

**Annex O
to CMCR Draft Interim Report
dated 21 July 2017**

Tribunals and courts

At first glance, it seems clear that a military judge, because of his or her experience, is better suited to judge a case involving a military member, but I do not think that that is true. I think that civilian judges have a thorough enough knowledge to preside over these cases. It is important to understand that each case is unique, and that the experience of civilian judges, who, statistically, preside over more cases than military judges, can work in their favour. Appointing civilian judges to our courts martial would lend a certain transparency in the eyes of the public. In more “military” cases, such as members breaching their duty in times of armed conflict, there is nothing preventing a civilian judge from requesting the assistance of a “subject matter expert”; that person could be designated by the Judge Advocate General. As to the question of whether we should ask courts martial to deploy, I think that the answer is no. From personal mission experience, I think that it is preferable for the accused and the rest of the personnel on deployment that the court martial proceeding be held in Canada following the repatriation of the accused. I understand that all accused parties are innocent until proven guilty, but I think that if a member is judged for an incident, that could be a distraction and a danger to the operation and to colleagues.

Prosecution service

Does the Director of Military Prosecutions (DMP) have to be military? No, and at the risk of repeating myself, the fact that the DMP is a civilian could lend transparency in the eyes of the public and the military population. For example, if we look at recent high-profile cases of high-ranking military members being prosecuted, it appears that their sentences were “light” compared to the average citizen/military member. We can also analyze what has happened in the past in other DND organizations, such as the Canadian Forces Grievance Authority. That organization is a perfect example of the fact that qualified civilian personnel can work in a military environment and understand all of its issues. There is nothing preventing our military lawyers from doing the same and helping a civilian DMP understand and apply the rules and policies in effect. Our reward for such a practice would be transparency.

Defence Counsel Services

*The idea of having defence counsel services within DND is excellent. Not all civilian lawyers understand the realities and operational and military issues, and accused military members need the assurance of periodic consultations or a complete defence. **However, why do military members charged in a court martial not pay the cost of their defence?***

For all the cases sent to the DMP for analysis, the DMP makes sure that the charges represent a certain chance of culpability, meaning that the chance of conviction of delinquent military members is very high. I am conducting this analysis without any statistics; this is just my interpretation. I am having difficulty with the explanation that members charged in a court martial have the right to a full defence at taxpayer expense. While we do not want our members paying a fortune in lawyer fees, I think that a system comparable to Legal Aid should be implemented so that members are required to pay for part of their defence.

Offences under military law

I believe that military justice has its place in all types of offences, whether they are service offences (insubordination, desertion, etc.) or civilian ones (assault, theft, etc.). Civilian justice is unfortunately overloaded, and has trouble getting through all the charges filed. As you know, military justice needs to be fair and quick so that troops understand the importance of behaving appropriately and respecting authority. This principle is applied particularly in garrison for education purposes and on operations and/or deployments for CoC to demonstrate its seriousness.

Punishments, sanctions and sentencing laws

For the sake of a level field with the civilian population, military punishments should be the same as those handed out in civilian courts. The military sentences listed on the website are strictly reserved for military members; I believe that this is not just or fair. Why can a CAF officer be “dismissed with disgrace from Her Majesty's service,” while a senior federal official is not at the same risk? **Is the impact greater on the Canadian public if an officer does something reprehensible, or a senior official?** Unfortunately, our sentencing system does not provide the flexibility of the 2000s to the chain of command. Civilian justice enables judges to impose weekend prison sentences, while the CAF do not. However, with the adoption of bill C-15, we will have that power. Operations will not be disturbed, and we will be able to punish delinquents appropriately.

Law of evidence

I prefer not to comment on this because I do not know enough about the subject.

Rights, grounds and mechanisms of appeal

I may be repeating myself a bit, but I believe that military expertise is required in all stages of military law. As I have mentioned, I believe that delinquent military members can and should be judged by civilian judges, but military expertise may be requested and required to clarify operational questions. Because the appeal system is based on a group decision, a military member should be included in the group of judges to avoid having defence lawyers base their defence on the fact that the group is unaware of the realities of the military system. Procedural fairness would be ensured by having at least one military judge (or more).

Specific groups and the military justice system

I believe that courts martial should not have special dispositions for specific groups such as children etc. These specific cases should go to civilian courts, especially in cases involving children (cadets), spousal abuse (women), etc.