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Distribution List

MARPAC Comments for the Court Martial Comprehensive Review

1. Feedback was solicited from all MARPAC L3s and the results are consistent with other commentary on Courts Martial and the Summary Trial process. Overall, the perception is that the military justice system is a fair method of maintaining good order and discipline within the CAF, but there is room for improvement to enhance the processes.
2. The comments received have been grouped into the following categories: timeliness of the process; training, general deterrence; and attendance and electable offences/summary trials. In addition to these themes, all units noted that the Military Justice System is not broken, needs to remain within the realm of the Military and should not become a Civilian System.
3. Timeliness – The Courts Martial system is seen as a very time-consuming process, with long delays, from the laying of the charge to the actual conclusion of the process. There is a widespread concern that the system is overburdened, and it takes in excess of two years to get to a Court Martial date. This is universally viewed as far too long and not serving the needs of the population. Over the last several years, the perceived limited capacity of military judges has led to unacceptable and lengthy wait times, which goes against the fundamentals of due process regarding being tried in a reasonable time frame. Furthermore, timely, swift, and balanced justice provides an effective deterrent, promotes good order and discipline, and counters many aspects of discipline which negatively affect morale and welfare. If Superior Commanders were delegated authority to preside over some of the lesser offences, with appropriate AJAG advice, this would significantly reduce the amount of mistrials and dropping of charges that occurs as a result of the current system being overly burdened due to lack of resources.
4. Training – While the process for training Presiding Officers is generally perceived as being excellent, there needs to be additional training for those who are assigned as Assisting Officers. The view is that it doesn't have to be a traditional course but could be a specific module on DNDLearn, to help Junior Officers and Petty Officers better understand their role as Assisting Officers. Some units also noted that additional training for those that conduct Unit Disciplinary Investigations would be most helpful.
5. General Deterrence – The widespread perception amongst the junior sailors is that election of Court Martial over Summary Trial currently provides members with a much greater chance of getting acquitted of their charges, particularly if they enlist the services of a civilian lawyer, who are perceived to have a better understanding and application of trial law than military lawyers. Many of the acquittals over the last decade are perceived to be due to “technicalities”, and members of the CAF view the accused as having gotten away with

infractions. There is a perception that the advantage will go to the accused if Court Martial is elected in that the investigation will be scrutinized against a civilian legal standard that military investigators can't meet. The belief is that a competent lawyer will be able to poke enough holes in the conduct of an investigation that charges will be reduced or discarded. The current commonly held perception is that election for Court Martial has been used as a tactic to either delay proceedings until a member is released, or in hopes that it will be thrown out/dismitted due to a backlog. This may be why, more often than not, alleged offenders tend to choose Court Martial over Summary Trial.

6. Attendance – One of the strengths of the Military Justice system is that the CAF encourages participation, both through attendance at proceedings and making public the results and sentences of those proceedings. The publicity, even of minor infractions, ensures personnel have clear understanding of the consequences of their actions; this is not achieved as effectively in the civilian courts. It serves as a deterrence mechanism that helps maintain order and discipline, and reminds all personnel of the standards they are expected to maintain. The formal conduct and military tradition in Summary Trials and Courts Martial also serves as a reminder to all that the CAF is held to a higher standard for very important reasons. All units need to continue to ensure leaders attend Courts Martial to better understand the process and the outcomes.

7. Electable offences and Summary Trials – All units noted that there needs to be a review of what types of offences that are electable and which are not, with a view to shortening the list of electable offences. Also, for the sentencing phase of both Summary Trials and Courts Martial, punishment discretion can lead to inconsistency across the Formation/RCN/CAF. Some units suggested new sentencing guidelines/ranges should be reviewed/considered. Some sailors feel that the fines are too low based on current rates of pay, with the consensus being that fines need to be increased dramatically to have an effect. Powers of Punishments for all levels in the Summary Trial process should be increased, and remove the option for election for Court Martial for some offences, in order to better deal with them at lower level where they belong.

Conclusion

8. The Military Justice System is not broken but is in need of some amendments and streamlining of process. The continued engagement of the Chain of Command in this process will be critical to the success of any changes and in communicating the changes to all members of the Formation. Should you have any questions, please do not hesitate to contact my Chief of Staff, Capt(N) Doug Young, at 250-363-5898.

//Original signed by//

Art McDonald
Rear-Admiral
Commander

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