



Défense nationale

National Defence

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

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

Annex Y  
to CMCRT Draft Interim Report  
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QGDN Ottawa, On. K1A 0K2

NDHQ Ottawa ON, K1A 0K2

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#### Distribution List

#### DEFENCE COUNSEL SERVICES AND THE COURT MARTIAL COMPREHENSIVE REVIEW

- Ref A: Letter: JAG/ADM(Review Services) 6 October 2016
- B. Letter: ADM/(Review Services) / JAG 19 October 2016
- C. Request for Interview: Deniz Pactunc / DDCS 9 January 2017
- D. ADM(Review Services) Review of Court Martial System Interview Questions DDCS
- E. Report of the Special Advisory Group on Military Justice and Military Police investigation March 1997
- F. Report of the Defence Counsel Study Team on the provision of Defence Counsel Services in the Canadian Forces, 15 August 1997

1. I am writing further to refs A through D which solicited responses to some very specific questions about the Military Justice System and the defence counsel services provided to members of the Canadian Armed Forces. As I understand that the final product of this review will be solicitor / client privilege (which excludes the defence). Therefore I have sent my response to the broader audience of stakeholders.
2. The Court Martial Comprehensive Review has focused on the cost of delivering defence counsel services. Defence Counsel Services (DCS) has not spent more than the funds identified in the Office of the JAG (OJAG) Business Plan and which were budgeted for our use. As indicted below, decisions made within the OJAG but outside DCS control can cause our costs to fluctuate significantly.
3. Similarly, the Court Martial Comprehensive Review has highlighted the reduced number of Courts Martial, which are down from the 60 to 70 per year, the traditional steady state of the system. Nonetheless, this reduced case flow came at a time when there were five new captains posted into the Military Prosecution Service. It came at a time when we were down from four to three judges and when one of those three judges was new and involved in training. Further, it came at a time when the most senior of our judges had allegations made against him (investigation by both a Judicial Committee and an investigative agency do not appear to have established an evidentiary foundation for these) which took him out of commission for a period of time, leaving only one fully functioning judge. These circumstances will pass.

4. The real issue with the Military Justice System today is delay. Defence Counsel have very little ability to control this delay. I trust that in the course of answering your questions below I will shed some light on this central issue of delay.

Question 1.

Could you please describe your role and responsibilities as the Director of Defence Counsel Services?


5. The statutory foundation for my role and responsibilities as Director of Defence Counsel Services is found at section 249.19 of the National Defence Act which reads as follows:

249.19 The Director of Defence Counsel Services provides, and supervises and directs the provision of legal services prescribed in regulations made by the Governor in Council to persons who are liable to be charged, dealt with and tried under the Code of Service Discipline.

6. This statutory mandate followed concerns that are reflected in the reports of both the Special Advisory Group on Military Justice and Military Police investigation Services, established by the Minister of National Defence in January of 1997(ref E) and the Report of the Defence Counsel Study Team on the Provision of Defence Counsel Services in the Canadian Forces (ref F).

7. Ref E, at recommendation 7, emphasized the importance of the independence of defence counsel, taking the position that "...whenever a Canadian Forces member is entitled to legal advice under the Code of Service Discipline, the Judge Advocate General provide such advice in a manner that is independent of the Judge Advocate General's prosecution and judicial functions."

8. Ref F developed a list of essential requirements for an independent defence counsel system and stated that the system must:

- "a. meet the requirements of Canadian law for the provision of such services;
- b. be, and be seen by Canadian Forces (CF) members as, independent and acting at all times in their best interests;
- c. be able to provide services in the official language of choice of the member wherever the need for legal advice arises;
- d. meet the military need for a just, speedy, and efficient disciplinary system;
- e. be portable, i.e., be usable in all circumstances in which the CF may find itself both in Canada and outside Canada, including in circumstances of peace, peacekeeping and war; and 
- f. be practical and affordable."

9. Thus, my role is to ensure that the services to which members have a right under section 249.17 of the NDA, and which I am responsible to “provide, supervise and direct” under section 249.19 of the NDA, are delivered in a manner that meets the requirements set out at subparagraphs a to f above. I have little ability to ensure the same with respect to the investigative, charging, referral or preferral stages within the Military Justice System.

#### Question 2

What are some of the key challenges for your organization?

10. We have challenges in several of these areas. With respect to the requirements at subparagraph 8a and 8b above we have the requirements to both be and be seen to be independent of other parts of the JAG Branch. This is stressed in both the Dickson Report and in the Report of the Defence Counsel Study Team. The Defence Counsel Study Team highlighted a number of benchmark or mechanisms to achieve this independence.

11. More recently, the independence of Defence Counsel has been the subject of litigation before the Supreme Court of Canada in the case of Canada (Attorney General) v. Federation of Law Societies of Canada, 2015 SCC 7. There is a “principle of fundamental justice” under section 7 of the Charter that the state cannot function in a manner that undermines, either in fact or in the perception of a reasonable person, defence counsel’s duty of commitment to their clients’ cause. There are challenges with respect to the present governing structure of the JAG Branch that engage these principles, given that defence counsel remain under the command of the JAG, a member of the executive, who controls their pay, posting and annual assessment notwithstanding the fact that their clients are litigating against the organization. Ref F had proposed some very practical solutions to these issues which were never implemented.

12. With respect to the requirement at 8(d) above, the post 1998/99 system has had chronic challenges with respect to speed and efficiency. In part, this is inherent in the multistage process of moving a matter to trial. The stages (investigation, charging, election, referral, post-charge screening, preferral, convening, and trial) take place serially and flow through a variety of different actors. All represent responsibilities to make decisions, take actions or add documents to the file and each stage can, quite reasonably (given competing pressures) take days, weeks or months to complete. As mentioned above, the defence has little or no influence on any of these stages except trial.

13. In a recent court martial there was affidavit evidence filed by the prosecutor indicating that it took an average of 3 months for a case to arrive at the prosecutor’s office after it was charged and a further 3 months for their review and referral. Changing charges during this process is routine. Thus it is, on average, 6 months from the date of charging, which may itself occur after a lengthy investigation, until the accused actually knows the charges on which he will be tried.

14. As I am writing this there are recently arrived cases that are sitting on the corner of my desk. These are “requests for counsel”. They have come straight from the units accompanied by the charging document (Record of Disciplinary Proceeding). They indicate whether the accused would like to have DDCS counsel or has some other intent. These files were charged on 5 October 2016, 14 December 2016, and 7 Dec 2016. If they are processed according to the average speed, then the accused are likely to know what their actual charges will be in April 2017, June 2017, and June 2017. The dates of the actual offences are 19 May 2016, 22 Feb 2016, and 12 December 2014. By the time the accused will know what their

actual charges are in these cases; the offences will be 11 months (stealing), 16 months (transmitting intimate image without consent) and 33 months old (sexual assault).

15. Defence counsel have certain duties to gather information and review the case with the clients before they can advise with respect to reasonable outcomes and appropriate settlement and the passage of time impedes all parts of this process. Delay makes everyone's job more difficult and both the accused's and complainant's lives more stressful. It needs to be tackled right at the beginning of the process. It is difficult to address at the end. If these cases are processed in the average time for referral, convening and trial they will be in court 21 months, 26 months and 43 months after the events with which they dealt. We recently had a Commanding Officer testify that unless matters were dealt with within 6 months they had no effect on discipline within a unit.



16. The various counsel within DJAG/MJ have, over the years, considered ways to change the system but these appear to have sometimes exacerbated the problem of delay. I will give just three examples:

a. Section 162 of the *NDA*, mandating the "duty to act expeditiously" in respect of charges under the Code of Service Discipline was amended in 2008 in order to address the issue of delay and, specifically, to alleviate the possibility that cases would be lost because of delay. The solution which was decided upon was to amend the section such that it no longer required that offences be investigated expeditiously. Since this amendment, the duty to act expeditiously has covered only the period subsequent to an actual charge being laid.

b. QR&O 111.11, which requires the prosecution to notify the accused of proposed witnesses, as well as the "nature of the proposed evidence of that witness" has been, as a matter of policy, far less diligently followed over time. This is in spite of the fact that this provision has the significant advantage of forcing both the prosecution and the defence to understand the issues of the case early in the preparation process, thus allowing for a meaningful dialogue with respect to litigation or settlement.

c. We have, with the new system, moved to a two-track charge screening process with different standards for summary trials and courts martial. This means that, when a member elects court martial, there will often be a hopeless case released into the referral process. That case will require significant expenditures of energy by both prosecution and defence to contact and talk to witnesses and the only thing that they will find out is that the case never had any 'reasonable prospect of conviction' outside a hopeful expectation by lawyers at the unit that the accused might elect summary trial. This two-track system was reviewed in 2008 and the policy decision was to maintain it.

### Question 3

We noted that DDCS uses reservists and civilian counselors as alternative sources of defence counsel.

a. Do you believe that the current workload of the defence counsel is efficient?

17. We are working within a system where investigations, even for quite minor offences, can take months and where disclosure is often provided in a stack of discs or boxes of repetitive papers, and is often provided after the charges are preferred. It is a system in which the

charges quite regularly change through the referral process and, if the charges don't change, the particulars do. The work of defence counsel really cannot start until he/she has the final charges and the disclosure. Defence counsel are at the downstream end of a system which has traditionally focussed less on efficiency and more on displaying, at a "court martial event", a public manifestation of retributive justice with the goal of general deterrence. As a CAF, we put significant resources into every stage of the process with the goal of conviction and, within this context, I have no doubt that the work of defence counsel is efficient.

b. Are there challenges with the workload?

18. There are challenges with the workload. They do not arise per se from the number of trials within the system but rather from the slowness with which cases progress within the system and the number of clients on hold at any time within the court martial process. It will take months just to know what the final charges in any given case will actually be. It will take months to get disclosure within the process and any further requests for disclosure will be actively resisted as a matter of practice. This will result in significant unnecessary work and motions. Accused clients have custody review conditions and the issues that arise with those. Some will have multiple custody review hearings. They have the right to silence issues that will arise within the context of parallel administrative and disciplinary processes. They have the full panoply of issues to which they are entitled to legal advice within the context of waiting for an eventual trial.

19. We have completed 82 files since the beginning of the fiscal year. At the present moment we have 87 files open within the office. This is less than normal since recently many charges have been quite aggressively terminated, perhaps because of the Supreme Court decision in *Jordan*. Each file represents a client who has had charges referred against them. Each file involves a lawyer who is assigned to them to look after the legal issues associated with the charges and preparation for the trial. There are clients whose cases go smoothly. There are clients who will have been arrested multiple times, with all the attendant requirements, as they go through the stressful months of waiting to know what their charges will ultimately be and what will happen to them at trial.

20. The largest file load that any of the trial counsel is carrying at this moment is 23.

c. Could you please explain some of the challenges you experience finding alternative sources to counsel?

21. We have three alternative sources of counsel, which are discussed at ref D and available under the *NDA*. They are regular force counsel, reserve force counsel and civilian counsel. The challenge in the use of the various alternatives is the variance in incremental cost between them. Regular Force counsel are cost-transparent to us (although not necessarily to the system). Reserve Force counsel are available but come at an incremental cost. Civilian counsel can be costly and I have tried to use them only where genuinely required, either because we represent a co-accused or are otherwise in a conflict of interest. More recently, I have had to use them because of some staffing decisions outside of my control.

22. At the appellate level, civilian counsel tend to be difficult to find for an accused. This is in part because there are a limited number of civilian counsel who are sufficiently familiar with the system to want to step in at this level. It is also because, the moment that an accused has received authorization for publicly funded counsel, there are generally significant time pressures to get a factum prepared and filed. My predecessor tended to hire civilian counsel to respond to appeals and it appeared to me that he often had to pay a premium to entice civilian appellate

counsel to this work. This is an area much more efficiently handled by in-house counsel, provided sufficiently experienced counsel are available and posted here. 

d. Do you see any issues regarding the experience levels of military defence counsel? Would more training (in class or on the job) result in more favourable trial outcomes for clients or reduce delays in the court martial system?

23. Since 2010 we have built a high level of litigation competence within the DCS office and this has resulted in favourable trial outcomes for clients. During the 2016 National Military Law subsection meeting of the Canadian Bar Association, one of the criticisms of the Canadian Armed Forces, raised by counsel representing a number of sexual assault victims in civil suits against the CAF, was that charged members of the CAF were receiving a full and vigorous defence in our military courts and that the organization was not restricting itself to providing a “legal aid defence”.

24. This same “criticism”, that we were providing too good a defence for members of the Canadian Forces charged with sexual crimes, was also aired this year in a documentary on CBC’s French language network in the show “Les Grands Reportages”. Moreover, I read substantially the same “criticism” in an article in the Chronicle Herald last month. All of these commentators seemed to fundamentally misunderstand the nature of our professional obligations to our clients. They also misunderstand the fact that, if the CAF is going to take jurisdiction over any given sexual offences, it cannot set up processes which are a “garden path to conviction”.

25. The one issue that I do see as very concerning regarding the experience levels of military defence counsel is that, both last year and the year before, I was effectively shut out of knowing which legal officers had expressed a desire to come to DCS. This is a complete reversal from my early years in this position. It has the potential to severely influence the competence level within the organization as others unilaterally select who will come. Further, it is disappointing for young officers who tell me that they had wished to be posted to DCS to hear that their desires were never passed on to me.

#### Question 4

Do you keep track of reasons or can you comment on some potential reasons why accused opt for a civilian lawyer at their own expense?

26. If they do not select DCS as counsel we have no contact with them so I would not normally know why they elected to pay civilian counsel. We have, for a number of years, reported in our annual report the number of individuals who elect to have civilian counsel. It is generally two or three members each year although in any given year it could be more than that. It is my understanding that generally about 96% of accused members request DCS counsel. A number of those who elect DCS have to be sent to civilian counsel (at our expense) since we already represent a co-accused in the matter. I am aware of one case in which the accused member elected civilian counsel simply because he wished to have the same military counsel that we had previously provided him and that officer was now beyond age 60 and had retired. He was, for this reason, not available through us.

27. The number of service members electing not to be represented by military defence counsel has dropped significantly since the creation of the present system. According to the Report of the Defence Counsel Study Team, which looked at the numbers between 1990 and

1997 under the old system, during this period 21.4 % of members going to court martial elected to hire their own counsel. Today, as indicated above, that number is significantly less.

#### Question 5

The 2009 Bronson Report on the office of the DDCS recommended that admin staff be trained to take some responsibilities of the duty phone, which would relieve some of the workload on defence counsel. Has this ever been implemented?

28. Admin staff do, during business hours, screen calls coming in on the duty counsel line. The types of calls that they screen out include calls from individuals who are neither under investigation nor charged with an offence but who, nonetheless, have a particular concern with how the CAF is treating them. These are referred to the Ombudsman's Office or the Grievance Authority. Those individuals who have a personal legal issue that they wish advice on are directed to seek assistance from civilian counsel unless their issue is more about civilian charges and how this may impact their military obligations or career. Military Police who call in anticipation of an investigation and are "just checking" to ensure the functionality and procedures of the duty counsel line are reassured about its use. Finally, those members who are under investigation, arrested, charged, acting as assisting officers, or the subject of a BOI or SI are referred to counsel with whom they would be linguistically comfortable. Additionally, members who seem to be under psychological distress are generally not screened out and are put through to counsel. Those calls which are screened out by support staff do not appear in our statistics as the statistics are inputted only on the basis of discussion with counsel.

#### Question 6

Another recommendation in the Bronson Report was made to regionalize the DCS with aim of reducing travel. Was this ever considered for implementation?

29. The question of regionalization was seriously considered within DCS, especially during the early years of my appointment when we were housed in block 1900 of Asticou. This accommodation was too small, too proximate to the Judges and lacked privacy. While regionalization sounds efficient, it has a number of drawbacks.

30. Firstly, any savings derived from minimizing the costs of travel to see clients or attend court will be more than offset by the increased costs of maintaining separate offices for regionalized counsel and by the inability for all counsel to share support staff in the regionalized structure. Secondly, and of real concern, is the fact that when you regionalize defence counsel, the individual lawyers are unable to engage in the kind of collegial discussion around the lunch table or within the office environment that allows them to share experiences and knowledge and effectively "bring everyone along". One of the real benefits of the present system, instituted in 1998, is that it greatly reduced defence counsel working in isolation from their colleagues and with little organizational support.

#### Question 7

Do you keep track of lessons learned or evaluate your performance after a case is completed?

31. During my tenure in the prosecution service we used to prepare a document called the 'Prosecutor Information Sheet' which was a succinct document memorializing the cases, the

charges, the results and any motions or unusual issues dealt with. This document was widely circulated and was available -- even to defence counsel -- in the preparation of further cases.

32. In 2010, when I came to DCS, I found that this document was no longer available to the defence. We started recording cases and lessons learned in a "Case Record". This is written by trial counsel after the conclusion of the trial. It memorializes the particulars of those involved, the charges, preliminary or charter motions addressed, manner of disposition, unusual issues and the result. The case record is circulated to all counsel so that they have a broader understanding of what is happening in the courts. It is written on the understanding that it is solicitor/client privilege.

#### Question 8

Have you noticed any trends in types of cases presented at courts martial? If so, how did you respond to these trends?

33. There have certainly been changes in the types of cases that have presented at courts martial. In the past we saw many accidental discharges charged as some manner of negligence. There are fewer of these since the judges have moved to a more careful analysis of criminal negligence. Similarly, for a while we saw a significant number of charges involving child pornography. These charges can be very technical and they can be difficult to prosecute and expensive to defend. Recently, I believe, more of these have gone downtown. The present trend appears to be bringing us more "OP Honour offences". We have responded to all of these trends by sharpening our analysis of accidental discharges, child pornography offences and sexual assault and fraternization issues as the charges demand. Moreover, individual counsel tend to develop expertise with respect to different types of offences.

#### Question 9

An independent review of Defence Prosecution Services, conducted in 2008 revealed inefficient trial scheduling, and trials that take very long leading to perceptions that either trials would be lost and/or would be resolved in less severe sentences. Also 64% resolved without trial on the day of the hearing. Has anything been done in the last five years to reduce delay, at any point in the process leading up to and including the court martial?

34. In 2008 two retired civilian prosecutors were hired to look at our system, both from the prosecution and defence perspectives. I do not think that it will come as a surprise to anyone that the civilian system, in which probably greater than 95% of all charges are disposed of by guilty plea and in which a court can address a docket of 50 or more cases in a single session, is more efficient than the military justice system, where ad hoc courts travel to locations to address cases one at a time.

35. Moreover, I doubt that any significant number of cases within our system are "resolved without trial on the day of the hearing". Rather, they are resolved through the referral process, after disclosure, perhaps after motions addressing relevant legal issues, and certainly after discussions. Those discussions may be subject to an approval process within the Military Prosecution Service. Any resolution agreed to is effected at the first available opportunity presented by the system; and that is when the court is convened, the judge swears himself in and the procedural steps found in chapter 112 of *Queen's Regulations and Orders* are carried out.



36. It may appear to a civilian counsel that the cases “resolved without trial on the day of the hearing” much as they would in a civilian docket court, or at the commencement of a trial, but that is simply not the process that our legislative structure has created. Parliament could decide to dispose of *NDA* charges in the same manner as other criminal or non-criminal federal offences, by inclusion in a civilian docket near a base or unit. Up to now they have continued with our more cumbersome system and there are, I believe, valid reasons for doing so.

37. The creation of the ‘new system’ in 1998/1999 involved doing away with much of the “efficiency” inherent in the system prior to that time. It did so in favour of a process which involved more prosecutorial discretion exercised by more actors along the way. Prior to 1998:

a. When an accused was charged with an offence, he knew on the date of charging exactly what charges he would face on the date of trial. There was little provision for the addition of new or substitute charges. This meant that the meaningful charge screening process took place prior to the laying of charges and, according to recent affidavit evidence filed by the prosecution reflecting the time it takes for referral and charge screening, would have cut an average of six months off present delay.

b. When an accused was charged with an offence, he was given an election on every case that involved a potential fine of greater than two-hundred dollars. Because the election was based on anticipated punishment and did not offer any scope for “election avoidance” based on either charge selection or legal interpretation of when elections must be offered, there was little time lost on these activities.

c. The standard or norm was for charges to be hand carried to the appropriate convening authority (now referral authority) who, rather than express an opinion as to the charges, simply relied on locally obtained legal advice as to the “reasonable prospect of conviction” and made the actual decision as to whether it was in the “public interest to prosecute”. If he was proceeding, he signed the charge sheet the day it was walked through his office, thus commencing the preparations for court.

38. I raise these issues because my recollection is that, when charges were laid, one could expect to be at Court Martial in about 4 months. (You can check the accuracy of this recollection simply by going to the many transcripts in the JAG Library and looking at the date the charges were convened and the date the Courts Martial commenced.)

39. With the recent decision of the Supreme Court in *Cawthorne* and *Gagnon* much of the legal requirement for a specific prosecutorial structure have been removed. If the system is serious about reducing delay, a greater role for DJAs and/or referral authorities, directed towards speeding the charge screening and decision making process, appears to be legally available. The number one issue in the reduction of delay is, in my view, early crystallization of the final charges -- the ones that will be prosecuted -- combined with early disclosure and the production of “willsays”.

40. There have been measures taken by the system to reduce delay. Some of these measures were suggested by the Bronson report itself. Some of these measures were expressed above, did not speed the process, and included:

a. Section 162 of the *National Defence Act*, mandating the “duty to act expeditiously” in respect of charges under the Code of Service Discipline was amended in 2008 such that it no longer required that offences be investigated expeditiously and covered only the post-charge period. This addressed the mischief of charges being thrown out because of slow investigations but also removed any impetus to investigate swiftly.

b. QR&O 111.11 which requires the prosecution to notify the accused of proposed witnesses along with the “nature of the proposed evidence of that witness” has been largely ignored. This provision was a relaxed version of the old requirement that a synopsis of the evidence be given to the accused. It still had the significant advantage of forcing the both the prosecution and the defence to understand the issues of the case early in the preparation process, thus allowing for a meaningful and early dialogue with respect to settlement. Failure to respect this regulation has meant that prosecutors are free to delay their preparation, their discussion with witnesses and their ability to talk meaningfully about the issues of the case until very late in their preparation process and, sometimes, until the week or two immediately preceding a scheduled trial.

c. We moved, with the present system, to a charge screening process with different standards for summary trials and courts martial such that an accused’s election for court martial often leads to cases with no reasonable prospect of conviction moving through the referral process. These cases may never have had any reasonable prospect of conviction outside a hopeful expectation that summary trial might be elected. The Chain of Command may have unrealistic expectations because no one briefed them on the actual strength of the case. This issue of divergent charge screening standards was addressed in the 2008 Report on Court Martial delay and it was decided to retain the two standards, a decision that facilitates conviction at summary trial but impedes efficiency in our courts.

41. Defence Counsel, from time to time, get offers of a “better deal” if they do not wait for disclosure. This is not something that they can ethically do. There is sometimes pressure pushing defence counsel (and perhaps prosecutors) to set down cases which are not yet ready for trial. However, any meaningful solution to the issue of delay will come from establishing a system that treats cases as a priority right from the moment they come to the attention of the military police or the chain of command. Delay is cumulative. When the investigative, referral, post-charge screening and disclosure processes are slow, there is no ‘magic pill’ available at the final post-referral stage. Moreover, this may well be the only period for preparation by the defence.

Question 10

Has there been any work in incorporating best practices and international standards?  
What are your thoughts on the Australian Military Justice System?

43. The Canadian Military Justice System is part of the fabric of Canadian law. Decisions are decided in accordance with the jurisprudence of Canadian courts. International standards and best practices for litigation are only valuable to the extent that they have been accepted by Canadian courts. The question reminds me of a lecture I recently attended on “how the Military Justice System deals with sexual assaults”. An international definition of sexual impropriety was immediately put up on

the screen. It was a definition which had played no role in any sexual assault case in the Canadian Forces of which I am aware. We have processed and litigated our cases in accordance with Canadian law.

44. What I know of the Australian Military Justice System is that it functions in a country that has no equivalent of the Canadian Charter of Rights, that it has run afoul of its own countries' constitutional imperatives and that, on those limited occasions that I have spoken to the Australian DMP or JAG equivalent (as I recall he was a civilian) they have expressed that they have significant costs associated with the utilization of reservists within the system. These were expressed to me to be more than double the costs that we have with the utilization of civilian counsel within our system.

#### Question 11

Could you provide documentation to show the cost of a Reservist and a civilian lawyer paid for by the DDCS for a selection of trials in any given year?

45. Reservists are paid the rate of pay set out in the regulations for them. For a major it is my understanding that the daily rate of pay is \$359.10 and for a LCol it is 406.98. These are rates of pay common to all reserve force legal officers. At present I have no reserve force captains. However, we do have some coming on-line and the rate of pay will be lower for them.

46. Our reservists earn this rate of pay when they work on our files for six hours. Their pay is capped at a maximum of six hours per day notwithstanding that they often work more than six hours in any given day. If they maximized their billings and only worked on our files six hours in a day, they would be compensated at the rate of \$59.85 per hour and \$67.83 per hour respectively.

47. Additionally, reservists earn trial counsel fees on days when they appear in court. These fees were instituted in response to concerns identified within the Report of The Defence Counsel Study Team (Ref F). They were concerned that litigating as a reservist within the Military Justice System would be financially prohibitive to many lawyers in private practice given the "opportunity cost" inherent in being away from their private clients. The fee is also available to reserve force prosecutors. However, in my experience as Deputy Director of Military Prosecutions between 2002 and 2006, many reservists who work for the Federal Prosecution Service or a provincial prosecution service never billed the fee because they were already being paid by the Crown.

48. The Trial Counsel Fee has not been increased since implemented about 17 years ago. It represents both an appearance fee and a preparation fee. It is paid according to the following formula:

At Trial: (\$550.00 dollars for each day of appearance) + (\$550.00 dollars for the total number of days of the appearance divided by 3 and rounded up to the nearest whole number of days as preparation fee)

On Appeal: (\$550.00 dollars for each day of appearance) + (3 times \$550.00 for dollars for each day of appearance as preparation fee)

49. Both the daily rate and the trial counsel fee can be collected on days when court is sitting. For example, a three day trial would give counsel at the rank of major compensation of:  $(359.10 \times 3) + (550.00 \times 3) + 550.00 \times (3 \text{ days of court divided by } 3 \text{ rounded up to the nearest whole number of days of court thus equalling } 1)$  According to my calculation, total compensation for those three days would be roughly \$3,277.30 This works out to just less than \$1,100.00 per day of court.

50. Civilian Lawyers are sometimes hired by DCS, normally this is because someone has requested us and we already represent a co-accused. The authority for contracting counsel comes from two sources. Firstly, it comes from s. 249.21 of the *National Defence Act* which reads as follows:

249.21(1) The Director of Defence Counsel Services may be assisted by persons who are barristers or advocates with standing at the bar of a province.

(2) The Director of Defence Counsel Services may engage on a temporary basis the services of counsel to assist the Director of Defence Counsel Services.

(3) The Director of Defence Counsel Services may, subject to any applicable Treasury Board directives, establish the terms and conditions of engagement and fix the remuneration and expenses of counsel engaged under subsection (2).

51. When I first came to DDCS I sought legal advice from CFLA as to the scope of this authority and it was indicated to be quite broad.

52. The second source of authority for contracting civilian counsel comes through the *Government Contracts Regulations*. Section 4 of the regulations restricts contracting for "the performance of legal services" to those contracts entered into "by or under the authority of the Minister of Justice". There is a schedule of exempt organizations but Defence Counsel Services does not appear in that schedule. This was causing some misunderstanding with the Department of Justice (DoJ).

53. In 2012, I both applied to get on the schedule and sought DoJ sanction of my contracting. DoJ approval was renewed in 2015 and I will probably renew it again in 2018. The DoJ framework is not, in my view, legally necessary for DCS contracting, However it does provide alternate authority. Even more importantly, it provides support in the form of lawyers who are familiar with federal contracting for legal services and with whom one can discuss contracting issues as they arise.

54. Civilian counsel are generally engaged at the rate of \$200.00 per hour to a maximum of \$30,000. There have been circumstances, involving the complexity of, or expenses associated with cases, where the maximum amount has been higher. There

have been cases before the Supreme Court where the hourly rate has been higher. Similarly, there have been cases where the maximum rate has been lower. This however, tends to be the norm. I have had contracted cases go to guilty plea and “bill out” under \$2,800.00. Some have not been billed at all because the charges were eventually withdrawn and counsel basically “gave us the work performed”.

55. There have been times when additional work was unforeseen, was outside the control of counsel and was brought to my attention prior to being performed such that contract amendments were put in place. There have been times when counsel has simply absorbed his fees when they came in over the contract maximum. It all depends on the circumstances of the case and the efficiency or unwillingness to be efficient displayed by the prosecution and other actors within the system.

56. In *White*, 2010 SCC 59, the Supreme Court of Canada noted the manner in which the Crown had litigated that case and acknowledged their efficiency. The court also suggested that the efficiency of the Crown should be a factor to be considered not in the hourly rate of publicly funded counsel but in the number of hours charged.

#### Question 12

Could you provide any potential issues with moving to a legal aid model for providing defence counsel services, similar to the one currently in place in the UK?

57. Your question arises under the heading “efficiency and economy” which suggests that you believe somehow it is going to be less costly to give accused members a “legal aid” defence or that somehow some of the cost of the defence is going to be pushed onto the accused member thus attenuating the cost of, or the likelihood of, the accused raising legal issues at his trial.

58. The difficulty with this is simply that the movement of the Military Justice System over the past 17 or 18 years has been away from a system centered around the local unit and convening authorities. These governmental actors were quite efficient but were also thought to be too centrally controlling in any given prosecution. The Military Justice System has moved towards a system which is significantly less efficient at every step of the process, but which is thought to have the countervailing benefit of being less centrally controlled. I am not sure that it is possible to take one part of the system, the defence of the client, which occurs at the “downstream end” of the process, and create any meaningful efficiency within the process as a whole. What seems more likely to happen is that the ability of members to defend themselves within the system as a whole will be truncated.

59. At many steps in the process -- from investigation, to charge selection, to transmittal (now referral), to convening, disclosure and even the rhythm of the trial once commenced, we have relaxed the norms and rigor of the process. Trials are long, disclosure resisted, final charges months in coming. The system is evolving and even the very purpose of the system, whether a disciplinary system or a criminal justice

system, has required us to call upon the assistance of the Supreme Court to “figure it out”.

60. We could restrict the resources of the accused so as to avoid having the issues that arise from these changes being litigated but this will not actually address the issues themselves. I believe it will only increase the sense of grievance of those who are caught up within the system. It may increase negative post-acquittal publicity and create post-acquittal litigation.

### Question 13

Could you provide any examples of how your organization has saved time or money, or reduced duplication?

61. A recent example would be that Defence Counsel Services recently faced the loss of two very experienced members (one regular and one reserve) within a five month period. Both faced retirement at age 60. This followed the loss of another experienced reservist who had been backfilling an unfilled Regular Force position in our organization and who, upon joining Regular Force in the last posting season, was being posted outside DCS.

62. This meant that we had a surplus of more serious cases and no one to transfer those cases to. Last summer we requested that we get experienced counsel, or even one of the young captains who had an obvious capacity for criminal law, and we had asked that they come in sufficient time to be mentored into the transfer of files.

63. We were unsuccessful in having counsel to whom files could be expeditiously transferred assigned to us as it was suggested to me both that there were higher priority needs within the larger body of the OJAG and that we were an organization that could compensate for personnel shortages by hiring outside counsel.

64. Since the manner of service delivery – regular, reserve or civilian – is the number one variable in incremental costing, the hiring of civilian counsel to complete retiring counsel's cases significantly increased our costs. Nonetheless, we were able to ameliorate our cost of service delivery by negotiating with retiring counsel such that they would complete certain cases by continuing to represent certain clients as civilians, albeit on contracts that would mirror the cost of reserve force counsel. This moved our litigation costs from \$200/hr to \$60.00/hr plus trial counsel fees for time in court and, although still more expensive than regular force counsel, represented a significant cost saving to our office.

### Final Point

65. I trust that these answers have been helpful in understanding our system from the DCS perspective. Having responded to your questions, I would like to highlight one

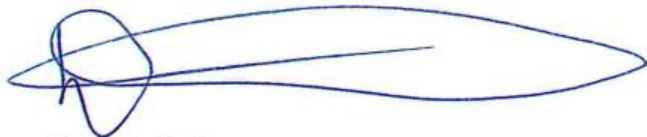
point in greater detail. I have throughout this discussion emphasized the importance of “crystalizing” early in the process the actual charges that will be prosecuted. This is critical, subsequent to the SCC decision in *Jordan*, if the system is going to function within section 11(b) of the *Charter*. The accused cannot begin to defend against charges until they know what the charges are going to be.

66. At annex A, I have attached an anonymized, serialized list of all charges within the office for which we have received both an RDP and a signed charge sheet. The annex displays the time that has passed between being charged on a Record of Disciplinary Proceedings and having the assigned prosecutor select and sign on a Charge Sheet the actual charges on which the accused will be tried. This 6 ½ month average delay detracts from our ability to try the accused within a reasonable time. Moreover, as revealed in annex B, this 6 ½ month delay is in addition to the average 12 months delay between the actual event giving rise to the charges and the signing of an RDP

67. Moreover, under section 11(a) of the Charter, accused persons have the “right to be informed without unreasonable delay of the specific offence”. In our system the charges often change throughout processing and the accused do not know the specific offence upon which he will be tried until the post-charge screening is completed and the Charge Sheet endorsed. Again, the time between the signing of the RDP and Charge Sheet detracts from their right to be “informed without unreasonable delay” of their specific offences.

### Conclusion

68. I trust that have been of some assistance in responding to your questions. At the same time, as indicated above, it is my view that an overriding issue within the Military Justice System today is delay. This is an issue that affects the efficiency, the cost, the purpose and the constitutionality of the system. It touches every accused and every complainant within the system, as well as many other members of the CAF. It is, nonetheless, not an issue that can be addressed simply by trying to shorten trials or attenuate our support to an accused. It is more complex than that and has to be addressed at every stage of the process.



D.K. Fullerton  
Colonel  
Director of Defence Counsel Services

Enclosures 2 (annex A and annex B)

Distribution List:

Action

Court Martial Comprehensive Review Team  
Office of the Judge Advocate General  
7<sup>th</sup> Floor – South Tower  
101 Col By Drive  
NDHQ

Information

The Hon Harjit Sajjan, PC, OMM, MSM, CD, MP  
Minister of National Defence  
13<sup>th</sup> Floor – North Tower  
101 Col By Drive  
NDHQ

Gen J.H. Vance, CMM, MSC, CD  
Chief of the Defence Staff  
13<sup>th</sup> Floor – South Tower  
101 Col By Drive  
NDHQ

Mr. J. Forster, Bsc, MBA  
Deputy Minister of National Defence  
13<sup>th</sup> Floor – North Tower  
101 Col By Drive  
NDHQ

Vice-Admiral M.F.R. Lloyd, CMM, CD  
Vice Chief of the Defence Staff  
13<sup>th</sup> Floor – South Tower  
101 Col By Drive  
NDHQ

MGen B.B. Cathcart, OMM, CD, QC  
Judge Advocate General  
JAG Suite  
7<sup>th</sup> Floor – South Tower  
101 Col By Drive  
NDHQ



## ANNEXE A

## Numbers of days between signing of RDP and signing of the Charge Sheet

|    | Date of Oldest Alleged Offence | Date of RDP | Date Charge Sheet signed | days between RDP & Charge Sheet |
|----|--------------------------------|-------------|--------------------------|---------------------------------|
| 1  | 14-Feb-06                      | 28-Nov-16   | 21-Dec-16                | 23                              |
| 2  | 1-Nov-13                       | 6-May-14    | 11-Jun-14                | 36                              |
| 3  | 14-Sep-15                      | 18-Feb-16   | 21-Apr-16                | 63                              |
| 4  | 18-Mar-15                      | 3-Jul-15    | 11-Sep-15                | 70                              |
| 5  | 22-Nov-14                      | 23-Apr-15   | 2-Jul-15                 | 70                              |
| 6  | 1-Jun-08                       | 9-Apr-15    | 19-Jun-15                | 71                              |
| 7  | 27-Sep-15                      | 12-Sep-16   | 22-Nov-16                | 71                              |
| 8  | 18-Jun-15                      | 12-Aug-16   | 28-Oct-16                | 77                              |
| 9  | 25-Sep-14                      | 14-May-15   | 7-Aug-15                 | 85                              |
| 10 | 9-May-10                       | 9-Sep-15    | 3-Dec-15                 | 85                              |
| 11 | 26-Oct-14                      | 24-Mar-15   | 30-Jun-15                | 98                              |
| 12 | 31-Aug-15                      | 6-Jan-16    | 21-Apr-16                | 106                             |
| 13 | 9-Jun-16                       | 28-Sep-16   | 26-Jan-17                | 120                             |
| 14 | 27-Nov-15                      | 15-Aug-16   | 13-Dec-16                | 120                             |
| 15 | 10-Dec-15                      | 19-Jul-16   | 17-Nov-16                | 121                             |
| 16 | 10-Aug-12                      | 31-Jul-13   | 30-Nov-13                | 122                             |
| 17 | 2-Nov-14                       | 21-May-15   | 25-Sep-15                | 127                             |
| 18 | 1-Apr-15                       | 22-Feb-16   | 29-Jun-16                | 128                             |
| 19 | 27-Aug-16                      | 2-Sep-16    | 9-Jan-17                 | 129                             |
| 20 | 10-Nov-15                      | 13-Sep-16   | 20-Jan-17                | 129                             |
| 21 | 14-Sep-14                      | 27-Nov-14   | 7-Apr-15                 | 131                             |
| 22 | 2-Feb-16                       | 1-Jun-16    | 11-Oct-16                | 132                             |
| 23 | 4-Jun-15                       | 24-Aug-15   | 4-Jan-16                 | 133                             |
| 24 | 15-Dec-14                      | 5-Jul-16    | 15-Nov-16                | 133                             |
| 25 | 25-May-15                      | 11-Apr-16   | 23-Aug-16                | 134                             |
| 26 | 24-Nov-15                      | 21-Apr-16   | 7-Sep-16                 | 139                             |
| 27 | 12-Jun-15                      | 11-Feb-16   | 29-Jun-16                | 139                             |
| 28 | 17-Mar-16                      | 4-Apr-16    | 23-Aug-16                | 141                             |
| 29 | 30-Sep-15                      | 17-Nov-15   | 6-Apr-16                 | 141                             |
| 30 | 5-Aug-15                       | 28-Jul-16   | 16-Dec-16                | 141                             |
| 31 | 19-Dec-12                      | 29-Jun-15   | 20-Nov-15                | 144                             |
| 32 | 8-Oct-15                       | 12-Nov-15   | 6-Apr-16                 | 146                             |
| 33 | 30-Oct-14                      | 21-Jan-15   | 19-Jun-15                | 149                             |
| 34 | 24-Dec-15                      | 28-Dec-15   | 26-May-16                | 150                             |
| 35 | 21-Oct-11                      | 13-Nov-14   | 13-Apr-15                | 151                             |
| 36 | 9-May-15                       | 12-Jan-16   | 16-Jun-16                | 156                             |
| 37 | 16-Aug-13                      | 19-Sep-14   | 24-Feb-15                | 158                             |
| 38 | 31-Mar-11                      | 9-Jun-14    | 14-Nov-14                | 158                             |
| 39 | 10-Jun-15                      | 9-Feb-16    | 21-Jul-16                | 163                             |
| 40 | 10-Aug-15                      | 3-Jul-16    | 14-Dec-16                | 164                             |
| 41 | 14-Jul-15                      | 3-Jul-16    | 14-Dec-16                | 164                             |
| 42 | 26-Feb-16                      | 1-Apr-16    | 14-Sep-16                | 166                             |
| 43 | 17-Jul-04                      | 10-Jun-15   | 24-Nov-15                | 167                             |
| 44 | 11-Nov-14                      | 26-Feb-15   | 14-Aug-15                | 169                             |

Average: 202 days

## ANNEXE A

## Numbers of days between signing of RDP and signing of the Charge Sheet

|    |           |           |           |     |
|----|-----------|-----------|-----------|-----|
| 45 | 8-Aug-15  | 12-Jan-16 | 29-Jun-16 | 169 |
| 46 | 20-Aug-14 | 1-Feb-16  | 22-Jul-16 | 172 |
| 47 | 30-May-15 | 25-Jun-15 | 18-Dec-15 | 176 |
| 48 | 8-May-14  | 14-Apr-15 | 15-Oct-15 | 184 |
| 49 | 8-Feb-16  | 24-Feb-16 | 31-Aug-16 | 189 |
| 50 | 7-Dec-15  | 23-Feb-16 | 31-Aug-16 | 190 |
| 51 | 21-Sep-15 | 21-Jan-16 | 4-Aug-16  | 196 |
| 52 | 15-Dec-14 | 20-Apr-15 | 6-Nov-15  | 200 |
| 53 | 24-Feb-16 | 21-Mar-16 | 11-Oct-16 | 204 |
| 54 | 29-Sep-15 | 22-Apr-16 | 18-Nov-16 | 210 |
| 55 | 20-May-15 | 28-Apr-16 | 25-Nov-16 | 211 |
| 56 | 18-Nov-15 | 24-Mar-16 | 25-Oct-16 | 215 |
| 57 | 4-Nov-15  | 7-Dec-15  | 18-Jul-16 | 224 |
| 58 | 30-Nov-15 | 16-Feb-16 | 29-Sep-16 | 226 |
| 59 | 3-Nov-15  | 10-Jun-16 | 1-Feb-17  | 236 |
| 60 | 25-Aug-15 | 28-Jan-16 | 28-Sep-16 | 244 |
| 61 | 17-Jan-15 | 31-Mar-15 | 3-Dec-15  | 247 |
| 62 | 25-Mar-15 | 15-Feb-16 | 24-Oct-16 | 252 |
| 63 | 21-Jan-16 | 21-Feb-16 | 3-Nov-16  | 256 |
| 64 | 20-Feb-16 | 5-May-16  | 23-Jan-17 | 263 |
| 65 | 4-Jul-13  | 28-Apr-16 | 16-Jan-17 | 263 |
| 66 | 14-Jun-11 | 9-Oct-15  | 30-Jun-16 | 265 |
| 67 | 1-Jan-16  | 19-Apr-16 | 10-Jan-17 | 266 |
| 68 | 19-Apr-15 | 22-Mar-16 | 13-Dec-16 | 266 |
| 69 | 1-Jan-12  | 24-Sep-14 | 19-Jun-15 | 268 |
| 70 | 6-Sep-14  | 12-Dec-14 | 23-Sep-15 | 285 |
| 71 | 1-Jan-16  | 14-Apr-16 | 25-Jan-17 | 286 |
| 72 | 23-Oct-15 | 26-Jan-16 | 18-Nov-16 | 297 |
| 73 | 19-Apr-05 | 11-Sep-15 | 27-Jul-16 | 320 |
| 74 | 12-Sep-15 | 17-Nov-15 | 11-Oct-16 | 329 |
| 75 | 30-Jul-15 | 10-Dec-15 | 10-Nov-16 | 336 |
| 76 | 21-Aug-15 | 20-Jan-16 | 10-Jan-17 | 356 |
| 77 | 24-Jun-14 | 22-Apr-15 | 15-Apr-16 | 359 |
| 78 | 16-Aug-14 | 14-Nov-14 | 4-Dec-15  | 385 |
| 79 | 2-Aug-14  | 27-Aug-14 | 3-Nov-15  | 433 |
| 80 | 18-Jun-14 | 18-Aug-14 | 6-Nov-15  | 445 |
| 81 | 11-Sep-14 | 11-Feb-15 | 3-May-16  | 447 |
| 82 | 9-Dec-14  | 13-Mar-15 | 18-Aug-16 | 524 |
| 83 | 1-Apr-14  | 12-Jun-15 | 7-Dec-16  | 544 |
| 84 | 2-Jul-14  | 3-Oct-14  | 11-May-16 | 586 |
| 85 | 26-Jul-15 |           | 10-Jan-17 | -   |
| 86 | 16-Nov-16 |           |           | -   |
| 87 | 14-Aug-15 |           | 8-Dec-16  | -   |
| 88 | 10-Dec-14 |           |           | -   |
| 89 | 26-Jun-15 |           | 22-Jul-16 | -   |
| 90 | 10-Sep-14 |           | 11-May-16 | -   |
| 91 | 9-Apr-14  |           | 13-Sep-16 | -   |
| 92 | 20-Dec-15 |           | 16-Aug-16 | -   |

## ANNEXE A

## Numbers of days between signing of RDP and signing of the Charge Sheet

|     |           |           |  |   |
|-----|-----------|-----------|--|---|
| 93  | 22-Jan-17 | 2-Feb-17  |  | - |
| 94  | 28-May-16 | 17-Jun-16 |  | - |
| 95  | 20-Mar-16 | 13-Apr-16 |  | - |
| 96  | 20-Mar-16 | 13-Apr-16 |  | - |
| 97  | 20-Mar-16 | 13-Apr-16 |  | - |
| 98  | 6-Jan-16  | 2-Feb-16  |  | - |
| 99  | 16-Jul-15 | 13-Aug-15 |  | - |
| 100 | 15-Dec-16 | 23-Jan-17 |  | - |
| 101 | 26-Jul-15 | 9-Sep-15  |  | - |
| 102 | 22-Oct-15 | 8-Dec-15  |  | - |
| 103 | 26-Feb-15 | 15-Apr-15 |  | - |
| 104 | 14-Mar-16 | 5-May-16  |  | - |
| 105 | 20-Feb-16 | 13-Apr-16 |  | - |
| 106 | 7-Apr-16  | 6-Jun-16  |  | - |
| 107 | 11-Nov-15 | 13-Jan-16 |  | - |
| 108 | 11-Jul-16 | 19-Sep-16 |  | - |
| 109 | 3-Nov-15  | 14-Jan-16 |  | - |
| 110 | 14-Sep-15 | 26-Nov-15 |  | - |
| 111 | 8-Nov-15  | 20-Jan-16 |  | - |
| 112 | 1-Nov-15  | 14-Jan-16 |  | - |
| 113 | 29-Jan-16 | 13-Apr-16 |  | - |
| 114 | 18-Oct-16 | 5-Jan-17  |  | - |
| 115 | 1-Nov-15  | 19-Jan-16 |  | - |
| 116 | 18-Oct-16 | 5-Jan-17  |  | - |
| 117 | 11-Apr-16 | 30-Jun-16 |  | - |
| 118 | 21-Oct-16 | 10-Jan-17 |  | - |
| 119 | 19-Feb-16 | 13-May-16 |  | - |
| 120 | 19-Feb-16 | 16-May-16 |  | - |
| 121 | 21-Oct-15 | 19-Jan-16 |  | - |
| 122 | 14-May-16 | 12-Aug-16 |  | - |
| 123 | 30-Dec-15 | 30-Mar-16 |  | - |
| 124 | 5-May-16  | 5-Aug-16  |  | - |
| 125 | 9-Oct-15  | 11-Jan-16 |  | - |
| 126 | 14-Oct-16 | 26-Jan-17 |  | - |
| 127 | 14-Jan-16 | 28-Apr-16 |  | - |
| 128 | 3-Mar-15  | 22-Jun-15 |  | - |
| 129 | 28-Jun-16 | 20-Oct-16 |  | - |
| 130 | 27-Mar-16 | 22-Jul-16 |  | - |
| 131 | 23-Jun-15 | 20-Oct-15 |  | - |
| 132 | 16-Jul-15 | 19-Nov-15 |  | - |
| 133 | 2-Jun-15  | 8-Oct-15  |  | - |
| 134 | 5-Oct-15  | 10-Feb-16 |  | - |
| 135 | 1-Jul-16  | 15-Nov-16 |  | - |
| 136 | 19-May-16 | 5-Oct-16  |  | - |
| 137 | 21-Mar-15 | 13-Aug-15 |  | - |
| 138 | 28-Jan-16 | 22-Jun-16 |  | - |
| 139 | 21-Aug-15 | 19-Jan-16 |  | - |
| 140 | 21-Aug-15 | 19-Jan-16 |  | - |

## ANNEXE A

## Numbers of days between signing of RDP and signing of the Charge Sheet

|     |           |           |           |    |
|-----|-----------|-----------|-----------|----|
| 141 | 5-Feb-16  | 25-Jul-16 |           | -- |
| 142 | 1-Aug-15  | 19-Jan-16 |           | -- |
| 143 | 28-Feb-15 | 1-Sep-15  |           | -- |
| 144 | 19-Jul-16 | 27-Jan-17 |           | -- |
| 145 | 27-May-16 | 6-Dec-16  |           | -- |
| 146 | 7-Apr-15  | 27-Oct-15 |           | -- |
| 147 | 23-May-16 | 12-Dec-16 |           | -- |
| 148 | 1-Apr-16  | 15-Nov-16 |           | -- |
| 149 | 28-Jul-15 | 15-Mar-16 |           | -- |
| 150 | 28-Jul-15 | 15-Mar-16 |           | -- |
| 151 | 1-Jun-15  | 19-Jan-16 |           | -- |
| 152 | 1-Jun-15  | 19-Jan-16 |           | -- |
| 153 | 11-Sep-15 | 1-May-16  |           | -- |
| 154 | 25-Jun-14 | 16-Feb-15 |           | -- |
| 155 | 1-May-15  | 11-Jan-16 |           | -- |
| 156 | 29-Apr-15 | 13-Jan-16 |           | -- |
| 157 | 7-Mar-15  | 25-Nov-15 |           | -- |
| 158 | 22-Feb-16 | 7-Dec-16  |           | -- |
| 159 | 13-Nov-15 | 30-Aug-16 |           | -- |
| 160 | 12-Feb-16 | 7-Dec-16  |           | -- |
| 161 | 24-Jun-15 | 27-Apr-16 |           | -- |
| 162 | 17-Mar-15 | 20-Jan-16 |           | -- |
| 163 | 30-Jun-15 | 3-Jun-16  |           | -- |
| 164 | 10-Apr-15 | 16-Mar-16 |           | -- |
| 165 | 1-Mar-15  | 18-Feb-16 |           | -- |
| 166 | 20-Nov-15 | 9-Nov-16  |           | -- |
| 167 | 20-Nov-15 | 14-Nov-16 |           | -- |
| 168 | 15-Jul-15 | 29-Aug-16 |           | -- |
| 169 | 21-Feb-15 | 12-May-16 |           | -- |
| 170 | 14-Dec-14 | 11-May-16 |           | -- |
| 171 | 23-Oct-13 | 9-Apr-15  |           | -- |
| 172 | 28-Jun-15 | 24-Jan-17 |           | -- |
| 173 | 12-Dec-14 | 14-Dec-16 |           | -- |
| 174 | 9-Jan-14  | 3-Feb-16  |           | -- |
| 175 | 26-Jun-14 | 9-Nov-16  |           | -- |
| 176 | 27-Mar-13 | 20-Jul-16 |           | -- |
| 177 | 1-Mar-13  | 14-Sep-16 |           | -- |
| 178 | 5-Dec-11  | 26-Nov-15 |           | -- |
| 179 | 18-May-12 | 29-Jan-17 |           | -- |
| 180 | 1-Apr-10  | 27-Nov-15 |           | -- |
| 181 | 1-Aug-10  | 9-Nov-16  |           | -- |
| 182 | 28-Jul-14 |           | 13-Oct-15 | -- |
| 183 | 5-Oct-15  |           |           | -- |
| 184 | 04-Aug-14 |           |           | -- |
| 185 | 04-Aug-14 |           |           | -- |
| 186 | 04-Aug-14 |           |           | -- |

## ANNEXE B

## Numbers of days between alleged infraction and signing of the RDP

|    | Date of Oldest Alleged Offence | Date of RDP | days between alleged infraction & accusation |
|----|--------------------------------|-------------|--|
| 1  | 24-Dec-15                      | 28-Dec-15   | 4  |
| 2  | 27-Aug-16                      | 2-Sep-16    | 6  |
| 3  | 22-Jan-17                      | 2-Feb-17    | 11   |
| 4  | 8-Feb-16                       | 24-Feb-16   | 16   |
| 5  | 17-Mar-16                      | 4-Apr-16    | 18   |
| 6  | 28-May-16                      | 17-Jun-16   | 20   |
| 7  | 20-Mar-16                      | 13-Apr-16   | 24   |
| 8  | 20-Mar-16                      | 13-Apr-16   | 24   |
| 9  | 20-Mar-16                      | 13-Apr-16   | 24   |
| 10 | 2-Aug-14                       | 27-Aug-14   | 25   |
| 11 | 30-May-15                      | 25-Jun-15   | 26   |
| 12 | 24-Feb-16                      | 21-Mar-16   | 26   |
| 13 | 6-Jan-16                       | 2-Feb-16    | 27   |
| 14 | 16-Jul-15                      | 13-Aug-15   | 28   |
| 15 | 21-Jan-16                      | 21-Feb-16   | 31   |
| 16 | 4-Nov-15                       | 7-Dec-15    | 33   |
| 17 | 8-Oct-15                       | 12-Nov-15   | 35   |
| 18 | 26-Feb-16                      | 1-Apr-16    | 35   |
| 19 | 15-Dec-16                      | 23-Jan-17   | 39   |
| 20 | 26-Jul-15                      | 9-Sep-15    | 45   |
| 21 | 22-Oct-15                      | 8-Dec-15    | 47   |
| 22 | 30-Sep-15                      | 17-Nov-15   | 48   |
| 23 | 26-Feb-15                      | 15-Apr-15   | 48   |
| 24 | 14-Mar-16                      | 5-May-16    | 52   |
| 25 | 20-Feb-16                      | 13-Apr-16   | 53   |
| 26 | 7-Apr-16                       | 6-Jun-16    | 60   |
| 27 | 18-Jun-14                      | 18-Aug-14   | 61   |
| 28 | 11-Nov-15                      | 13-Jan-16   | 63   |
| 29 | 12-Sep-15                      | 17-Nov-15   | 66   |
| 30 | 11-Jul-16                      | 19-Sep-16   | 70   |
| 31 | 3-Nov-15                       | 14-Jan-16   | 72   |
| 32 | 17-Jan-15                      | 31-Mar-15   | 73   |
| 33 | 14-Sep-15                      | 26-Nov-15   | 73   |
| 34 | 8-Nov-15                       | 20-Jan-16   | 73   |
| 35 | 14-Sep-14                      | 27-Nov-14   | 74   |
| 36 | 1-Nov-15                       | 14-Jan-16   | 74   |
| 37 | 20-Feb-16                      | 5-May-16    | 75   |
| 38 | 29-Jan-16                      | 13-Apr-16   | 75   |
| 39 | 7-Dec-15                       | 23-Feb-16   | 78   |
| 40 | 30-Nov-15                      | 16-Feb-16   | 78   |
| 41 | 18-Oct-16                      | 5-Jan-17    | 79   |
| 42 | 1-Nov-15                       | 19-Jan-16   | 79   |
| 43 | 18-Oct-16                      | 5-Jan-17    | 79   |
| 44 | 11-Apr-16                      | 30-Jun-16   | 80   |

Average: 357 days

## ANNEXE B

## Numbers of days between alleged infraction and signing of the RDP

|    |           |           |     |
|----|-----------|-----------|-----|
| 45 | 4-Jun-15  | 24-Aug-15 | 81  |
| 46 | 21-Oct-16 | 10-Jan-17 | 81  |
| 47 | 30-Oct-14 | 21-Jan-15 | 83  |
| 48 | 19-Feb-16 | 13-May-16 | 84  |
| 49 | 19-Feb-16 | 16-May-16 | 87  |
| 50 | 16-Aug-14 | 14-Nov-14 | 90  |
| 51 | 21-Oct-15 | 19-Jan-16 | 90  |
| 52 | 14-May-16 | 12-Aug-16 | 90  |
| 53 | 30-Dec-15 | 30-Mar-16 | 91  |
| 54 | 5-May-16  | 5-Aug-16  | 92  |
| 55 | 2-Jul-14  | 3-Oct-14  | 93  |
| 56 | 9-Dec-14  | 13-Mar-15 | 94  |
| 57 | 9-Oct-15  | 11-Jan-16 | 94  |
| 58 | 23-Oct-15 | 26-Jan-16 | 95  |
| 59 | 6-Sep-14  | 12-Dec-14 | 97  |
| 60 | 1-Jan-16  | 14-Apr-16 | 104 |
| 61 | 14-Oct-16 | 26-Jan-17 | 104 |
| 62 | 14-Jan-16 | 28-Apr-16 | 105 |
| 63 | 18-Mar-15 | 3-Jul-15  | 107 |
| 64 | 11-Nov-14 | 26-Feb-15 | 107 |
| 65 | 1-Jan-16  | 19-Apr-16 | 109 |
| 66 | 9-Jun-16  | 28-Sep-16 | 111 |
| 67 | 3-Mar-15  | 22-Jun-15 | 111 |
| 68 | 28-Jun-16 | 20-Oct-16 | 114 |
| 69 | 27-Mar-16 | 22-Jul-16 | 117 |
| 70 | 23-Jun-15 | 20-Oct-15 | 119 |
| 71 | 2-Feb-16  | 1-Jun-16  | 120 |
| 72 | 21-Sep-15 | 21-Jan-16 | 122 |
| 73 | 15-Dec-14 | 20-Apr-15 | 126 |
| 74 | 16-Jul-15 | 19-Nov-15 | 126 |
| 75 | 18-Nov-15 | 24-Mar-16 | 127 |
| 76 | 31-Aug-15 | 6-Jan-16  | 128 |
| 77 | 2-Jun-15  | 8-Oct-15  | 128 |
| 78 | 5-Oct-15  | 10-Feb-16 | 128 |
| 79 | 30-Jul-15 | 10-Dec-15 | 133 |
| 80 | 1-Jul-16  | 15-Nov-16 | 137 |
| 81 | 19-May-16 | 5-Oct-16  | 139 |
| 82 | 21-Mar-15 | 13-Aug-15 | 145 |
| 83 | 28-Jan-16 | 22-Jun-16 | 146 |
| 84 | 26-Oct-14 | 24-Mar-15 | 149 |
| 85 | 24-Nov-15 | 21-Apr-16 | 149 |
| 86 | 21-Aug-15 | 19-Jan-16 | 151 |
| 87 | 21-Aug-15 | 19-Jan-16 | 151 |
| 88 | 22-Nov-14 | 23-Apr-15 | 152 |
| 89 | 21-Aug-15 | 20-Jan-16 | 152 |
| 90 | 11-Sep-14 | 11-Feb-15 | 153 |
| 91 | 25-Aug-15 | 28-Jan-16 | 156 |
| 92 | 14-Sep-15 | 18-Feb-16 | 157 |

## ANNEXE B

## Numbers of days between alleged infraction and signing of the RDP

|     |           |           |     |
|-----|-----------|-----------|-----|
| 93  | 8-Aug-15  | 12-Jan-16 | 157 |
| 94  | 5-Feb-16  | 25-Jul-16 | 171 |
| 95  | 1-Aug-15  | 19-Jan-16 | 171 |
| 96  | 28-Feb-15 | 1-Sep-15  | 185 |
| 97  | 1-Nov-13  | 6-May-14  | 186 |
| 98  | 19-Jul-16 | 27-Jan-17 | 192 |
| 99  | 27-May-16 | 6-Dec-16  | 193 |
| 100 | 2-Nov-14  | 21-May-15 | 200 |
| 101 | 7-Apr-15  | 27-Oct-15 | 203 |
| 102 | 23-May-16 | 12-Dec-16 | 203 |
| 103 | 29-Sep-15 | 22-Apr-16 | 206 |
| 104 | 3-Nov-15  | 10-Jun-16 | 220 |
| 105 | 10-Dec-15 | 19-Jul-16 | 222 |
| 106 | 1-Apr-16  | 15-Nov-16 | 228 |
| 107 | 25-Sep-14 | 14-May-15 | 231 |
| 108 | 28-Jul-15 | 15-Mar-16 | 231 |
| 109 | 28-Jul-15 | 15-Mar-16 | 231 |
| 110 | 1-Jun-15  | 19-Jan-16 | 232 |
| 111 | 1-Jun-15  | 19-Jan-16 | 232 |
| 112 | 11-Sep-15 | 1-May-16  | 233 |
| 113 | 25-Jun-14 | 16-Feb-15 | 236 |
| 114 | 12-Jun-15 | 11-Feb-16 | 244 |
| 115 | 10-Jun-15 | 9-Feb-16  | 244 |
| 116 | 9-May-15  | 12-Jan-16 | 248 |
| 117 | 1-May-15  | 11-Jan-16 | 255 |
| 118 | 29-Apr-15 | 13-Jan-16 | 259 |
| 119 | 27-Nov-15 | 15-Aug-16 | 262 |
| 120 | 7-Mar-15  | 25-Nov-15 | 263 |
| 121 | 22-Feb-16 | 7-Dec-16  | 289 |
| 122 | 13-Nov-15 | 30-Aug-16 | 291 |
| 123 | 12-Feb-16 | 7-Dec-16  | 299 |
| 124 | 24-Jun-14 | 22-Apr-15 | 302 |
| 125 | 10-Nov-15 | 13-Sep-16 | 308 |
| 126 | 24-Jun-15 | 27-Apr-16 | 308 |
| 127 | 17-Mar-15 | 20-Jan-16 | 309 |
| 128 | 25-May-15 | 11-Apr-16 | 322 |
| 129 | 1-Apr-15  | 22-Feb-16 | 327 |
| 130 | 25-Mar-15 | 15-Feb-16 | 327 |
| 131 | 10-Aug-15 | 3-Jul-16  | 328 |
| 132 | 19-Apr-15 | 22-Mar-16 | 338 |
| 133 | 30-Jun-15 | 3-Jun-16  | 339 |
| 134 | 8-May-14  | 14-Apr-15 | 341 |
| 135 | 10-Apr-15 | 16-Mar-16 | 341 |
| 136 | 20-May-15 | 28-Apr-16 | 344 |
| 137 | 27-Sep-15 | 12-Sep-16 | 351 |
| 138 | 1-Mar-15  | 18-Feb-16 | 354 |
| 139 | 10-Aug-12 | 31-Jul-13 | 355 |
| 140 | 14-Jul-15 | 3-Jul-16  | 355 |

## ANNEXE B

## Numbers of days between alleged infraction and signing of the RDP

|     |           |           |      |
|-----|-----------|-----------|------|
| 141 | 20-Nov-15 | 9-Nov-16  | 355  |
| 142 | 5-Aug-15  | 28-Jul-16 | 358  |
| 143 | 20-Nov-15 | 14-Nov-16 | 360  |
| 144 | 16-Aug-13 | 19-Sep-14 | 399  |
| 145 | 15-Jul-15 | 29-Aug-16 | 411  |
| 146 | 18-Jun-15 | 12-Aug-16 | 421  |
| 147 | 1-Apr-14  | 12-Jun-15 | 437  |
| 148 | 21-Feb-15 | 12-May-16 | 446  |
| 149 | 14-Dec-14 | 11-May-16 | 514  |
| 150 | 20-Aug-14 | 1-Feb-16  | 530  |
| 151 | 23-Oct-13 | 9-Apr-15  | 533  |
| 152 | 15-Dec-14 | 5-Jul-16  | 568  |
| 153 | 28-Jun-15 | 24-Jan-17 | 576  |
| 154 | 12-Dec-14 | 14-Dec-16 | 733  |
| 155 | 9-Jan-14  | 3-Feb-16  | 755  |
| 156 | 26-Jun-14 | 9-Nov-16  | 867  |
| 157 | 19-Dec-12 | 29-Jun-15 | 922  |
| 158 | 1-Jan-12  | 24-Sep-14 | 997  |
| 159 | 4-Jul-13  | 28-Apr-16 | 1029 |
| 160 | 21-Oct-11 | 13-Nov-14 | 1119 |
| 161 | 31-Mar-11 | 9-Jun-14  | 1166 |
| 162 | 27-Mar-13 | 20-Jul-16 | 1211 |
| 163 | 1-Mar-13  | 14-Sep-16 | 1293 |
| 164 | 5-Dec-11  | 26-Nov-15 | 1452 |
| 165 | 14-Jun-11 | 9-Oct-15  | 1578 |
| 166 | 18-May-12 | 29-Jan-17 | 1717 |
| 167 | 9-May-10  | 9-Sep-15  | 1949 |
| 168 | 1-Apr-10  | 27-Nov-15 | 2066 |
| 169 | 1-Aug-10  | 9-Nov-16  | 2292 |
| 170 | 1-Jun-08  | 9-Apr-15  | 2503 |
| 171 | 19-Apr-05 | 11-Sep-15 | 3797 |
| 172 | 14-Feb-06 | 28-Nov-16 | 3940 |
| 173 | 17-Jul-04 | 10-Jun-15 | 3980 |
| 174 | 26-Jul-15 |           | -    |
| 175 | 16-Nov-16 |           | -    |
| 176 | 14-Aug-15 |           | -    |
| 177 | 10-Dec-14 |           | -    |
| 178 | 26-Jun-15 |           | -    |
| 179 | 10-Sep-14 |           | -    |
| 180 | 9-Apr-14  |           | -    |
| 181 | 20-Dec-15 |           | -    |
| 182 | 28-Jul-14 |           | -    |
| 183 | 5-Oct-15  |           | -    |
| 184 | 04-Aug-14 |           | -    |
| 185 | 04-Aug-14 |           | -    |
| 186 | 04-Aug-14 |           | -    |