

CMCRT – Summary of In-Person Consultation with Lieutenant-Commander (Retired) Levesque, Ph.D.

On 12 June 2017, three members of the CMCRT conducted an in-person targeted engagement with retired Lieutenant-Commander Pascal Levesque, formerly a Canadian Armed Forces legal officer with extensive experience both as defence counsel at courts martial, and in the development of military justice policy.

Mr. Levesque began his input by noting that the court martial system must be ready for a large scale armed conflict at any time, and must be capable of operating effectively in such a situation. He also suggested that the military justice system serves two purposes – a public order and welfare purpose and a disciplinary purpose – while the civilian criminal justice system only serves the former purpose.

Regarding the structure of prosecution and defence counsel services, Mr. Levesque was of the view that there are as many reasons to civilianize these offices as there are to keep them in their current form, so the balance should weigh in favour of the status quo. However, he suggested a number of changes to these offices that he felt would enhance them, including all of the following:

- Create a sub-occupation of “Litigator” within the military legal occupation, that requires at least five years of experience as prosecutor or defence lawyer as a prerequisite;
- Allow litigation counsel to remain in their postings indefinitely, and compensate them; and,
- Provide greater control over assessment and promotion of litigation counsel to the respective litigation Directors (DMP and DDCS, respectively).

Mr. Levesque also noted that the JAG’s multiplicity of roles under the NDA created clear conflicts in certain cases. In particular, the JAG’s role as legal advisor to government on military justice matters, superintendent of the administration of military justice, supervisor of the DMP, and supervisor of the DDCS created a web of relationships that were inherently problematic. Mr. Levesque likened this situation to a game of Chess, where the JAG makes all the rules, then controls the Black team’s plays, then control’s the White team’s plays. Mr. Levesque felt that it would be far more principled to have the DDCS organization fall under the Minister of National Defence’s supervision, but with an independent Board of Directors appointed to oversee the operation of the DDCS organization.

The CMCRT asked Mr. Levesque about how rank differentials (e.g.: between a judge and an accused person, or between a prosecutor and a witness for the defence) might have an adverse impact within the court martial system. Ultimately, Mr. Levesque was of the opinion that the accuracy of testimony and the fairness of proceedings would not be affected by the different ranks of participants in a court martial in Canada. He acknowledged that such an effect could exist in other systems where there is greater deference to rank and social class distinctions, however.

With respect to the conduct of courts martial in deployed theatres of operations, Mr. Levesque noted that it would ultimately be up to the operational military commanders to decide whether the CAF needs courts martial to be deployable, but Mr. Levesque seemed to think that this would be necessary. In particular, in a state of total war, he noted that a deployed system for deterring and dealing with misconduct would be essential in order to avoid incentivizing misconduct by soldiers as a means of getting back to safety in Canada.

Mr. Levesque proposed the idea of having regionalized military judicial districts across Canada where courts martial could take place, in addition to an “expeditionary” district for dealing with offences that take place outside of Canada.

When the CMCRT noted that most CAF deployments are six months in duration, and asked Mr. Levesque whether he thought it would be possible to hold courts martial within six months of an offence taking place so that it would make sense to hold them in a deployed theatre of operations, Mr. Levesque was unequivocal in saying that this would be impossible within the current court martial system. However, he suggested that it might be possible if the system were sufficiently changed by, for instance, removing unnecessary steps between the laying of a charge and the receipt of that charge by the DMP.

Mr. Levesque also made a number of observations about summary trial reforms that were outside of the scope of the review.