. For the 21 charges which took place within the Operation REASSURANCE unit, 19 of those were for section 90 absence without leave offences, compared to one in 2016/17. The other two offences were section 83, disobedience of lawful command.

For the Royal Canadian Air Force, there were 27 fewer summary trials, representing approximately a 31% decrease in the total number of summary trials in comparison to the previous reporting period. There was also a decrease in the total number of

charges laid. During the 2016/17 reporting period, there were a total of 133 charges laid compared to this reporting period in which there were 80 charges for a difference of approximately 40%. However, over the five reporting periods the total number of summary trials has been relatively constant.

Finally, the Chief of Military Personnel had the most significant increase in the total number of summary trials compared to the previous reporting period. The total number increased from 57 to 100, representing an approximate increase of 75%.

While at this time it is not possible to determine the specific reasons for the increase, a number of factors may have contributed, including an increased number of summary trials within training establishments.

With regards to the section 129 offences, during the 2016/17 reporting period, all eight charges fell under the "Other" category.[6] During this reporting period, 22 fell under the "Other" category, while four were alcohol or drug related offences, three were related to personal relationships, and five were of a sexual misconduct nature.

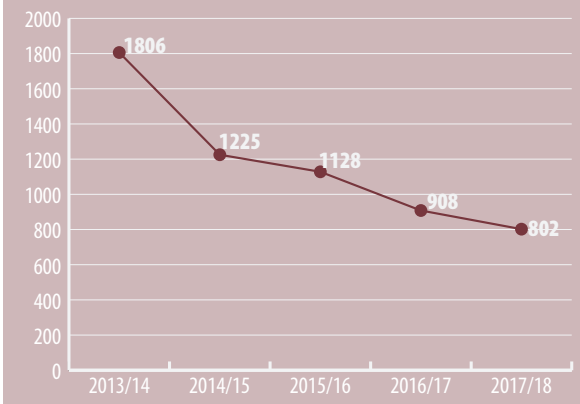
Number of Charges Disposed of by Summary Trial

In this reporting period, there were a total of 802 charges disposed of at summary trial compared to 908 charges disposed of at summary trial during the 2016/17 reporting period. Figure 2-5 shows the total number of charges disposed of at summary trial since 2013/14, which demonstrates a consistent decrease in the overall number of charges disposed of at summary trial.

The two most common types of offences which account for approximately 66% of all charges in the summary trial system are absence without leave and conduct to the prejudice of good order and discipline.

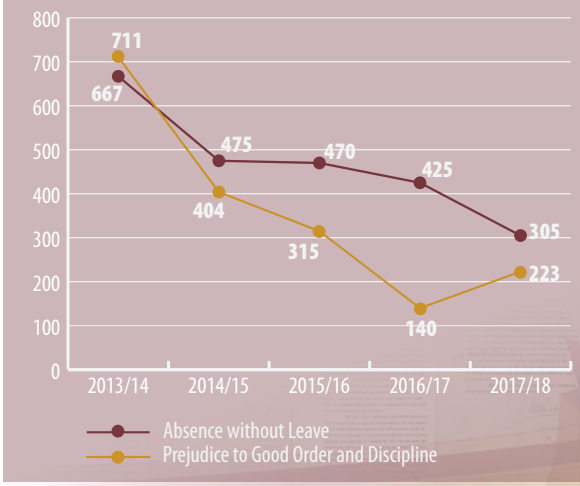
Since the 2013/14 reporting period there has been a consistent decline in the total number of charges reported for absence without leave. In the current reporting period the total number was 305 compared to 667 charges for absence without leave in the 2013/14 reporting period.

Figure 2-5:
Number of Charges Disposed of at Summary Trial



In this reporting period there were a total of 223 charges for the offence of conduct to the prejudice of good order and discipline. This is an increase compared to the previous reporting period of 140 charges. However, there continues to be an overall decline when compared to 2013/14 which had a peak of 711 charges for conduct to the prejudice of good order and discipline. Figure 2-6 shows the number of charges for absence without leave and conduct to the prejudice of good order and discipline between 2013/14 and 2017/18.

Figure 2-6:
Number of charges for Absence without Leave and Conduct to the Prejudice of Good Order and Discipline



6 For the purposes of tabulating results, the offences of conduct to the prejudice of good order and discipline have been sub-divided into a number of categories including unauthorized discharge, sexual harassment, inappropriate relationship, alcohol related, drug related and other. For a detailed breakdown of the number of charges in each sub-category please refer to Annex B.

Number of Elections to be Tried by Court Martial

Pursuant to the Queens Regulations and Orders for the Canadian Forces article 108.17, an accused person has the right to elect to be tried by court martial rather than summary trial except where the accused: (1) has been charged with one of five minor service offences; and (2) the circumstances surrounding the commission of the offence are sufficiently minor in nature that the officer exercising summary trial jurisdiction over the accused concludes that a punishment of detention, reduction in rank or a fine in excess of 25% of the accused's monthly basic pay would not be warranted if the accused were found guilty of the offence.

The five minor offences are: (1) insubordinate behaviour, (2) quarrels and disturbances, (3) absence without leave, (4) drunkenness, and (5) conduct to the prejudice of good order and discipline where the offence relates to military training, maintenance of personal equipment, quarters or work space, or dress and deportment.[7]

During this reporting period, 180 elections to be tried by court martial were offered to accused members. Of the 180 elections offered, the accused elected summary trial 143 times, representing approximately 79% of the elections provided. There were 145 summary trials completed within this reporting year, where an election was offered. Two of these summary trials were a result of an election offered in the 2016/17 reporting period.

In the current reporting period, 37 accused elected to be tried by court martial, representing approximately 21% of the elections offered. Figure 2-7 represents the percentage of accused persons electing court martial when one was offered over the past five reporting periods.

Figure 2-8 shows the number of summary trials completed for the past five reporting periods in which the accused person was offered an election as well as the number of cases in which no election was offered. Figure 2-9 shows the percentage of summary trials completed per reporting period where an accused was offered an election.

Figure 2-7:
Percentage of Accused Electing to be Tried by Court Martial

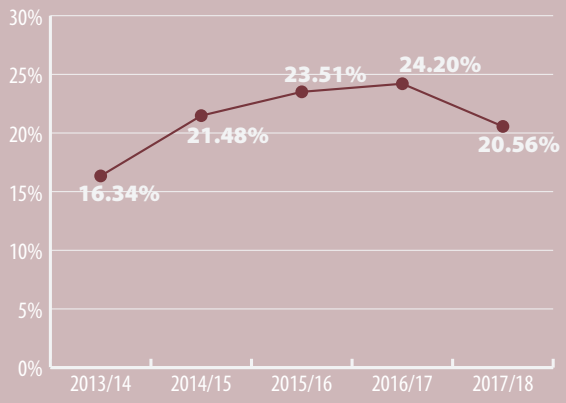


Figure 2-8: Number of Summary Trials Completed where Election Offered and Not Offered

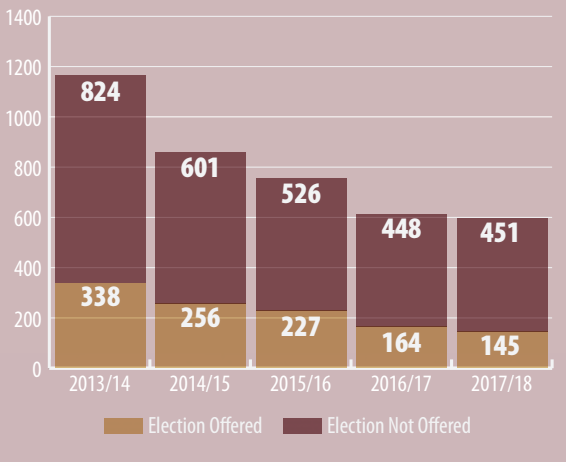
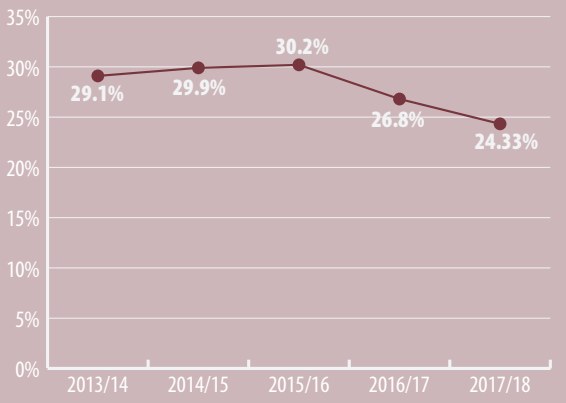


Figure 2-9:
Percentage of Summary Trials Completed where Accused Offered an Election



7 An accused will also not have the right to choose to be tried by court martial or summary trial in those circumstances where the charges require a direct referral to court martial.

Results by Charge at Summary Trial

The percentages of all findings by charge have remained relatively constant on a year to year basis. For example, the percentage of guilty findings has remained relatively constant at approximately 89%. The percentage of not guilty findings has decreased by 2.6% compared to the previous reporting period. A complete breakdown of the total number of findings by charge and the corresponding percentage for the last two reporting periods can be found at Figure 2-10.

Figure 2-10: Results by Charge

	2016-2017		2017-2018	
	#	%	#	%
Guilty	783	86.23	717	89.40
Guilty – Special Finding	8	0.88	8	1.00
Not guilty	93	10.24	61	7.61
Charge stayed	21	2.32	15	1.87
Charge not proceeded with	3	0.33	1	0.12
Total	**908**	**100**	**802**	**100**

Punishments at Summary Trial

This reporting period there were a total of 782 punishments imposed at summary trial.[8] Of those possible punishments which can be imposed at summary trial, fines and confinement to ship or barracks continue to be imposed more frequently.

Figure 2-11: Punishments at Summary Trial

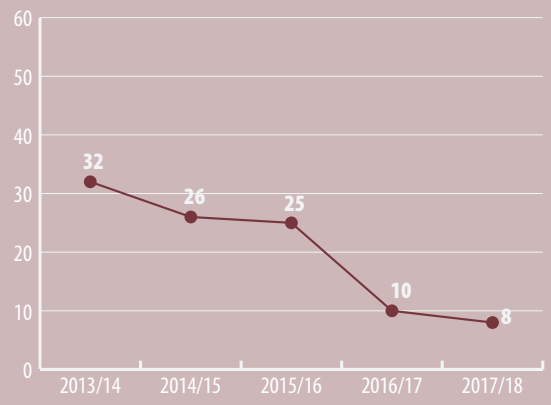
	2016-2017		2017-2018	
	#	%	#	%
Detention	10*	1.25	8*	1.02
Reduction in rank	9	1.12	4	0.51
Severe reprimand	1	0.12	2	0.26
Reprimand	42	5.23	31	3.96
Fine	444	55.29	438	56.01
Confinement to ship or barracks	208	25.90	204	26.09
Extra work and drill	57	7.10	45	5.76
Stoppage of leave	14	1.74	22	2.81
Caution	18	2.24	28	3.58
Total	**803**	**100**	**782**	**100**

* Includes three punishments for which the carrying into effect was suspended

Figure 2-11 shows the total number of punishments imposed at summary trial for the last two reporting periods as well as the corresponding percentage of each punishment over that same period.

In this reporting period the punishment of detention was imposed eight times when compared to the 2013/14 reporting period where the punishment of detention was imposed 32 times. An overview of the number of times the punishment of detention was imposed at summary trial over the past five years can be found in Figure 2-12.

Figure 2-12:
Total Punishments of Detention



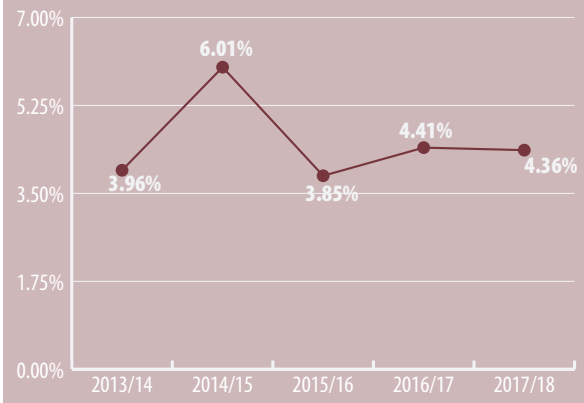
Summary Trial Reviews

In the current reporting period, a total of 26 summary trials were reviewed based on requests by members found guilty at summary trial or on a review authority's own initiative. As there was a total of 596 summary trials, the percentage of cases that were subject to a review was approximately 4%. Of those reviews, 11 were based on finding, nine on sentence, and six were based on both finding and sentence. This percentage is consistent with that of the previous reporting period when approximately 4% of cases were reviewed. Figure 2-13 shows the percentage of cases for which a review of the finding, the sentence or both were conducted since 2013/14.

Based on the nature of the request for review, a review authority has several options available to them to deal with the matter including upholding the decision of the presiding officer, quashing the

8 More than one type of punishment may be imposed at a summary trial.

Figure 2-13:
Percentage of Summary Trials Reviewed



finding of guilt, and substituting the finding or punishment. In approximately 23% of all decisions a reviewing authority quashed the decision of the presiding officer. In approximately another 54% of all decisions a reviewing authority upheld the decision of the presiding officer. In the previous reporting period approximately 39% of decisions by the review authority were to uphold the findings. A complete breakdown of all decisions of a review authority and the corresponding percentage of each decision for the past two reporting periods can be found at Figure 2-14.

Figure 2-14: Decisions of Review Authority

	2015-2016		2016-2017	
	#	%	#	%
Upholds decision	11	39.29	14	53.85
Quashes findings	11	39.29	6	23.08
Substitutes findings	2	7.14	2	7.69
Substitutes punishment	0	0.00	1	3.85
Mitigates / commutes / remits punishment	4	14.29	3	11.53
Total	**28**[9]	**100**	**26**	**100**

Harmful and Inappropriate Sexual Behaviour, Sexual Misconduct and Personal Relationships

At the summary trial level, charges include: inappropriate sexual behaviour; sexual misconduct; and adverse personal relationship.[10] These offences were charged pursuant to section 129 of the *National Defence Act*, conduct to the prejudice of good order and discipline. Failure to report a personal relationship when required to do so may result in a charge, such cases are also included in this section.

In the current reporting period there were a total of 24 charges for Harmful and Inappropriate Sexual Behaviour as well as Sexual Misconduct compared to 26 charges in the previous reporting period.

The number of charges related to adverse personal relationships has increased. In the previous reporting period there were two charges related to adverse personal relationships as compared to seven for the current reporting period.[11]

Language of Summary Trials

As an accused may choose to have his or her summary trial conducted in either official language, the presiding officer must be able to understand the language in which the proceedings are to be conducted without the assistance of an interpreter. Where the presiding officer lacks the required language ability, he or she should refer the case to another presiding officer who has the required language ability to try the case.

This reporting period, approximately 83% of summary trials were conducted in English and 17% were conducted in French. These percentages are

9 In one case the review authority took two separate decisions in one request for review. The review authority reviewed both finding and punishment at the request of the accused.

10 Harmful and Inappropriate Sexual Behaviour is defined in Operation HONOUR as "behaviours that are inconsistent with the Profession of Arms" and may include such behaviour as unacceptable language or jokes, actions that devalue members on the basis of their sex, sexuality, or sexual orientation, accessing, distributing, or publishing in the workplace material of a sexual nature, offensive sexual remarks, exploitation of power relationships for the purposes of sexual activity, unwelcome requests of a sexual nature, verbal abuse of a sexual nature, or the publication of an intimate image of a person without their consent, voyeurism, indecent acts, sexual interference, sexual exploitation, and sexual assault. Sexual Misconduct is defined in Defence Administrative Order and Directive (DAOD) 5019-5 as an act that is either of sexual nature or committed with the intent to commit an act(s) that is sexual in nature and constitutes an offence under the *Criminal Code* or Code of Service Discipline. Such acts may include sexual assault, indecent exposure, voyeurism, or acts involving child pornography. DAOD 5019-1 defines an adverse personal relationship as a personal relationship which has a negative effect on the security, cohesion, discipline or morale of a unit.

11 Two charges for inappropriate personal relationships stemmed from one incident where both members failed to report their personal relationship as required by DAOD 5019-1: Personal Relationships and Fraternization.

consistent when compared to previous reporting periods. Figure 2-15 shows the number of summary trials conducted in both English and French for the past two reporting periods.

Figure 2-15: Language of Summary Trials

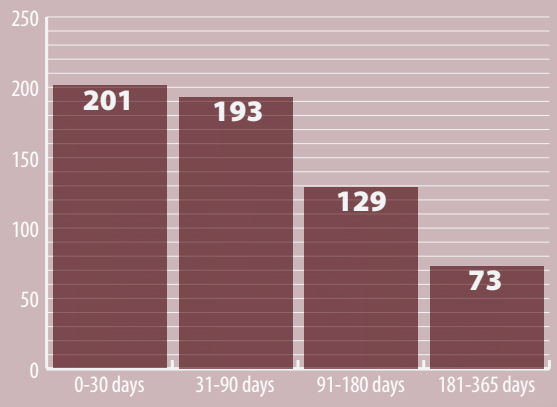
	2016-2017		2017-2018	
	#	%	#	%
English	523	85.46	492	82.55
French	89	14.54	104	17.45
Total	**612**	**100**	**596**	**100**

Timelines for Summary Trials

The purpose of the summary trial system is to provide prompt but fair justice in respect of minor service offences and as such, these trials are required to begin within one year of the date on which the offence is alleged to have been committed.[12]

This reporting period, there were 596 summary trials and the average number of days from the date of the alleged offence to the start date of the summary trial was approximately 87 days. Of those 596 summary trials, 394 were disposed of within 90 days of the alleged incident, representing approximately 66% of all summary trials for the reporting period. Further, approximately 88% of all summary trials were commenced within 180 days of the alleged incident. Figure 2-16 shows a breakdown of the number of days from the date of the alleged offence to the commencement of the summary trial.

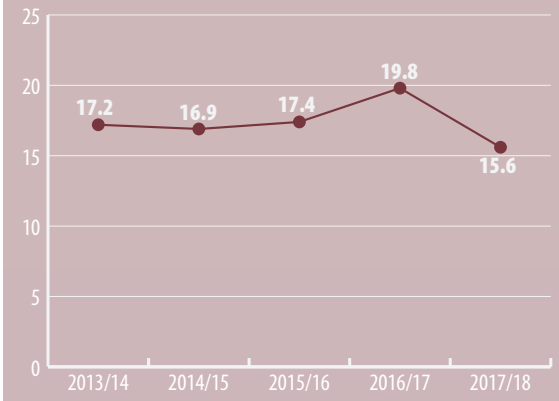
Figure 2-16:
Number of Days from Alleged Offence to the Start of the Summary Trial



Once a charge has been laid by the appropriate authority and is referred to a presiding officer, the presiding officer may be required to obtain legal advice before commencing the summary trial. Once that advice has been received from the unit legal adviser, the presiding officer may commence the summary trial.

Over the past five years, the number of days between the time of charge to the start of the summary trial has increased to reach a peak of just under 20 days in the previous reporting period. During the current reporting period, this number has decreased to approximately 15 days. Figure 2-17 shows the average number of days from charge laid to the start of the summary trial over the last five reporting periods.

Figure 2-17:
Number of Days from Charge Laid to Summary Trial



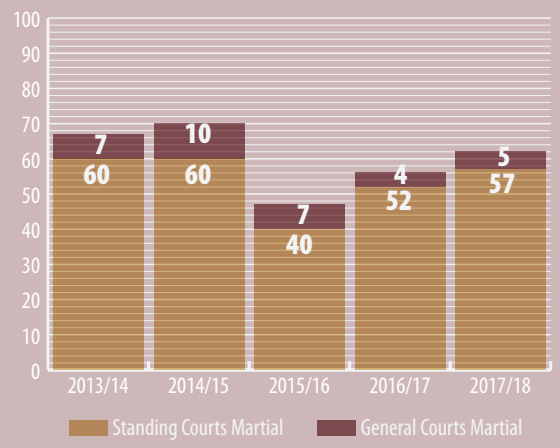
12 See subsections 163(1.1) and 164(1.1) of the *National Defence Act*.

COURTS MARTIAL

Number of Courts Martial

During this reporting period, there were a total of 62 courts martial completed, representing approximately 9% of all service tribunals and a 11% increase in Courts Martial from the previous reporting period. Figure 2-18 demonstrates the number of courts martial by year since 2013/14.

Figure 2-18:
Number of Courts Martial



Results by Case at Court Martial

Of the 62 courts martial held this year, 51 of the 62 accused were either found guilty or pleaded guilty to at least one charge and 11 were found not guilty on all charges. Figure 2-19 shows disposition by case over the past two reporting periods.

Figure 2-19: : Disposition of Cases at Court Martial

	2016-2017		2017-2018	
	#	%	#	%
Found Guilty of at Least One Charge	46	82.14	51	82.26
Found Not Guilty of All Charges	8	14.29	11	17.74
Stay of All Charges	1	1.79	0	0
Withdrawal of All Charges	0	0	0	0
Mistrial	1	1.79	0	0
Total	**56**	**100**	**62**	**100**

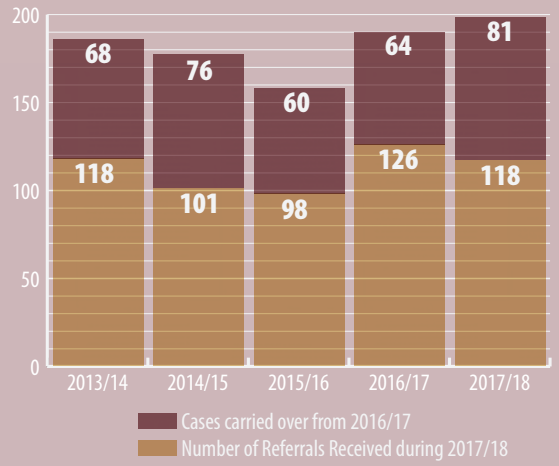
Director of Military Prosecutions Case Management

Referrals

During this reporting period, the Director of Military Prosecutions received a total of 118 referrals compared to 126 in the previous reporting period, a decline of 6%. Although fewer referrals were received by the Director of Military Prosecutions in 2017/18, there were a higher number of cases carried over, resulting in a total of 199 referrals processed in 2017/18 as compared to 190 in 2016/17, or an increase of 5%. Of these 199 cases, post-charge decisions were made by the Canadian Military Prosecution Service in 120 of them with the remainder carried over to the next reporting period.

Figure 2-20 shows the number of referrals received by the Director of Military Prosecutions over the last five years with a comparison as to how many were processed within each respective reporting period.

Figure 2-20:
Number of Referrals

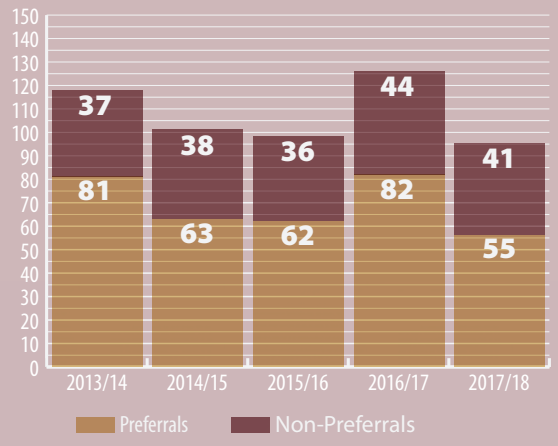


Preferrals and Non-Preferrals[13]

During this reporting period there were 55 files preferred for trial by court martial and 41 cases in which no charges were preferred. The percentage of cases preferred for trial by court martial for this reporting period was approximately 57%, with 22 cases awaiting a post-charge decision. As with the 2016/17 reporting period in which 82 files were preferred, or 65%, this remains consistent with the past five reporting periods. In the past five reporting periods, the highest rate of preferrals was 69% in 2013/14 and the lowest rate of preferrals was 57% in 2017/18.

Figure 2-21 illustrates the number of files preferred by the Director of Military Prosecutions and the number of files where no charges were preferred over the past five reporting periods.

Figure 2-21:
Number of Preferrals and Non-Preferrals



Director of Defence Counsel Services Representation

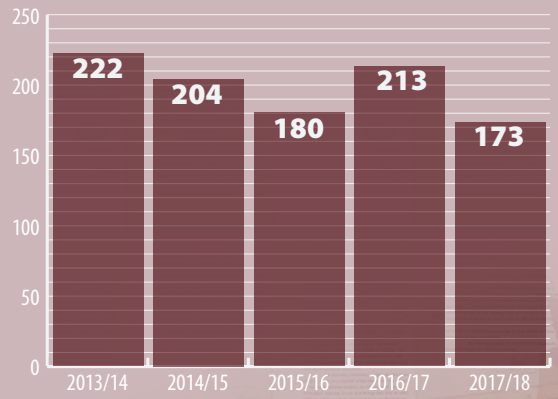
When a person appears before a Military Judge, a Court Martial, the Court Martial Appeal Court or the Supreme Court of Canada, they have the right to be represented by counsel assigned by the Director of Defence Counsel Services at public expense or they may retain civilian counsel at their own expense or choose to self-represent.

During this reporting period, the Director of Defence Counsel Services provided legal representation to accused persons in 200 referred files, which included 96 cases from the previous reporting period which were still awaiting disposition at the commencement of this reporting period. Of these 200 files, 115 were completed during this reporting period. Of the completed files, 60 had the charges withdrawn without proceeding to a trial but requiring some level of legal representation by the Director of Defence Counsel Services. The remaining 55 cases resulted in 10 cases where the accused was found not guilty on all of the charges and 45 cases in which the accused was either found guilty or pled guilty to at least one of the charges.

Court Martial Sitting Days

During this reporting period there was a decline in the total number of court martial sitting days with a total of 173 days, an average of 2.79 days per trial, as compared to 213 days in the previous reporting period. This represented the lowest average number of days per trial over the past five years with the highest average number of days being 3.83 days per trial during the 2015/16 reporting period. The overall five year average for sitting days per court martial is 3.33 days. Figure 2-22 shows the total number of court martial sitting days over the past five reporting periods.

Figure 2-22:
Court Martial Sitting Days

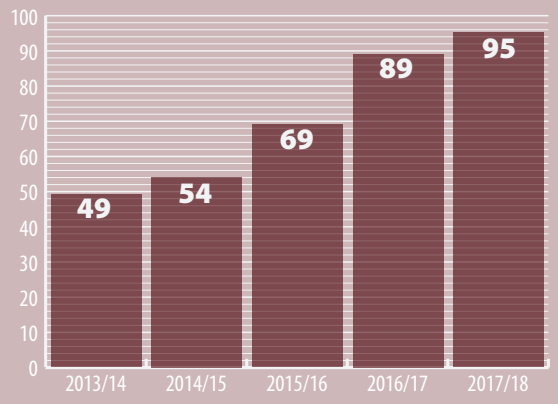


13 In accordance with the Director of Military Prosecutions Policy Directive # 003/00, Post Charge Review, when considering whether or not a charge will be preferred, the Prosecutor must determine if there is a reasonable prospect of conviction and whether the public interest requires that a prosecution be pursued at the post-charge stage. Further information concerning the Director of Military Prosecutions Policies regarding post-charge review can be found at http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/about-policies-standards-legal/dmp-policy-directive-003-post-charge-review.pdf

Timelines

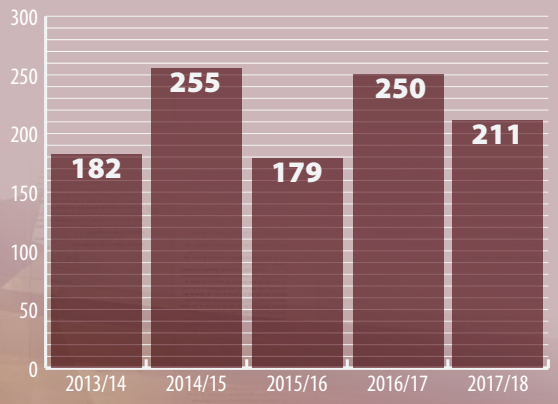
During this reporting period the average number of days from referral of a matter to the Director of Military Prosecutions until charges against an accused were preferred was approximately 95 days, an increase of approximately six days or 7% from the previous year. Figure 2-23 illustrates the average number of days from referral to preferral over the course of the past five reporting periods.

Figure 2-23:
Number of Days from Referral of File to the Director of Military Prosecutions to Preferral of Charges



During this reporting period, the average length of time it took for the commencement of a court martial following the preferral of charges against an accused was 211 days, a decrease from the previous reporting period by an average of 39 days, or 16%.

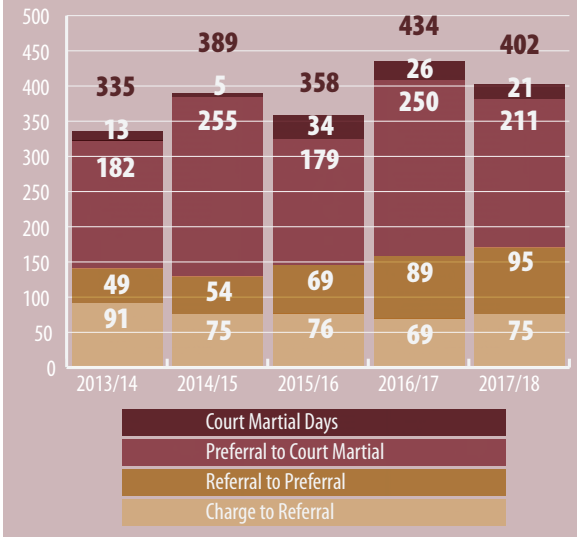
Figure 2-24:
Number of Days from Preferral of Charges to Beginning of Court Martial



The total number of days from the preferral of a charge to the commencement of a court martial in the previous reporting period was 250 days. Figure 2-24 demonstrates the average length of time for a court martial to commence once charges against an accused were preferred over the course of the past five years.

Along with a decrease in the number of days between the preferral of charges to the beginning of a court martial, there was also a decrease in the number of calendar days from the date of the Record of Disciplinary Proceedings to completion of the court martial. The overall process from the date of the Record of Disciplinary Proceedings to the completion of the court martial was 402 days, 7% faster than the previous reporting period which had a total of 434 days, bringing the five year average to 384 days. Figure 2-25 shows the average number of days from the time it takes for a file to move through the referral process once a charge has been laid to the completion of a court martial for the past five reporting periods.

Figure 2-25:
Average Number of Days for Each Step from Charge Laid to Completion of Court Martial



Punishments at Court Martial

While only one sentence may be passed on an offender at a court martial, more than one punishment may be given as part of the sentence. In the 2017/18 reporting period, 51 sentences were pronounced by courts martial, involving a total of 95 punishments. The most common punishment imposed were fines, 38 in total, representing 40% of punishments, followed by 20 reprimands, or 21%. A total of 11 custodial punishments, representing approximately 12% of punishments, were imposed by courts martial, including seven imprisonments and four detentions, three of which were suspended. Figure 2-26 breaks down the punishments imposed by courts martial over the past two reporting periods.

Figure 2-26: Punishments at Courts Martial

	2016-2017	2017-2018
Dismissal	1	3
Imprisonment	4	7
Detention	4*	4**
Reduction in rank	9	9
Severe reprimand	6	11
Reprimand	17	20
Fine	39	38
Confinement to ship or barracks	0	1
Stoppage of leave	0	1
Caution	0	1
Total	**80**	**95**

* One of these punishments were suspended by the Military Judge.
** Three of these punishments were suspended by the Military Judge.

Sexual Misconduct

The *National Defence Act* and the *Criminal Code* provide for a number of offences for which an accused may be tried at court martial for sexual misconduct. These offences include, but are not limited to, sexual assault, assault, accessing or possessing child pornography, disgraceful conduct, prejudice to good order and discipline, and ill-treatment of subordinates.

During the 2017/18 reporting period, 40 referrals for sexual misconduct offences were received by the Director of Military Prosecutions wherein 28 files were preferred, or 70%, for Court Martial with five, or 12.5%, pending a decision by the Director of Military Prosecutions.

A total of 20 Courts Martial dealing with sexual misconduct charges were completed, 14, or 70%, of those resulting in a guilty finding, one court martial, or 5% of the trials, resulting in a guilty finding of a lesser and included offence and five courts martial, or 25%, resulting in findings of not guilty.

A complete breakdown of all courts martial for sexual misconduct can be found in Annex C.


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CHAPTER THREE

Military Justice: Jurisprudence, Developments and Policy Initiatives

JURISPRUDENCE

This chapter highlights some jurisprudence from the reporting period. During the reporting period, two cases concerning the military justice system were appealed to the Supreme Court of Canada and are expected to be heard during the next reporting period. The Court Martial Appeal Court rendered a decision in 14 appeal cases, while at the end of the current reporting period there were three ongoing appeals at the Court Martial Appeal Court.

Upcoming Appeals to the Supreme Court of Canada

Right to a jury trial pursuant to section 11(f) of the *Canadian Charter of Rights and Freedom*

***R v Déry*, 2017 CMAC 2**[14]

This decision involved 11 appeals in which individuals were charged with or found guilty of service offences contrary to section 130 of the *National Defence Act*.[15] The appellants argued that paragraph 130(1)(a) of the *National Defence Act* violated their right to a jury trial pursuant to section 11(f) of the *Canadian Charter of Rights and Freedoms (Charter)*. Section 11(f) of the *Charter* provides that anyone charged with an offence has the right to the benefit of a trial by jury where the maximum punishment for the offence is imprisonment for five years or more, except in the case of an offence under military law tried by military tribunal. The Court Martial Appeal Court had previously ruled in *R v Royes*, 2016 CMAC 1, that section 130 of the *National Defence Act* was an offence under military law without resort to a military nexus test, and therefore the exception to the right to a jury trial applied.

In *Déry*, the Court Martial Appeal Court was unanimous that it was bound by its previous decision in *Royes*. However, Justices Cournoyer and Gleason wrote extensive reasons why they would have found that section 130 of the *National Defence Act*, absent a military nexus test, violated the right to a jury trial under section 11(f) of the *Charter*. Chief Justice Bell wrote separate reasons in support of the unanimous decision in *Royes*. The Supreme Court of Canada granted leave to appeal this decision on 8 March 2018.

Defence of honest but mistaken belief in consent

***R v Gagnon*, 2018 CMAC 1**

Warrant Officer Gagnon is one of the parties to the appeal to the Supreme Court of Canada in *Déry* concerning section 11(f) of the *Charter*. However, this specific case involved a challenge to the military judge's decision to put the defence of honest but

14 The appeal to the Supreme Court of Canada is known as *Stillman v R*. This is due to some of the original 11 applicants, including *Déry*, not being part of the appeal to the Supreme Court of Canada.

15 Subsection 130(1) of the *National Defence Act* states:
130 (1) An act or omission
(a) that takes place in Canada and is punishable under Part VII, the *Criminal Code* or any other Act of Parliament, or
(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the *Criminal Code* or any other Act of Parliament,
is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

mistaken belief to the General Court Martial panel. Warrant Officer Gagnon was acquitted of one count of sexual assault.

The Court Martial Appeal Court found that the military judge erred in law by submitting to the court martial panel a defence of honest but mistaken belief in consent without having considered whether the statutory preconditions in paragraph 273.2(*b*) of the *Criminal Code* had been met, that is, whether Warrant Officer Gagnon had taken reasonable steps in the circumstances known to him at the time to confirm consent to the sexual activities in question. The majority concluded that a judge applying the proper legal framework would likely consider that reasonable steps had not been taken, and would therefore have denied the defence of honest but mistaken belief in consent. On this basis, the majority overturned the acquittal and ordered a new trial.

The Chief Justice, in dissent, concluded that there was evidence of reasonable steps and an air of reality to the defence of honest but mistaken belief on the facts of the case sufficient to put the defence to the panel, and therefore there was no error.

Warrant Officer Gagnon has appealed this decision as of right to the Supreme Court of Canada.

Court Martial Appeal Court Decisions

Obstructing a peace officer and conduct to the prejudice of good order and discipline

***R v Golzari,* 2017 CMAC 3**

On 26 October 2014, Corporal Golzari was attempting to gain access to Canadian Forces Base (CFB) Kingston by car when he was stopped at the gate. The security posture at CFB Kingston had been elevated due to the recent killing of two Canadian Armed Forces members. A member of the Base Auxiliary Security force asked Corporal Golzari to show his military identification card and to provide his destination on base. When Corporal Golzari refused to comply the Military Police were called. Corporal Golzari refused to comply with the direction of the Military Police and was subsequently placed under arrest.

Corporal Golzari was charged with three offences: behaving with contempt toward a superior officer; obstructing a peace officer; and, conduct to the prejudice of good order and discipline. At his court martial, on his own motion, the military judge questioned whether a *prima facie* case had been made out against Corporal Golzari on the grounds that there was no evidence to indicate that there was a standard of conduct requiring the accused to provide his destination when entering the base. The military judge found that the prosecution had failed to lead any evidence that Corporal Golzari knew that the member of the Military Police he was interacting with was a peace officer, or any evidence that there was a standard of conduct that had been breached by Corporal Golzari. The military judge entered a finding of not guilty on all charges. The Director of Military Prosecutions appealed the decision.

The Court Martial Appeal Court unanimously concluded that the military judge erred in this determination.

The Court Martial Appeal Court noted that Military Police are always peace officers in relation to persons subject to the Code of Service Discipline and that the knowledge component of the offence was complete when Corporal Golzari knew he was dealing with a member of the Military Police.

With respect to the charge related to conduct to the prejudice of good order and discipline, the Court Martial Appeal Court found that the prosecution is not required to prove a separate standard of conduct. The offence prohibits any conduct that is prejudicial to good order and discipline. The element of prejudice requires conduct that tends to, or is likely to, adversely affect good order and discipline. The Court Martial Appeal Court noted that, in most cases, the trier of fact should be able to conclude whether the proven conduct is prejudicial to good order and discipline based on their experience and general service knowledge.

The Court Martial Appeal Court allowed the appeal and ordered a new trial.

Principle of police independence

***R v Wellwood*, 2017 CMAC 4**

Major Wellwood is also one of the parties to the appeal to the Supreme Court of Canada in *Déry* concerning section 11(f) of the *Charter*. However, this case involved a challenge to the military judge's instructions to the General Court Martial panel. Major Wellwood was convicted of obstructing a peace officer. The incident occurred when a corporal from the Military Police attended the command post location under Major Wellwood's responsibility in response to a 911 call regarding a possibly suicidal soldier. A confrontation ensued between Major Wellwood and the member of the Military Police, each of whom refused to cooperate with the other.

The Court Martial Appeal Court concluded that the military judge's instructions to the panel were needlessly complex, and failed to properly relate the evidence to the law. The Court Martial Appeal Court further concluded that the military judge failed to adequately address Major Wellwood's competing obligations toward the suicidal soldier and to what degree those obligations informed what was a reasonable and necessary exercise of police powers in the circumstances.

The Court Martial Appeal Court confirmed that the principle of police independence applies to members of the Military Police in the exercise of their law enforcement duties during their interactions with the chain of command. Military Police are not required to obey the orders of superior officers when those orders conflict with the exercise of their police duties.

The Court Martial Appeal Court overturned the conviction and ordered a new trial.

Unfit sentence

***R v Hoekstra*, 2017 CMAC 5**

Corporal Hoekstra pled guilty to possession of marijuana, possession of explosives, possession of prohibited devices, and receiving property obtained by the commission of a service offence. The prosecution recommended a sentence of 18 months imprisonment and dismissal from Her Majesty's service. Defence counsel suggested a suspended sentence of 30-90 days detention, a severe reprimand and a significant fine. The military judge sentenced Corporal Hoekstra to 60 days imprisonment.

The Court Martial Appeal Court unanimously concluded that the sentence was demonstrably unfit, and that an appropriate sentence was 14 months imprisonment. The Court found the military judge had not appropriately weighed the aggravating factors against the mitigating factors and had failed to properly consider other sentences for similar offences in determining the sentence. Upon the admission of fresh evidence of Corporal Hoekstra's rehabilitative efforts and good conduct, and with the agreement of the Director of Military Prosecutions, the Court Martial Appeal Court stayed the remaining period of imprisonment.

Ongoing Appeals at the Court Martial Appeal Court at the End of the Reporting Period

Charge-layer did not have an actual belief that the accused committed the alleged offence

***R v Edmunds,* 2017 CM 3016**

Master Corporal Edmunds ran a fraudulent scheme whereby he contracted on behalf of the Canadian Armed Forces with a company of which he was the sole owner. After pleading guilty to one count of fraud over $5000 involving two fraudulent transactions, he was charged with several additional counts of fraud which resulted in a second trial. He was sentenced to 30 days imprisonment at his first trial. At his second trial, Master Corporal Edmunds argued that the conduct of the investigators and prosecution was abusive, mainly because the prosecution had improperly split its case. The issues at appeal arose from this second trial.

During a pre-trial disclosure and abuse of process application, the charge-layer testified that he did not know any information about the alleged offences. He had been presented with a Record of Disciplinary Proceedings containing a number

of charges and had simply signed it. The military judge found that the charge-layer did not have an actual and reasonable belief that an offence had been committed, incorporating this finding into his decision on the abuse of process.

In his decision on the abuse of process, the military judge found that the prosecution had not acted in bad faith or maliciously, but concluded that subjecting Master Corporal Edmunds to two trials was an abuse of process. The military judge concluded that the prejudice arising from this abuse was the possibility that Master Corporal Edmunds would be subjected to two separate periods of incarceration. He concluded that this prejudice could be remedied through mitigation of sentence.

Master Corporal Edmunds appealed the military judge's refusal to grant a stay of proceedings. After a review of the appeal record, the Director of Military Prosecutions agreed that the error at the charge laying stage was fatal to the charges and that the Court Martial had therefore been without jurisdiction. This vitiated the proceedings and required the Court Martial Appeal Court to quash the conviction. The Court Martial Appeal Court agreed, declaring the court martial a nullity and overturning the conviction.

The Court Martial Appeal Court rendered a decision from the bench with written reasons expected in the next reporting period.

Right to a jury trial pursuant to section 11(f) of the *Charter*

***R v Beaudry,* 2016 CACM 2**

On 30 January 2018, the Court Martial Appeal Court heard constitutional arguments as to whether paragraph 130(1)(a) of the *National Defence Act* violates the right to a jury trial pursuant to section 11(f) of the *Charter*. The Court Martial Appeal Court has reserved its decision.

Sexual Assault

***R. v. Cadieux,* 2017 CM 3008**

Corporal Cadieux was charged with one offence for having allegedly committed a sexual assault, and one offence of drunkenness while deployed on an exercise in Jamaica in November 2015.

Corporal Cadieux was acquitted at a Standing Court Martial of sexual assault and drunkenness. The Director of Military Prosecutions appealed the acquittal on the basis that the military judge erred in his assessment of the defence of honest but mistaken belief in consent, in his assessment of witness credibility and in his interpretation of the offence of drunkenness under section 97 of the *National Defence Act*.

The Court Martial Appeal Court heard oral arguments in this case on 12 March 2018 and reserved its decision.

Upcoming Appeal to the Court Martial Appeal Court

Behaved in a disgraceful manner and conduct to the prejudice to good order and discipline

***R v Bannister,* 2018 CM 3003**

Captain Bannister was the Commanding Officer of 148 Royal Canadian Army Cadet Corps Charlottetown, Prince Edward Island. He was charged with three offences for having allegedly behaved in a disgraceful manner contrary to section 93 of the *National Defence Act*. Alternately he was charged with three offences for conduct to the prejudice of good order and discipline contrary to section 129 of the *National Defence Act* for inappropriate sexual comments made in the workplace.

The prosecution told the Court that if it did not find Captain Bannister guilty by using the deeming provision of subsection 129(2) of the *National Defence Act*, it could still go on to do an analysis of the evidence on the essential element of prejudice provided at subsection 129(1) of the *National Defence Act* and it made further reference to the Court Martial Appeal Court decision in *Golzari* (referring to the trier of fact being able to rely on their experience and general service knowledge). On that issue, the trial judge agreed with the comments of the military judge in the decision of *R v Rollman*, 2017 CM 2005, on the extent to

which it is appropriate for a trier of fact to rely on their experience or general service knowledge to determine whether or not something is, or likely to be, prejudicial to good order and discipline.

Captain Bannister was acquitted on all counts. The Director of Military Prosecutions appealed the acquittal on the basis that the military judge erred in his interpretation of the offence of disgraceful conduct and erred in his interpretation of prejudice to good order and discipline. The Notice of Appeal was filed on 29 March 2018.

Court Martial Decisions

Appropriate interpretation of a trier of fact relying on experience and general service knowledge regarding what constitutes conduct to the prejudice of good order and discipline

***R v Rollman*, 2017 CM 2005**

Corporal Rollman, a reservist, working as a military cook at 5 Canadian Division Support Base Detachment Aldershot was found not guilty of three offences namely: one count of striking a superior officer, contrary to section 84 of the *National Defence Act* and two counts of conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*.

Following a comment made by Corporal Rollman to a civilian employee, which the employee regarded as a racial slur, Corporal Rollman's supervisor advised Corporal Rollman that a complaint had been made against him. During this interaction Corporal Rollman struck Sergeant Smith.

The Court found Corporal Rollman believed on reasonable grounds that force was about to be used by Sergeant Smith and that he slapped away Sergeant Smith's hand to defend and protect himself against Sergeant Smith's first use of force, which was reasonable.

To assess whether the conduct in question resulted in prejudice to good order and discipline, the Court referred to the decision in *R v Golzari*. In that decision the Court Martial Appeal Court stated that a trier of fact, relying on military experience and general service knowledge could determine whether "conduct tended to adversely affect good order and discipline."

In the view of the Court, if a trier of fact wishes to rely upon such experience and knowledge, it must be done in accordance with the law of evidence. The concern raised by the court was:

> "... the uncertainty that exists if the trier of fact relies upon his or her own subjective experience and general service knowledge in order to infer an essential element of an offence. An accused cannot be left in the unfair position of having to speculate on what fact, matter, custom or general military knowledge as evidence that the trier of fact might rely upon in order to convict him. An accused must have all the legal evidence adduced before him in court to ensure that he is given the opportunity to meet, explain or contradict this evidence and to determine on what grounds he should argue his defence. […] the trier of fact must be careful to limit it to matters of general knowledge or facts known to the "ordinary" military person and is not entitled to apply knowledge that he or she might have by reason of a military specialty or personal experience."[16]

Sexual assault

***R v Cooper*, 2018 CM 2014**

Master Seaman Cooper was found guilty at a Standing Court Martial of sexual assault and ill-treatment of a subordinate to him. He was sentenced to imprisonment for a period of 22 months, dismissal from Her Majesty's service, and a reduction in rank to the rank of Ordinary Seaman.

***R v W (T.S.)*, 2018 CM 2004**

Master Corporal W. (T.S.) was found guilty of sexual assault and sentenced to imprisonment for a period of 18 months, dismissal with disgrace from Her Majesty's service, and a reduction in rank to Private.

16 *R v Rollman*, 2017 CM 2005 at paras 79-83.

***R v Wilks,* 2017 CM 1008**

Petty Officer 2nd Class (Retired) Wilks is also one of the parties to the appeal to the Supreme Court of Canada in *Déry* concerning section 11(f) of the *Charter*. However, in this separate case he was found guilty of sexual assault and three charges of breach of trust by a public officer and sentenced to a period of imprisonment of nine months.

DEVELOPMENTS AND POLICY INITIATIVES

Support to Victims

Providing support to victims and survivors is a strategic priority for the Government of Canada and the Canadian Armed Forces clearly articulated in *Strong, Secure, Engaged* and Operation HONOUR. Such support for victims and survivors is directly linked to the legitimacy of the military justice system. The development of policies providing support to victims and survivors at all stages of the military justice system, including during an investigation, at summary trial and at court martial, will further commitments made to provide a full range of support services to victims and survivors.

The *Canadian Victims Bill of Rights* was enacted in 2015 to provide rights to victims of a crime such as the rights to information, protection, participation and restitution. The Military Justice Division was tasked with coordinating with and supporting the Canadian Armed Forces chain of command in identifying those protections which can be implemented by policy within the Canadian Armed Forces, while legislative options are being considered regarding rights for victims of crime in the military justice system. This process included consultation with various groups, including victim advocacy groups and civilian lawyers with relevant background and experience. The analysis of existing policies indicated that a significant portion of *Canadian Victims Bill of Rights*-inspired protections for victims has been addressed in Director of Military Prosecutions and Military Police policies. Further effect will be achieved by synchronizing current policies, which require relatively minor amendments.

The Judge Advocate General has also directed the Military Justice Division to generate options to provide legal advice to victims and survivors of sexual assault in the Canadian Armed Forces in an effort to significantly enhance the level of support available to them. This approach to victim support is considered an emerging "best practice", one which is now being piloted in some Canadian provinces, and by the United States Army and United States Navy. The Office of the Judge Advocate General proactively supports stakeholders mandated to provide services to victims by assisting them in their respective mandates and duties. For example, assistance is being provided to a working group that is developing a model for the provision of legal advice to admissible victims. This service would contribute to empowering victims and survivors by helping them make better informed choices about the situations they are facing.

Consequently, the Military Justice Division is providing legal services required to develop options resulting in efficient and effective models to be implemented by the appropriate entities with the benefit of broad internal and external consultation. Stakeholders supported by the Judge Advocate General include: the Canadian Armed Forces Strategic Response Team on Sexual Misconduct, the Sexual Misconduct Response Centre, and the Canadian Forces Provost Marshal. Consulted organizations include: the Department of Justice, several police organizations, senior officials in charge of provincial pilot programs, and victims advocacy groups. Although insights generated through this consultation have so far been invaluable, the specific needs of members of the Canadian Armed Forces and the unique aspects of the military justice system highlight the requirement for an initiative that is tailored to the Canadian Armed Forces context, which requires adaptation from each of the other existing initiatives. The Military Justice Division continues to refine possible courses of action with a view to ensuring the selected model will optimally support victims and survivors within the Canadian Armed Forces.

Policy on Sentencing Considerations Related to Aboriginal Offenders

The Minister of National Defence's mandate letter[17] from the Prime Minister specifies that: "*No relationship is more important to me and to Canada than the one with Indigenous Peoples*." With this in mind, sentencing considerations related to aboriginal offenders has therefore been identified as a strategic priority by the Judge Advocate General. The Office of the Judge Advocate General is currently looking to develop the best courses of action to implement the consideration of the circumstances of aboriginal offenders at sentencing in the military justice system. The Office of the Judge Advocate General has engaged with many stakeholders inside and outside the Canadian Armed Forces to implement a policy that aligns with broader Canadian Armed Forces efforts and initiatives concerning indigenous persons.

Bill C-15 Implementation

The Military Justice Division has continued its work, in conjunction with the Department of Justice's National Defence Regulatory Section, to draft the regulations necessary to bring into force the remaining amendments made to the *National Defence Act* as a result of the *Strengthening Military Justice in the Defence of Canada Act*. These amendments focus on the military justice system and address, among other things, matters related to sentencing, victim impact statements, and summary trials. The improvements in fairness and flexibility introduced by these amendments enhance the effectiveness, and thus the legitimacy, of the military justice system. A military justice system reflective of Canadian values is one that will help the Canadian Armed Forces promote a culture of leadership, respect, and honour – cornerstones of Canada's Defence Policy - *Strong, Secure, Engaged*. These amendments advance these objectives as they come into force in 2018.

Superintendence Enhancement and Assessment Project (SEAP)

In the 2015/16 JAG Annual Report, the Judge Advocate General announced the initiation of an audit team in order to "develop and pilot a process for… [the collection of] objective and measurable data from a variety of sources and through a variety of mechanisms in order to assess the unit level administration of the Code of Service Discipline." From this original concept the mandate has been expanded to comprehensively address the efficiency and efficacy of the military justice system as a whole.

Based on this mandate, the SEAP was created with the Superintendence Enhancement and Assessment Team (SEAT) to see to its implementation. In order to achieve the Judge Advocate General's direction, the SEAT began work on two sub-projects under SEAP which will combine to provide institutional strategic oversight and will enhance the Judge Advocate General's ability to carry out her statutory mandate of superintendence of the administration of the military justice system. It will also provide data for performance measurement initiatives.

1. The Justice Administration and Information Management System (JAIMS)

The first sub-project under SEAP is the JAIMS. JAIMS will be an electronic system designed to seamlessly and electronically track military justice files from the reporting of an alleged infraction, through to investigation, charge laying, trial disposition and review in both the summary trial and court martial processes. Front-end users of the system (including investigators, charge layers, presiding officers, review authorities, referral authorities, legal advisers, prosecutors and defense counsel) will input data at each stage of the process thereby allowing the progress of a file to be tracked in real-time.

JAIMS will deliver the means to provide commanders at all levels with a user-friendly, responsive, effective and efficient real-time workflow tool that will facilitate the administration of military justice at the unit level. It will also ensure that a case proceeds through the

17 Minister of National Defence Mandate Letter, November 12, 2015, https://pm.gc.ca/eng/minister-national-defence-mandate-letter

system in a timely manner by confirming that the matter proceeds in the proper order and prompting key actors at the appropriate time when they are required to take a specific action. JAIMS will also compile all relevant statistics on the administration of military justice and provide strategic oversight of the entire military justice system.

Funding has been approved and development of JAIMS will begin during the next reporting period and the system will be piloted before a Canadian Armed Forces-wide launch.

2. Military Justice Stakeholder Engagement Project (MJSEP)

The second sub-project under SEAP is the MJSEP. MJSEP will consist of targeted questionnaires and on-site visits designed primarily to collect quantifiable and measurable subjective as well as qualitative data from military justice stakeholders. During the next reporting period, the SEAT will continue working on MJSEP by identifying which stakeholders will participate in the first engagement, designing the questionnaires and planning the on-site visits.

Military Justice Performance Management System

The Military Justice Division has been directed to develop and implement a new military justice performance measurement system. Once implemented, it is envisaged that the performance measurement system will work with JAIMS and MJSEP in order to further enable the effective and efficient superintendence of the military justice system. It is intended that these new sources of data will further enable the Office of the Judge Advocate General to conduct evidenced-based analysis and decision-making. This will allow a proper analysis of the performance of the military justice system and to identify any issues to be addressed.

Office of the Auditor General Audit of the Military Justice System

During this reporting period, the Office of the Auditor General of Canada conducted an important audit of the military justice system. The Office of the Judge Advocate General remained fully committed to fully supporting the Office of the Auditor General in this audit through complete transparency and sharing of information. This approach allowed the Office of the Judge Advocate General to identify and address some deficiencies as they were identified. For example, the Canadian Military Prosecution Service took the initiative to institute a number of changes to expedite disclosure to defence counsel.

Court Martial Comprehensive Review

The Court Martial Comprehensive Review (CMCR) was initiated by the previous Judge Advocate General by terms of reference dated 13 May 2016. The purpose of this internal review was to conduct a legal and policy analysis of all aspects of the Canadian Armed Forces' court martial system and provide options to enhance the effectiveness, efficiency, and legitimacy of that system. Soon after her appointment, the Judge Advocate General met with the CMCR Team and provided additional guidance including direction to make the document a policy-based analysis, not subject to solicitor-client privilege, in order for the document to be made public. A draft CMCR report was provided to the Judge Advocate General in July 2017. In large part due to challenges related to methodology and a paucity of metrics and analytics, the document was of limited assistance in assessing the current court martial system. The draft internal report will therefore serve as a discussion paper. It offers perspectives that may be taken into account following receipt of the Auditor General's report, the report of the next independent review authority along with other internal and external consultations on the military justice system. The Judge Advocate General published the draft CMCR report on 17 January 2018 and has communicated publicly her decision that the CMCR project has reached its conclusion.[18]

18 Judge Advocate General Statement, Draft Internal Report - Court Martial Comprehensive Review, dated 17 January 2018, http://www.forces.gc.ca/en/about-reports-pubs-military-law-court-martial-comprehensive-review/index.page

Chief Military Judge Charged with Offences Under the Code of Service Discipline

On 25 January 2018, the Canadian Forces National Investigation Service laid charges against the Chief Military Judge. This unique and unprecedented situation raised many questions concerning the military justice system. Just like the civilian justice system, the military justice system has the appropriate mechanisms and tools to deal with this exceptional situation, fairly and in accordance with the law. The matter is now proceeding in the military justice system.

2018-2021 Office of the JAG Strategic Direction

In February 2018, the Judge Advocate General issued the 2018-2021 Office of the JAG Strategic Direction,[19] which provides the Judge Advocate General's direction and guidance on the Mission, Priorities and Relevance Proposition for the Office of the Judge Advocate General. These guiding principles reflect the values of the Office of the Judge Advocate General and set the expectations of professional conduct for its members, including to deliver client-focused, timely, options-oriented and operationally-driven military legal services, and support the superintendence of the administration of the military justice system in the Canadian Armed Forces. In particular, this Direction highlights the requirement to respect the independent roles of each statutory actors in the military justice system. In implementing this Direction, members of the Office of the Judge Advocate General will work together to enhance communication, leverage technology, use relevant data to support decision-making and align their priorities and resources with the Governmental, Departmental and Canadian Armed Forces' objectives and priorities. The Office of the Judge Advocate General will be an inclusive, gender equal, diverse, resilient and ready team that will be prepared to effectively and efficiently deliver high quality military legal services.

Canadian Armed Forces Discipline Advisory Council

The Canadian Armed Forces Discipline Advisory Council is mandated to discuss and provide input on matters pertaining to the maintenance of discipline and policies related to the continued effective functioning of the Code of Service Discipline. It is co-chaired by the Canadian Armed Forces Chief Warrant Officer and the Judge Advocate General Chief Warrant Officer and its membership includes the most senior non-commissioned members from each command and from other key organizations within the Canadian Armed Forces. The Council met four times during this reporting period and addressed a number of topics including proposed legislative, regulatory and policy changes impacting the military justice system, as well as current initiatives in development aimed at improving the administration of military justice. This Council plays a vital role for the Judge Advocate General in her role as the superintendent for the administration of military justice. The Council provides an invaluable forum for the discussion of current issues concerning discipline and the military justice system.

19 *Supra* note 1

Bill C-66: *Expungement of Historically Unjust Convictions Act*

Bill C-66, which was introduced in the House of Commons on 28 November 2017, creates a procedure for expunging certain historically unjust convictions and provides for the destruction or removal of the judicial records of those convictions. Eligible offences include a number of sexual offences involving consensual sexual activity between same-sex persons whether they were prosecuted under the *Criminal Code* or the *National Defence Act*. Bill C-66 deems a person who is convicted of an offence for which expungement is ordered never to have been convicted of that offence. The Office of the Judge Advocate General provided direct support to this legislative initiative, ensuring that service offences under the *National Defence Act* would be included. During this reporting period, Bill C-66 was referred to the Standing Senate Committee on Human Rights following Second Reading (27 March 2018) and further information on the progress of Bill C-66 is expected during the next reporting period. The Office of the Judge Advocate General remains ready to provide the required legal services regarding the implementation of this legislation.



CHAPTER FOUR

The Way Ahead

Over the last 100 years, the Office of the Judge Advocate General has demonstrated excellence through service. The Office of the Judge Advocate General will honour its past, embrace the present and shape its future by providing client-focused, timely, options-oriented and operationally-driven legal services. Building on past accomplishments, in the upcoming reporting period the Office of the Judge Advocate General will continue to advance a number of initiatives designed to enhance the superintendence, increase the efficiency, effectiveness and the legitimacy of the military justice system.

The Office of the Judge Advocate General will continue to support the Chief of the Defence Staff and the chain of command towards the elimination of harmful and inappropriate sexual behaviour within the Canadian Armed Forces. Such behaviour not only undermines the ability of the Canadian Armed Forces to achieve its mission of defending Canadian interests at home and abroad, but it also impacts the discipline, efficiency and morale of the Canadian Armed Forces. The military justice system plays a complementary role to Operation HONOUR and provides a valuable tool for commanders at all levels in the elimination of harmful and inappropriate sexual behaviour which can seriously undermine discipline, efficiency and morale in the Canadian Armed Forces. The Office of the Judge Advocate General remains committed to ensuring that the military justice system plays an important role in supporting complainants and in dealing with those individuals who are alleged to have committed offences of a sexual nature in accordance with the rule of law.

The Office of the Judge Advocate General will continue to work towards the development and implementation of the Superintendence Enhancement and Assessment Project, including the Justice Administration and Information Management System and the Military Justice Stakeholder Engagement Project which will assist the Judge Advocate General in her statutory responsibility of superintending the administration of military justice in the Canadian Armed Forces. The Justice Administration and Information Management System and the Military Justice Stakeholder Engagement Project will allow the Judge Advocate General to maintain an overall awareness of the efficiency and effectiveness of the military justice system. It will provide objective and measurable data which, when combined with stakeholder engagement through interviews and questionnaires, will lead to a significantly enhanced ability to measure, analyze, and take corrective measures to improve the performance of the military justice system. In addition, the Justice Administration and Information Management System will provide commanders at all levels with a user-friendly, responsive, effective and efficient real-time workflow tool that will facilitate the administration of military justice at the unit level.

The Office of the Judge Advocate General will continue to work with the Department of Justice towards the completion of the regulations required to bring the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act,* into force. Bill C-15 comprises the most significant amendments to the *National Defence Act* since 1998 and requires extensive regulatory amendments in relation to military justice. Bill C-15 improves various aspects of the military justice system and includes a number of provisions that, when brought into force, will provide victims of service offences with specific procedural rights such as the right to make victim impact statements during the sentencing phase of courts martial and the ability of a court martial to make an order for restitution similar to those provisions that exist in the *Criminal Code*. The Office of the Judge Advocate General and the Canadian Forces Military Law Centre are developing training for members of the chain of command, including presiding officers as well as for legal officers, related to the changes as a result of Bill C-15. This will ensure that all actors within the military justice system are properly prepared when the new regulations come into force.

On 1 March 2018, the Minister of National Defence approved the appointment of the former Chief Justice of Canada, the Right Honourable Beverley McLachlin, P.C., as Honorary Colonel of the Office of the Judge Advocate General. The practice of unit honorary appointments in Canada dates back more than a century. The role of an Honorary appointee is honorary and advisory, and includes fostering esprit de corps, supporting their unit, providing expertise and guidance, representing the Canadian Armed Forces, as well as maintaining a positive link with the military and legal communities and the Canadian public in the case of the Office of the Judge Advocate General appointee. Honorary Captain (Navy) McLachlin, given her wealth of experience, will provide invaluable counsel to the Judge Advocate General and the senior leadership of the Office of the Judge Advocate General. Honorary Captain (Navy) McLachlin will succeed Honorary Colonel John Hoyles who has fulfilled those duties since 2014.

CONCLUSION

This past year has been a productive and positive one for the development of military justice. Members of the Office of the Judge Advocate General have worked as a team with partners and stakeholders to advance a variety of policy and legal initiatives while also responding to a number of other challenges within the military justice system. In doing so, they have proven themselves to be experts in the area of military justice and military law and have demonstrated excellence through service. However, despite the work that has been undertaken thus far, challenges remain such as the implementation of a performance measurement system and workflow management system to enable the effective and efficient delivery of military legal services and to improve the ability of the Judge Advocate General to superintend the administration of military justice in the Canadian Armed Forces.

Canada's military justice system is a unique and necessary part of the larger Canadian legal mosaic which contributes significantly to the ability of the Canadian Armed Forces to achieve its missions in Canada and around the world. Over the last 100 years, the military justice system has continued to evolve in order to remain a fair and efficient system that promotes the operational effectiveness of the Canadian Armed Forces, complies with Canadian and international law and is one in which Canadians have confidence.

ANNEX A:

2018-2021 Office of the JAG Strategic Direction — *"Excellence Through Service"*



2018-2021 OFFICE OF THE JAG STRATEGIC DIRECTION

"EXCELLENCE THROUGH SERVICE"

MISSION

To deliver client-focused, timely, options-oriented and operationally-driven military legal services in support of Government of Canada, Department of National Defence and Canadian Armed Forces priorities and objectives; and, to superintend the administration of military justice in the Canadian Armed Forces while respecting the independent roles of each statutory actor within the military justice system.

PRIORITIES

OUR CLIENTS

The Office of the JAG will serve the Government of Canada, the Department of National Defence and the Canadian Armed Forces, whether in Canada or abroad.

OUR TEAM

The Office of the JAG will be an inclusive, gender equal, diverse, resilient and ready team that will be prepared to effectively and efficiently deliver high quality military legal services.

OUR VALUES

The paramount value for the Office of the JAG is teamwork. It will be achieved through the development and sustainment of trust-based relationships. Our personal credibility and behaviour as well as our office demonstrated results, reputation, alignment with clients' objectives and priorities will foster trust in us, trust amongst us, and trust between our clients and ourselves.

Office of the JAG lawyers will conduct themselves and deliver legal services in accordance with their respective law society's code of professional conduct.

Office of the JAG members will embrace and behave in accordance with the Department of National Defence and Canadian Armed Forces Code of Values and Ethics, which includes: respect for the dignity of all persons, service to Canada before self, obedience and support of lawful authority, honesty, integrity, loyalty, and courage.

RELEVANCE PROPOSITION

As a trusted partner in the Defence Team, the Office of the JAG will effectively and efficiently deliver high quality and consistent military legal services that enable the Government of Canada, the Department of National Defence and the Canadian Armed Forces to conduct their activities in accordance with applicable national and international law. These services will meaningfully contribute to the foundations of a strong, secure, engaged and democratic Canada founded on the Rule of Law.

While respecting the independent roles of each statutory actor within the military justice system, the Office of the JAG will effectively and efficiently support the superintendence of the administration of a military justice system that promotes the operational effectiveness of the Canadian Armed Forces, complies with Canadian law, and is one in which Canadians have confidence.



IN ORDER TO DELIVER RESULTS, THE OFFICE OF THE JAG WILL:

ALIGN ACTIVITIES, PRIORITIES AND RESOURCES

Plan and deliver all activities and processes in a manner that fully integrates and supports Governmental, Departmental and Canadian Armed Forces' objectives and priorities, as found in the Strong Secure and Engaged: Defence Policy; Defence Plan (2018-2023); Force Posture and Readiness; Defence Results Framework; and Defence Program Analytics.

ENHANCE THE CONFIDENCE IN THE MILITARY JUSTICE SYSTEM

Enable the superintendence of the administration of the military justice system in a manner that ensures that the Government of Canada, the Department of National Defence, the Canadian Armed Forces and Canadians have confidence that the military justice system is legitimate (i.e., is lawful and meets Canadian values, such as fairness and transparency), effective and efficient, thereby promoting the discipline, efficiency and morale of the Canadian Armed Forces.

PREPARE OUR TEAM FOR THE FUTURE

Implement human resources practices, recruiting and retention strategies, career management, succession planning as well as professional development (which include substantive education and skill development) that foster a more empowered, resilient, gender equal, inclusive, diverse and engaged professional team across the Office of the JAG.

DEVELOP PARTNERSHIPS

Support our clients' priorities and objectives through the development of internal capacities that identify and promote meaningful, timely and enhanced connections between the JAG, the Office senior leadership and team members; between the Office of the JAG and our clients; between the Office of the JAG and other government departments; between the Office of the JAG and the Canadian as well as international legal community; and between the Office of the JAG and internal as well as external stakeholders.

ENHANCE COMMUNICATIONS

Enhance transparency and information sharing across the Office of the JAG, while respecting the independence requirements of both the prosecution and defence counsel. Offer and present uniformity, consistency and correctness in the articulation, development and interpretation of legal advice that supports the Government of Canada, the Department of National Defence and the Canadian Armed Forces. Uniformity and consistency will enhance the credibility of and trust in our services. As collective stewards of the military justice system, identify and seize all opportunities to educate Canadian Armed Forces members and Canadians on this system, which forms an integral part of the Canadian legal mosaic.

SUPPORT DECISION-MAKING

Data is the currency of decision-making. Develop and implement a performance measurement system to enable the effective and efficient delivery of military legal services. Also, develop and implement a new military justice case management tool, database and performance measurement system to enable the effective and efficient superintendence of the military justice system. Leverage all Office of the JAG performance measurement data to support evidence-based decision-making and develop relevant solutions to enhance the service delivery and superintendence functions.

LEVERAGE TECHNOLOGY

Leverage the most appropriate and effective technology for performance and case management, information management, partnership building, education and skill development, and virtual meetings. This will enhance our ability to provide consistent advice, increase the transparency of our military justice system and provide means to attain seamless communications amongst the Office of the JAG team and with our partners.

ANNEX B:

Summary of Charges Disposed of at Summary Trial

Summary of Charges Disposed of at Summary Trial

1 April 2017 – 31 March 2018
*current as of 22 May 2018

NDA SECTION	DESCRIPTION	2016-2017		2017-2018	
		#	%	#	%
83	Disobedience of lawful command	35	3.86	17	2.12
84	Striking or offering violence to a superior officer	2	0.22	3	0.37
85	Insubordinate behavior	58	6.39	42	5.24
86	Quarrels and disturbances	35	3.85	58	7.23
87	Resisting or escaping from arrest or custody	1	0.11	0	0.00
90	Absence without leave	425	46.81	305	38.03
93	Cruel or disgraceful conduct	1	0.11	2	0.25
95	Abuse of subordinates	12	1.32	2	0.25
96	Making false accusations or statements or suppressing facts	0	0.00	1	0.13
97	Drunkenness	127	13.99	109	13.59
101.1	Failure to comply with conditions	2	0.22	0	0.00
108	Signing inaccurate certificate	1	0.11	0	0.00
111	Improper driving of vehicles	4	0.44	3	0.37
112	Improper use of vehicles	10	1.10	6	0.75
113	Causing fires	0	0.00	1	0.13
114	Stealing	9	0.99	5	0.62
116	Destruction, damage, loss or improper disposal	9	0.99	2	0.25
117	Miscellaneous offences	7	0.77	3	0.37
125	Offences in relation to documents	12	1.32	6	0.75
127	Injurious or destructive handling of dangerous substances	1	0.11	1	0.13
129	Conduct to the prejudice of good order and discipline – Unauthorized discharge	5	0.55	12	1.50
129	Conduct to the prejudice of good order and discipline – Sexual harassment	26	2.86	24	2.99
129	Conduct to the prejudice of good order and discipline – Inappropriate relationships	2	0.22	7	0.87
129	Conduct to the prejudice of good order and discipline – Alcohol related	28	3.09	26	3.24
129	Conduct to the prejudice of good order and discipline – Drug related	9	0.99	11	1.37
129	Conduct to the prejudice of good order and discipline – Other	70	7.71	143	17.83
130(4(1) CDSA*)	Possession of a controlled substance	4	0.44	2	0.25
130(265 CC**)	Assault	0	0.00	1	0.13
130(266 CC)	Assault	8	0.88	9	1.12
130(267 CC)	Assault with a weapon or causing bodily harm	4	0.44	1	0.13
130(430 CC)	Mischief	1	0.11	0	0.00
Total		**908**	**100**	**802**	**100**

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.

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

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

ANNEX C:

Summary of Charges Disposed of at Court Martial

Summary of Charges Disposed of at Court Martial

1 April 2017 – 31 March 2018
*current as of 22 May 2018

NDA SECTION	DESCRIPTION	2016-2017		2017-2018	
		#	%	#	%
83	Disobedience of lawful command	3	2.04	3	1.47
84	Striking or offering violence to a superior officer	1	0.68	3	1.47
85	Insubordinate behavior	7	4.77	7	3.43
86	Quarrels and disturbances	7	4.77	7	3.43
88	Desertion	2	1.36	0	0.00
90	Absence without leave	1	0.68	10	4.90
93	Cruel or disgraceful conduct	8	5.44	11	5.40
95	Abuse of subordinates	2	1.36	10	4.90
97	Drunkenness	9	6.12	10	4.90
98	Malingering, aggravating or infirmity or injury self or another	2	1.36	0	0.00
101.1	Failure to comply with conditions	1	0.68	2	0.98
114	Stealing	3	2.04	4	1.96
115	Receiving	2	1.36	0	0.00
116	Destruction, damage, loss or improper disposal	3	2.04	2	0.98
117	Miscellaneous offences	5	3.40	1	0.49
124	Negligent performance of a military duty	2	1.36	4	1.96
125(a)	Willfully (or negligently) made a false entry	5	3.40	0	0.00
127	Injurious or destructive handling of dangerous substances	2	1.36	0	0.00
129	An act to the prejudice of good order and discipline	36	24.50	44	21.58
130 (4(1) CDSA*)	Possession of a controlled substance	4	2.72	1	0.49
130 (5(1) CDSA)	Trafficking in substance	3	2.04	2	0.98
130(5(2) CDSA)	Possession for purpose of trafficking	3	2.04	2	0.98
130 (7(1) CDSA)	Production of a substance	0	0.00	1	0.49
130 (82(1) CC**)	Possession without lawful excuse	2	1.36	0	0.00
130 (86(1) CC)	Negligent handling of a firearm	2	1.36	2	0.98
130 (86(2) CC)	Contravention of storage regulations	2	1.36	2	0.98
130 (87 CC)	Pointing a firearm	0	0.00	1	0.49
130 (88 CC)	Possession of a weapon for dangerous purpose	0	0.00	1	0.49
130 (91(1) CC)	Unauthorized possession of a firearm	1	0.68	1	0.49
130 (91(2) CC)	Unauthorized possession of prohibited weapon or restricted weapon	2	1.36	0	0.00
130 (92(2) CC)	Possession of a prohibited weapon	1	0.68	0	0.00
130 (95 CC)	Possession of a prohibited or restricted firearm with ammunition	1	0.68	0	0.00

NDA SECTION	DESCRIPTION	2016-2017		2017-2018	
		#	%	#	%
130 (122 CC)	Breach of trust by public officer	0	0.00	17	8.33
130 (129 CC)	Offences relating to public or peace officer	1	0.68	0	0.00
130 (151 CC)	Sexual interference	0	0.00	1	0.49
130 (162(1)(a) CC)	Voyeurism	0	0.00	1	0.49
130 (162.1 CC)	Made available an intimate image without consent	0	0.00	1	0.49
130 (163.1(2) CC)	Making child pornography	0	0.00	1	0.49
130 (163.1(4) CC)	Possession of child pornography	0	0.00	2	0.98
130 (221 CC)	Causing bodily harm by criminal negligence	1	0.68	0	0.00
130 (246(a) CC)	Bodily harm, overcoming resistance to commission of offence	1	0.68	0	0.00
130 (264(1) CC)	Criminal harassment	0	0.00	1	0.49
130 (264.1 CC)	Uttering threats	2	1.36	9	4.41
130 (266 CC)	Assault	3	2.04	11	5.45
130 (267 CC)	Assault with a weapon or causing bodily harm	1	0.68	0	0.00
130 (268 CC)	Aggravated assault	1	0.68	0	0.00
130 (271 CC)	Sexual assault	9	6.12	9	4.41
130 (272 CC)	Sexual assault causing bodily harm	1	0.68	0	0.00
130 (286.1(1) CC)	Obtaining sexual services for consideration	0	0.00	1	0.49
130 (334 CC)	Theft	0	0.00	1	0.49
130 (334(a) CC)	Punishment for theft – value stolen does not exceed $5000	1	0.68	1	0.49
130 (337 CC)	Public servant refusing to deliver property	0	0.00	1	0.49
130 (354 CC)	Possession of stolen property	1	0.68	0	0.00
130 (355.2 CC)	Trafficking in property obtained by crime	0	0.00	3	1.47
130 (366(1) CC)	Forgery	0	0.00	1	0.49
130 (368(1) CC)	Uttering a forged document	0	0.00	1	0.49
130 (380(1) CC)	Fraud	1	0.68	8	3.92
130 (419 CC)	Unlawful use of military uniforms and certificates	2	1.36	0	0.00
130 (430(1) CC)	Willfully committed mischief	0	0.00	2	0.98
130 (463(b) CC)	Attempted to defraud	0	0.00	1	0.49
TOTAL		**147**	**100**	**204**	**100**

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.

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

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

ANNEX D:

2017-2018 Director of Military Prosecutions Annual Report

National Defence / Défense nationale

2017 – 2018
DIRECTOR OF MILITARY PROSECUTIONS
ANNUAL REPORT

Canada

National Defence | Défense nationale

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

Directeur des poursuites militaires
Quartier générale de la Défense nationale
Édifice Major-général George R. Pearkes
101, promenade du Colonel-By
Ottawa (Ontario) K1A 0K2

15 June 2018

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

Commodore Bernatchez,

Pursuant to article 110.11 of the *Queen's Regulations and Orders for the Canadian Forces*, I am pleased to present you with the 2017-2018 Annual Report of the Director of Military Prosecutions. The report covers the period from 1 April 2017 through 31 March 2018.

Yours sincerely,

Colonel Bruce MacGregor, CD
Director of Military Prosecutions

Canada

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MESSAGE FROM THE DIRECTOR OF MILITARY PROSECUTIONS

I am pleased to present the Director of Military Prosecutions (DMP) Annual Report for the 2017-2018 reporting period, my fourth since being appointed as DMP on 20 October 2014.

As provided for in the *National Defence Act* (*NDA*), the DMP is responsible for the preferral of charges and prosecution of cases at courts martial under the *Code of Service Discipline* (CSD); he acts as counsel for the Minister of National Defence in respect of appeals to the Court Martial Appeal Court (CMAC) and Supreme Court of Canada (SCC); and he provides legal advice to the Canadian Forces National Investigation Service (CFNIS). Bolstered by his security of tenure as set out in legislation, the DMP fulfils his legal mandate in a fair, impartial and independent manner.

Canadians expect disciplined military forces that comply with Canadian and international law. The maintenance of discipline in the Canadian Armed Forces (CAF) is the responsibility of the chain of command and is crucial for operational effectiveness and mission success. A disciplined military promotes a respectful work environment, supportive of diversity, in which members feel valued and are motivated to contribute to mission success and to reach their full potential. The military justice system is designed to support the maintenance of discipline, efficiency and morale of CAF members as well as heightening respect for the rule of law.

During the fiscal year 2017-2018, the Canadian Military Prosecution Service (CMPS) remained committed to conducting prosecutions in a manner that is fair, transparent and responsive. To this end, CMPS continued to further push ahead initiatives that were launched during the previous reporting period, notably regarding the improvement of data collection and reporting tools to enhance decision-making and resource allocation, the updating of its policies which included the creation of the Deputy Director of Military Prosecutions (DDMP) Sexual Misconduct Action Response Team (SMART) position and through the provision of specialized training to prosecutors pertaining to sexual misconduct offences and mental readiness.

CMPS has been actively involved in support of the efforts of the Office of the Auditor General (OAG) of Canada in conducting a review of the administration of military justice in the CAF and also the Court Martial Comprehensive Review (CMCR) mandated by the Judge Advocate General (JAG) by providing comments and data that illustrate the work being done by our military prosecutors and support staff on a daily basis.

Respecting appeals, in *R v Private Déry et al.,* 2017 CMAC 2*,* a second panel of the CMAC unanimously found that it was bound by its previous decision in *R v Master Corporal Royes* respecting the constitutionality of paragraph 130(1)(a) of the NDA *vis-à-vis* section 11(f) of the *Charter.* A third panel heard arguments on this issue on 30 January 2018 in the case of Corporal Beaudry and the CMAC has reserved its decision.

There were also several decisions rendered by the CMAC on other questions of law in the cases of *R v Major Wellwood*, 2017 CMAC 4; *R v Warrant Officer Gagnon*, 2018 CMAC 1; *R v Corporal Golzari*, 2017 CMAC 3; *R v Corporal Hoekstra*, 2017 CMAC 5; and *R v Master Corporal Edmunds*. Details about these cases can be found in the appeals section of chapter 3 of this report.

In closing, I wish to thank once more the CMPS team for their efforts and hard work. While this past year has been rife with challenges, I am confident that we were successful in meeting them and thus, in the process, remained resolutely committed to improving the quality and efficiency of military prosecutions.

ORDO PER JUSTITIA

Colonel Bruce MacGregor, CD
Director of Military Prosecutions

chapter 1

THE CANADIAN MILITARY PROSECUTION SERVICE: ORDO PER JUSTITIA

Introduction

The nature of the operational missions entrusted to the Canadian Armed Forces (CAF) requires the maintenance of a high degree of discipline among CAF members. Parliament and the Supreme Court of Canada (SCC) have long recognized the importance of a Code of Service Discipline (CSD) supported by a separate military justice system to govern the conduct of individual soldiers, sailors and air force personnel, and to prescribe punishment for disciplinary breaches. In 1980 and 1992 the SCC in *MacKay v the Queen*[1] and *R v Généreux,*[2] unequivocally upheld the need for military tribunals to exercise their jurisdiction in order to contribute to the maintenance of discipline, efficiency and morale in the CAF.

These principles were unanimously reaffirmed by the SCC in 2015 in *Second Lieutenant Moriarity et al v R*: "I conclude that Parliament's objective in creating the military justice system was to provide processes that would assure the maintenance of discipline, efficiency and morale of the military."[3] In *Moriarity* the SCC also reinforced that "… the behavior of members of the military relates to discipline, efficiency and morale even when they are not on duty, in uniform, or on a military base."[4]

These views were directly in line with earlier comments by Chief Justice Lamer in *Généreux* that the CSD "does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare" and "recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. In other words, criminal or fraudulent conduct, even when committed in circumstances that are not directly related to military duties, may have an impact on the standard of discipline, efficiency and morale in the CAF. There is thus a need for separate tribunals to enforce special disciplinary standards in the military."[5]

Following *Moriarity*, the SCC delivered another unanimous decision related to the military justice system. In 2016, the SCC confirmed in the case of *R v Cawthorne*[6] that the authority conferred to the Minister of National Defence over appeals was in compliance with the *Canadian Charter of Rights and Freedoms (Charter)*. This decision not only confirmed the organizational structure of the military prosecution service but also was important for all prosecution services across Canada as the court touched upon the concept of prosecutorial independence and abuse of process.[7] This clearly shows that the military justice system is a respected parallel justice system within the broader Canadian legal mosaic.

1 [1980] 2 SCR 370 at paras 48 and 49.
2 [1992] 1 SCR 259 at para 50.
3 2015 SCC 55, [2015] 3 SCR 485 at para 46.
4 *Ibid* at para 54.
5 *Généreux,* at 281 and 293.
6 2016 SCC 32.
7 The Attorney General of Canada, the Attorney General of Ontario, the Attorney General of Quebec, the Attorney General of British Columbia and the Director of Criminal and Penal Prosecutions of Quebec all intervened in this appeal to the SCC.

1.1 The Military Justice System

Canadian military doctrine identifies discipline as one of the essential components of the Canadian military ethos. Discipline is described as a key contributor to the instilling of shared values, the ability to cope with the demands of combat operations, self-assurance and resiliency in the face of adversity, and trust in leaders. It enables military individuals and units to succeed in missions where military skill alone could not.[8] Some cases may seem minor until they are seen in their military context as violations of the four core Canadian military values which are: duty, loyalty, integrity, and courage. The value of integrity obliges CAF members to maintain the highest possible levels for honesty, uprightness of character, honour, and the adherence to ethical standards.[9] The military justice system exists in part to address instances where it is alleged that CAF members did not discharge their obligations to the required level.

To these ends, the *National Defence Act* (NDA) creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are courts martial. Significantly, court martial decisions may be appealed to the Court Martial Appeal Court (CMAC), which is made up of civilian justices of provincial superior courts, the Federal Court and the Federal Court of Appeal. CMAC decisions can be appealed further to the SCC, providing the court martial system with final civilian review similar to that of the criminal justice system.

In determining whether to prefer a matter for trial by court martial, military prosecutors conduct a two-stage analysis: they must consider whether there is a reasonable prospect of conviction should the matter proceed to trial and whether the public interest requires that a prosecution be pursued.[10] This policy is consistent with policies applied by attorneys general throughout Canada and by prosecution agencies elsewhere in the Commonwealth. What sets the military justice system apart are some of the public interest factors that must be taken into account by the military prosecutor as the maintenance of the discipline, efficiency, and morale of the CAF needs to be considered. These include:

- the likely effect on public confidence in military discipline or the administration of military justice;
- the prevalence of the alleged offence in the unit or military community at large and the need for general and specific deterrence; and
- the effect on the maintenance of good order and discipline in the CAF, including the likely impact, if any, on military operations.

Information relating to these and other public interest factors comes from the accused's commanding officer (CO) when the CO sends the charges to his or her next superior officer in matters of discipline. That superior officer is expected to also comment on public interest factors when referring the matter to the DMP.[11] Military prosecutors are to maintain effective communication with service authorities as it is necessary for the prosecutor to understand the needs and requirements of the chain of command after a charge is referred to the DMP and during the court martial process.[12]

Additionally, the consideration of uniquely military public interest factors as part of the second stage of the analysis further allows the DMP to support the CAF in "providing a workplace free from harassment and discrimination."[13]

8 Canada, Department of National Defence, "Canadian Military Doctrine," by the Chief of the Defence Staff, Ottawa: 2011-09 [Canadian Military Doctrine]. See, in particular, Ch. 2 "Generation and Application of Military Power" and Ch. 4 "The Canadian Forces" at 4-5.

9 Canadian Military Doctrine. See, in particular, Ch 2 "Generation and Application of Military Power" and Ch 4 "The Canadian Forces".

10 For further information, please refer to DMP Policy Directive 003/00 Post-Charge Review available on the DMP website: http://www.forces.gc.ca/en/about-policies-standards-legal/post-charge-review.page.

11 *Supra* note 7, at paragraph 28-29.

12 DMP Policy Directive 005/99 Communications with Service Authorities

13 Canada's Defence Policy, *Strong Secure Engaged*, p.27.

1.1.1 Unique features of the Court Martial System

The court martial system has many features in common with the civilian criminal justice system. For example, the *Charter* applies to both civilian criminal courts and to courts martial. As such, in both a civilian criminal trial and a trial by court martial, an accused person is presumed innocent until the prosecution proves his or her guilt beyond a reasonable doubt. Additionally, courts martial are independent and impartial tribunals and hearings are open to the public, just as they are before a civilian criminal court. They are announced in advance in the Routine Orders of the Base where the court martial is to occur. The media is also proactively invited to attend courts martial, and courts martial results and appeals are also communicated publically through a variety of means including the web and social media.

There are a number of features that are unique to the court martial system. For example, courts martial, in contrast to civilian justice processes, are mobile and may be held anywhere in or outside Canada. Normally, they are held at the unit of the accused person. This allows courts martial to take place in or close to the military community that was most affected by the alleged offences, whether it be an individual victim or a military unit. Those most affected by an alleged offence can see for themselves that justice is being done. This also means that all military judges, military defence counsel, and military prosecutors, are away from home on a regular basis. For this reporting year, military prosecutors spent a total of 750 days on temporary duty (TD) outside of their assigned geographical locations for courts martial (including trial preparation), training (both prosecution and general service related) or other reasons pertaining to military service.

Table 1

REGION	COURT MARTIAL RELATED TD	APPEALS RELATED TD	TRAINING RELATED TD	OTHER TD	TOTALS
CMPS HQ	45	6	109	52	212
Atlantic	85	3	19	0	107
Eastern	28	0	82	1	111
Central	64	0	101	0	165
Western	73	0	29	0	102
Pacific	40	0	6	7	53
Totals	**335**	**9**	**346**	**60**	**750**

Here are other unique features worth mentioning outlined in the table, below.

Table 2

FACTS	REMARKS
• The purpose of the military justice system is to maintain the discipline, efficiency, and morale of the CAF	• Like their civilian colleagues, every military judge, military defence counsel, and military prosecutor is a graduate of a civilian law school. Each defence counsel and prosecutor is a member of at least one provincial law society • Additionally, military judges, defence counsel, and prosecutors have the CAF training and experience to understand the unique aspects of the military justice system and the intricacies of military discipline
• With few exceptions, civilian criminal courts cannot deal with offences committed outside Canada • With few exceptions, courts martial can deal with offences committed anywhere in or outside Canada	• The CAF has the ability to maintain discipline, efficiency, and morale both in Canada and overseas
• Civilian criminal courts have jurisdiction over everyone in Canada • Courts martial have jurisdiction only over persons subject to the CSD	• When a person joins the CAF, they remain subject to all Canadian laws and they become subject to the CSD • Thus, members of the CAF are subject to the concurrent jurisdiction of the civilian criminal justice system and the military justice system
• There are two types of courts martial • A General Court Martial (GCM) is composed of a military judge and a panel of five members • A Standing Court Martial (SCM) is composed of a military judge sitting alone	• In the military justice system, a panel serves a similar function to that of a jury in the civilian criminal justice system • A panel reaches a verdict by unanimous vote • Panel members are randomly selected from members of the regular force • Members of the regular force do not serve on civilian juries
• With few exceptions, a person having authority to lay charges in the military justice system cannot do so without first obtaining legal advice concerning the sufficiency of the evidence, whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge. A similar requirement exists in some civilian jurisdictions but not all	• Military prosecutors provide pre-charge legal advice in all cases investigated by the Canadian Forces National Investigation Service (CFNIS) • In certain circumstances, military prosecutors will also assist other legal officers in providing pre-charge legal advice in cases not investigated by the CFNIS
• Most persons charged with a service offence are not placed under arrest • If a person is arrested under the NDA, the person under arrest may be released by the person making the arrest, by certain specially designated "custody review officers", or by a military judge	• Military prosecutors represent the CAF at custody review hearings, which are held before a military judge • Military defence counsel provide legal advice to all persons arrested or detained in respect of a service offence, and to all persons taken before a military judge for a custody review hearing, at no cost to the person in custody

FACTS	REMARKS
• As in the civilian criminal justice system, accused persons being tried by court martial have the constitutional right to make full answer and defence	• Like civilian crown attorneys, military prosecutors must disclose to the accused person all relevant information whether or not the prosecution intends to introduce it into evidence and whether it is inculpatory or exculpatory
• Military defence counsel are provided at no cost to the accused person	• The ability to mount a defence is not limited by financial considerations • Military defence counsel are able to zealously represent their clients and "raise fearlessly every issue, advance every argument, and ask every question" without regard to the client's financial resources • Applications under the *Canadian Charter*, which are very time-consuming and therefore costly, are quite common in the court martial system
• In the court martial system, the CAF pays for the travel, meals, and accommodations of the accused person's witnesses during the trial • If the accused person is represented by military defence counsel, costs associated with hiring expert witnesses for the accused person are also borne by the CAF	• Again, an accused person's ability to mount a defence is not limited by his or her financial resources
• In the civilian criminal justice system, the prosecutor addresses the trier of fact last, except if the accused person chooses to call no evidence	• In the military justice system, counsel for the accused person always addresses the trier of fact last
• Upon conviction, offenders may be sentenced to a number of punishments including minor punishments (e.g., extra work and drill, stoppage of leave), a fine, a reprimand, reduction in rank, detention, dismissal from the CAF, imprisonment, etc.	• Military judges have a wide variety of sentencing options at their disposal in order to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale
• In cases where an offender is sentenced to a custodial sentence, he or she may serve that sentence at the Canadian Forces Service Prison and Detention Barracks	• The offender will serve his or her sentence of detention or imprisonment in a very safe and highly structured environment where the emphasis is on rehabilitation and discipline
• Appeals from courts martial are heard by the CMAC • Decisions of the CMAC may be further appealed to the SCC	• Military prosecutors represent the Minister of National Defence on appeals to the CMAC and the SCC • For appeals launched by the accused, the Director of Defence Counsel Services (DDCS) provides legal representation, at no cost to CAF members, when authorized to do so by the Appeal Committee. Authorization is not required when the accused is the respondent

As illustrated above, the court martial system has its own particularities but these are not the hallmark of a second class substandard system. They are only differences designed to maintain or reinforce discipline. Even though there is some overlapping, the military justice system has different objectives than the civilian criminal justice system. This was well explained by Colonel (Retired) Michael Gibson, now a serving Ontario Superior Court Justice:

> This synthesis illustrates that military law has a more positive purpose than the general criminal law in seeking to mould and modify behaviour to the specific requirements of military service. Simply put, an effective military justice system, guided by the correct principles, is a prerequisite for the effective functioning of the armed forces of a modern democratic state governed by the rule of law. It is also key to ensuring compliance of states and their armed forces with the normative requirements of international human rights and international humanitarian law.[14]

1.2 Duties and Functions of the DMP

The DMP is appointed by the Minister of National Defence.[15] Section 165.11 of the NDA provides that the DMP is responsible for the preferring of all charges to be tried by court martial and for the conduct of all prosecutions at courts martial in Canada and abroad. The DMP also acts as counsel for the Minister of National Defence in respect of appeals before the CMAC and the SCC. DMP is also responsible for representing the CAF at custody review hearings and providing legal advice and training to the CFNIS.

In accordance with section 165.15 of the NDA, the DMP is assisted by officers from the Regular Force and the Reserve Force who are barristers or advocates. DMP can also count on a small but highly effective group of civilian support staff. Appointed for a four-year term, the DMP fulfils his mandate in a manner that is fair and impartial. Although the DMP acts under the general supervision of the Judge Advocate General (JAG), he exercises his prosecutorial mandate in an independent manner from the chain of command. DMP has a constitutional obligation, like any other public official exercising a prosecutorial function, to act independently of partisan concerns and other improper motives.

In accordance with sections 165.12 and 165.13 of the NDA, when a charge is referred to him, DMP determines whether:

- To prefer or not the charge(s);
- Prefer any other charge that is founded on fact disclosed by evidence in addition to or in substitution for the charge(s); or
- Refer it for disposal by an officer who has jurisdiction to try the accused by summary trial.

The DMP may also withdraw a charge that has been preferred.

14 Michael Gibson, "International Human Rights Law and the Administration of Justice through Military Tribunals: Preserving Utility while Precluding Impunity" (2008) 4: 1 Intl L and Relations 1, at 12.

15 Colonel Bruce MacGregor was appointed by the Minister of National Defence on 20 October 2014 to be the DMP for a four-year term.

1.3 Mission and Vision

Our Mission

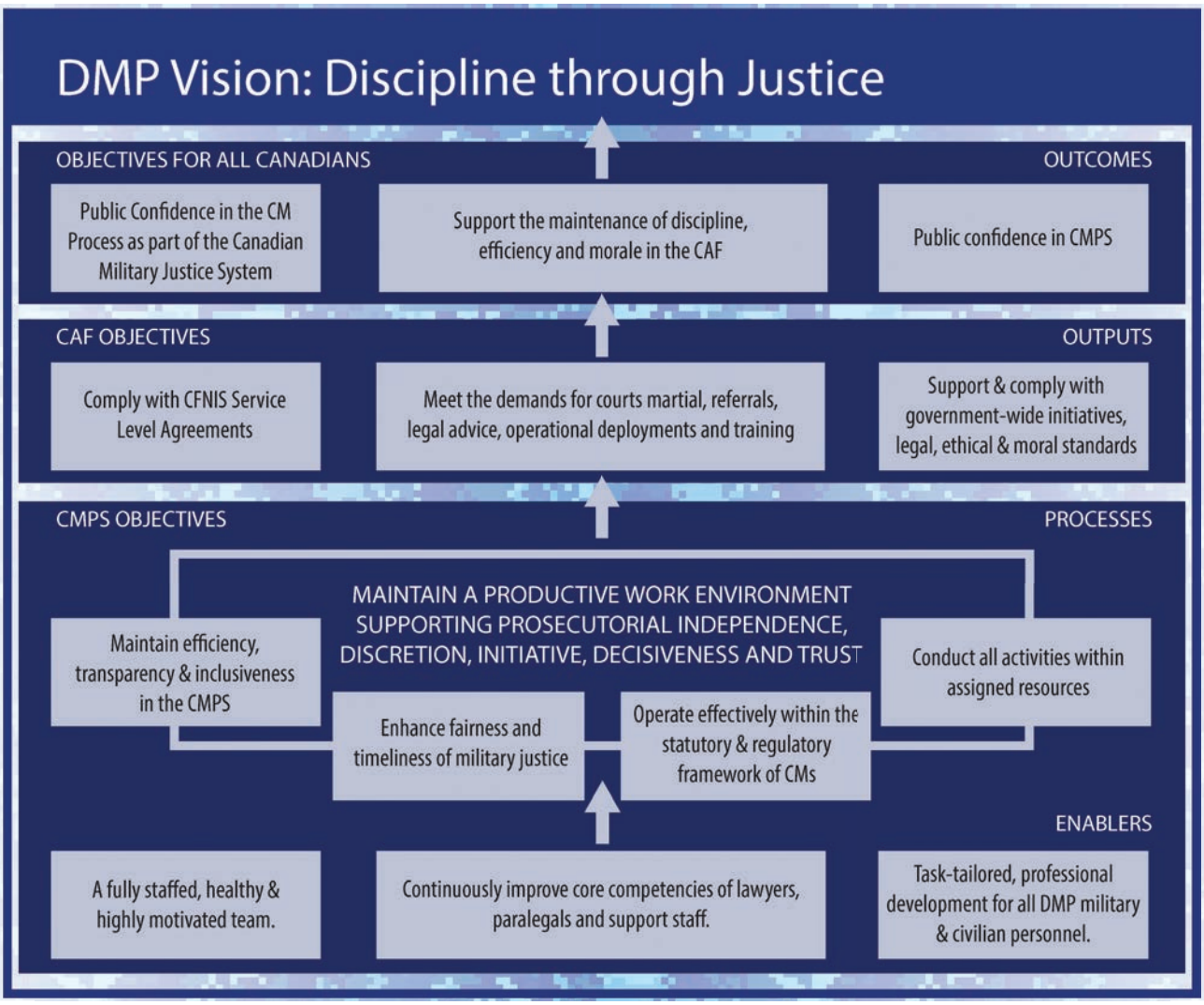
To provide competent, fair, swift and deployable prosecution services to the CAF in Canada and overseas.

Our Vision

"*ORDO PER JUSTITIA*" or "*DISCIPLINE THROUGH JUSTICE*". The DMP is a key player in the Canadian military justice system helping to promote respect for the rule of law and the maintenance of discipline, efficiency and morale in the CAF.

The DMP's vision described in the graphic below, aligns itself with the JAG's new Strategic Direction.[16]

16 2018-2021 Office of the JAG Strategic Direction, *Excellence Through Service*.



1.4 Organizational Structure

DMP and his staff of military prosecutors and civilian personnel are known collectively as the Canadian Military Prosecution Service (CMPS). It is organized regionally. Since the last reporting period some structural changes have been implemented. The two Deputy Directors of Military Prosecutions (DDMP) and the Assistant Director of Military Prosecutions (ADMP) respective roles were adjusted to improve efficiency and ensure a better distribution of files amongst prosecutors as well as allowing the ADMP to focus more on long term projects and strategic issues. There was also the creation of a new Lieutenant-Colonel (LCol) position, DDMP Sexual Misconduct Action Response Team (SMART). As a result, the CMPS is currently structured as:

- DMP headquarters at National Defence Headquarters in Ottawa consisting of the following personnel:
  - DMP;
  - ADMP;
  - DDMP Atlantic, Eastern and Pacific regions;
  - DDMP Central and Western regions;
  - DMP-2 (Policies, Training & Communications);
  - DMP-3 (Appellate Counsel);
  - CFNIS Legal Advisor;
  - CMPS Paralegal; and
  - Legal Assistant to the DMP.

- Regional Military Prosecutors' (RMP) offices, with the exception of the Pacific regional office, have an establishment of two Regular Force military prosecutors and one legal assistant, located at:
  - Halifax, Nova Scotia (Atlantic Region);
  - Valcartier, Quebec (Eastern Region);
  - Ottawa, Ontario (Central Region);
  - Edmonton, Alberta (Western Region);
  - Esquimalt, British Columbia (Pacific Region); and

- DDMP SMART
  The position of DDMP SMART was created in this reporting period 2017-2018 and is currently filled by a LCol from the Reserve Force working from Toronto, Ontario.

- Eight Reserve Force positions located individually across Canada, including a LCol position for the reserve who acts as DDMP Reserves

The DMP organization chart is provided at Annex A.



CMPS personnel at the 2018 DMP Continuous Legal Education (CLE) in Ottawa, Ontario on 26 February 2018

1.5 CMPS Personnel

Regular Force

During this reporting period, CMPS continued the integration and building of experience of our more junior prosecutors. Our RMP Pacific was posted out of his position but replaced by an experienced military prosecutor from Western Region. Western Region also welcomed a new prosecutor with a wealth of experience in policing matters. The DDMP Western and Pacific retired from the CAF during the reporting period and was replaced by an experienced LCol with prosecutorial background and significant knowledge of the military justice system.

CMPS also welcomed the arrival of two new Captains, both still on the basic training list, amongst its ranks: one in Quebec Region and one in Central Region. Both have some level of experience in prosecution from their previous civilian practice. Finally, at the headquarters, the ADMP was promoted to Colonel during the reporting period and posted out of CMPS to lead the Military Justice Division. He was replaced by the LCol who was the DDMP Central and Atlantic, ensuring continuity and retention of experience within CMPS.

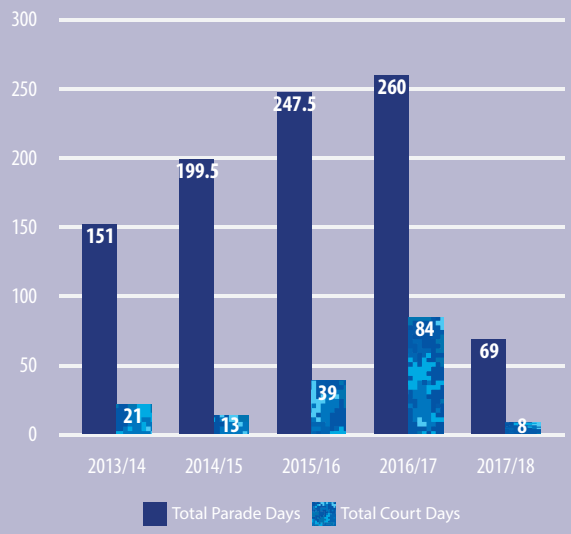
Reserve Force

During this reporting period, two experienced Reserve Force RMPs left CMPS but not the legal branch. They are now both with Regional Services and one of them was promoted to the rank of LCol.

As shown in Figure 1, the departure of two experienced RMPs had an impact on the organization. During this reporting period, the parade days and court days of the CMPS reservists were at their lowest since 2013/2014.

As shown at Figure 2, the average parade days by reservist RMPs was only slightly higher than in 2013/2014 while the average court days by reservist RMPs was at its lowest since 2013/2014 for this reporting period. Because of health reasons, civilian career demands and taskings on special projects, the remaining Reserve RMPs were not in a position to take on the same number of files as the previous years. The DMP is committed to seeing the average parade and court days return to FY 2016-2017 levels.

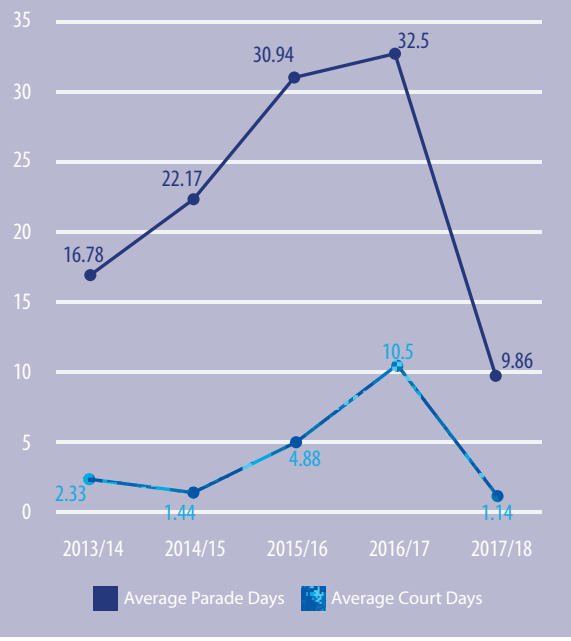
Figure 1:
Parade And Court Days - Reservist Regional Military Prosecutors



Civilian Staff

During this reporting fiscal year, our paralegal left to pursue new opportunities within the public service. Our Central Region Administrative assistant, who is also a certified paralegal, has transferred with success into the paralegal position. Efforts to staff the Central Region Administrative assistant position permanently are still underway.

Figure 2:
Average Parade And Court Days - Reservists Regional Military Prosecutors



chapter 2

REVIEW OF THE MILITARY JUSTICE SYSTEM

Introduction

During this reporting period, a number of reviews regarding diverse aspects of the military justice system were conducted. DMP fully collaborated with the different review authorities and has already taken proactive corrective actions regarding some deficiencies noted before official departmental or JAG review had been completed.

2.1 Audit by the Office of the Auditor General

The Office of the Auditor General of Canada has been tasked to conduct an audit on the Administration of Justice in the CAF. Since August 2017, CMPS prosecutors and administrative staff spent considerable resources and time to ensure that auditors sufficiently understood the military prosecution services and that all appropriate documents and information were provided in a timely fashion to the auditors.

Collaboration with the auditors proved extremely useful in immediately addressing process deficiencies and exploring potential efficiencies in file processing. Importantly, the CMPS has now instituted a number of changes to expedite disclosure to defence counsel. For example, before a file is assigned to a prosecutor, the prosecutor's supervisor will request disclosure from the appropriate investigative agency. In addition, prosecutors have been instructed to send disclosure to defence counsel once they have received and reviewed it and prior to making a decision (whether to prefer a charge). With the benefit of an improved electronic database/case management system coming on-line in the near future, it is expected that the timeliness of courts martial will be improved. Close collaboration with the JAG and her Deputy JAG for Military Justice on a significantly improved information management system will bring benefits to the processing of courts martial and expedite disclosure to accused persons.

2.2 The Implementation of Court Martial Sentences

CMPS assisted in the investigation undertaken by the Directorate of Special Examination and Inquiries pertaining to the administrative procedures for court martial sentence implementation. CMPS helped confirm whether a Court Martial Result message was sent to the offender's Commanding Officer at the end of each trial and whether information related to the finding and sentence imposed were included in the message as per DMP obligations found at QR&O 112.05(23). A request was made to the DMP to provide court martial results messages for 138 cases that were held between 2010-2017. DMP has fulfilled this request and is now proactively working at updating documents/templates related to court martial messaging to ensure a consistent practice amongst all of its regional offices.

2.3 Court Martial Comprehensive Review

The Court Martial Comprehensive Review was initiated by our previous JAG, Major-General Cathcart, in May of 2016 to conduct a legal and policy analysis of all aspects of the CAF's court martial system and, where appropriate, to develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system. In July 2017, the Court Martial Comprehensive Review Team submitted an internal draft report to the current JAG.

Due to challenges related to methodology and a paucity of metrics and analytics, the report was found to be of limited assistance in assessing the current court martial system. In light of various external reviews of the military justice system, such as the one conducted by the Auditor General discussed above, it was determined by the JAG that no additional revision of the draft internal report was to be undertaken. The draft report thereby only serves as a discussion paper that represents the views of its authors and does not represent the views of the Office of the JAG or the DMP.

chapter 3

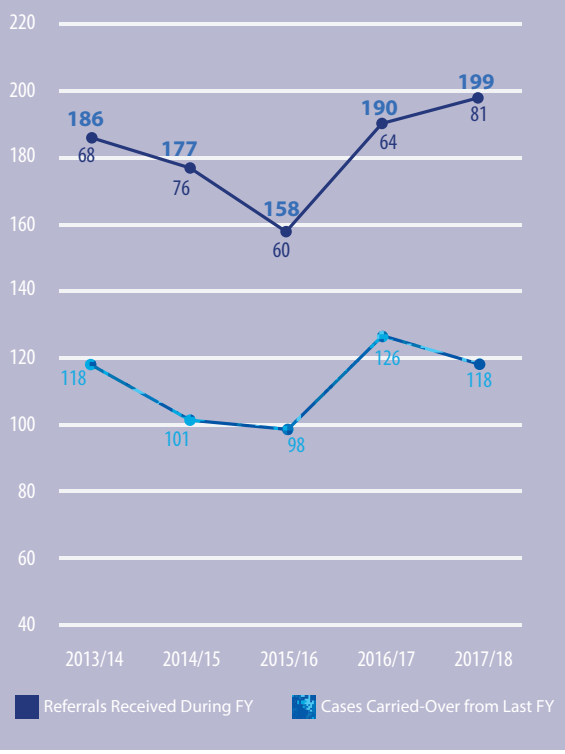
2017-2018 IN FOCUS: THE YEAR IN MILITARY PROSECUTIONS

Introduction

The information and analysis provided below reflects the workload of the CMPS pertaining to general file advice, pre-charge advice, post-charge review, custody review hearings, courts martial and appeals.

3.1 Overview

Figure 3:
Total Number of Referrals Handled During The Fiscal Year



CMPS worked on a total of 199 referral files during the reporting period, 118 of which were received during the reporting period, and 81 which were carried over from FY 2016-2017.17 In addition, CMPS handled 129 pre-charges files and 14 appeals for a total number of files (pre-charge, referral and appeal files combined) of 342 files. This was the highest number of cases worked on by CMPS in five years.

3.2 General File Advice

In addition to reviewing and prosecuting charges under the CSD, the CMPS provides general legal advice to the CFNIS pertaining to investigations and other disciplinary matters. CMPS is also frequently consulted by Deputy Judge Advocates (DJAs) who are responsible for advising Military Police (MP) detachments and CAF units in the conduct of disciplinary investigations. This advice is provide by both the CFNIS LA and the RMPs, and is not reflected in the caseload statistics contained in this report.

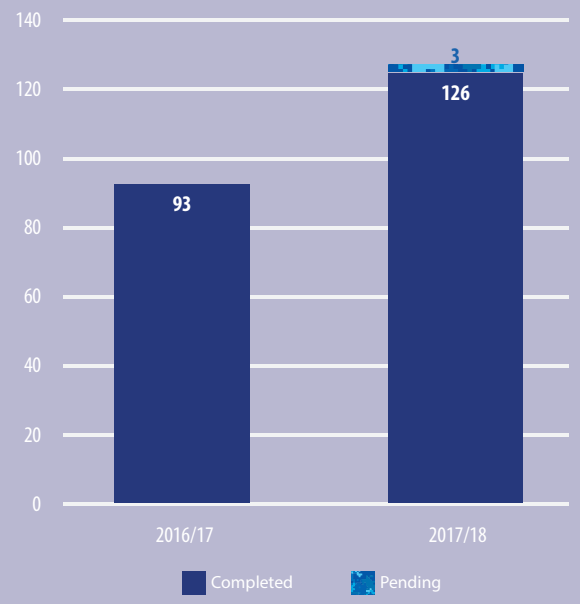
The CFNIS LA is a military prosecutor embedded with the CFNIS who provides dedicated legal advice to the CFNIS HQ in support of effective, timely and sound investigatory work, while respecting the necessary distinction between the investigative independence of the military police and the prosecutorial independence of the DMP. The CFNIS LA provides advice to investigators throughout all stages of an investigation. This proves essential in complex cases of cross-border operations where liaison and coordination with foreign police and prosecutorial entities are required. The CFNIS LA also provides the CFNIS with updates on criminal law developments and assists with systemic issues brought to light by individual cases, for example, by identifying deficiencies in policies, organizational structures, or unit processes.

17 Files carried over from FY 2016-2017 includes those files where a post-charge decision was still pending, supplementary investigations were requested but not yet received, cases were awaiting a trial date or the courts martial were not yet completed.

RMPs will also provide advice to CFNIS investigators in the early stage of the investigation upon request, such as in the investigative planning stage or in the drafting of a search warrant. However, RMPs will ensure that they avoid direct involvement in the investigative process, as this may impair their ability to provide independent advice at the pre-charge screening stage.

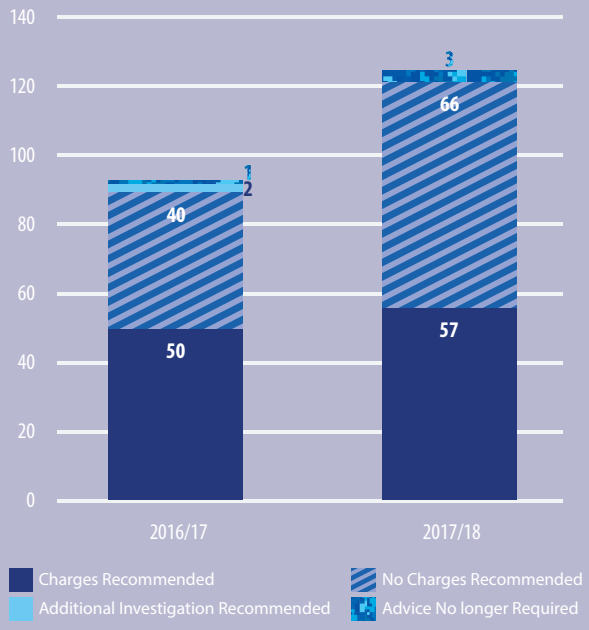
3.3 Pre-Charge Advice

Figure 4:
Pre-charge Files Handled by Fiscal Year
(Since Fiscal Year 2016-2017)



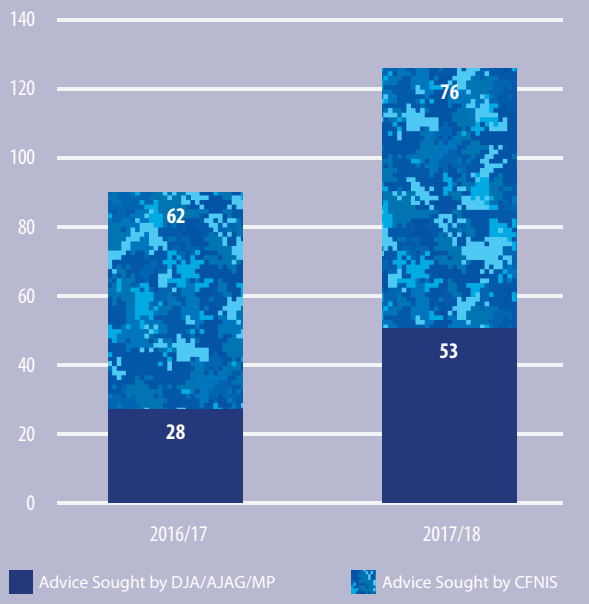
CMPS is responsible to provide pre-charge advice to the CFNIS, but also to DJA who are advising individual CAF units in matters of discipline. As per JAG Policy Directive 048/18 – Pre-Charge Screening, if the pre-charge review of the evidence reasonably supports the conclusion that a charge will not proceed by way of summary trial, but instead will be referred to court martial, the DJA shall consult with a RMP. In FY 2017-2018, a total of 129 pre-charge files were handled by CMPS; 126 were completed and 3 were still pending as of 31 March 2018.

Figure 5:
Outcome - Pre-charge Files Completed
(Since Fiscal Year 2016-2017)



In relation to the 126 pre-charge files completed during the reporting period, RMPs recommended that a charge or charges be laid in 57 of them (45% of total files completed).

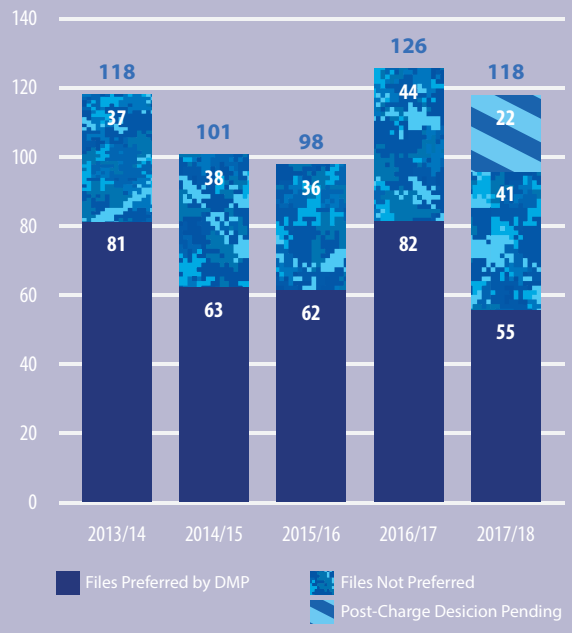
Figure 6:
Origin of Pre-charge Files
(Since Fiscal Year 2016-2017)



59% of pre-charge files came from the CFNIS and 41% from DJAs during the reporting period.

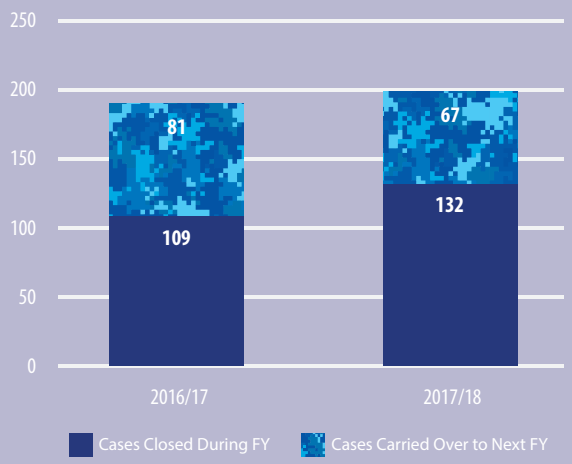
3.4 Files Referred to DMP

Figure 7:
Files Referred to DMP Over the Past Five Years



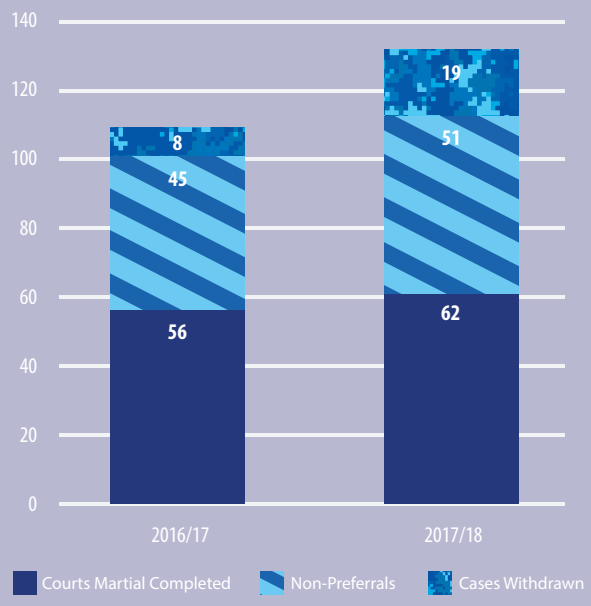
The number of files referred to DMP in the reporting period slightly decreased compared to the previous fiscal year (from 126 to 118). The yearly average over five years is 112 referrals. For referrals received in FY 2017-2018, 55 files led to charges being preferred for court martial, 41 files were not preferred and 22 files were still pending prosecutorial decision as of 31 March 2018.

Figure 8:
Outcome of Referrals Processed by Fiscal Year
(Since Fiscal Year 2016-2017)



Of the 199 referrals processed, 132 files were closed[18] during the reporting period; a 21% increase at the post-charge stage over FY 2016-2017. Of the files that were not completely resolved as of 31 March 2018, 45 had charges preferred and were awaiting court martial completion and 22 were at the post-charge review stage.

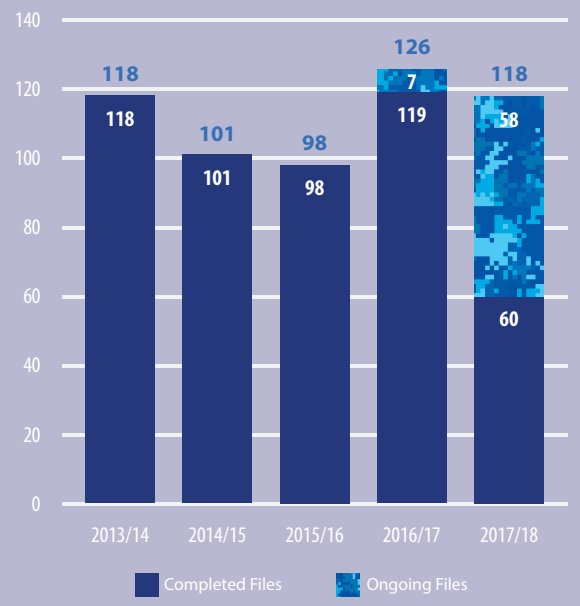
Figure 9:
Outcome Of Cases Closed During Fiscal Year
(Since Fiscal Year 2016-2017)



Of the 132 referrals closed during the reporting period (of which 60 were received in FY 2017-2018 and 72 from previous FYs), 62 referrals were closed through the conclusion of court martial proceedings; 51 files resulted in non-preferral of charges and 19 cases resulted in withdrawal of charges.

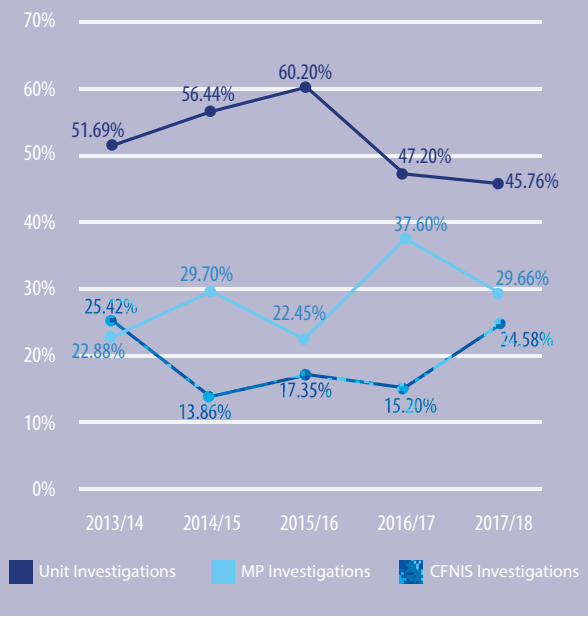
18 A file is considered closed either through the conclusion of court martial proceedings, through non-preferral of charges or through withdrawal of charges.

Figure 10:
Status of Referrals Received by Fiscal Year



Current status of all referrals received per fiscal year for the past five years is displayed above. For referrals received in the reporting period, 60 were completed (either though a non-preferral decision, a completed court martial or withdrawal of charges), thus leaving 58 cases ongoing (pending post-charge decision, awaiting trial date or court martial convened but not completed). As of 31 March 2018, 7 cases from previous fiscal years were still outstanding (for a total of 65 cases carried over to FY 2018-2019).

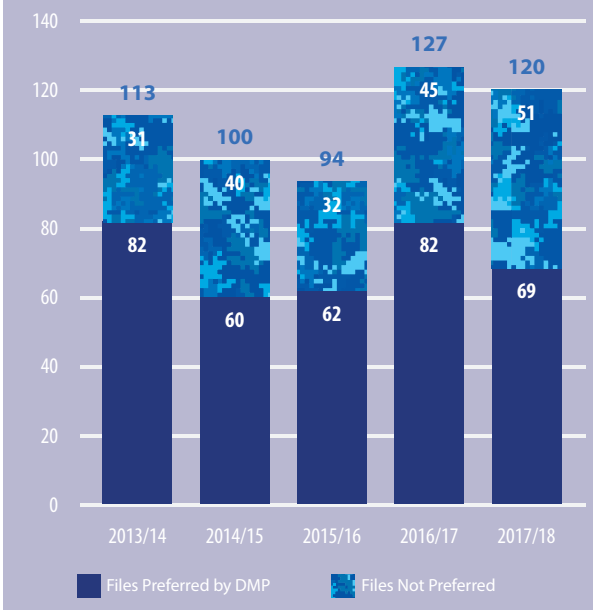
Figure 11:
Investigative Agencies - Referrals Received by Fiscal Year



During the reporting period, the investigation of the alleged offence(s) was done at the unit level for over 45% of referrals (54 out of 118 referrals). In contrast, MP investigations amounted to more than 29% of referrals compared to close to 38% in FY 2016-2017. CFNIS investigations increased by 15% from referrals received in FY 2016-2017 to 25% of all referrals received during this reporting period.

3.5 Post-Charge Review

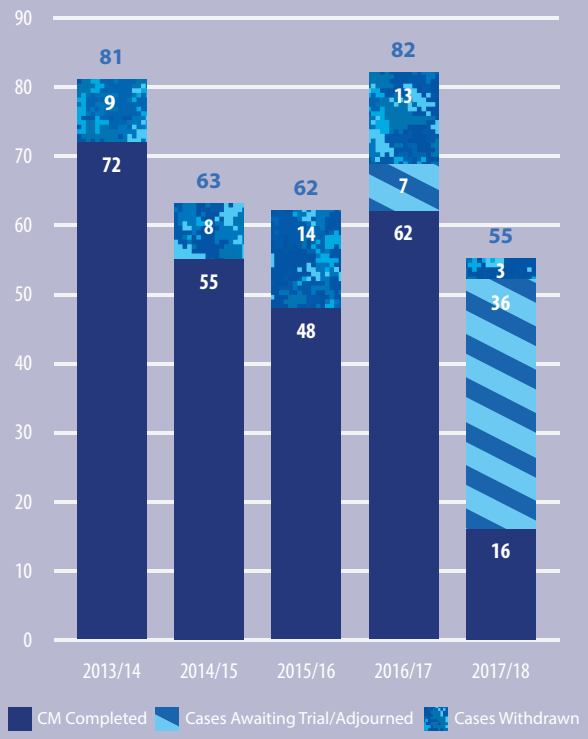
Figure 12:
Post-Charge Decisions per Fiscal Year (Total)



The number of post-charge decisions made by CMPS during the reporting period decreased slightly compared with 2016-2017. Out of the 199 referrals handled in the reporting period, decisions were made in relation to 120 of them. As of note, 57 files carried-over from previous FYs already had

charges preferred for court martial. An additional 22 files, all of them received in FY 2017-2018 were still awaiting post-charge decision as of 31 March 2018. Out of the total of 120 post-charge decisions made in the reporting period, 58% resulted in charges being preferred for court martial which is less than last year's preferral rate of 65%.

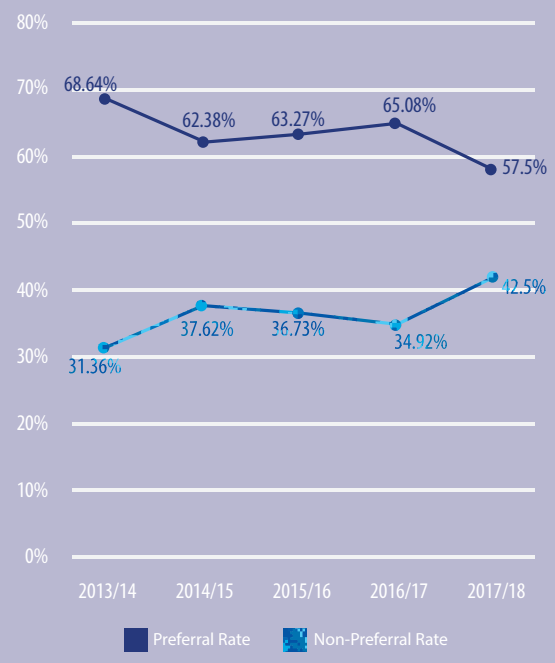
Figure 13:
Status of Files Preferred from Referrals Received During the Fiscal Year (as of 31 March 2018)



The graph above displays the current status of referrals that were received in the corresponding fiscal year and for which charges were preferred for court martial. Out of a total of 69 files that were preferred for court martial in FY 2017-2018, 55 were preferred from referrals received during the reporting period. 19 cases were completed prior to 31 March 2018, including 16 out of the total 62 courts martial completed during the reporting period. An additional 14 referrals preferred during the reporting period were received during previous FYs.

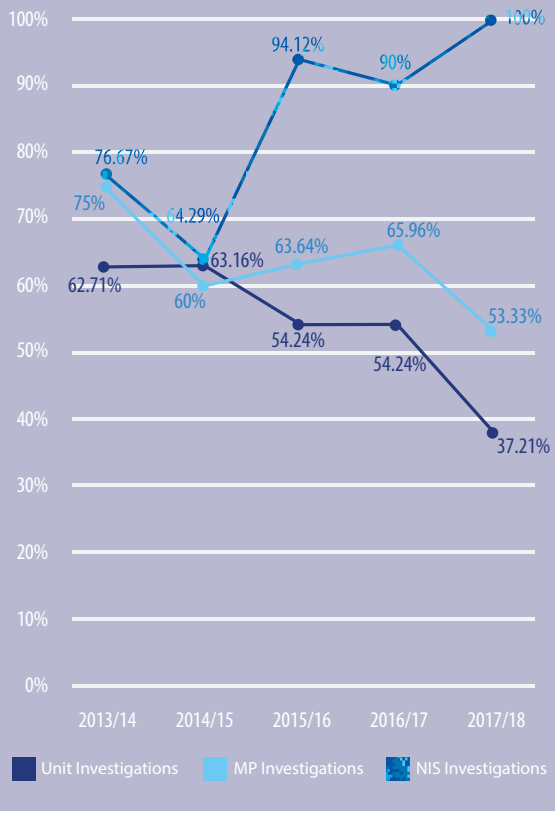
As of 31 March 2018, there were 7 files (6 accused) from previous FYs (all from FY 2016/2017) that were preferred for court martial and still outstanding:

Figure 14:
Preferral/Non-Preferral Rates (Based on Referrals Received During the Fiscal Year)



As indicated by figure 14, the preferral rate for this reporting period was at its lowest since FY 2013-2014.

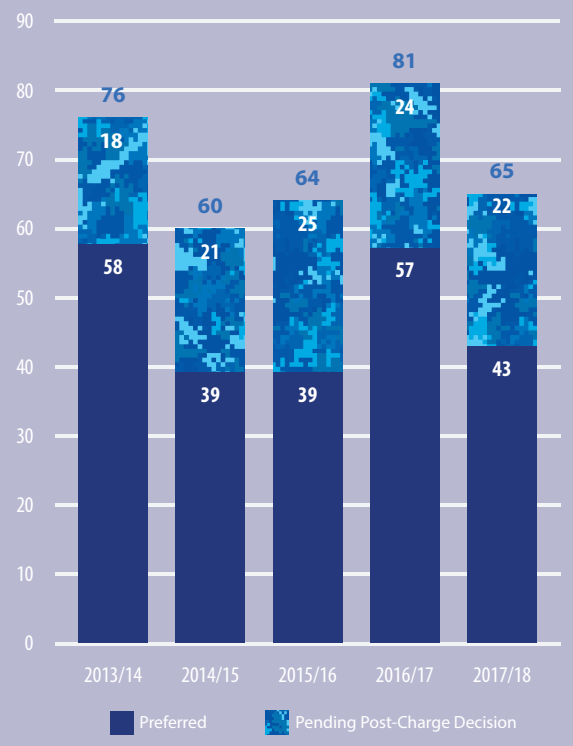
Figure 15:
Preferral Rate - Investigative Agencies



The DMP has noticed a downward trend regarding the preferral rate for cases investigated at the unit level which may be indicative of a systemic issue and has proceeded to bring it to the attention of the JAG in her capacity as superintendent of military justice.

3.6 Cases Carried-Over

Figure 16:
Cases Carried Over to the Next Fiscal Year



Of the 65 files that will be carried-over into FY 2018-2019, 43 had charges already preferred for court martial and an additional 22 were still pending as of 31 March 2018.

3.7 Military Justice Proceedings

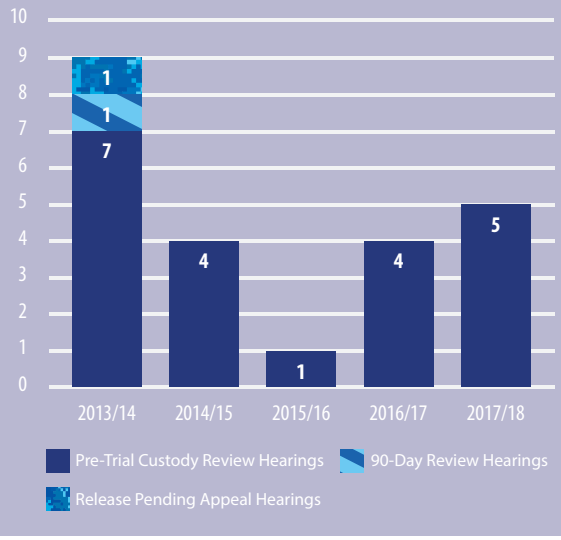
During the present reporting period, military prosecutors represented the Crown in several different types of judicial proceedings related to the military justice system. These proceedings included pre-trial custody hearings, courts martial, and appeals from courts martial to the CMAC and SCC.[19]

3.7.1 Custody Review Hearings

Military judges are, in certain circumstances, required to review orders made to retain a CAF member in service custody. The DMP represents the CAF at such hearings. During the reporting period, military prosecutors appeared at five pre-trial custody review hearings.[20] There were no 90-day review hearings[21] and no release pending appeal revocation hearings.[22]

Further information on custody reviews is provided at Annex G.

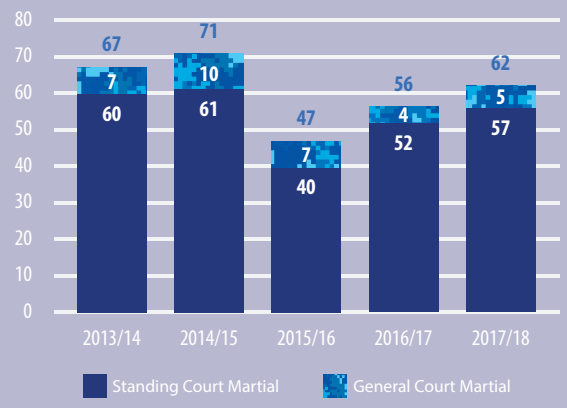
Figure 17:
Custody Review Hearings By Fiscal Year



19 The interests of the accused are usually represented at reviews of pre-trial custody, courts martial and appeals from courts martial to the CMAC and SCC by the DDCS. Representation by DDCS is provided at public expense. The accused may choose to retain counsel at his or her own expense.
20 NDA, s. 159.
21 NDA, s. 159.8.
22 NDA, s. 248.1.

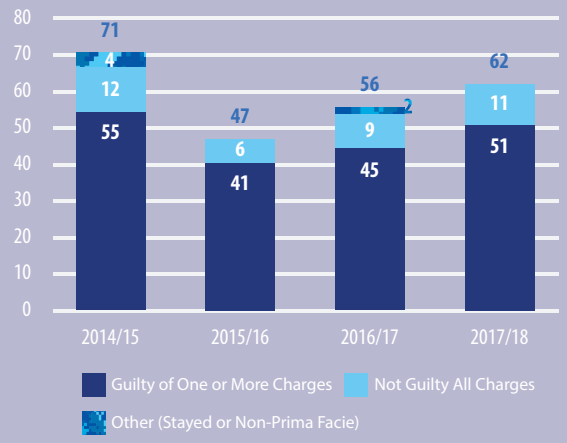
3.7.2 - Court Martial Proceedings

Figure 18:
Courts Martial By Type



During the reporting period, 62 courts martial were completed. The majority of these are SCMs presided by a military judge alone. Only five GCMs were held before a panel of five military members acting as trier of facts.

Figure 19:
Results - Courts Martial Since Fiscal Year 2014-2015



Sentences imposed at courts martial for service offences range from imprisonment for life to minor punishments which are prescribed by the *QR&Os*.[23] During the reporting period, 43% of punishments consisted in a fine and there were only two dismissals.

Courts martial sat for 173 days during the reporting period, for an average of 2.79 days per trial.

23 Sections 139(1) and 146 NDA.

Figure 20:
Court Martial Sentences

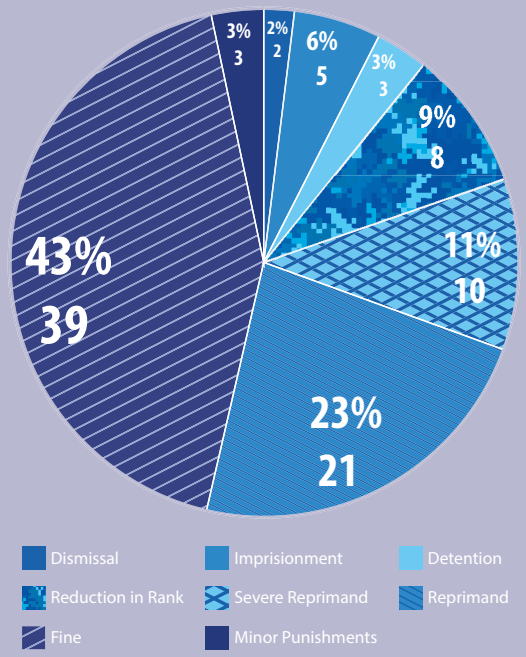


Figure 21:
Court Martial Completed, Preferrals And Non Preferrals By Region In Fy 2017-2018

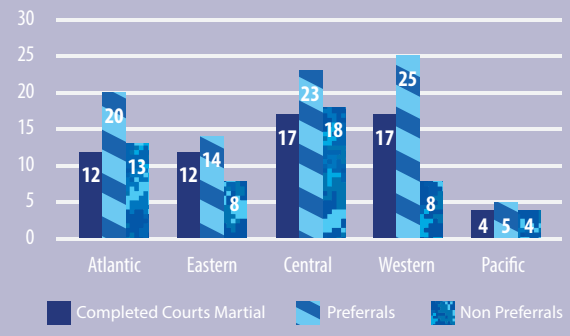


Figure 22:
Court Martial Sitting Days

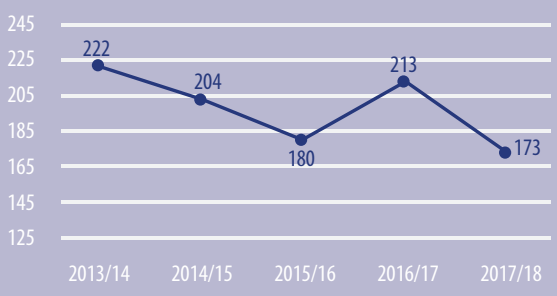
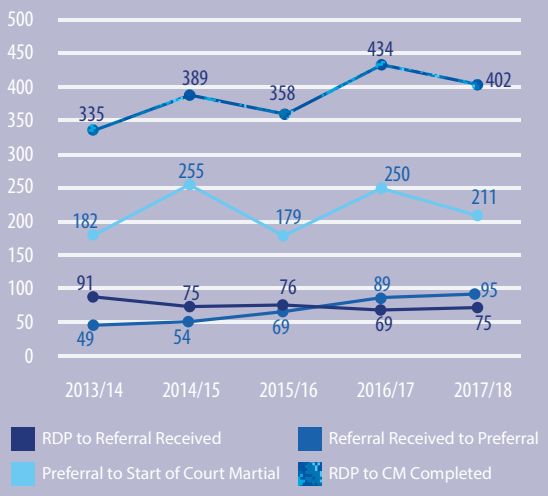


Figure 23:
Delays For Courts Martial Completed Per Fiscal Year
(Calendar Days)



For the 62 courts martial that were completed during the reporting period, the average number of calendar days from the date of the record of disciplinary proceedings (RDP) to completion of the court martial was 402 days, 7% faster than in FY 2016-2017, thus bringing the five-year average to 384 days.

The time required to prefer charges increased from 89 days in 2016-2017 to 95 days in 2017-2018.

Cases Over 18 Months as of 31 March 2018

Following the SCC decision in the case of *R v Jordan,*[24] the court martial in the case of *R v Leading Seaman Thiele*[25] ruled that a court martial should be completed within 18 months from the laying of the charge on the RDP. As of 31 March 2018, the only case currently over the 18-month ceiling is the following:

Table 3

CASE	18 MONTHS REACHED ON
Capt Nordstrom	19 January 2018. Trial in this case is set to commence on 8 June 2018

24 2016 SCC 27
25 2016 CM 4015

3.8 Special Interest Offences Categories

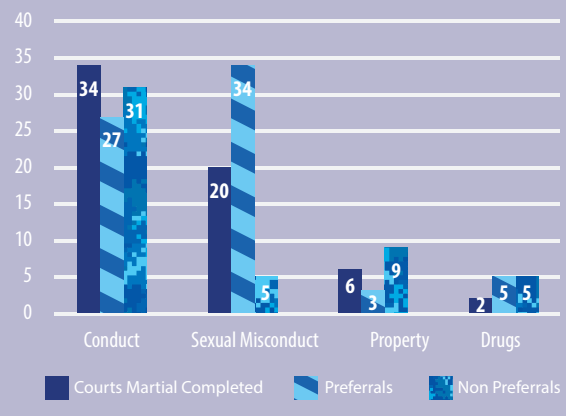
CMPS counsel prosecute offences found in the CSD, including offences under section 130 of the NDA, which incorporate by reference federal offences such as offences found in the *Criminal Code* and in the *Controlled Drugs and Substances Act* (CDSA).[26]

A selection of courts martial in the following four broad areas is highlighted below:

- Military Conduct Offences (unique military offence such as disobedience of lawful command, insubordination, absence without leave, drunkenness desertion, etc.
- Sexual Misconduct Offences;
- Fraud and Other Offences Against Property; and
- Drug Offences

Additionally, a list of charges preferred under sections 129 and 130 of the NDA for courts martial held during the reporting period may be found at the end of this section.

Figure 24:
Offences by Categories
(Files Processed During The Fiscal Year)



26 See NDA sections 70 and 130. A service tribunal shall not try any person charged with any of the following offences committed in Canada: murder; manslaughter or an offence under any of sections 280 to 283 of the *Criminal Code*.

The cases discussed below are a sampling of those dealt with by courts martial during the reporting period. These cases give a sense of the offenders and offences that were prosecuted, as well as the sentences that were pronounced.

3.8.1 Sexual Misconduct Offences

For this section, the term sexual misconduct offence include a broad range of offences and is not limited to a sexual assault charge contrary to section 271 of the *Criminal Code*.

The NDA provides military prosecutors with a number of offences such as disgraceful conduct, abuse of a subordinate, sexual harassment etc. to deal with sexual misconduct in an appropriate manner. These are options open to the military prosecutor depending on the facts and the level of gravity of each case. These offences are not available in the civilian justice system. For example, under the CSD a prosecution for sexual harassment is a possibility which is not available under the civilian criminal justice system.

Figure 25:
Sexual Misconduct Offences in the Military Justice System over the Past Six Fiscal Years

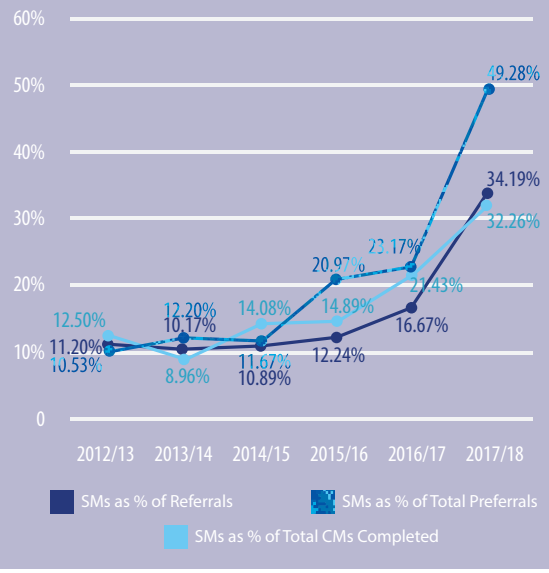


Figure 25 shows sexual misconduct offences in the military justice system over the past six fiscal years as a percentage of total referrals received, preferrals and courts martial completed.

Figure 26:
Preferrals for All Referrals Received During the Fiscal Year (Total and Sexual Misconduct Offences)

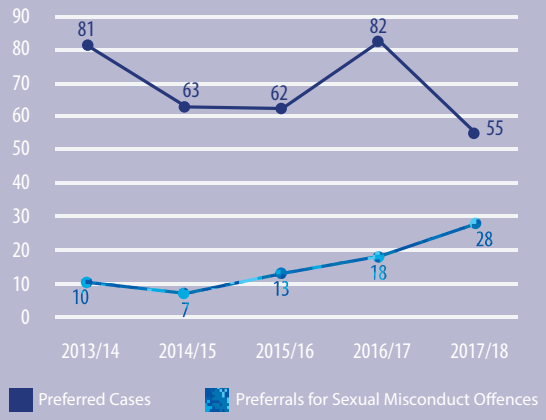


Figure 27:
Court Martial Completed - Total for Sexual Misconducts Offences by Fiscal Year

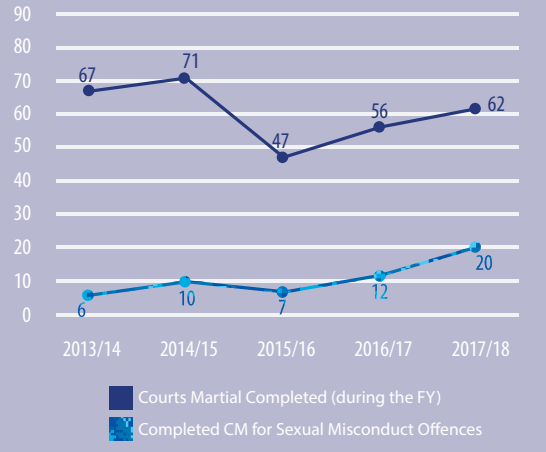


Figure 28:
Sexual Misconduct Offences (Based on Referrals Received During the Fiscal Year - As of 31 March 2018

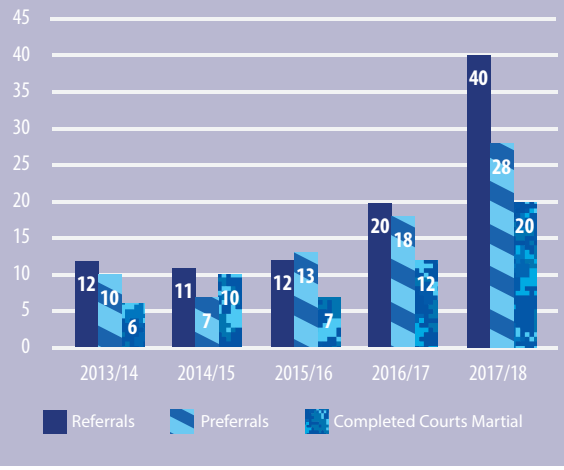


Figure 29: Sexual Misconduct Offences - Courts Martial Completed By Region

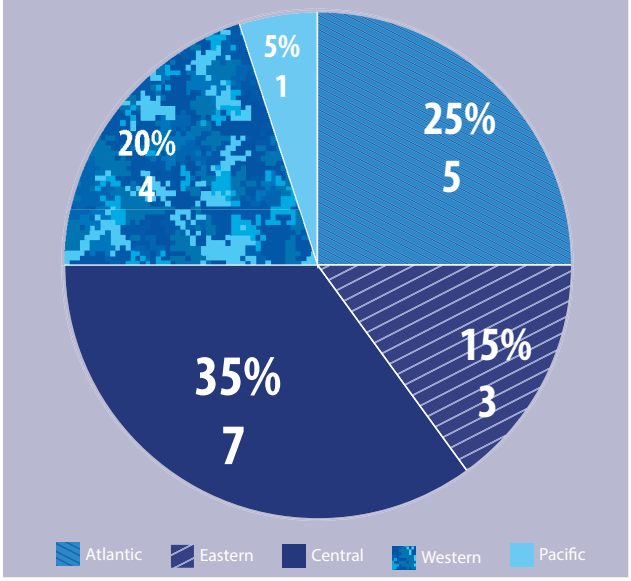
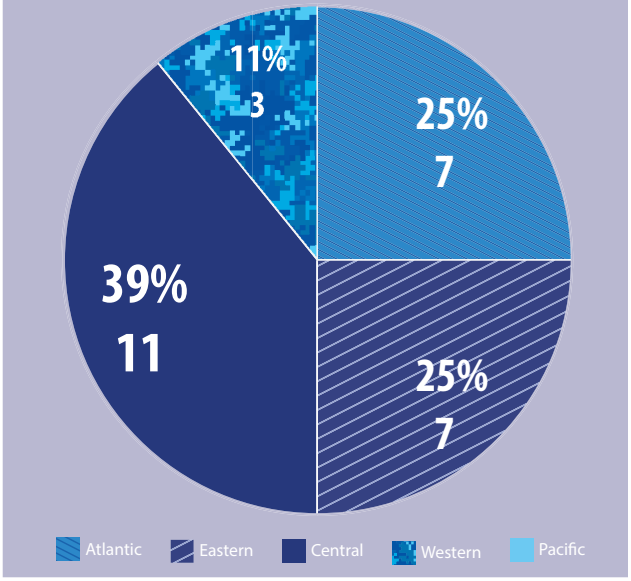


Figure 30: Sexual Misconduct Offences - Preferrals By Region (As 31 March 2018)



For this reporting period (as of 31 March 2018), here is a summary regarding sexual misconduct offences:

- 40 Referrals for sexual misconduct offences were received
  - 28 files (from referrals received during FY) have been preferred for CM (80% of the files for which we have a decision)
  - 7 were non-prefs (19% of files with decision)
  - 5 are currently pending decision
- 20 courts martial were completed for SMs
  - 11 x guilty pleas and guilty verdicts (55%)
  - 3 x non guilty pleas and guilty verdicts (15%)
  - 1 x non guilty plea and guilty of lesser and included offence (5%)
  - 5 x non guilty verdicts (25%)

List of courts martial for sexual misconduct offences during the reporting period (details can be found at annex D):

1	SCM	Capt Bannister
2	GCM	OS Betts
3	SCM	WO Buenacruz (Ret'd)
4	SCM	Cpl Cadieux
5	SCM	Lt(N) Clark
6	SCM	MS Cooper
7	SCM	Sgt Covyeow
8	SCM	Capt Duvall
9	SCM	Sgt Euper
10	SCM	Cpl Furtado
11	SCM	Cpl Gobin
12	SCM	WO Grant

Table 4

SEXUAL MISCONDUCT OFFENCES	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
Referrals Received for SMs	14	12	11	12	21	40
Total Referrals Received During FY	125	118	101	98	126	118
SMs as % of Total Referrals Received	11.20%	10.17%	10.89%	12.24%	16.67%	34.19%
Preferrals for SMs During FY (Regardless of Date Received)	10	10	7	13	19	34
Totals Preferrals During FY	95	82	60	62	82	69
SMs as % of Total Preferrals	10.53%	12.20%	11.67%	20.97%	23.17%	49.28%
Courts Martial Completed for Sexual Misconduct	8	6	10	7	12	20
Total Courts Martial Completed	64	67	71	47	56	62
SMs as % of Total CMs Completed	12.50%	8.96%	14.08%	14.89%	21.43%	32.26%
Guilty Verdicts	5	4	5	7	10	15

13	SCM	Cdr Mensah
14	SCM	Cpl Miszczak
15	SCM	OCdt Morgado
16	SCM	MCpl Obele Ngoudni #1
17	SCM	Cpl Quirion
18	SCM	Cpl Riddell
19	SCM	MCpl W.
20	GCM	PO2 Wilks

3.8.2 Drug Offences

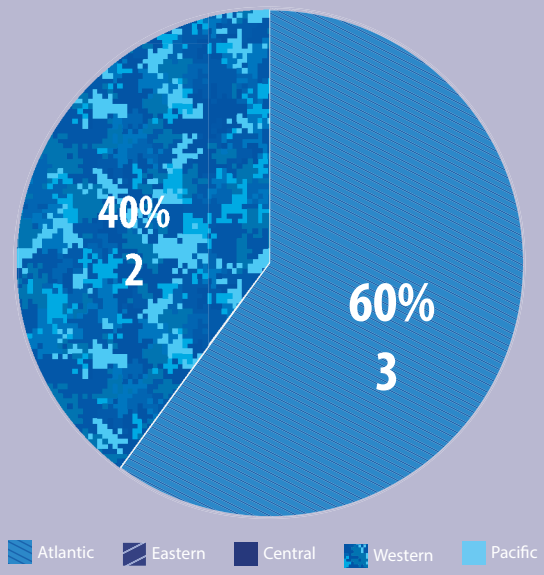
Like all Canadians, persons subject to the CSD are liable to prosecution for drug-related offences as provided in the CDSA. Unlike the civilian population, however, persons subject to the CSD are also liable to prosecution for drug use.[27] Such offence will be prosecuted using section 129 of the NDA.

During the reporting period there were only two courts martial completed for drug offences. Both were held in the Atlantic region (details can be found at annex D):

1	SCM	Pte Burrell
2	SCM	LS Smith

There were 5 preferrals for drug offences during the reporting period.

Figure 31:
Drug Offences - Preferrals by Region



27 QR&O, article 20.04.

3.8.3 Fraud and Other Offences against Property

Figure 32:
Fraud and Other Offences Against Property - Courts Martial Completed by Region

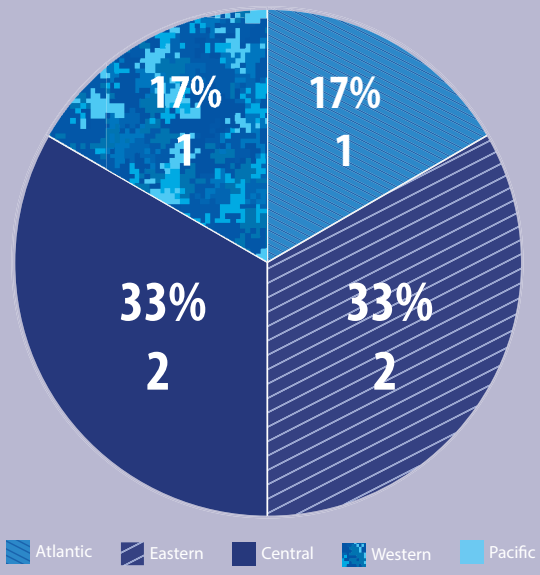
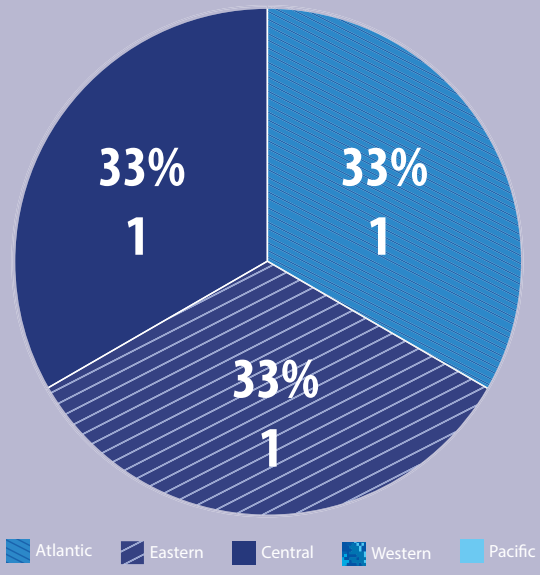


Figure 33:
Fraud and Other Offences Against Property - Preferrals by Region



List of courts martial for fraud and other offences against property during the reporting period (details can be found at annex D):

1	SCM	Cpl Chabot-Leroux
2	SCM	MS De Nobile

3	GCM	MCpl Edmunds
4	SCM	MBdr Gaffey
5	SCM	Cpl Kroetsch
6	SCM	Cpl Whaley

3.8.4 Military Conduct Offences

Figure 34:
Military Conduct Offences
Courts Martial Completed By Region

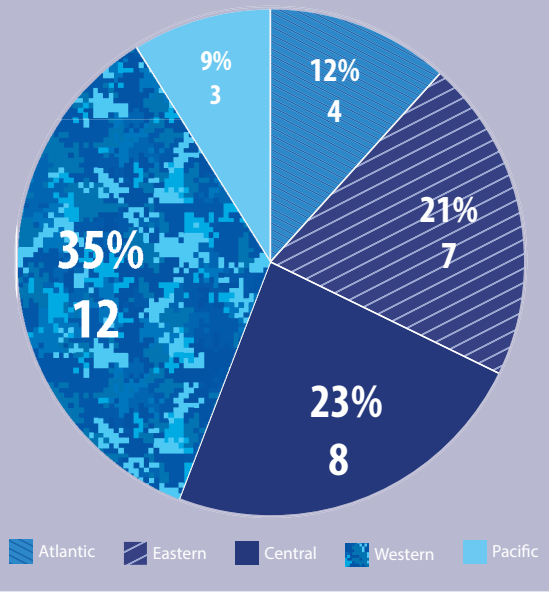
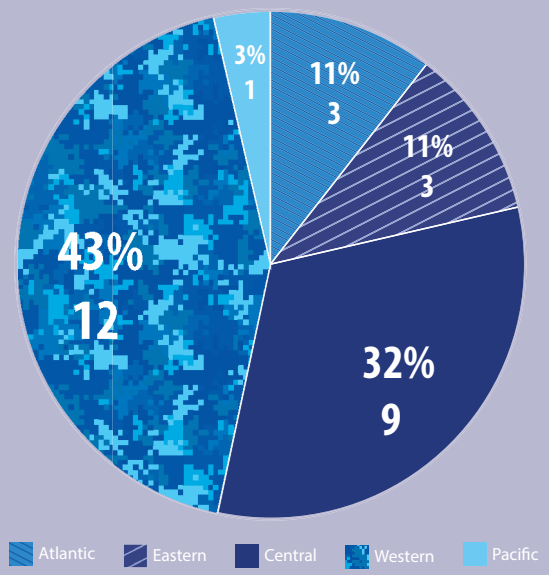


Figure 35:
Military Conduct Offences - Preferrals By Region



List of courts martial for military conduct offences during the reporting period (details can be found at annex D):

1	SCM	Cpl Ayers
2	SCM	OCdt Baluyot
3	SCM	Cpl Belleview
4	SCM	Sgt Burton
5	SCM	LCdr Carlyon
6	SCM	Cpl Dickey
7	GCM	WO Dowe
8	SCM	2Lt Ghaffari
9	SCM	Cpl Gibbons
10	SCM	Capt Gillespie
11	SCM	Spr Grening
12	SCM	Cdr Hopkie
13	SCM	Cpl Ladet
14	SCM	Cpl Lafrenière
15	SCM	MCpl Leadbetter
16	SCM	LS MacDonald
17	SCM	Lt(N) Makow
18	SCM	MCpl Matarewicz
19	SCM	Capt Matte
20	SCM	Cpl Newton
21	SCM	Pte Normand-Therrien
22	SCM	MCpl Obele Ngoudni #2
23	SCM	Sgt Ogston
24	SCM	Cpl Parent
25	SCM	MCpl Penner
26	SCM	Cpl Rollman
27	SCM	MWO Scotto D'anielo
28	SCM	Sgt Shulaev
29	SCM	Maj Skrok
30	GCM	Ex-Cpl Stuart
31	SCM	Sig Truelove
32	SCM	Sgt Williams
33	SCM	MCpl Wylie
34	SCM	MCpl Young

3.8.5 Section 129 of the *National Defence Act*

Subsection 129(1) of the NDA is broad and covers any act, conduct, disorder or neglect to the prejudice of good order and discipline. Every person convicted is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

During the reporting period, a total of 26 accused have faced 45 charges under section 129 of the NDA, of which 32 were for conduct, 7 for neglect and 6 for an act to the prejudice of good order and discipline.

List of courts martial with charges under section 129 of the NDA (details can be found at annex D):

1	SCM	Capt Bannister
2	GCM	OS Betts
3	SCM	WO Buenacruz (Ret'd)
4	SCM	LCdr Carlyon
5	SCM	Lt(N) Clark
6	SCM	Sgt Covyeow
7	SCM	MBdr Gaffey
8	SCM	Cpl Gibbons
9	SCM	Capt Gillespie
10	SCM	Cdr Hopkie
11	SCM	MCpl Leadbetter
12	SCM	LS MacDonald
13	SCM	Lt(N) Makow
14	SCM	Capt Matte
15	SCM	Cdr Mensah
16	SCM	Cpl Miszczak
17	SCM	Cpl Newton
18	SCM	MCpl Obele Ngoudni #2
19	SCM	Sgt Ogston
20	SCM	MCpl Penner
21	SCM	Cpl Rollman
22	SCM	Maj Skrok
23	GCM	Ex-Cpl Stuart
24	SCM	MCpl W.
25	SCM	Sgt Williams
26	SCM	MCpl Wylie

3.8.6 Section 130 of the *National Defence Act*

As indicated earlier, section 130 of the NDA incorporate by reference offences that are punishable under the *Criminal Code* or any other Act of Parliament. The essential elements of the underlying federal offences remain the same.

Over the reporting period, 86 charges were preferred under section 130 of the NDA in relation to 30 accused. The charges were preferred in relation to the following federal offences:

- Section 86(1) of the *Criminal Code* – Careless use of firearm (2 charges);
- Section 86(2) of the *Criminal Code* – Contravention of a regulation under paragraph 117(h) of the *Firearms Act* (1 charge);
- Section 87(1) of the *Criminal Code* – Pointing a firearm (1 charge);
- Section 88 of the *Criminal Code* – Possession of a weapon for a dangerous purpose (1 charge);
- Section 91(1) of the *Criminal Code* – Unauthorized possession of a firearm (1 charge);
- Section 122 of the *Criminal Code* – Breach of trust by a public officer (17 charges);
- Section 151 of the *Criminal Code* – Sexual interference (1 charge);
- Section 162.1 of the *Criminal Code* – Publication of an intimate image without consent (1 charge);
- Section 162.1(a) of the *Criminal Code* – Voyeurism (1 charge);
- Section 163.1(2) of the *Criminal Code* – Making child pornography (1 charge);
- Section 163.1(4) of the *Criminal Code* – Possession of child pornography (2 charges);
- Section 264(1) of the *Criminal Code* – Criminal harassment (1 charge);
- Section 264.1(1) of the *Criminal Code* – Uttering threats to cause death or bodily harm (9 charges);
- Section 265(1) of the *Criminal Code* – Assault (1 charge);
- Section 266 of the *Criminal Code* – Assault (10 charges);
- Section 271 of the *Criminal Code* – Sexual assault (9 charges);
- Section 286.1(1) of the *Criminal Code* – Obtaining sexual services for consideration (1 charge);
- Section 334 of the *Criminal Code* – Theft (2 charges);
- Section 337 of the *Criminal Code* – Public servant refusing to deliver property (1 charge);
- Section 355.2 of the *Criminal Code* – Trafficking in property obtained by crime (3 charges);
- Section 366(1)(a) of the *Criminal Code* – Made a forged document (1 charge);
- Section 368(1)(a) of the *Criminal Code* – Use of a forged document (1 charge);
- Section 380(1) of the *Criminal Code* – Fraud (8 charges);

- Section 430(1) of the *Criminal Code* – Mischief (2 charges);
- Section 463(b) of the *Criminal Code* – Attempted to defraud (1 charge);
- Section 4(1) of the CDSA – Possession (1 charge);
- Section 5(1) of the CDSA – Trafficking (2 charges);
- Section 5(2) of the CDSA – Possession for the purpose of trafficking (2 charges); and
- Section 7(2)(a.1) of the CDSA – Production of a substance (1 charge).

3.9 - Appeals

3.9.1 Appeals to the Court Martial Appeal Court

3.9.1.1 Constitutionality of paragraph 130(1)(a) of the *National Defence Act*

Paragraph 130(1)(a) of the NDA makes it a service offence to commit offences punishable under other Acts of Parliament. In *Moriarity*, the SCC unanimously decided that paragraph 130(1)(a) of the NDA was not unconstitutionally overbroad and that there was no requirement for a military nexus for the provision to be consistent with section 7 of the *Charter*. Following this decision, numerous appellants raised a new ground of appeal before the CMAC alleging that paragraph 130(1)(a) of the NDA violated their right to a jury trial contrary to section 11(f) of the *Charter*. Section 11(f) of the *Charter* provides that anyone charged with an offence has the right:

> except in the case of an offence under military law tried before a military tribunal, to the benefit of trial by jury where the maximum punishment for the offence is imprisonment for five years or a more severe punishment…

Three separate panels of the CMAC have now heard arguments on this matter. During the previous reporting period, the CMAC ruled that paragraph 130(1)(a) of the NDA did not violate section 11(f) of the *Charter* and did not require a military nexus (*R v Master Corporal Royes*, 2016 CMAC 1). During this reporting period, a second panel rendered its decision in *R v Private Déry et al.*, 2017 CMAC 2 – which included the cases of Petty Officer Second Class Blackman, Warrant Officer Gagnon, Corporal Thibault, Private Déry, Second Lieutenant Soudri, Lieutenant (Navy) Klein, Corporal Nadeau-Dion, Corporal Pfahl, Petty Officer Second Class Wilks, Master Corporal Stillman and Major Wellwood. The CMAC was unanimous that it was bound by its previous decision in *Royes*. However, JJ.A. Cournoyer and Gleason wrote extensive reasons as to why they would have found that paragraph 130(1)(a) of the NDA, absent a military nexus test, violated the right to a jury trial under section 11(f) of the *Charter*. C.J. Bell wrote separate reasons in support of the unanimous decision in *Royes*. The SCC granted leave to appeal this decision on 8 March 2018.

A third panel heard arguments on this issue on 30 January 2018 in the case of Corporal Beaudry. The CMAC has reserved its decision.

3.9.1.2 Other Questions of Law Heard on Appeal

***R v Major Wellwood*, 2017 CMAC 4**

In addition to the *Charter* challenge in *Déry*, this case involved a challenge to the Chief Military Judge's instructions to the General Court Martial panel. Maj Wellwood was convicted of obstructing a peace officer. The incident occurred when a corporal from the MP attended a command post location run by Maj Wellwood, in response to a 911 call regarding a potentially suicidal soldier. A confrontation ensued between Maj Wellwood and the MP officer.

The CMAC concluded that the military judge's instructions to the panel were needlessly complex, and failed to properly relate the evidence to the law. The CMAC further concluded that the military judge failed to adequately address Maj Wellwood's competing obligations toward the suicidal soldier and to what degree those obligations informed what was a reasonable and necessary exercise of police powers in the circumstances.
The CMAC confirmed that the principle of police

independence applies to MP officers in the exercise of their law enforcement duties during their interactions with the chain of command. MP are not required to obey the orders of superior officers when those orders conflict with the exercise of their police duties.

The CMAC overturned the conviction and ordered a new trial. After further review by DMP following the appeal, it was decided not to prefer the matter for a second court martial.

***R v Warrant Officer Gagnon*, 2018 CMAC 1**

In addition to the *Charter* challenge in *Déry*, this case involved a challenge to the Chief Military Judge's decision to put the defence of honest but mistaken belief to the General Court Martial panel. WO Gagnon was acquitted of one count of sexual assault.

A majority of the CMAC found that the Chief Military Judge erred in law by submitting to the court martial panel a defence of honest but mistaken belief in consent without having considered whether the statutory preconditions in section 273.2 of the *Criminal Code* had been met. Section 273.2 required WO Gagnon to take reasonable steps in the circumstances known to him at the time to confirm consent to the sexual activities in question. Two of the three justices concluded that a judge applying the proper framework would likely consider that reasonable steps had not been taken, and would therefore have not put the defence of honest but mistaken belief in consent to the panel. On this basis, the CMAC overturned the acquittal and ordered a new trial.

The Chief Justice, in dissent, concluded that there was evidence of reasonable steps and an air of reality to the defence of honest but mistaken belief on the facts of the case sufficient to put the defence to the panel, and therefore there was no error.

WO Gagnon has appealed this decision as of right to the SCC. This appeal is expected to be heard on 16 October 2018.

***R v Corporal Golzari*, 2017 CMAC 3**

Cpl Golzari was charged with obstructing a peace officer and conduct to the prejudice of good order and discipline resulting from an incident which occurred at the gate of CFB Kingston while the base was on high alert. At his court martial, the Chief Military Judge found that the prosecution had failed to lead any evidence that Cpl Golzari knew that the MP officer he was interacting with was a peace officer, and any evidence that there was a standard of conduct that had been breached by Cpl Golzari.

The CMAC unanimously concluded that the Chief Military Judge erred in this determination. With respect to the obstruction charge, the CMAC noted that MP are always peace officers in relation to persons subject to the CSD and that the knowledge component of the offence was complete when Cpl Golzari knew he was dealing with a MP officer. With respect to the conduct charge, the CMAC concluded that the prosecution is not required to prove a separate standard of conduct. The offence prohibits any conduct that is prejudicial to good order and discipline. The element of prejudice requires conduct that tends to, or is likely to, adversely affect good order and discipline. The CMAC further noted that, in most cases, the trier of fact should be able to conclude whether the proven conduct is prejudicial to good order and discipline based on their experience and general service knowledge.

The CMAC granted the appeal and ordered a new trial. After further review by DMP following the appeal, it was decided not to prefer the matter for a second court martial.

***R v Corporal Hoekstra*, 2017 CMAC 5**

Cpl Hoekstra pled guilty to possession of marijuana, possession of explosives, unlawful possession of a firearm, and receiving property obtained by the commission of a service offence. The prosecution recommended a sentence of 18 months imprisonment. Defence counsel suggested a sentence of 60-90 days detention, a severe reprimand and a significant fine, or alternatively, 90 days detention and a reduction in rank to private. The military judge sentenced Cpl Hoekstra to 60 days imprisonment.

The CMAC unanimously concluded that the sentence was demonstrably unfit, and that an

appropriate sentence for this offence was 14 months imprisonment. Upon the admission of fresh evidence of Cpl Hoekstra's rehabilitative efforts and post-offence good conduct, and with the agreement of the prosecution, the CMAC stayed the remaining period of imprisonment.

R v Master Corporal Edmunds

MCpl Edmunds ran a fraudulent scheme whereby he contracted on behalf of the CAF with himself as a sole proprietor. After pleading guilty to one count of fraud over $5000 involving two fraudulent transactions, he was charged with several additional counts of fraud which resulted in a second trial. He was sentenced to 30 days imprisonment at his first trial. At his second trial, MCpl Edmunds argued that the conduct of the investigators and prosecution was abusive, mainly alleging that the prosecution had improperly split its case. The issues at appeal arose from this second trial.

During a pre-trial disclosure and abuse of process application, the charge-layer testified that he did not know any information about the charges. He had been presented with a draft Record of Disciplinary Proceedings and had simply signed it. The military judge found that the charge-layer did not have an actual and reasonable belief that an offence had been committed, incorporating this finding into his decision on the abuse of process application.

In his decision on the abuse of process, the military judge found that the prosecution had not acted in bad faith or maliciously, but concluded that subjecting MCpl Edmunds to two trials was an abuse of process. The military judge concluded that the prejudice arising from this abuse was the possibility that MCpl Edmunds would be subjected to two separate periods of incarceration. He concluded that this prejudice could be remedied through mitigation of sentence.

MCpl Edmunds appealed the military judge's refusal to grant a stay of proceedings. After a review of the appeal record, the DMP agreed that the error at the charge laying stage was fatal to the charges and that the court martial had therefore been without jurisdiction. This vitiated the proceedings and required the CMAC to quash the conviction. The CMAC agreed, declaring the court martial a nullity and overturning the conviction.

3.9.1.3 Upcoming Appeals to the CMAC

R v Corporal Cadieux

Cpl Cadieux was acquitted at a Standing Court Martial of sexual assault and drunkenness. The DMP appealed the acquittal on the basis that the military judge erred in his assessment of the defence of honest but mistaken belief in consent, in his assessment of witness credibility, and in his interpretation of the offence of drunkenness under section 97 of the NDA.

The CMAC heard oral arguments in this case on 12 March 2018 and reserved its decision.

R v Corporal Beaudry

This was the third time in which the CMAC heard constitutional arguments as to whether section 130(1)(a) of the NDA violates the right to a jury trial contrary to section 11(f) of the *Charter*.

The CMAC heard final oral arguments on 30 January 2018 and reserved its decision.

R v Captain Bannister

Capt Bannister was acquitted at a Standing Court Martial of two counts of disgraceful conduct and two counts of conduct to the prejudice of good order and discipline for inappropriate sexual comments made in the workplace. The DMP appealed the acquittal on the basis that the military judge erred in his interpretation of the offence of disgraceful conduct and erred in his interpretation of prejudice to good order and discipline.

The Notice of Appeal was filed on 29 March 2018.

Annex E provides additional information regarding appeals to the CMAC.[28]

28 Further information may also be obtained by accessing the CMAC website: http://www.cmac-cacm.ca/index-eng.shtml.



Major Patrice Germain and Major Dylan Kerr at the CMAC in *R v Corporal Beaudry* on 31 October 2017

3.9.2 Upcoming Appeals to the Supreme Court of Canada

R v Master Corporal Stillman et al.

Following the CMAC decision in *Déry*, a number of the appellants sought leave to appeal to the SCC. The SCC granted leave to appeal on 8 March 2018. Seven of the appellants have now filed their Notice of Appeal. The questions on appeal are: Does paragraph 130(1)(a) of the NDA violate section 11(f) of the *Charter*; and if so, is the infringement a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society under section 1 of the *Charter*.

On 11 April 2018, the SCC granted the appellants' motion to extend the time for filing written submissions until eight weeks after the CMAC renders its decision in the *Beaudry* matter.

R v Warrant Officer Gagnon

As indicated previously, WO Gagnon appealed the decision of the CMAC as of right. The Notice of Appeal was filed on 5 March 2018. A tentative hearing date is scheduled for 16 October 2018.

Annex F provides additional information regarding appeals to the SCC.[29]

29 Further information may also be obtained by accessing the SCC website: http://www.scc-csc.gc.ca/case-dossier/info/hear-aud-eng.aspx?ya=2015&ses=03&submit=Search.

Conclusion

In addition to general legal advice provided by CMPS on a regular basis to DJAs and CFNIS, RMPs have handled 199 referrals from the chain of command (118 of those having been received in 2017-2018), closed 132 cases, worked on 14 appeals (all at the CMAC) and provided pre-charge advice in relation to 126 files (with an additional 3 files still pending) during the reporting period. Overall, CMPS handled 342 files in FY 2017-2018. This is 42 files more than in 2016-2017 which was our busiest year in the last 5 years. This was accomplished even though our Reserves RMPs could not be as active as last year. Training invested in the RMPs the previous year and this year and the increase of experience appears to have helped in achieving these results.



Major Larry Langlois, RMP Central Region

chapter 4

POLICY, TRAINING, COMMUNICATION & OUTREACH

Policy, training, communication and outreach are key elements for CMPS. DMP policy directives govern prosecutions or other proceedings conducted by the RMPs to ensure that decisions are taken on a principled basis and in accordance with the law. Training is key to ensure that the RMPs discharge their duties in an efficient and competent matter. Finally, communication and outreach activities increase the knowledge about the CMPS mission, vision and activities, which are essential to ensure the confidence of CAF members and Canadians in the military justice system. These are the main accomplishments of CMPS in these areas during the reporting period.

4.1 Policy

4.1.1 Creation of DDMP SMART

During the previous reporting period, the CMPS amended a number of policy directives concerning the conduct of prosecutions for offences of a sexual nature. The two main objectives of that review were to ensure that offences of a sexual nature are prosecuted in the appropriate justice system and that the views of complainants are solicited, considered and addressed at all phases of the court martial process. In support of the CAF's goal to eliminate harmful and inappropriate sexual behaviour and building upon the policy amendments from the previous reporting period, the DMP created a new position within CMPS - DDMP SMART.

Sexual misconduct prosecutions are among the most serious and complex cases entrusted to the CMPS. Because of the personal and institutional damage that can result from sexual misconduct in the CAF, the vulnerability of the victims, and the unique evidentiary issues that may arise, military prosecutors require specialized training to optimize their knowledge and efficiency.

Other prosecution services across the country have recognized the unique challenges inherent in sexual misconduct cases and have responded by designating individual prosecutors as specialists and/or mentors for these cases in order to ensure proper training and continuity.

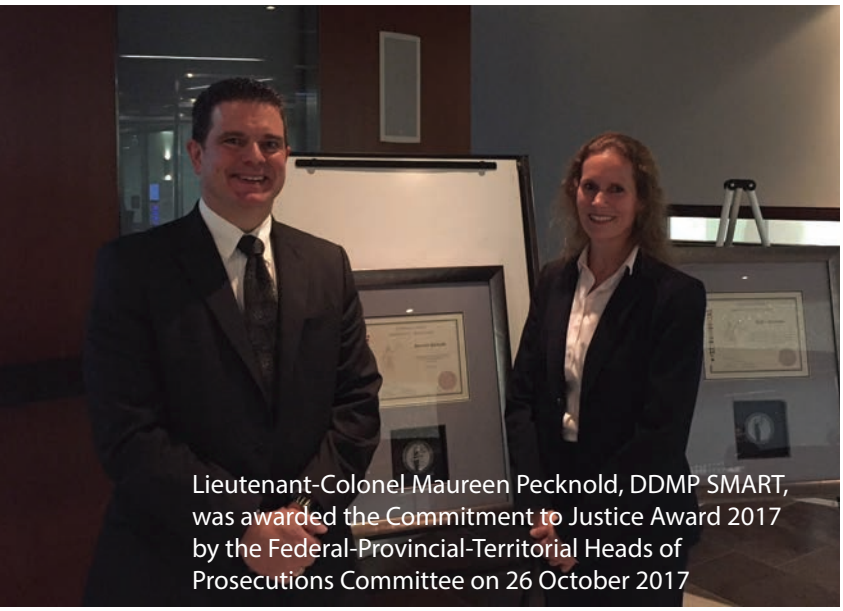
Consistent with Op HONOUR, Canada's Defence Policy[30] and DMP Policy Directive 004/00, the CMPS is committed to ensuring that its prosecutors possess the appropriate knowledge and skills necessary to prosecute sexual misconduct cases in a manner which instills public confidence in the administration of military justice.

The creation of DDMP SMART will be instrumental in achieving this objective in the following manner:

- The DDMP SMART identifies and facilitates regular training opportunities to ensure that RMPs acquire and maintain current knowledge and skills necessary to address the unique considerations which arise in sexual misconduct cases.
- The DDMP SMART works with DMP and ADMP to ensure continuity of expertise within the CMPS as needed, having regard to posting cycles.
- The DDMP SMART provides mentorship and support for prosecutors as needed in sexual misconduct prosecutions. This includes participating in ongoing cases, whether at the pre and post charge stage, during witness interviews and preparation as well as during courts martial, as needed.
- The DDMP SMART liaises with other prosecution services in Canada involved in sexual misconduct prosecutions to ensure that best practices are identified and followed at all stages of sexual misconduct prosecutions.
- The DDMP SMART participates in the

30 *Strong, Secure, Engaged*, *supra* note 13.

Coordinating Committee of Senior Officials (CCSO) Working Group on Access to Justice for Adult Victims of Sexual Assault, a working group created to explore, analyze and provide recommendations to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety.



Lieutenant-Colonel Maureen Pecknold, DDMP SMART, was awarded the Commitment to Justice Award 2017 by the Federal-Provincial-Territorial Heads of Prosecutions Committee on 26 October 2017

4.1.2 Special Prosecutors

The DPM issued a new Policy Directive on 12 April 2017 pertaining to the appointment of special prosecutors in instances where there may be the potential for an actual or perceived conflict of interest should military prosecution duties be conducted by a RMP.[31] Special prosecutors are appointed by the DMP and must be members in good standing of the bar of a province or territory of Canada and must also be officers of the CAF but not part of the Office of the JAG.

The DMP appointed a special prosecutor for the first time on 19 February 2018 to conduct the post-charge review of charges laid by the CFNIS against the Chief Military Judge, Colonel Mario Dutil on 25 January 2018. The appointee is Lieutenant-Colonel Mark Poland, a reserve infantry officer who is also the Crown Attorney of the Waterloo Region with the Ontario Ministry of the Attorney General.

31 DMP Policy Directive 016/17: http://www.forces.gc.ca/assets/FORCES_Internet/docs/en/about-policies-standards-legal/dmp-policy-directive-016-17-appointment-of-special-prosecutors.pdf

4.2 Training

4.2.1 Focus on specialized skills

During the previous reporting period, as a result of the number of newly posted legal officers into the CMPS, training for military prosecutors focused on basic foundational skills in order to assist military prosecutors to achieve proficiency in basic advocacy skills. However, during this reporting period, in order to better develop proficiency and expertise, the training provided to military prosecutors focused on more specialized topics such as expert witnesses, search and seizure, appellate advocacy, sexual violence and trauma informed prosecutions.

Given the small size of the CMPS, much of the required training is provided by external organizations. During the reporting period, military prosecutors participated in conferences and continuing legal education programs organized by the Federation of Law Societies of Canada, the Canadian Bar Association, the Ontario Crown Attorneys' Association, le Barreau du Québec, the International Association of Prosecutors, the Ontario Ministry of the Attorney General and the Public Prosecution Service of Canada (PPSC). These programs benefited the CAF not only through the knowledge imparted and skills developed but also through the professional bonds developed by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

CMPS held its annual Continuing Legal Education (CLE) workshop on 26 and 27 February 2018 for its Regular Force and Reserve Force military prosecutors. The event was held on two consecutive days again this year prior to the annual JAG CLE workshop and touched upon several topics, including a full day spent on resiliency training.

During the reporting period, 23 prosecutors took part in 15 different training activities for a total of 168 days of training (7.3 days of training per military prosecutor).

Military prosecutors also took part in a variety of professional development activities, including

significant participation from CMPS in the National Criminal Law Program held in Vancouver, BC from 10 to 14 July 2017.

Table 5	
Total days of Prosecution related training within CMPS	168
Number of Training Events	15
Number of Prosecutors who have received Training	23
Average Number of Days of Training per Prosecutor	7.304
Average Number of Training Events per Prosecutor	2.00

4.2.2 Memorandum of Understanding (MOU)

During the reporting year, CMPS entered into a partnership with the Attorney General for the Province of Ontario and PPSC for the temporary employment of a CAF legal officer as crown prosecutor with these provincial and federal prosecution services.

From October 2017 until the end of April 2018, a military prosecutor from the Central region was seconded to the Ottawa Crown Attorney's Office. As an Assistant Crown Attorney, he assisted and conducted several trials at the Ontario Court of Justice and one jury trial at the Superior Court of Justice, in matters concerning offences of sexual assault, domestic violence, prostitution and human trafficking. During that time, the prosecutor worked with detectives from various units of the Ottawa Police, caseworkers from the Victim and Witness Assistance Program, Probation officers, and experts from the Forensic Units of the Ottawa Police and from the Ontario Centre of Forensic Sciences.

These exchanges are invaluable in fostering relationships with other Canadian prosecution services, developing well-rounded advocates, and providing an opportunity to capture lessons learned that help further advance our practices and policies. In turn, it also promotes the quality and professionalism of counsel working at the Office of the JAG (OJAG).

4.2.3 Resilience Training and Mental Health

In line with Canada's new Defence Policy, "Strong, Secure, Engaged," and the promotion of psychosocial well-being in the workplace, the CMPS organization undertook a full day of training to explore different strategies to improve the mental resiliency of individual prosecutors. This training was the result of a partnership with the CAF Health Services Group started in 2016 and was specifically designed to deal with many of the challenges faced by military prosecutors. Based on the Road to Mental Readiness program (R2MR), the training was tailored specifically for military prosecutors and focused on:

- understanding and recognizing the impact stress has on your physiology and cognitive processes;
- applying stress management strategies in order to optimize well-being and performance in a high-stress occupational environment;
- identifying changes in health and performance as well as signs of under-recovery and mental illness; and
- knowing what mental health resources are available and how to access them.

The intent moving forward with this initiative is for all new legal officers posted into the CMPS to receive the training while also developing a refresher program for those who have already received the initial training.

4.2.4 Military Skills

In addition to prosecution training, CMPS military personnel also participate in other training activities in order to maintain their readiness to deploy into a theatre of operations. These activities include individual military skills training such as weapons familiarization, Chemical Biological Radiological Nuclear training, first aid training as well as maintaining an acceptable level of physical fitness.

During the reporting period, two of our RMPs attended The Governor General's Canadian Leadership Conference providing them with

unparalleled leadership training. This conference brings together Canada's emerging leaders from business, labor, government, NGOs, education and the cultural sector for a unique two-week experience aimed at broadening their perspectives on work, leadership, their communities and their country. Participation in this training provided the RMPs with an opportunity to broaden their experiences with leadership, and to understand the larger context of certain challenges such as access to justice and access to family services. The opportunity to discuss high-level leadership challenges with current and upcoming leaders from a variety of domains was invaluable.

4.2.5 Training provided by CMPS

CMPS also provides support to the training activities of the OJAG and other CAF entities. During the reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior military lawyers from the OJAG who completed a portion of their "on the job training" program by assisting in prosecutions at courts martial. CMPS also provided support to the Legal Officer Qualification Course as well as military justice briefings to JAG legal officers, criminal law/military justice training to members of the CFNIS, and served as supervisors for law graduates articling with the OJAG. Finally, legal officers serving outside the CMPS may, with the approval of their supervisor and the DMP, participate in courts martial as "second chair" prosecutors. The objective of this program is "to contribute to the professional development of unit legal advisors as well as to improve the quality of prosecutions through greater local situational awareness".[32]

Annex B provides additional information regarding the legal training received by CMPS personnel.

4.3 Communication and Outreach

4.3.1 CAF Chain of Command

The military justice system is designed to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale. It also ensures that justice is administered fairly and with respect for the rule of law. Operational effectiveness requires a workplace that is fair, respectful, inclusive and supportive of diversity. To meet these objectives, the chain of command must be effectively engaged.

While protecting the prosecutorial independence of CMPS, the DMP recognizes the importance of maintaining collaborative relationships with the chain of command of the CAF. Collaborative relationships with the chain of command ensure that both entities work together to strengthen discipline and operational efficiency through a robust military justice system.

During the reporting period, the DMP continued his practice of regularly attending court martial proceedings and meeting with senior members of the chain of command on different military bases across Canada.

4.3.2 CFNIS

The DMP also recognizes the importance of maintaining relationships with investigative agencies, while at the same time respecting the independence of each organization. Good relationships with investigative agencies ensure that both the DMP and the agencies exercise their respective roles independently, but co-operatively, and help to maximize CMPS's effectiveness and efficiency as a prosecution service.

RMPs provide investigation-related legal advice to CFNIS detachments across Canada. In addition, RMPs provide training to CFNIS investigators on military justice and developments in criminal law. At the headquarters level, DMP has assigned a

32 The DMP and the Deputy Judge Advocate General Regional Services have an agreement whereby unit legal advisors may participate as second chairs to RMPs in preparation for and conduct of courts martial. Please see DMP Policy Directive #: 009/00 (http://www.forces.gc.ca/en/about-policies-standards-legal/comms-with-legal-advisors.page) for further information.

military prosecutor as legal advisor to the CFNIS command team in Ottawa.[33] Additionally, the DMP has visited numerous CFNIS detachments across the country during the reporting period to discuss prosecution needs and strategic intent.

4.3.3 Federal, Provincial and Territorial Heads of Prosecutions Committee

The DMP is a member of the Federal/Provincial/Territorial Heads of Prosecution Committee, which brings together the respective leaders of Canada's prosecution services to promote assistance and cooperation on operational issues. The Committee held two general meetings during the reporting period both of which the DMP personally attended. These meetings provided an invaluable opportunity for participants to discuss matters of common concern in the domain of criminal prosecutions and find opportunities for collaboration.

4.3.4 International Association of Prosecutors – Military Network of Prosecutors

The International Association of Prosecutors (IAP) is a non-governmental and non-political organization. It promotes the effective, fair, impartial, and efficient prosecution of criminal offences through the application of high standards and principles, including procedures to prevent or address miscarriages of justice. The IAP also promotes good relations between prosecution agencies and facilitates the exchange and dissemination among them of information, expertise and experience.

The DMP and a senior RMP both attended the IAP's 22nd Annual Conference and General Meeting in September 2017 in Beijing, China. At that time, the Network for Military Prosecutors was officially launched with DMP taking a leadership role in this new initiative and facilitating a number of roundtable discussions with military and civilian prosecutors.

33 The provision of legal services by the military prosecutor assigned as CFNIS Legal Advisor is governed by a letter of agreement dated 30 September 2013, signed by DMP and the Canadian Forces Provost Marshal.

4.3.5 Victims

The DMP met with several victims of sexual misconduct offences in November 2017, notably victims in the "It's Just 700" group, to share information about CMPS's initiatives and recent policy updates aimed at better accounting for victims' perspectives in the military justice system and to listen to their concerns.



The DMP, Colonel Bruce MacGregor, speaking at the IAP's 22nd Annual Conference and General Meeting in September 2017 in Beijing, China



Major Chavi Walsh, RMP Central Region, at the IAP's 22nd Annual Conference and General Meeting in September 2017 in Beijing, China

chapter 5

INFORMATION MANAGEMENT AND TECHNOLOGY

CMPS has continued its effort to develop its case management system (CMS) to improve its transparency and efficiency in measuring performance with a view to increasing accountability and reducing overall delays in the military justice system. Competing priorities and challenges in resource allocation have delayed progress in that regard over the reporting period but CMPS is expecting that the DMP CMS will become operational later in 2018.

CMPS has further been engaged in the OJAG development of the Justice Administration and Information Management System (JAIMS), which is aimed at supporting all actors of the military justice system on information management.

chapter 6

FINANCIAL INFORMATION

Operating Budget

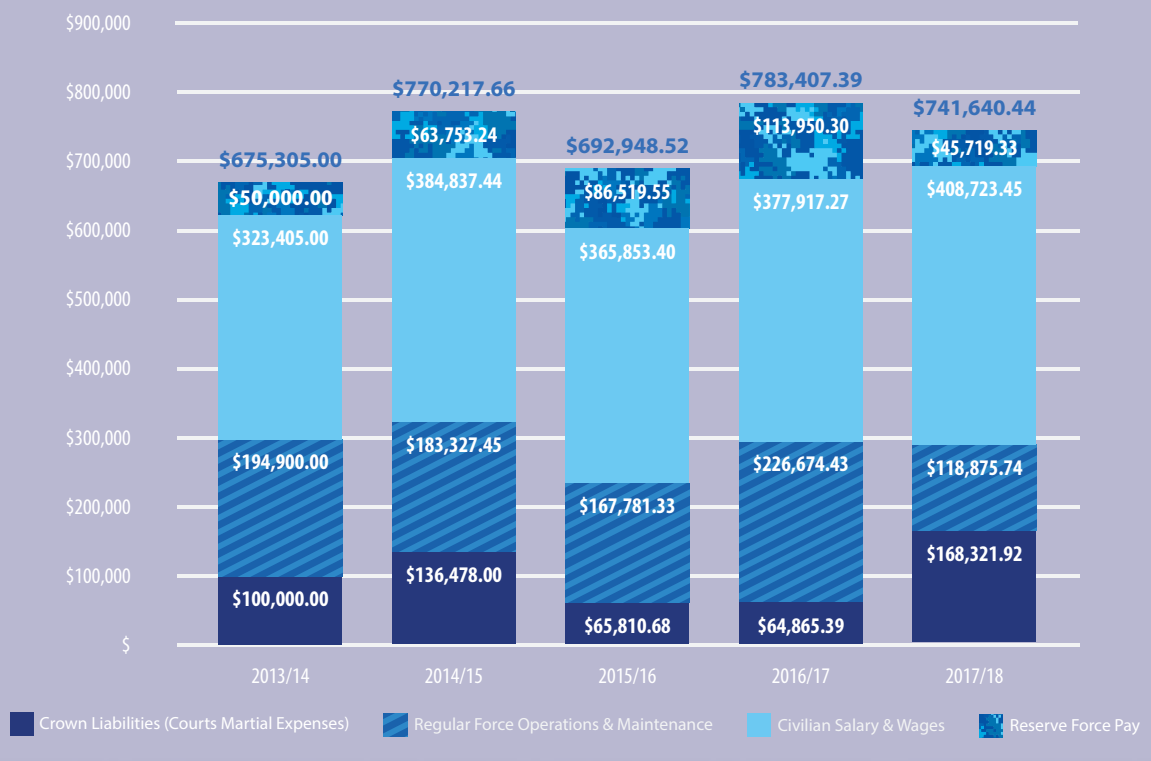
DMP's budget is allocated primarily to operations: that is, to providing prosecution services to the CAF. As a result of the uncertainty inherent in predicting the number of prosecutions that will be conducted in a given year or where they may be held, it is difficult to accurately forecast expenditures.

FY 2017-2018 DMP Budget Summary

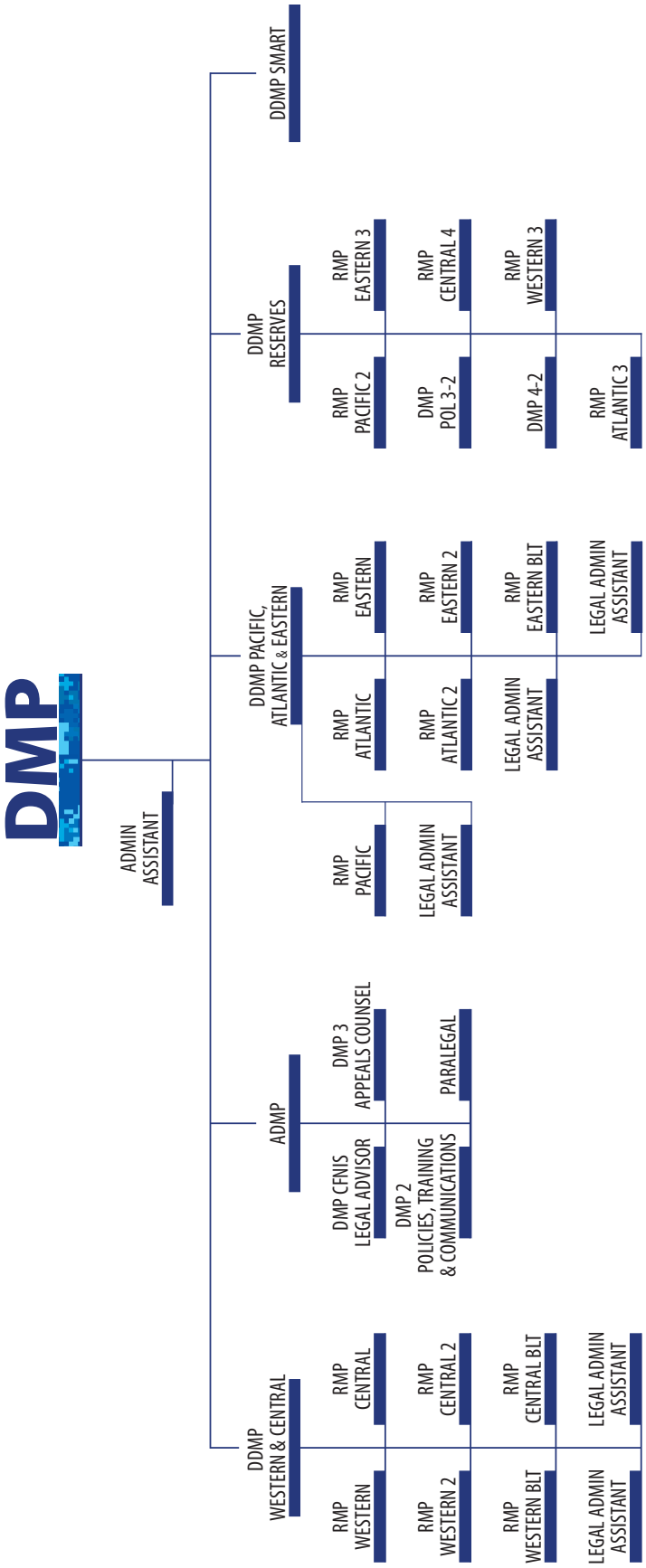
Table 6

FUND	INITIAL ALLOCATION	EXPENDITURES	BALANCE
Crown Liabilities (Courts Martial Expenses)	$90,000.00	$168,321.92	$(78,321.92)
Regular Force Operations & Maintenance	$217,800.00	$118,875.74	$98,924.26
Civilian Salary & Wages	$298,472.00	$408,723.45	($110,251.45)
Reserve Force Pay	$119,000.00	$45,719.33	$73,280.67
Totals	**$725,272.00**	**$741,640.44**	**$(16,368.44)**

Figure 36: DMP Operating Budget - Expenditures (Last 5 Years)



annex A Director of Military Prosecutions Organization Chart

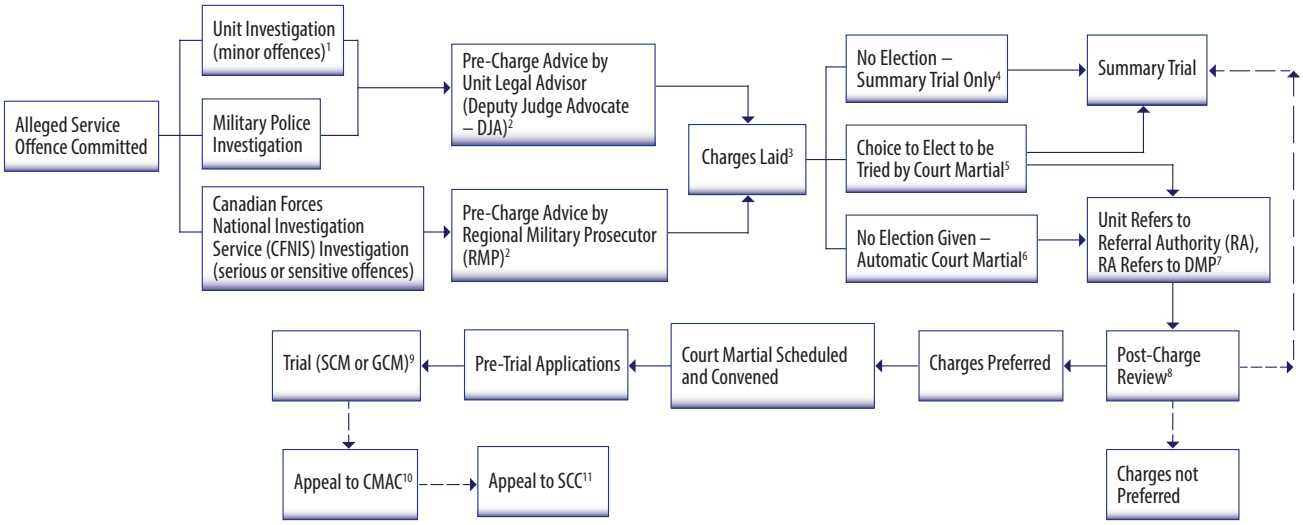


annex B

Legal Training Statistics

HOST ORGANIZATION	NAME OF COURSE	NUMBER OF ATTENDEES
Public Prosecution Service of Canada	PPSC School for Prosecutions – Prosecution Fundamentals (Level I)	1
Federation of Law Societies of Canada	2017 National Criminal Law Program	9
Ontario Crown Attorneys' Association	Sexual Violence	1
Ontario Crown Attorneys' Association	Experts	2
Ontario Crown Attorneys' Association	Search and Seizure	1
Ontario Crown Attorneys' Association	Trial Advocacy	3
Ontario Crown Attorneys' Association	Appellate Advocacy	2
Ontario Crown Attorneys' Association	Mental Health & the Criminal Justice System	1
Ontario Ministry of the Attorney General	2017 SVHAP Multidisciplinary Conference	1
Ontario Ministry of the Attorney General	Trauma Informed Prosecutions	5
End Violence Against Women International	Sexual Assault, Domestic Violence, and Systems Change	1
Canadian Bar Association	2017 CBA Military Law Conference	5
Barreau du Québec	Techniques de plaidoirie	1
International Association of Prosecutors	22nd Annual Conference	2
Director of Military Prosecutions	DMP Continuous Legal Education Seminar 2018	20

annex C Overview of the Referral Process



[1] See QR&O 106 "Investigation of Service Offences".
[2] Pre-charge advice is always advisable. Advice is mandatory under the circumstances in QR&O 107.03. See DMP Policy Directive 002/99 Pre-Charge Screening.
[3] See QR&O 107 "Preparation, Laying and Referral of Charges".
[4] Offences listed in QR&O 108.17(1)(a) must be tried by summary trial where the circumstances do not warrant punishment of detention, reduction in rank, or a fine greater than 25% of monthly pay under (1)(b).
[5] Accused may elect court martial for offences listed in 108.17(1)(a) where the warranted punishment exceeds those in (1)(b), and offences listed in QR&O 108.07(2),(3).
[6] Offences not listed in QR&O 108.07(2),(3) or where the accused is a LCol or higher must be tried by court martial.
[7] See QR&O 109 "Application for Referral Authority for Disposal of a Charge".
[8] See DMP Policy Directive 003/00 Post-Charge Review.
[9] See QR&O 111 "Convening of Courts Martial and Pre-trial Administration".
[10] See DMP Policy Directive 015/04 Appeals; QR&O 115 "Appeals from Courts Martial"; sections 230 and 230.1 of the *National Defence Act*.
[11] See DMP Policy Directive 015/04 Appeals; QR&O 115 "Appeals from Courts Martial"; section 245 of the *National Defence Act*.

annex D

Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
1	SCM	Cpl Ayers	*90 NDA* *90 NDA* *101.1 NDA*	Absence without leave Absence without leave Failed to comply with a condition imposed under Division 3	Guilty Guilty Guilty	Dismissal, a reduction in rank to Private, and one day imprisonment	N/A	Edmonton, AB	Edmonton, AB	English
2	SCM	OCdt Baluyot	*86 NDA*	Quarrels and disturbances	Guilty	Reprimand and a $1,900 fine	N/A	Kingston, ON	Jean-sur-Richelieu, QC	English
3	SCM	Capt Bannister	93 NDA *129 NDA* 93 NDA 129 NDA *93 NDA* *129 NDA*	Disgraceful conduct Conduct to the prejudice of good order and discipline Disgraceful conduct Conduct to the prejudice of good order and discipline Disgraceful conduct Conduct to the prejudice of good order and discipline	Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty	N/A	N/A	Charlottetown, P.E.I.	Charlottetown, P.E.I.	English
4	SCM	Cpl Bellevue	*130 NDA (264.1(1) Criminal Code)* 130 NDA (264.1(1) Criminal Code) *130 NDA (430(1) Criminal Code)* *116(a) NDA* 130 NDA (264(1) Criminal Code)	Uttering threats to cause death or harm Uttering threats to cause death or harm Wilfully committed mischief Wilfully damaged public property Criminal harassment	Guilty Guilty Withdrawn Withdrawn Withdrawn	Reprimand and a $2,000 fine	N/A	St-Jean, QC	Jean-sur-Richelieu, QC	French
5	GCM	OS Betts	*129 NDA* *129 NDA*	Conduct to the prejudice of good order and discipline Conduct to the prejudice of good order and discipline	Guilty Guilty	$200 fine	N/A	Victoria, BC	Esquimalt, BC	English
6	SCM	WO Buenacruz (Ret'd)	*130 NDA (271 Criminal Code)*	Sexual assault	Not Guilty	N/A	N/A	Shilo, MB	Brandon, Manitoba	English

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			93 NDA	Disgraceful conduct	Not Guilty					
			130 NDA (286.1(1) Criminal Code)	Obtaining sexual services for consideration	Not Guilty					
			93 NDA	Disgraceful conduct	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
7	SCM	Pte Burrell	*130 NDA (7(2)(a.1) CDSA)*	Production of a substance	Guilty	Five months' imprisonment	N/A	Greenwood, NS	Greenwood, NS	English
			130 NDA (5(1) CDSA)	Trafficking	Not Guilty					
			130 NDA (5(2) CDSA)	Possession for the purpose of trafficking	Guilty					
			130 NDA (88 Criminal Code)	Possession of a weapon for a dangerous purpose	Not Guilty					
			130 NDA (91(1) Criminal Code)	Unauthorized possession of a firearm	Not Guilty					
			130 NDA (86(1) Criminal Code)	Used a firearm in a careless manner or without reasonable precautions for the safety of other persons	Stayed					
			130 NDA (86(2) Criminal Code)	Stored a firearm in contravention of the storage, display, transportation and handling of firearms by individual regulations	Guilty					
8	SCM	Sgt Burton	*97 NDA*	Drunkenness	Guilty	Reprimand and a $750 fine	N/A	Shilo, MB	Yavoriv, Ukraine	English
9	SCM	Cpl Cadieux	*130 NDA (271 Criminal Code)*	Sexual assault	Not Guilty	N/A	N/A	Petawawa, ON	Savannah LA Mar, Jamaica	English
			97 NDA	Drunkenness	Not Guilty					
10	SCM	LCdr Carlyon	*129 NDA*	Neglect to the prejudice of good order and discipline	Not Guilty	N/A	N/A	Quebec, QC	El Gorah, Egypt	English
			129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty					
			130 NDA (86(1) Criminal Code)	Carelessly stored a firearm	Not Guilty					
11	SCM	Cpl Chabot-Leroux	*130 NDA (463(b) Criminal Code)*	Attempted to defraud	Withdrawn	Severe Reprimand and a $1,750 fine	N/A	Alouette, QC	Saguenay, QC	English
			130 NDA (366(1)(a) Criminal Code)	Made a forged document	Guilty					

annex D

Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			130 NDA (368(1)(a) Criminal Code)	Used of a forged document	Guilty					
12	SCM	Lt(N) Clark	*130 NDA (266 Criminal Code)*	Assault	Withdrawn	Reprimand and a $2,000 fine	N/A	Gatineau, QC	Sydney, NS	English
			130 NDA (266 Criminal Code)	Assault	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty on facts that differ materially from the facts alleged in the particulars of the charge					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
13	SCM	MS Cooper	*130 NDA (271 Criminal Code)*	Sexual assault	Guilty	22 months' imprisonment, dismissal from the CAF and a reduction in rank to Ordinary Seaman.	N/A	Halifax, NS	Rota, Spain	English
			95 NDA	Abuse of subordinates	Guilty					
14	SCM	Sgt Covyeow	*129 NDA*	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and a $200 fine	N/A	Greenwood, NS	Kentville, NS	English
15	SCM	MS De Nobile	*130 NDA (334 Criminal Code)*	Theft	Stayed	Reduction in rank to Able Seaman	N/A	Trois-Rivières, QC	Trois-Rivières, QC	French
			114 NDA	Stealing	Guilty					
16	SCM	Cpl Dickey	*83 NDA*	Disobedience of a lawful command	Withdrawn	Reprimand and a $700 fine	N/A	Petawawa, ON	Petawawa, ON	French
			85 NDA	Insubordinate behaviour	Guilty					
			90 NDA	Absence without leave	Guilty					
			90 NDA	Absence without leave	Withdrawn					
17	GCM	WO Dowe	*124 NDA*	Negligent performance of a military duty	Withdrawn	Reprimand and a $2,000 fine	N/A	Yellowknife, NWT	Yellowknife, NWT	English
			97 NDA	Drunkenness	Guilty					
18	SCM	Capt Duvall	*93 NDA*	Disgraceful conduct	Guilty	Severe reprimand and a $1,000 fine	N/A	Gagetown, NB	Gagetown, NB	English
19	GCM	MCpl Edmunds	*130 NDA (380 Criminal Code)*	Fraud	Guilty	30 days' imprisonment	N/A	Petawawa, ON	Petawawa, ON	English

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Not Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (380 Criminal Code)	Fraud	Withdrawn					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Withdrawn					
			130 NDA (380 Criminal Code)	Fraud	Withdrawn					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Withdrawn					
			130 NDA (380 Criminal Code)	Fraud	Withdrawn					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Withdrawn					
			130 NDA (380 Criminal Code)	Fraud	Guilty with a special finding					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not Guilty					
20	SCM	Sgt Euper	*95 NDA*	Abuse of subordinates	Guilty	Reduction in rank to Corporal and a $1,500 fine.	N/A	Edmonton, AB	Eureka, Nunavut	English
21	SCM	Cpl Furtado	*86 NDA*	Quarrels and disturbances	Guilty	Reprimand and a $700 fine	N/A	Edmonton, AB	Wainwright, AB	English
22	SCM	MBdr Gaffey	*130 NDA (122 Criminal Code)*	Breach of trust by a public officer	Not Guilty	Severe reprimand and a reduction in rank to Private	N/A	Gagetown, NB	Gagetown, NB	English
			114 NDA	Stealing	Guilty					
			130 NDA (355.5 Criminal Code)	Trafficking in property obtained by crime	Not Guilty					
			130 NDA (337 Criminal Code)	Public servant refusing to deliver property	Guilty					
			129 NDA	Act to the prejudice of good order and discipline	Guilty					
23	SCM	2Lt Ghaffari	*130 NDA (266 Criminal Code)*	Assault	Stayed	Reprimand and a $1,000 fine	N/A	Montreal, QC	Kingston, ON	French
			86(a) NDA	Quarrels and disturbances	Guilty					

annex D

Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			86(b) NDA	Quarrels and disturbances	Guilty					
24	SCM	Cpl Gibbons	*129 NDA*	Conduct to the prejudice of good order and discipline	Not Guilty	N/A	N/A	Borden, ON	Borden, ON	English
25	SCM	Capt Gillespie	*130 NDA (87(1) Criminal Code).*	Pointing a firearm	Not Guilty	Severe reprimand and a $7,000 fine	N/A	Petawawa, ON	Petawawa, ON	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			95 NDA	Abuse of subordinates	Not Guilty					
26	SCM	Cpl Gobin	*130 NDA (271 Criminal Code)*	Sexual assault	Guilty of the lesser offence of assault (266 Criminal Code)	Reprimand and a $1,500 fine	N/A	Shilo, MB	Wainwright, AB	English
27	SCM	WO Grant	*93 NDA*	Disgraceful conduct	Guilty	Reprimand and a $1,500 fine	N/A	Gatineau, QC	Ottawa, ON	English
			93 NDA	Disgraceful conduct	Withdrawn					
			97 NDA	Drunkenness	Guilty					
			86 NDA	Quarrels and disturbances	Withdrawn					
28	SCM	Spr Grening	*90 NDA*	Absence without leave	Guilty	Reprimand and a $1,000 fine.	N/A	Edmonton, AB	Edmonton, AB	English
			90 NDA	Absence without leave	Withdrawn					
			90 NDA	Absence without leave	Guilty					
29	SCM	Cdr Hopkie	*129 NDA*	Conduct to the prejudice of good order and discipline	Guilty	$500 fine	N/A	Gatineau, QC	Ottawa, ON	English
30	SCM	Cpl Kroetsch	*114 NDA*	Stealing	Guilty	Reprimand and a $600 fine	N/A	Edmonton, AB	Edmonton, AB	English
			117(f) NDA	Fraud	Guilty					
31	SCM	Cpl Ladet	*84 NDA*	Striking a superior officer	Guilty	Reduction in rank to Private and a $3,000 fine	N/A	Courcelette, QC	Cold Lake, AB	French
			130 NDA (264.1(1)(a) Criminal Code)	Uttering threats to cause death to a person	Not Guilty					
			130 NDA (264.1(1)(a) Criminal Code)	Uttering threats to cause death to a person	Not Guilty					
			130 NDA (266 Criminal Code)	Assault	Not Guilty					
			85 NDA	Insubordinate behaviour	Guilty					
			85 NDA	Insubordinate behaviour	Guilty					
32	SCM	Cpl Lafrenière	*85 NDA*	Insubordinate behaviour	Guilty	Minor punishment – caution	N/A	Courcelette, QC	Courcelette, QC	French

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			85 NDA	Insubordinate behaviour	Guilty					
33	SCM	MCpl Leadbetter	90 NDA	Absence without leave	Withdrawn	Reprimand and a $3,000 fine	N/A	Edmonton, AB	Chicago, Illinois	English
			97 NDA	Drunkenness	Guilty					
			85 NDA	Insubordinate behaviour	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
34	SCM	LS MacDonald	*129 NDA*	Conduct to the prejudice of good order and discipline	Withdrawn	$750 fine	N/A	Halifax, NS	Palma deMallorca, Spain	English
			129 NDA	Neglect to the prejudice of good order and discipline	Guilty					
35	SCM	Lt(N) Makow	*124 NDA*	Negligent performance of a military duty	Not Guilty	N/A	N/A	Victoria, BC	Puerto Quetzal, Guatemala	English
			129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty					
			124 NDA	Negligent performance of a military duty	Not Guilty					
			129 NDA	Neglect to the prejudice of good order and discipline	Not Guilty					
36	SCM	MCpl Matarewicz	*130 NDA (266 Criminal Code)*	Assault	Guilty	21 days' detention (suspended) and a severe reprimand	3 years prohibition order	Courcelette, QC	Glebokie, Poland	French
			130 NDA (264.1(1) Criminal Code)	Uttering threats to cause death or bodily harm	Guilty					
			130 NDA (430(1) Criminal Code)	Wilfully committed a mischief	Guilty					
			86 (b) NDA	Quarrels and disturbances	Guilty					
37	SCM	Capt Matte	97 NDA	*Drunkenness*	Not Guilty	Severe reprimand and a $2,000 fine	N/A	Gatineau, QC	Kabul Afghanistan	French
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			95 NDA	Abuse of subordinates	Guilty					
			130 NDA (266 Criminal Code)	Assault	Stayed					
			95 NDA	Abuse of subordinates	Guilty					
			130 NDA (266 Criminal Code)	Assault	Stayed					

annex D

Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
38	SCM	Cdr Mensah	*93 NDA*	Disgraceful conduct	Withdrawn	Severe reprimand and a $2,500 fine	N/A	Victoria, BC	Victoria, BC	English
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
39	SCM	Cpl Miszczak	*130 NDA (162.1 Criminal Code)*	Made available an intimate image without consent	Not Guilty	Reduction in rank to Private	N/A	Hamilton, ON	Meaford, ON	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
40	SCM	OCdt Morgado	*130 NDA (271 Criminal Code)*	Sexual assault	Withdrawn	Reprimand and a $1,500 fine	N/A	Kingston, ON	Cold Lake, AB	English
			93 NDA	Disgraceful conduct	Guilty					
41	SCM	Cpl Newton	*129 NDA*	Conduct to the prejudice of good order and discipline	Guilty	Reprimand and a $500 fine	N/A	Cold Lake, AB	Cold Lake, AB	English
42	SCM	Pte Normand-Therrien	*83 NDA*	Disobedience of a lawful command	Guilty	21 days' detention (suspended) and an $800 fine	N/A	Courcelette, QC	Courcelette, QC	French
			84 NDA	Striking a superior officer	Withdrawn					
			85 NDA	Insubordinate behaviour	Guilty					
43	SCM	MCpl Obele Ngoudni #1	*130 NDA (266 Criminal Code)*	Assault	Not Guilty	N/A	N/A	Courcelette, QC	Glebokie, Poland	French
			130 NDA (271 Criminal Code)	Sexual Assault	Not Guilty					
44	SCM	MCpl Obele Ngoudni #2	*129 NDA*	Act to the prejudice of good order and discipline	Guilty	$200 fine and 10 days of confinement to barracks.	N/A	Courcelette, QC	Glebokie, Poland	French
45	SCM	Sgt Ogston	*124 NDA*	Negligent performance of a military duty	Not Guilty	$200 fine and 30 days' stoppage of leave.	N/A	Gagetown, NB	Gagetown, NB	English
			129 NDA	Act to the prejudice of good order and discipline	Guilty					
			129 NDA	Act to the prejudice of good order and discipline	Not Guilty					
46	SCM	Cpl Parent	*130 NDA (264.1(1)(a) Criminal Code)*	Uttering threats	Guilty	Severe reprimand and a $3,000 fine	N/A	Kingston, ON	Kingston, ON	English
			130 NDA (264.1(1)(a) Criminal Code)	Uttering threats	Not Guilty					
47	SCM	MCpl Penner	*129 NDA*	Conduct to the prejudice of good order and discipline	Not Guilty	Reprimand and a $750 fine	N/A	Edmonton, AB	Republic of Latvia	English
			97 NDA	Drunkenness	Guilty					

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
48	SCM	Cpl Quirion	*130 NDA (266 Criminal Code)*	Assault	Withdrawn	Reprimand and a $1,500 fine	N/A	Alouette, QC	Cold Lake, AB	French
			95 NDA	Abuse of subordinates	Guilty					
			97 NDA	Drunkenness	Withdrawn					
49	SCM	Cpl Riddell	*130 NDA (271 Criminal Code)*	Sexual assault	Stayed	Severe Reprimand and an $1,800 fine	N/A	Courcelette, QC	Ali Al Salem, Kuwait	English
			93 NDA	Disgraceful conduct	Guilty					
50	SCM	Cpl Rollman	*84 NDA*	Striking a superior officer	Not Guilty	N/A	N/A	Gagetown, NS	Gagetown, NS	English
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Not Guilty					
51	SCM	MWO Scotto D'anielo	*86(b) NDA*	Quarrels and disturbances	Not Guilty	N/A	N/A	Courcelette, QC	Glebokie, Polande	French
			130 NDA (266 Criminal Code)	Assault	Withdrawn					
52	SCM	Sgt Shulaev	*97 NDA*	Drunkenness	Guilty	Reprimand and a $750 fine	N/A	Shilo, MB	Yavoriv, Ukraine	English
53	SCM	Maj Skrok	*129 NDA*	Neglect to the prejudice of good order and discipline	Guilty	Reprimand and a $1,500 fine	N/A	Victoria, BC	Singapore	English
			129 NDA	Neglect to the prejudice of good order and discipline	Withdrawn					
54	SCM	LS Smith	*130 NDA (5(1) CDSA*	Trafficking	Not Guilty	4 months' imprisonment and a $4,500 fine	DNA Order	Halifax, NS	Halifax, NS	English
			130 NDA (5(2) CDSA	Possession for the purpose of trafficking	Guilty					
			130 NDA (4(1) CDSA	Possession	Guilty					
			130 NDA (86(2) Criminal Code)	Stored a firearm in contravention of the storage, display, transportation and handling of firearms by individual regulations	Guilty					
55	GCM	Ex-Cpl Stuart	*129 NDA*	Conduct to the prejudice of good order and discipline	Withdrawn	Severe reprimand and a reduction in rank to Aviator	N/A	Cold Lake, AB	Cold Lake, AB	English
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
			90 NDA	Absence without leave	Guilty					

annex D
Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
56	SCM	Sig Truelove	*130 NDA (266 Criminal Code)*	Assault	Guilty	1 day detention (suspended)	N/A	Kingston, ON	Kingston, ON	English
			101.1 NDA	Failed to comply with a condition imposed under Division 3	Guilty					
57	SCM	MCpl W.	*83 NDA*	Disobedience of a lawful command	Withdrawn	Dismissal from the CAF with disgrace, 18 months' imprisonment and a reduction in rank to Private	SOIRA 20 years and DNA Order	Kingston, ON	Kingston, ON	English
			130 NDA (163.1(2) Criminal Code)	Making child pornography	Withdrawn					
			130 NDA (151 Criminal Code)	Sexual interference	Withdrawn					
			130 NDA (271 Criminal Code)	Sexual assault	Guilty					
			130 NDA (163.1(4) Criminal Code)	Possession of child pornography	Withdrawn					
			130 NDA (163.1(4) Criminal Code)	Possession of child pornography	Withdrawn					
			130 NDA (162.1(a) Criminal Code)	Voyeurism	Withdrawn					
			129 NDA	Conduct to the prejudice of good order and discipline	Withdrawn					
			90 NDA	Absence without leave	Withdrawn					
			97 NDA	Drunkenness	Withdrawn					
58	SCM	Cpl Whaley	*114 NDA*	Stealing	Guilty	14 days' detention and $3,000 fine	N/A	Greenwood, NS	Greenwood, NS	English
			130 NDA (334(a) Criminal Code)	Theft	Not guilty					
			130 NDA (355.2 Criminal Code)	Trafficking in property obtained by crime	Guilty					
			130 NDA (355.2 Criminal Code)	Trafficking in property obtained by crime	Stayed					
			116(a) NDA	Sold improperly public property	Guilty					
59	GCM	PO2 Wilks	*130 NDA (122 Criminal Code)*	Breach of trust by a public officer	Not guilty	9 months' imprisonment	N/A	London, ON	Thunder Bay, Ontario	English
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Not guilty					
			130 NDA (271 Criminal Code)	Sexual assault	Guilty					

annex D Court Martial Statistics

#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Guilty					
			130 NDA (122 Criminal Code)	Breach of trust by a public officer	Guilty					
60	SCM	Sgt Williams	*95 NDA*	Abuse of subordinates	Not guilty	Severe reprimand and $1,000 fine	N/A	St. John's, NL	St. John's, NL	English
			95 NDA	Abuse of subordinates	Not guilty					
			129 NDA	Conduct to the prejudice of good order and discipline	Guilty					
61	SCM	MCpl Wylie	*130 NDA (264.1(1) Criminal Code)*	Uttering threats	Not guilty	N/A	N/A	Edmonton, AB	Edmonton, AB	English
			130 NDA (264.1(1) Criminal Code)	Uttering threats	Not guilty					
			129 NDA	Act to the prejudice of good order and discipline	Not guilty					
			129 NDA	Act to the prejudice of good order and discipline	Withdrawn					
62	SCM	MCpl Young	*95 NDA*	Abuse of subordinates	Not guilty	N/A	N/A	St. John's, NL	St. John's, NL	English
			95 NDA	Abuse of subordinates	Not guilty					

annex E

Appeals to the Court Martial Appeal Court of Canada

CMAC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
566	Pte Déry	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
567	MCpl Stillman	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
571	Maj Wellwood	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
574	PO2 Wilks	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
577	Her Majesty the Queen	WO Gagnon	(1) Legality of Finding (2) Cross appeal- Constitutional Challenge	(1) Appeal granted (2) Appeal dismissed
578	Lt(N) Klein	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
579	Cpl Nadeau-Dion	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
580	Cpl Pfahl	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
581	Her Majesty the Queen	Cpl Thibault	(1) Legality of Finding (2) Cross appeal- Constitutional Challenge	(1) Appeal granted (2) Appeal dismissed
583	2Lt Soudri	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
584	PO2 Blackman	Her Majesty the Queen	Constitutional Challenge	Appeal dismissed
587	Her Majesty the Queen	Cpl Golzari	Legality of Finding	Appeal granted
588	Corporal Beaudry	Her Majesty the Queen	Constitutional Challenge	Waiting for Decision
589	Her Majesty the Queen	Cpl Hoekstra	Legality of Sentence and Severity of Sentence	Appeal granted
590	Ex-MCpl Edmunds	Her Majesty the Queen	Legality of Finding	Charges declared a nullity and quashed the conviction
591	Her Majesty the Queen	Cpl Cadieux	Legality of Finding	Waiting for Decision
592	Her Majesty the Queen	Capt Bannister	Legality of Finding	Ongoing

annex F

Appeals to the Supreme Court of Canada

SCC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
37701	MCpl Stillman, *et al*	Her Majesty the Queen	Legality of Finding (appeal as of right)	Leave to Appeal granted on 8 March 2018.
37972	WO Gagnon	Her Majesty the Queen	Legality of Finding (appeal as of right)	Notice of Appeal was filed on 5 March 2018. Hearing date scheduled for 16 October 2018.

annex G

Custody Review Hearings

#	ACCUSED	DATE	ALLEGED CHARGES		DECISION
1	Cpl Ayers	24 April 2017	90 NDA	Absence without leave	Released on conditions
			90 NDA	Absence without leave	
			101.1 NDA	Failed to comply with condition imposed under division 3	
2	Sgt Conway	27 April 2017	*90 NDA*	Absence without leave	Released on conditions
			90 NDA	Absence without leave	
3	Cpl McGregor	15 May 2017	*130 NDA (348(1)(b) Criminal Code)*	Breaking and Entering	Released on conditions
			130 NDA (348(1)(b) Criminal Code)	Breaking and Entering	
			130 NDA (348(1)(b) Criminal Code)	Breaking and Entering	
			130 NDA (163.1(4) Criminal Code)	Possession of Child Pornography	
			130 NDA (271 Criminal Code)	Sexual Assault	
			130 NDA (162(1) Criminal Code)	Voyeurism	
			130 NDA (162(1) Criminal Code)	Voyeurism	
			130 NDA (184(1) Criminal Code)	Interception of communications	
			130 NDA (184(1) Criminal Code)	Interception of communications	
			130 NDA (184(1) Criminal Code)	Interception of communications	
			130 NDA (162.1(1) Criminal Code)	Transmission of Intimate Images without Consent	
			130 NDA (191(1) Criminal Code)	Possession of a Device for Surreptitious Interception of Private Communication	
			130 NDA (191(1) Criminal Code)	Possession of a Device for Surreptitious Interception of Private Communication	
			130 NDA (334 Criminal Code)	Theft	
			130 NDA (354(1) Criminal Code)	Possession of property obtained by crime	

annex G Custody Review Hearings

#	ACCUSED	DATE	ALLEGED CHARGES		DECISION
4	Pte McGovern	12-13 July 2017	*130 NDA (264.1 Criminal Code)*	Uttering Threats	Released on conditions
			129 NDA	Conduct to the prejudice of good order and discipline	
			101.1 NDA	Failed to comply with condition imposed under division 3	
5	Pte Truelove	27 Oct -15 Nov 2017	*130 NDA (267(a) Criminal Code)*	Assault with a Weapon	Released on conditions
			102(a) NDA	Resist Arrest	
			130 NDA (270(1)(b) Criminal Code)	Assault of a peace officer	
			97 NDA	Drunkenness	
			101.1 NDA	Failed to comply with condition imposed under division 3	

ANNEX E:

Annual Report 2017-2018 Director of Defence Counsel Services

National Defence / Défense nationale

ANNUAL REPORT 2017- 2018



Director
Defence
Counsel
Services

Défense nationale

Service d'avocats de la défense
Centre Asticou, Bloc 300
241 boulevard Cité des jeunes
GATINEAU (Québec) Canada J8Y 6L2
Tél : (819) 994-9151
QGDN Ottawa, On. K1A 0K2

National Defence

Defence Counsel Services
Asticou Centre, Block 300
241Cité des jeunes Blvd
GATINEAU (Québec) Canada J8Y 6L2
Fax : (819) 997-6322
NDHQ Ottawa ON, K1A 0K2

30 May 2018

Commodore Bernatchez, CD
Judge Advocate General
National Defence Headquarters
101 Colonel By Drive
Ottawa, Ontario K1A 0K2

Commodore Bernatchez,

Pursuant to article 101.11(4) of the Queen`s Regulations and Orders for the Canadian Forces, enclosed please find the annual report of the Director of Defence Counsel Services. The report covers the period from 1 April 2017 through 31 March 2018.

Yours sincerely,



D.K. Fullerton
Colonel
Director of Defence Counsel Services

Canada

OVERVIEW

1. This report covers the period from 1 April 2017 to 31 March 2018. It is prepared in accordance with article 101.11(4) of the Queen's Regulations and Orders for the Canadian Armed Forces, which sets out the legal services prescribed to be performed by the Director of Defence Counsel Services and requires that he report annually to the Judge Advocate General on the provision of legal services and the performance of other duties undertaken in furtherance of the Defence Counsel Services mandate. The director during this period was Colonel Fullerton.

ROLE OF DEFENCE COUNSEL SERVICES

2. Under section 249.17 of the *National Defence Act* (*NDA*) individuals, whether civilian or military, who are "liable to be charged, dealt with and tried under the Code of Service Discipline" have the "right to be represented in the circumstances and in the manner prescribed in regulations." Defence Counsel Services is the organization that is responsible for assisting individuals exercise these rights.

3. The Director of Defence Counsel Services is, under section 249.18 of the *National Defence Act*, appointed by the Minister of National Defence. Section 249.2 provides that the director acts under the "general supervision of the Judge Advocate General" and makes provision for the JAG to exercise this role through "general instructions or guidelines in writing in respect of Defence Counsel Services." Subsection 249.2(3) places on the director the responsibility to ensure that general instructions or guidelines issued under this section are made available to the public. During this reporting period no general instructions were issued under this section.

4. The director "provides, and supervises and directs" the provision of the legal services set out in Queen's Regulations and Orders. These services may be divided into the categories of "legal advice" where advice of a more summary nature is provided, often delivered as a result of calls to the duty counsel line, and "legal counsel" which typically involves a more sustained solicitor-client relationship with assigned counsel and representation of an accused before a Military judge, a Court Martial, the Court Martial Appeal Court or the Supreme Court of Canada. Historically and occasionally, counsel have also appeared before provincial Mental Health Review Boards and the Federal Court.

5. Legal advice is provided in situations where:

a) members are the subject of investigations under the Code of Service Discipline, summary investigations, or boards of inquiry, often at the time when they are being asked to make a statement or otherwise conscripted against themselves;

b) members are arrested or detained, especially in the 48 hour period within which the custody review officer must make a decision as to the individual's release from custody;

c) members are considering an election between a summary trial or a court martial;

d) members are seeking advice of a general nature in preparation for a hearing by summary trial; and

e) a members is considering or preparing a Request for Review of the finding or punishment awarded to them at summary trial.

6. Legal representation by assigned counsel is provided in situations where:

a) custody review officers decline to release arrested individuals, such that a pre-trial custody hearing before a military judge is required;

b) there are reasonable grounds to believe that an accused is unfit to stand trial;

c) applications to refer charges to a court martial have been made against individuals;

d) individuals are appealing to the Court Martial Appeal Court or to the Supreme Court of Canada, or have made an application for leave to appeal and the Appeal Committee, established in Queen's Regulations and Orders, has approved representation at public expense; and

e) in appeals by the Minister of National Defence to the Court Martial Appeal Court or the Supreme Court of Canada, in cases where members wish to be represented by Defence Counsel Services.

7. The statutory duties and functions of Defence Counsel Services are exercised in a manner consistent with our constitutional and professional responsibility to give precedence to the interests of clients. Where demands for legal services fall outside the Defence Counsel Services mandate the members are advised to seek civilian counsel at their own expense.

8. Defence Counsel Services does not normally have the mandate to represent accused at summary trial. The military justice system relies upon the unit legal advisor, generally a Deputy Judge Advocate, to provide advice to the chain of command on the propriety of charges and the conduct and legality of the summary trial process, all with a view to ensuring that the accused is treated in accordance with the rule of law.

THE ORGANIZATION, ADMINISTRATION AND PERSONNEL OF DEFENCE COUNSEL SERVICES

9. Throughout the reporting period, the organization has been situated in the Asticou Centre in Gatineau, Quebec. The office has consisted of the Director, the Assistant Director, an appellate counsel at the rank of lieutenant-commander, and five regular force trial counsel at the rank of major/lieutenant-commander or captain. Throughout this period there were four reserve force legal officers in practice at various locations in Canada who assisted on matters part-time.

Administrative Support

10. Administrative support was provided by two clerical personnel occupying positions classified at the levels of CR-3 and AS-1, as well as a paralegal at the level of EC-1 providing legal research services and administrative support for courts martial and appeals. Moving forward some attention will be given to the question of whether our CR-3 and EC-1 positions should be reclassified to make them consistent with similar positions in the Directorate of Military Prosecutions and other divisions of the Office of the JAG and to appropriately reflect the work they perform.

Regular Force Resources

11. Defence Counsel Services are part of, and resourced through, the Office of the Judge Advocate General. This is also true of the prosecution service. For the first time since 2010 we became, this year, fully staffed in our regular force positions. This has allowed us greater control and stability in our finances, while maintaining an appropriate work-life balance.

Reserve Counsel

12. As indicated, at the commencement of the year there were a total of four reserve force defence counsel within the organization. During the year we enrolled two trial counsel at the rank of captain. As they complete their JAG mandated training and develop expertise within the court martial system they will be able to make their contribution as full members of our team.

13. Presently, our reserve force counsel are located throughout Canada; with two in Quebec, three in Ontario, and one in British Columbia. They are an important component of our organization which has made, and continues to make, a significant contribution to the Defence Counsel Services mandate.

Funding

14. During this fiscal year the following funds were spent.

FUND		EXPENDITURE
C125	Contracting (Counsel, Experts, and Services)	$181,573.00
L101	Operating Expenditures	$119,136.00
L111	Civilian Pay and Allowances	$179,767.00
L127	Primary Res Pay, Allowance, Ops, Maintenance	$333,612.00
TOTAL		**$814,088.00**

15. This amount is less than our projected business plan. This reflects the fact that, commencing in October of this reporting year, we were fully staffed with regular force trial counsel and therefore able to accommodate in a more cost-effective manner the increased activity resulting from the nomination of an additional military judge, the decision of the Supreme Court of Canada in *Jordan* and the disciplinary cases generated by OP Honour.

16. Within Defence Counsel Services there are three methods of service delivery; regular force counsel, reserve force counsel and, pursuant to subsections 249.21(2) and (3), of the *National Defence Act*, contracted counsel. Regular force counsel are the most cost effective means of service delivery and do not require the expenditure of budgeted funds. The use of reserve force counsel and contracted lawyers come at a cost. We have tried to restrict the use of contracted counsel to situations of conflict of interest.

TRAINING, SERVICES, AND ACTIVITIES

Professional Development

17. The Federation of Law Societies' National Criminal Law Program remains the primary source of training in criminal law for counsel with Defence Counsel Services. In July 2017, six regular force counsel and two reserve force counsel attended this program, which was held in Vancouver, British Columbia. Additionally, in February 2018, most regular and reserve force counsel attended an annual one-day in-house training program in Ottawa which dealt with a variety of issues relevant to our mandate. Certain other courses sponsored by the Office of the JAG, the Canadian Bar Association, the Criminal Lawyers' Association and the Department of Justice were attended by individual counsel in order to meet their specific professional needs.

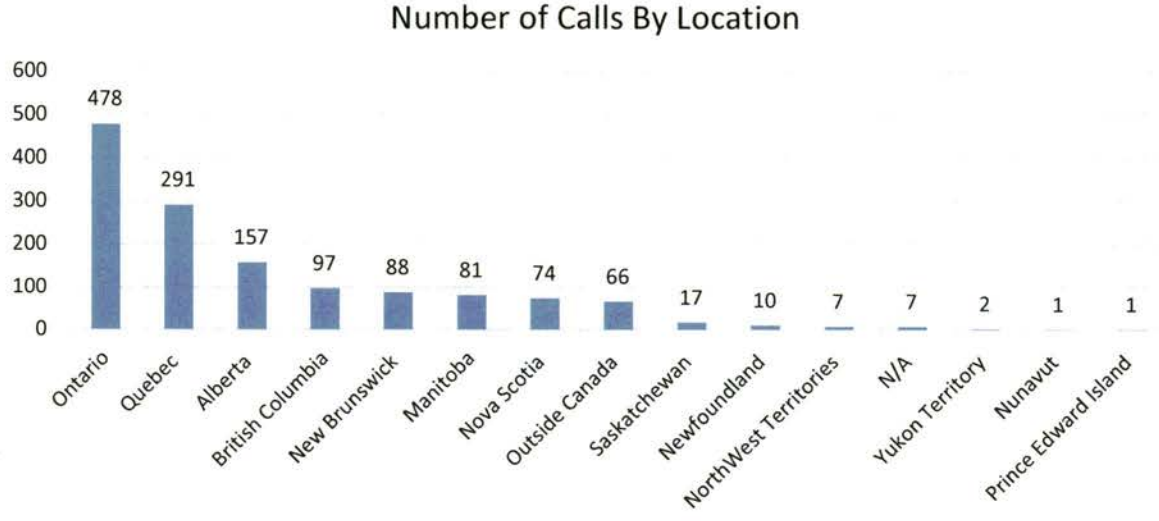
Duty Counsel Services

18. Legal advice is available twenty-four hours a day, seven days a week, to members who are under investigation or in custody. Legal advice is typically provided through our duty counsel line, a toll-free number which is distributed throughout the Canadian Armed Forces and is available on our website or through the military police and other authorities likely to be involved in investigations and detentions under the Code of Service Discipline.

19. During the reporting period, Defence Counsel Services recorded 1,378 calls on the duty counsel line. Services are provided in both official languages. The language of service was divided generally between English for 1,013 calls and French for 365 calls as depicted in the chart below.



20. The calls ranged in duration but, on average, lasted for approximately 15 minutes. Calls originated from every Canadian province and territory, as well as various locations outside of Canada from members serving abroad. The number of calls by location is illustrated in the graph below.

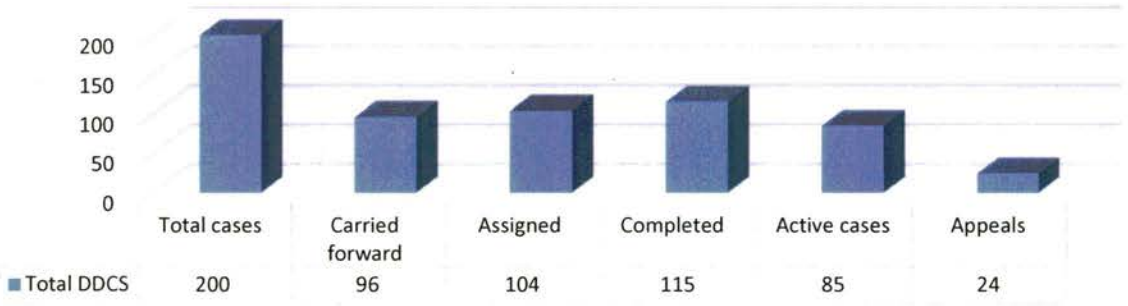


Court Martial Services

21. When facing court martial, accused persons have the right to be represented by lawyers from Defence Counsel Services at public expense, they may retain legal counsel at their own expense, or they may choose not to be represented by counsel.

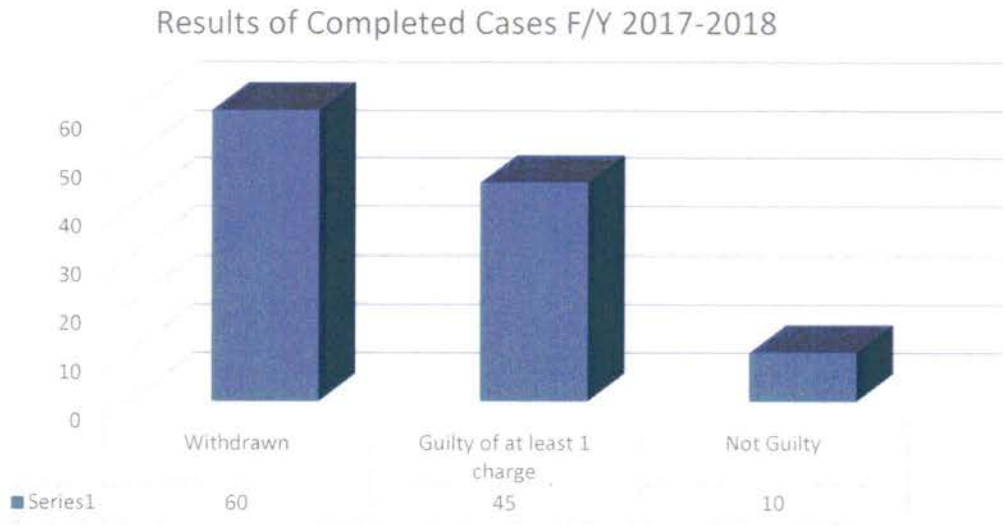
22. During this reporting period Defence Counsel Services provided legal representation to accused persons in 200 files referred for penal prosecution. This number includes 96 cases which were still awaiting disposition at the commencement of the year and were carried over from the previous reporting year. It also includes 104 new cases which defence counsel were assigned during this reporting period. It does not include the twenty-four clients represented by defence counsel on appeal.

DDCS Casefiles 01 Apr 2017 to 31 Mar 2018



23. Of these 200 client files open this year, 115 were completed during the reporting period. Of these, 60 had their charges withdrawn without trial but after assignment of counsel and some level of intervention by defence counsel. This involvement ranged from simple requests for disclosure, to informal discussions with prosecution respecting reasonable prospect of conviction or public interest in proceeding, to more formal motions and withdrawal after convening and assignment of a military judge.

24. Of the remaining 55 cases, our records indicate that in 10 of these cases the accused was found not guilty of all charges and in 45 cases the accused was either found guilty or plead guilty to at least one charge. Of the cases completed during this reporting period, approximately 60% of those who requested representation by Defence Counsel Services were able to move forward without conviction.



25. Under the *National Defence Act*, the Director of Defence Counsel Services may hire civilian counsel to assist accused persons at public expense in cases where, having received a request for representation by Defence Counsel Services, no uniformed counsel are in a position to represent the particular individual. This occurs primarily as a result of a real or potential conflict of interest, often involving Defence Counsel Service's representation of a co-accused. It may occur for other reasons as well. During this reporting period civilian counsel were hired by the director to represent persons in 14 cases. Four contracted cases proceeded to court martial for disposition. In two cases the charges were withdrawn by the prosecution prior to convening. Two cases involved counsel at the investigative stage and were dropped short of charges. The 4 remaining cases are awaiting prosecutorial decision as to whether to proceed.

Appellate Services

26. Twenty-four appeals were touched on at various points during this reporting period. This includes 17 cases which, at some point during this reporting year, were open before the Court Martial Appeal Court. It includes 7 cases which are presently before the Supreme Court of Canada. Before both courts, cases have been grouped together by issue and we are presently before the Supreme Court of Canada on two issues: the scope of the exception the right to trial by jury under section 11(f) of the *Charter*; and the application, to a charge of sexual assault, of the defence of honest but mistaken belief in consent.

27. Where a member is the appellant and is requesting representation at public expense by Defence Counsel Services, they are required to make an application to the Appeal Committee, established under *Queen's Regulations and Orders*, who assess whether the appeal has merit. During this reporting period one member made a request to the Appeal Committee to be represented on his appeal to the Court Martial Appeal Court. This request was approved. Successful requests to the Appeal Committee were also made for representation at public expense on both issues before the Supreme Court of Canada.

Charter challenge under s. 11(f)

28. Leave to appeal to the Supreme Court of Canada has been granted in *Stillman et.al.* (SCC File no. 37701) on the issue of the scope of the military exception to the right of Canadians to the benefit of trial by jury as guaranteed under section 11(f) of the *Canadian Charter of Rights and Freedoms*.

29. On 3 June 2016, the Court Martial Appeal Court had rendered its decision in *R. v. Royes* 2016 CMAC 1 and concluded that subsection 130(1)(a) of the *National Defence Act,* which allows all federal offences committed in Canada by those subject to the Code of Service Discipline to be tried by court martial, did not violate the right to be tried by jury guaranteed under subsection 11(f) of the *Charter*. Leave to appeal to the Supreme Court of Canada was denied.

30. At the same time as *R. v. Royes* was unfolding, twelve cases including *Stillman* were under reserve by a different panel of the Court Martial Appeal Court on this same constitutional issue. This panel followed the decision in *R. v. Royes* but expressed a number of concerns within their decision. Leave to appeal to the Supreme Court of Canada has been granted. *Stillman,* when addressed by the Supreme Court, should define the scope of this exception and clarify the rights of those tried by courts martial.

31. More recently, a third panel of the Court Martial Appeal Court was again seized of this same constitutional issue in the case of *Cpl Beaudry* (CMAC-588). This decision is pending. The Supreme Court of Canada has now directed that the appellants in *Stillman et.al.* wait until the CMAC has published the decision in *Beaudry* before filing the appellants factum in *Stillman et. al.* This will have the effect of placing all of the outstanding jurisprudence on this issue before the Supreme Court of Canada as they address this issue.

Other appellate cases

32. During this reporting period, four other Court Martial Appeal Court appeals raised substantial questions respecting the administration of military law. These were the cases of *Maj Wellwood* (CMAC 571), *Cpl Golzari* (CMAC 587), MCpl Edmunds (CMAC 590) and WO Gagnon (CMAC 577).

33. In *R. v. Wellwood*, the issue was whether a superior officer obstructed a member of the military police in violation of section 129 of the *Criminal Code of Canada*. The superior officer was engaged in a military exercise when she was informed that one of her subordinates had been experiencing suicidal thoughts. She immediately took action to have that member located and assisted.

34. At the same time, the military police received a 911 call indicating that there was a member involved in the exercise who had called home while or after experiencing suicidal

thoughts. The military police attended at the unit lines and were told that the chain of command was aware of the issue and were addressing it.

35. The attending military police member decided to take over management of the issue and a conflict of authority emerged between the major, who wanted to remain in charge of the welfare of her subordinate, and the military police corporal who viewed the welfare of the member as a police matter over which he had primary responsibility. The corporal perceived the officer as obstructing him in the performance of his duties and laid a criminal charge to that effect.

36. The officer was convicted at trial. The matter was heard at the Court Martial Appeal Court in April 2016. The decision of that court was rendered in June 2017. The Court Martial Appeal Court quashed the conviction and ordered a new trial on the basis that Military Judge's instructions did not adequately inform the panel of Maj Wellwood's own obligations towards the welfare of her subordinate. The prosecution decided not to retry.

37. In *R. v. Golzari*, the main issue was whether an off-duty soldier, who was denied access to the main gate of Canadian Force Base Kingston because he refused to say where he was going, had committed an act to the prejudice of good order and discipline contrary to s. 129 of the *National Defence Act*.

38. At trial, the accused was acquitted because the prosecution had failed to prove that the member had a positive duty to provide destination details to the gate sentry. On appeal, the prosecution argued that proof of such duty was not required under section 129 of the *National Defence Act*.

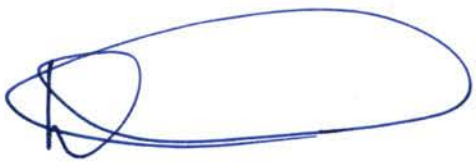
39. The prosecution argued not only that proof of duty was not required under section 129 but further that, in most cases, proof of prejudice to good order and discipline is a matter of judicial notice, to be inferred by the military judge, based on his own knowledge of service life and that, as such, it requires no evidence. In a decision released in June 2017 the Court Martial Appeal Court agreed. This decision appears to be in some tension with relevant Supreme Court of Canada jurisprudence and courts martial appear to be divided on how it should be interpreted and applied.

40. In *R. v. Edmunds* the appellant was found guilty, at court martial, of four counts of fraud contrary to section 380 of the Criminal Code. He was sentenced to 30 days incarceration and released pending appeal. He appealed, among other reasons, on the basis that the charges and thus the convictions were void given that the charge-layer did not have, at the time that he signed the record of disciplinary proceedings, reasonable grounds to believe the offences had been committed. In a decision, given from the bench, the Court Martial Appeal Court agreed with this position. This case has the effect of reaffirming some long-standing jurisprudence surrounding personal responsibility for the signing of the charging document as found in *Nye v. The Queen* (1972) C.M.A.R. vol. III p. 85.

41. In *R. v. Gagnon* the member was found not guilty of sexual assault before a General Court Martial. The Director of Military Prosecutions appealed on the basis that the defence of honest but mistaken belief in consent should not have been left to the panel. A majority of the Court Martial Appeal Court agreed and ordered a new trial. The Chief Judge of the CMAC dissented, ruling that there was an air of reality to the defence and that the defence was properly considered by the panel. WO Gagnon filed his appeal as of right with the Supreme Court of Canada and a tentative date for hearing has been set for October 2018.

CONCLUSION

42. Again it has been a challenging year for those within Defence Counsel Services. As in past years, the priority has remained the provision of legal advice and legal counsel to qualifying members of the military community who request our assistance. It is a privilege to assist these members. They are often facing a very difficult period within their lives and careers. Many continue with their careers and their contribution as dedicated and reliable members of the military community. For others, their charges are part of their transition from service to civilian life.



D.K. Fullerton
Colonel
Director of Defence Counsel Services

30 May 2018