

Assistant Deputy Minister (ADM) Review Services (RS)
Review of Court Martial System
Interview Questions
Director of Military Prosecutions (DMP)

Thank you for meeting with us today. As you are aware, ADM(RS) is tasked to assist Judge Advocate General(JAG) in conducting a review of the Court Martial System, its efficiency and effectiveness and whether there are more cost effective ways to delivering these services.

The following interview questions are based on administrative and financial document reviews as well as other corresponding document review. Your responses will assist us in validating review of program information.

General introductory comments before addressing the questions contained in the questionnaire

Source of the input provided

1. My input will consist of comments based on our respective and collective experiences, as well as data which my service has collected. My comments will be in blue, using Calibri font.
2. I note that many of the questions below contain inaccurate information/assumptions, which our comments will address. I will also provide observations and information beyond the questions below that nonetheless concern the effectiveness, efficiency, and legitimacy of the court martial system from the perspective of the prosecution.
3. I have consulted with a number of members of my team, the Canadian Military Prosecution Service (CMPS). Some of them are reservists, whose civilian job is that of prosecutor in the federal Public Prosecution Service of Canada, and with provincial prosecution services. The responses I will provide will include their observations as well as my own.
4. For your information, I personally have been a legal officer for 20 years 8.5 years of experience as military prosecutor appearing before numerous courts martial, the Court Martial Appeal Court of Canada and the Supreme Court of Canada as prosecution and appellate counsel, 6 years as civilian defence counsel and as a federal prosecution agent appearing almost daily before all levels of court in Nova Scotia. Additionally, I have significant years of experience in the military justice policy area, both

strategic and operational, including working on the expert team to deal with providing a response to the First Independent Review Authority (Former Chief Justice of Canada Antonio Lamer), the Second Independent Review Authority (Mr. Justice Lesage), as well as participating in, and in some cases leading, significant legislative preparation and policy development work on various military justice Bills including Bills S-2, C-7, C-41, C-9, C-16 and C-15. My CV is enclosed.

5. Those who provided input into this questionnaire and their experience include:
 - a. 1 LCol with 20 years as a legal officer (including 11 years advising clients on military discipline law and 2 years in the Directorate of Military Justice), 2 years as military prosecutor, 6 years as a civilian prosecutor;
 - b. 1 LCol with 18.5 years as legal officer, almost 2 years as prosecutor, 2 years as defence counsel, 6 months as civilian prosecutor;
 - c. 1 LCol with 17 years as legal officer 10 years as military prosecutor, 1 year as defence counsel;
 - d. 1 Maj with 6.5 years as a legal officer and military prosecutor in various capacities (regional military prosecutor, legal advisor to the Canadian Forces Investigative Service (CFNIS) and appellate counsel);
 - e. 1 Maj reservist with 10 years as legal officer and military prosecutor, 20 years as provincial prosecutor in Ontario; and
 - f. 1 Capt reservist with 15 months as legal officer and military prosecutor, 20 years as a federal Crown in BC and Ontario.
6. Data will complement the empirical observations from prosecutors. The data comes from our database where we enter and keep all relevant information concerning the management and progress of prosecutorial files.
7. In the past year, we have undertaken and invested the time to improve our timely gathering of data related to military prosecutions before court martial, as well as to other connected legal functions members of my service perform (e.g., pre-charge screening). We have maximized the use of Microsoft Excel and instituted better information gathering discipline.
8. This allows me to better:
 - a. monitor our work;

- b. manage resources;
- c. identify areas of concern; and
- d. diagnose causes of and craft solutions to problems.

9. This is done in order to be as effective and efficient as possible, and to meaningfully publicly report about the performance of my functions. This, in turns, is aimed at maintaining and improving the legitimacy of the court martial system. Improving this information management capability, and continuing to do so, directly contributes to enhance the effectiveness, efficiency, and legitimacy of the court martial system.

10. This has proven resource intensive, however. Our data management system, while improved, is still not state of the art and suffers from many technical limitations. Many hours were also required to search, input and validate data from previous fiscal years. Developing a more efficient, powerful and user-friendly system tailored to the needs of my service requires technical expertise exceeding that of my otherwise very talented legal and para-legal staff. To that end, we have been working with the Informatics Section of the Office of the JAG for over 7 months and are hopeful to be able to roll out a more capable tool in a not too distant future.

Observations on effectiveness, efficiency and legitimacy of the court martial system

11. The mandate of the court martial comprehensive review team (CMCRT) is to provide options to identify ways to enhance the effectiveness, efficiency and legitimacy of the court martial system.

12. Effectiveness means successfully accomplishing set objectives and goals. Definition of those objectives and goals is essential in order to measure whether the system meets them, and how it could do it better. The CMCRT has not proposed objectives and goals for the court martial that differ from what the Supreme Court of Canada (SCC) has stated is the purpose Parliament intended the military justice system (MJS) to accomplish, i.e., contribute to the maintenance of discipline, effectiveness and morale of the Canadian Armed Forces (CAF).

13. Efficiency means accomplishing goals (i.e., being effective) with the minimal expenditure of resources required.

14. Legitimacy refers to the conformity of something to law, established legal requirements, principles, rules and standards.

15. In so far as legitimacy means lawfulness or legality, the court martial system's legitimacy should be beyond question. Duly elected officials have validly set up this system, in accordance with all applicable and accepted legal requirements. On occasion, including quite recently, the legality of various fundamental aspects of the court martial systems have been questioned and challenged in court. In each such case that it heard, the Supreme Court of Canada has either confirmed the lawfulness of those disputed aspects, or provided guidance on how to correct deficiencies in order for the court martial system to comply with Canadian law. When the latter was the case, Parliament took the appropriate measures to ensure that such guidance were followed and modified the *National Defence Act* (NDA) accordingly. Furthermore, the need for this system has been expressed on numerous occasions by the highest court and by some of the most renowned legal authorities of Canada. In so far as the court martial system conforms to the law, it is already legitimate. The fact that the system is open to challenges before the courts ensures its ongoing legitimacy.

16. Legitimacy, however, also carries the notion of acceptance of something as being valid and in accordance with expectations that may not be limited to considerations of legality. I assume that this latter definition of legitimacy is what the CMCRT examines, i.e., how accepted is the court martial system in the eyes of individuals. I further assume that those individuals would be the Canadian public at large, as well as the leadership and members of the CAF.

17. Under that definition, effectiveness and efficiency are by themselves factors of legitimacy, i.e., a lawful system that accomplishes the important societal objectives it is meant to accomplish with minimum wasted effort is likely to be accepted as being well-founded and acceptable. From that perspective, enhancing effectiveness and/or efficiency contributes to enhance legitimacy. The central need is therefore to measure the extent to which the system accomplishes what it is meant to, and how well/bad it does it. Without this, it is difficult to identify problematic areas, the scope of the problem, the proper means to address them, and whether those means worked.

Timeliness in relation to measuring effectiveness, efficiency and legitimacy

18. The questions you have put to the DMP seem to focus greatly on the speed at which cases are processed. I wish to caution against putting undue emphasis on time as a measure of 'success', let alone as an end in itself.

19. Timeliness is clearly a relevant element to measure the effectiveness, efficiency and legitimacy of any criminal justice system.

20. Canadian law specifically imposes an obligation for prosecutions to proceed diligently once charges are laid (i.e., at paragraph 11(b) of the Charter and s.162 of the NDA), and the courts have fleshed out what it means in practice (quite recently in the SCC case of *Jordan*). It reflects societal expectations about how justice should be administered.

21. It is important to remember that speed is not the sole factor through which we can measure effectiveness, efficiency and legitimacy. It might not even be the most important. It is a fact that time has the advantage of being easily measurable (just like money), more so than ‘the level of discipline, effectiveness and morale’ for instance. This could easily lead to an overemphasis of that aspect to the detriment to others which may be more difficult to measure, but nevertheless crucial.

22. It is important to keep in mind that the time required to deal with cases is the result of steps, rules and processes aimed at dealing with at least 4 potentially different legitimate and important interests:

- a. The disciplinary, operational effectiveness and morale needs of the CAF (which is the overall purpose of the MJS).
- b. The rights of the accused. Respecting them entail a series of obligations that require time, e.g., only prosecuting individuals when there is a reasonable prospect of conviction and when it is in the public interest, disclosure, providing opportunity to consult with counsel, etc.
- c. The rights and concerns of the victims.
- d. The safety of the public.

23. The rules governing our system that the courts (through decisions), Parliament (through legislation), and Government (through regulations and policies) have put in place reflect and balance those interests. Removing steps intended to address any one of these interests would result in some time savings. Conversely, the steps required in the court martial system in order to balance those interests will necessarily reduce its speed. An effective system strives to achieve a reasonable balance in most cases, understanding that complete satisfaction of one set of interests may not be possible. The way courts address the right of the accused to a trial within a reasonable time as guaranteed by para 11(b) of the Charter already offers a mechanism to balance those interests, once charges have been laid against an accused.

24. I am not necessarily advocating *status quo*. And I will provide ample information in response to the questions related to delays in the questionnaire below. I am simply cautioning against focusing on time to the detriment of other important aspects.

Recommending changes to existing rules and processes with a view of gaining time needs to be done with extreme care. Otherwise those recommendations, if adopted, could negatively affect those important societal interests, and ultimately the effectiveness, efficiency and/or legitimacy of the court martial system (which would be the opposite of the CMCRT's mandate).

Additional avenues to enhance the effectiveness, efficiency and legitimacy of the court martial system beyond the questions found in the questionnaire

25. Metrics could be developed to measure to what extent the court martial system meets the important societal interests that the court martial system must serve. Developing those metrics (with a view to eventually communicating them and ideally acting upon what they tell us), would be a very significant way to enhance the effectiveness, efficiency and legitimacy of the court martial system. Although it would likely require more work than simply measuring time or money spent, it appears to me that it is this project that the CMCRT may wish to seriously consider recommending.

26. Another important aspect of the court martial system's legitimacy is how much the public knows and understands that system, as well as the decisions made within in. The definition of 'public' could be further segmented, e.g., within the CAF, amongst members of the legal profession, amongst Parliamentarians, etc.

27. I do not have the required expertise to authoritatively identify the ways to measure how knowledgeable and understanding of the court martial system the public is. But, I am convinced that it is possible to devise relevant indicators (e.g., the volume of criticism and praise of the court martial system (in court proceedings, on traditional and social media, the amount and "footprint" of information available and circulated about the court martial system). Surveys could be used, along with algorithms, to gather that information. I recognize, however, that it may be more difficult to devise and measure such indicators than, for instance, counting the time it takes to complete a trial after charges are laid. It could prove extremely useful, however, in order to better identify knowledge gaps that affect legitimacy of the system in the eyes of the public. That too could be a project that the CMCRT could recommend undertaking with of view of enhancing the legitimacy of the court martial system.

28. Even without having a clear evidence-based view of the level of public support and knowledge of the court martial system, it is empirically evident that there is a lot of misunderstanding and criticism of the court martial system. This alone militates towards better public communication about the court martial system, with a view of enhancing its legitimacy.

29. At present, beyond what military prosecutors publicly say in the court room, the ability to reach out to the public to discuss and explain what prosecutors do (especially in relation to controversial decisions) is at the mercy of the questions news media may

wish to ask and the response they wish to publish. Other prosecution services in Canada have developed proactive approaches to public communication in order to enhance public understanding. For example, pursuant to its external communications strategy, the British Columbia prosecution service proactively releases information to the media and the public, at the discretion of my BC equivalent. Such release may be done through media statements posted on its internet site and announced through its Twitter account (launched last December). The CMCRT could recommend adopting a communication strategy enabling the DMP to reach out to the public and provide information concerning certain cases, decisions or issues related to prosecutorial functions as a way to enhance the legitimacy of the court martial system.

30. Having a means to measure public knowledge and understanding of the court martial system (as discussed above) would then allow us to measure the effectiveness of such a communication strategy (and allow for targeted and efficient modifications if required).

General:

1. Could you please describe your role and responsibilities? How many people report to you/who do you report to?

- a. 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 JAG, he exercises his prosecutorial mandate independent of the chain of command. Those duties and functions, set out in the NDA, the QR&O, ministerial orders and other instruments, include:
 - (1) Reviewing all Code of Service Discipline (CSD) charges referred to him through the CAF chain of command and determining whether:
 - (a) The charges or other charges founded on the evidence should be tried by court martial (CM);
 - (b) The charges should be dealt with by an officer who has jurisdiction to try the accused by summary trial; or
 - (c) The charges should not be proceeded with.
 - (2) Conducting – within Canada or overseas – the prosecution of all charges tried by court martial.
 - (3) Acting as appellate counsel for the Minister of National Defence (MND) on all appeals from courts martial, to the Court Martial Appeal Court (CMAC) and to the Supreme Court of Canada (SCC).
 - (4) Acting as the representative of the CAF at all custody review hearings conducted before a military judge.

(5) Providing legal advice to military police personnel assigned to the CFNIS.

- b. 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. The DMP can also count on a small but highly effective group of civilian support staff.
- c. DMP and his staff of military prosecutors and civilian personnel are known collectively as the Canadian Military Prosecution Service (CMPS). It is comprised of 16 Regular Force and 9 Reserve Force prosecutors, 1 civilian paralegal and 6 civilian legal assistants. It is organized regionally, and currently consists of:

- (1) DMP headquarters at National Defence Headquarters in Ottawa consisting of the DMP, the Assistant Director of Military Prosecutions (ADMP, who is also responsible for the Eastern Region), one Deputy Director of Military Prosecutions (DDMP) responsible for the Atlantic and Central regions, an appellate counsel, a military prosecutor responsible for policy, training and communications, a legal advisor working directly with the CFNIS, a civilian paralegal, and one legal assistant;

- (2) 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:

- i. Halifax, Nova Scotia (Atlantic Region);
- ii. Valcartier, Quebec (Eastern Region);
- iii. Ottawa, Ontario (Central Region);
- iv. Edmonton, Alberta (Western Region);
- v. Esquimalt, British Columbia (Pacific Region);¹ and

- (3) Nine Reserve Force military prosecutors located individually across Canada.

¹The DDMP (Western and Pacific) is currently co-located with the RMP Pacific.

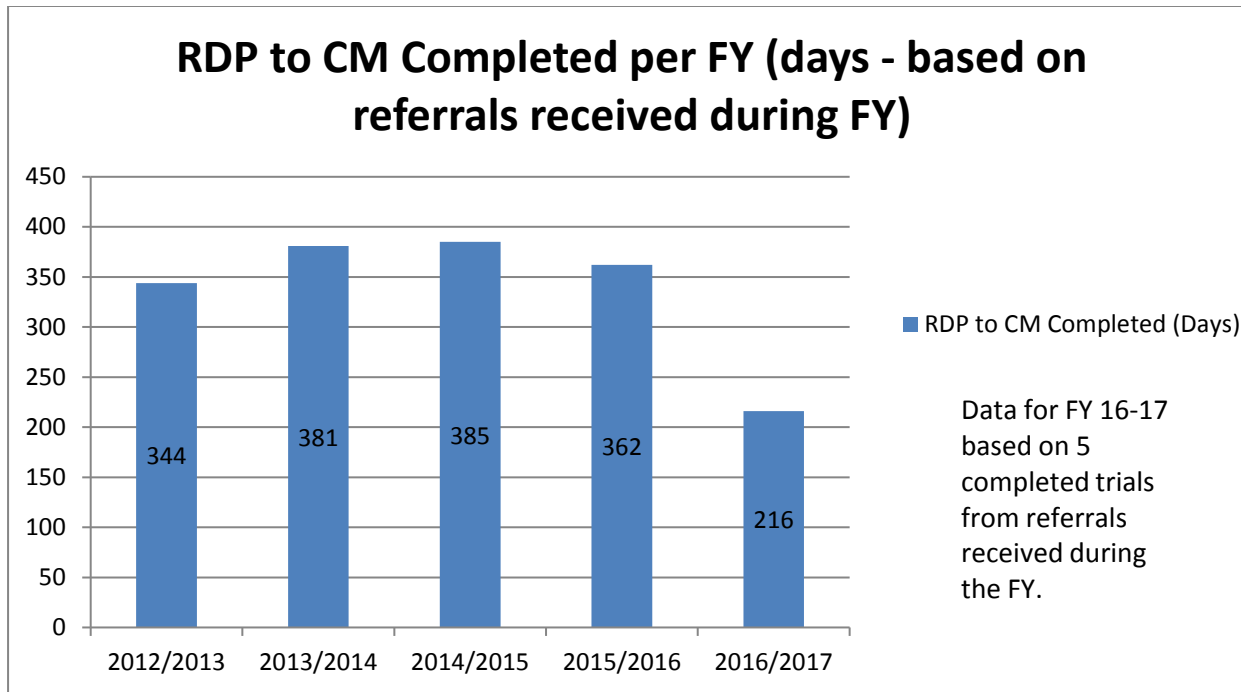
Performance:

1. Based on the findings of a review of the Military Prosecution Services conducted by the Bronson Consulting Group (2008), time spent from referral of the charges for disposition until referral for court martial exceeds the preferred target of three months. The report suggests that, delays experienced during Court Martials were so severe that the very purpose of having a separate military justice system was threatened.

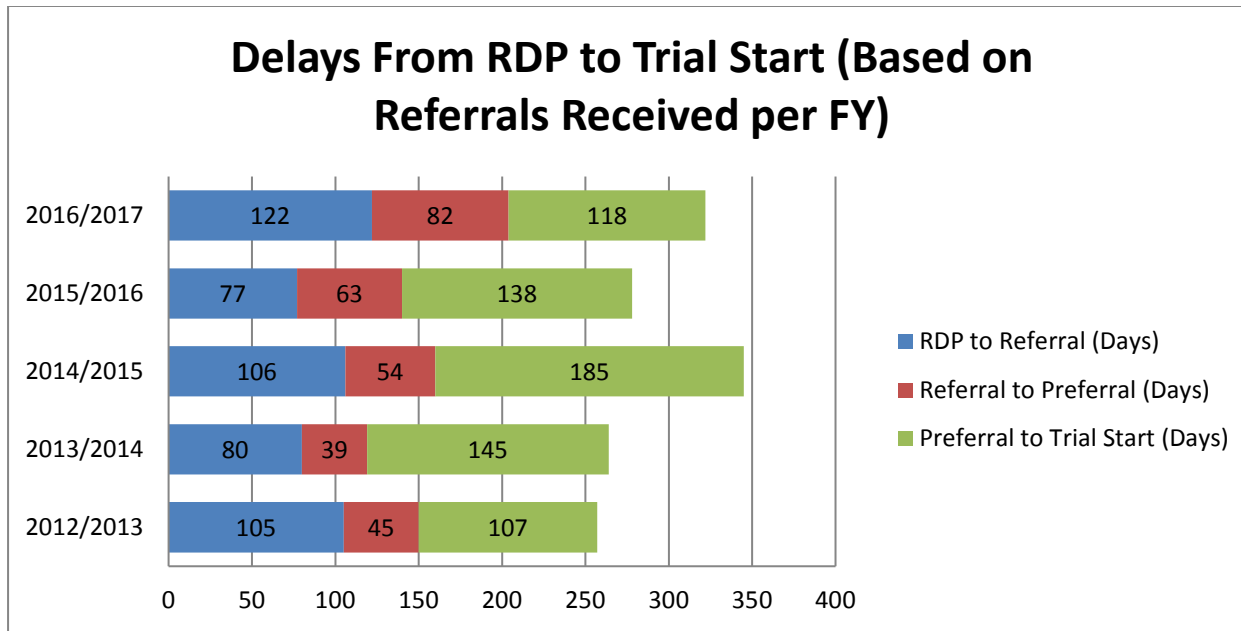
- a. What are your thoughts on this finding?

DMP's comments

- (1) I echo the comments that follow from CMPS prosecutors.
- (2) I also refer you to my comments above on timeliness in relation to measuring effectiveness, efficiency and legitimacy.
- (3) The MJS overall is very speedy. 92-96% of all trials are summary trials and take place within 1 year. The more complex cases, or those affecting the rights of the accused more greatly, are dealt with at court martial, with the added necessary guarantees, which requires more time. Even then, cases going to court martial are completed on average within a year (337.6 days since fiscal year 2012/13) of the charges being laid.



(4) The average time it takes to bring a case to trial after charges are laid can be broken down as follows:

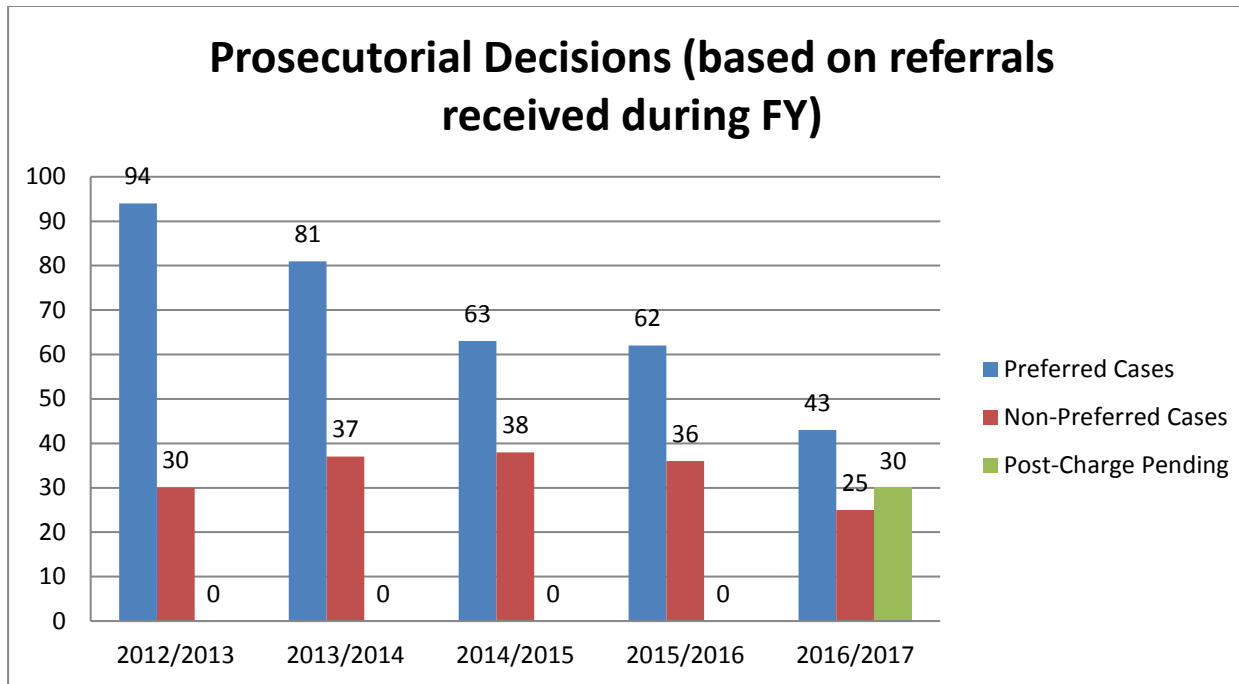


- (5) Explanation for the various segments of the time required to process a case, as well as ways to make improvements, will be discussed below.
- (6) The time it takes to complete a case is only part of the picture.
- (7) The really crucial factor appears to be the capacity to handle the volume of cases preferred to court martial.
- (8) Let's look at the number of cases that have led to a trial and those that have not.
- (9) For fiscal year (FY) 2015-16, 98 cases were referred to DMP. The same number has been received to date (as of 17 Jan 17) for this FY. It is likely that in the next 2 ½ months, more referrals will come in (at current rate, an additional 20 cases for a total of 118 referrals).

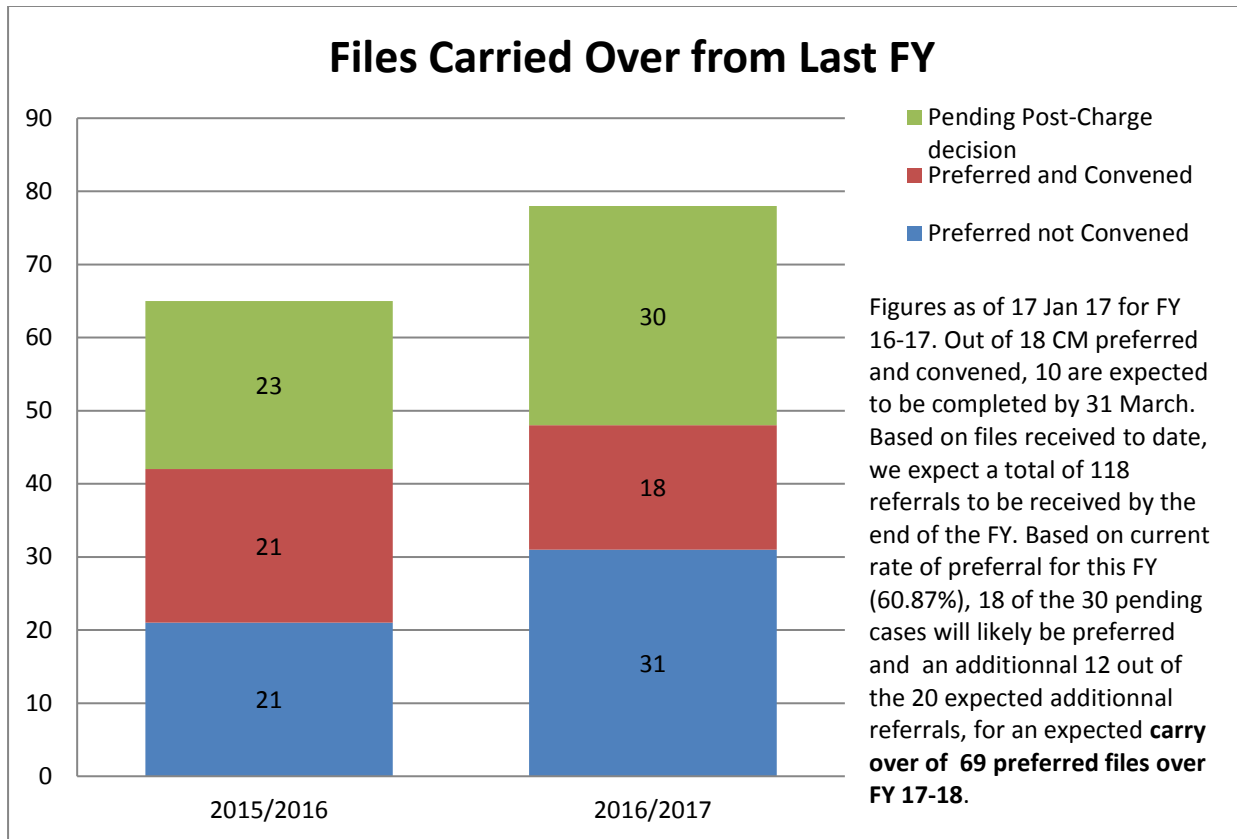
- (10) Of those cases referred, 77 are still ongoing, including 10 from previous FYs (noting that the one from FY 2012/13 is an outlier as it concerns an accused fled the country before being tried). They have neither been completed at court martial, nor the object of a decision by the DMP not to prefer them.
- (11) At present, there have been 41 courts martial completed this FY. Note that there is still almost 2 ½ months before the end of the FY and that 10 trials are either ongoing or scheduled to begin before then. The anticipated number of courts martial that will be completed this FY is similar to last FY.

Fiscal Year	2012/13	2013/14	2014/15	2015/16	2016/17	Avg	Current as of
Stats Based on Total Cases Processed During FY							
Courts Martial Completed (during the FY)	64	67	72	47	41	53.33	17-Jan-17

- (12) Only 5 of the 41 courts martial completed so far this FY relate to cases referred to DMP this FY (98 in total). The 36 other courts martial completed relate to cases referred to DMP in previous FY. This indicates a buildup, an accumulation of cases that will need to be heard in court. Courts martial hear cases from previous FY while new cases accumulate. This would not be concerning if there would be enough courts martial to deal with cases before delays become unreasonable. It appears that in a very short future there will be a marked increase in the number of cases where the time between charges being laid and completion of trial will exceed 18 months. 18 months is the ceiling where delay is presumptively unreasonable according to the current interpretation that military judges have made of the SCC *Jordan* decision. At the current clearance rate, we can project that there will be an increase of cases above the 18 month ceiling towards the end of the next FY, and even more in the following FY.

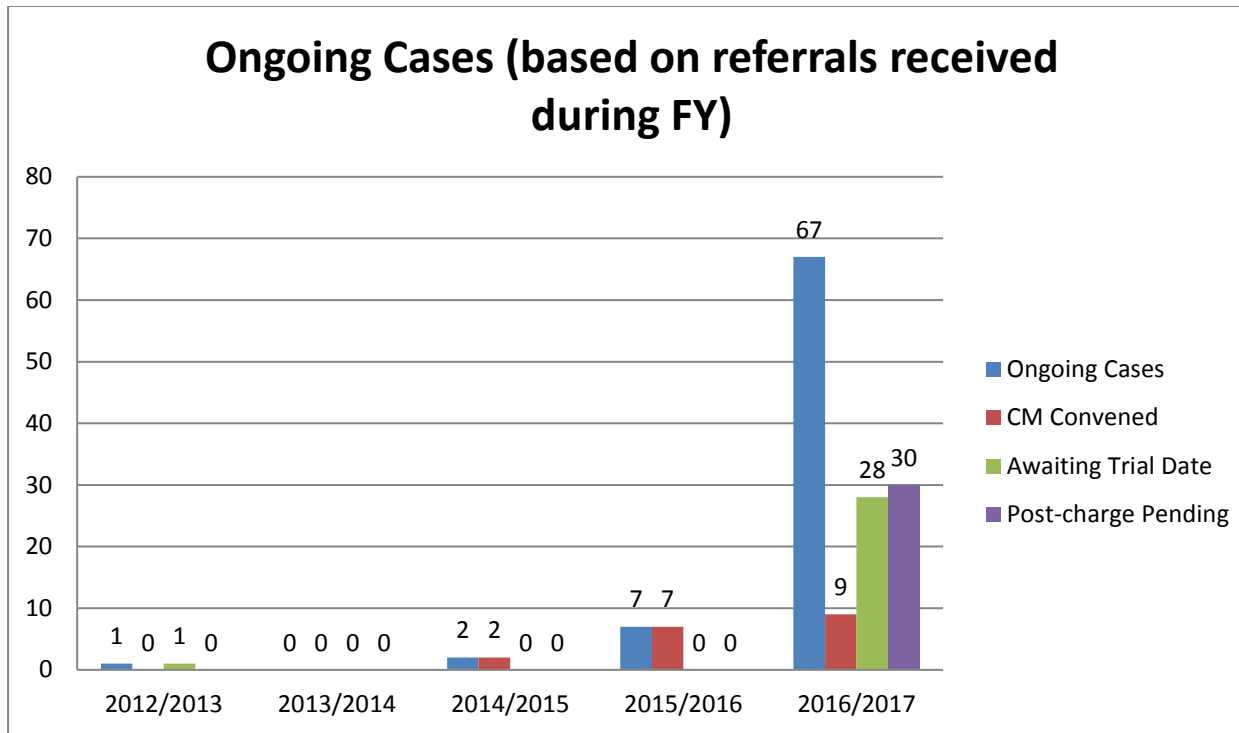


(13) To date, in FY 2016/17, prosecutors have made a decision whether to prefer charges (or to withdraw them) in 100 cases (68 of which were referred this FY, 32 from previous FY: 30 cases referred to DMP this FY still require a decision whether to prefer). In 43 of those 68 referred cases the decision was to prefer to court martial: in 25 out of 68 cases, the decision has been not to prefer to court martial.



(14) At present, 18 preferred cases are either ongoing or have a date for trial set (10 during this FY, 8 in the next). 31 cases have been preferred but not yet convened. 30 cases still require a decision whether to prefer to court martial. We can anticipate that up to 18 of the 30 cases pending preferral decision may be preferred to court martial². These would add to the 31 cases preferred but not yet convened, and to the 8 that have been convened for trial in the next FY.

² In the last 5 FY, the average of cases preferred to court martial out of those referred to DMP is approximately 62%, and those where the decision is not to prefer represent 38% of the cases referred to DMP.

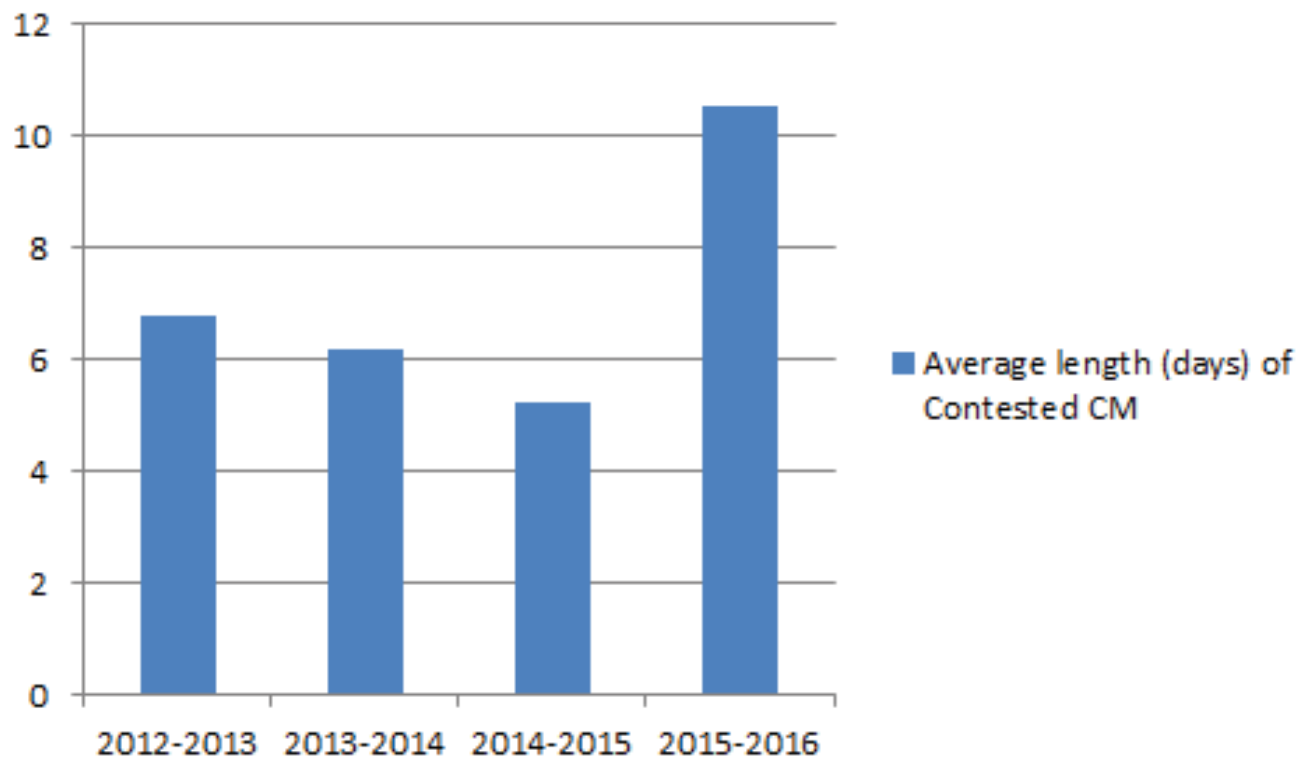


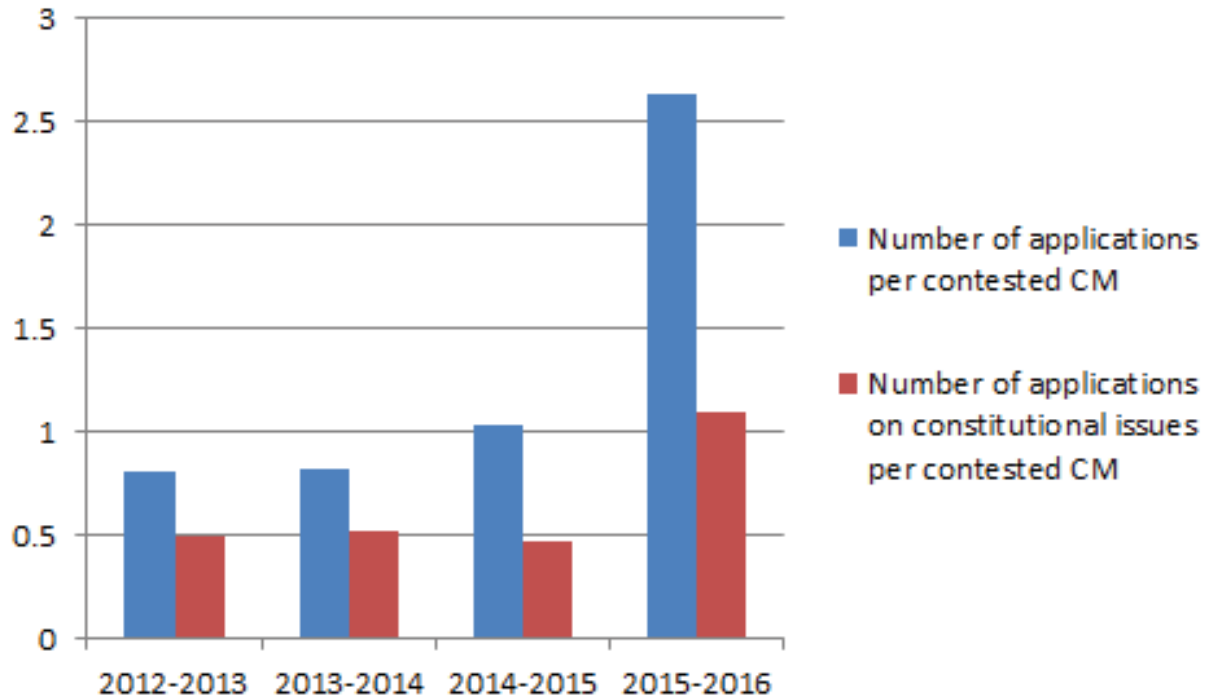
(15) We can therefore anticipate that even before any new referrals come in, the new FY 2017/18 will begin with at least 57 cases ready for trial (and possibly up to 69 cases if 12 out of the 20 cases expected to be referred in FY 2016/17 are preferred – see graph on p. 14).

(16) Assuming that the military judges are able to deal with roughly the same number of cases next FY as they have been in the last 2 FY (completing 47 cases in FY 2015/16 and 41 to date in FY 2016/17, with 180 of sitting court days in FY 2015/16 and already 112 days for courts martial completed to date this FY) not all of those 57 cases will be heard in 2017/18. Possibly 10 to 22 cases will be pushed to FY 2018/19 in addition to referrals that will be done for referrals received in FY 2017/18. Many of those will likely exceed the 18-month presumptive ceiling for unreasonable delay by the time the trial ends. In the coming FY, new cases will add to those cases from FY 2016/17 that will need to be heard, compounding the problem.

Fiscal Year	2012/13	2013/14	2014/15	2015/16	2016/17
Court Sitting Days (112 for FY 2016/2017 plus an additional forecast of 65 days by the end of the FY)	251	222	204	180	177

- (17) As reported in my 2015/16 annual report in 2015-2016, only 23% of the 47 (11 out of 47) courts martial completed were contested trials (as opposed to situations where the accused pleads guilty) as opposed to 48% of 71 courts martial (34 out of 71) for 2014-2015, and 36% of 67 courts martial (24 out of 67) for 2013-2014. I expect that we will have seen a continuation of that trend when FY 2016/17 ends.
- (18) Another trend observed in FY 2015/16 that I expect will have continued in FY 2016/17 is that of the increased duration of contested trials, which seems to somewhat correlate with an increase in the number of applications made by defence.





- (19) In conclusion, even if prosecutors preferred cases faster, these would only increase the number of cases waiting for a trial date.
- (20) Availability of prosecutors to conduct trials does not appear to be the major factor preventing the convening of more trials. Nor is the availability of defence counsel. Rather, the fact that there is only 3 sitting judges out of an establishment of 4 seems to be the most important impediment to conduct more trials each year, when combined with the increased duration of contested trials.

Comments from CMPS prosecutors:

(21) I don't think these delays are "so severe that the very purpose of having a separate military justice system is threatened." The lack of successful 11(b) applications for unreasonable delays suggests the opposite. Yes, we can and should get faster. Yes, we need to decrease the post-charge review delay. But delay is not threatening to destroy our system.

(22) The question exaggerates the findings of the Bronson report. It looks at the system in isolation; what was going on in 2008 as opposed to now. The system is now adapting to the SCC decision of *Jordan* concerning unreasonable delays. I think the way the question as framed possibly indicates a completely unrealistic idea of what should be a reasonable delay.

(23) I would note that the "very purpose of having a separate military justice system" has recently been addressed and sustained by the SCC (in 2015). The speed of dealing with cases within the Military Justice System (MJS) is only one factor amongst others that support having a separate system of military justice, including courts martial.

(24) I would argue that the delays experienced in the civilian system could be viewed as far more "threatening". This seems like an extreme and baseless finding/affirmation.

- b. Have there been any new measures to reduce delays? For example, in the number of days it takes from referral of the charges for disposition until preferral for court martial?

Comments from DMP

(1) Comments of CMPS prosecutors below reflect measures that have been put in place.

(2) The increased time taken by prosecutors at the post charge review stage (as seen on the graph at p. 11) is not the result of complacency. Supervisors have been closely monitoring progress of each file and vigorously demanded diligent work on the part of every RMP. CMPS improved database has improved the ability to do so. Instead, this increased as compared to previous FY can be explained by 2 factors:

- (a) The relatively great number of new prosecutors in FY 2016/17: 5 new captains. Given their lack of experience, they take more time to adequately review files of equal complexity than a more experienced prosecutor would take. They are initially assigned files of lesser complexity, generally requiring less time. They require supervision and assistance from more senior prosecutors, which takes away from the time the latter can devote to their files. The more senior prosecutors end up with a greater proportion of the more complex cases requiring more time, with less time to devote to them than if there was a greater number of senior prosecutors in the team. However, this was a conscious investment in the future of DMP's part. These new prosecutors are extremely talented and promising. We expect that with the benefit of additional experience, those prosecutors will quickly become more efficient at reviewing files, capable of handling more complex cases, require less assistance, thus freeing more senior prosecutors. Globally, this should result in a reduction of post-charge review timelines in FY 17/18.

- (b) Medical situations led to the unexpected release of 1 prosecutor creating a vacancy for many months, and the absence for many weeks of 2 DDMPs. Furthermore, during the entire FY, at least 1 prosecutor was on parental leave (two at the same time for a period of a few months). This resulted in a loss of manpower and supervisory capacity, at a time where coincidentally both would have been particularly required due to the great number of more junior prosecutors within the team. The vacancy left by the medical release has since been filled. The medical situation of 1 DDMP has improved. Everyone will be back from parental leave mid-FY. This increase in capacity should also contribute to reducing post-charge review delays in FY 2017/18.

- (3) Most of the files referred to DMP each FY for preferral decision are based on investigations from units or local military police. Only a minority comes from the Canadian Forces National Investigation Service (CFNIS).

Fiscal Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	Avg
Unit Investigations	63/125 (50.40%)	62/118 (52.54%)	57/101 (56.44%)	59/98 (60.20%)	48/98 (48.98%)	57.8 (53.71%)
MP Investigations	27/125 (21.60%)	26/118 (22.03%)	29/101 (28.71%)	22/98 (22.45%)	38/98 (38.78%)	28.4 (26.71%)
NIS Investigations	35/125 (28.00%)	30/118 (25.42%)	15/101 (14.85%)	17/98 (17.35%)	12/98 (12.24%)	21.8 (19.57%)

- (4) Investigating units and local military police detachments receive legal advice from legal advisors working for the Deputy JAG/Regional Services: not the DMP. In the course of FY 2016/17, DMP and Deputy JAG/Regional Services have agreed that regional services legal advisors would consult more regularly with CMPS prosecutors with respect to investigations prior to charges being laid in cases likely to be referred to DMP. This is aimed at reducing the amount of time spent in supplementary investigations to meet CMPS prosecutors' post-charge review requirement and reducing the number of cases referred to DMP that the prosecutors end up not-preferring (the rate of non-preferral and withdrawal is higher for files based on unit and military police investigations than it is for those based on CFNIS investigations). This increased cooperation between CMPS prosecutors and regional services legal advisors will be monitored and enforced.
- (5) CMPS also discussed with CFNIS concerning putting greater emphasis on pre-charge work in order to minimize avoidable post-charge delay that could lead to breaching the presumptive ceiling of 18 months for unreasonable delays.
- (6) But as mentioned previously, even if post-charge review fall back on average below 60 days, it will not address the main cause of overall delays in bringing cases to trial. Available court time seems to be the biggest issue and it is beyond DMP's control to fix it.

Comments from CMPS prosecutors:

- (7) Increased monitoring and reporting of progress (timely gathering and dissemination of data and statistics). Increased awareness of delay issues amongst new prosecutors.
 - (8) Improved discussion between RMP and Deputy Judge Advocates (DJA) when necessary to help thing to move faster.
 - (9) Increased information provided to/communication with the chain of command regarding prosecutions may also increase understanding of the system, including the impact of delays in the referral process and therefore may reduce delays.
 - (10) Could consider mandating increased communication/coordination/cooperation between RMP and investigator, as well as clear expectations on both sides for timing and content of disclosure. That has been key in managing delay in the civilian system post-*Jordan*.
- c. Do you think excessively lengthy investigations are still contributing to overall delays? Could investigations be simplified for minor cases?

Comments from DMP:

- (1) Charges referred to DMP based on investigations done too hastily end up requiring more time to complement them. Post-charge, as opposed to pre-charge, the time will count towards the presumptive ceiling of 18 months beyond which courts could order stay of proceedings for unreasonable delay.
- (2) The chain of command may wish to see a matter investigated and tried rapidly. The conclusions of the Bronson report were greatly based on interviews with a number of representatives of the chain of command. However, especially when conducted by members who are not professional investigators, and even more if the case involves a certain level of complexity, rapid investigations may jeopardize the admissibility of the evidence (often due to breaches of the rights of the accused) and ultimately lead to charges being not-preferred, withdrawn or stayed. As mentioned in my introductory comments, the steps required in the court martial system exist in order to balance important societal interests that may not always coincide. Opinions that tend to minimize the need to respect the rights of accused in order to save time should be considered with care.

Comments from CMPS prosecutors:

- (3) There are some examples of simple cases taking too long to be investigated. There are numerous possible causes for this, including higher priority files, inexperienced investigators, and posting season. However, this is an investigative agency issue, not a DMP issue.
- (4) We should note however that proof to proceed with a court martial and to sustain a conviction at court martial is the same as for criminal trials. We do not see current investigations as being excessive and note that inadequate investigations would not support proceeding with courts martial or convictions at trial. Some complex cases do take a long time to investigate but the reasons for delay and what can be done is a question for investigative agencies not DMP.
- (5) Could consider increased training of NIS in areas which are ripe for causing delay, e.g. dealing with informers or agents, unsealing ITOs (information to obtain a warrant), vetting ITOs.

2. Another finding of this report was that the challenges for the Court Martial System come from within (policies/practices), unlike the civilian justice systems that have had to deal with increasing caseloads with limited resources.
 - a. What are your thoughts on this finding?

Comments from DMP:

- (1) This question contains inaccurate assumptions, presented as facts, concerning the civilian justice system. Comments from CMPS prosecutors below correct those misconceptions.
- (2) Furthermore, what is presented as “challenges” are better viewed as necessary to address and reconcile multiple very important societal interests, as I discussed in my introductory comments on Timeliness in relation to measuring effectiveness, efficiency and legitimacy.
- (3) The biggest challenge from my perspective is the inability to conduct trials in sufficient numbers to avoid an accumulation of cases. The single factor that could improve this is additional judicial capacity, something that the MJS shares with the civilian justice system.

Comments from CMPS prosecutors:

- (4) I don't understand this question. What 'challenges' are being referred to. As we pleaded in the recent *Jordan* applications, we have different inherent delays from our process that do not exist in the civilian system. However, there are pros and cons that need to be considered in any system. We could save time by cutting out all review of files, but at what cost?
- (5) Here they are using the civ system to compare, as point of ref like it was the perfect system. It is difficult to compare the two systems because they are different and serve different purposes- we do not have a docket system that push the file into the system; it is the RMP basically that have to pull those files for them to be in the system.
- (6) We should also mention that the purpose of our system – to support good order, discipline, morale and efficiency, inevitably leads to us completing numerous additional tasks that prosecutors in the civilian justice system do not have to do.(I have a list of our tasks versus those done in the criminal justice system – some of these are absolutely necessary, and while some could potentially be done differently if we added institutional infrastructure, still, those additional tasks would remain – included in this are communication with the chain of command prior to, during and following courts martial, and working with a variety of investigating agencies of varying competencies, including individual units).
- (7) The challenges in the civilian system are not merely increasing caseloads and limited resources. Some of them also arise from policies and practices which may include communication between the police and the crown's offices. For example, the legal aid funding process and Rowbotham applications are a key cause of delay – this is not an issue in the military system. Finding representation for unrepresented accused to cross examine witnesses in domestic abuse or sexual assault cases can add to delay. This is not often found in the military system. Those are both policy/practice issues that have nothing to do with caseloads or resources.
- (8) The docket system in the civilian system is a significant delay factor which is not present in the military justice system. This is a 'plus', though we could likely benefit from more aggressive setting of trial dates by RMPs in the face of defence inertia to reduce delay.

b. Do similar challenges still exist today?

Comments from DMP:

(1) This follow on question is moot in light of our input above.

3. Some practices are considerably different in the civilian justice system such as ‘the post charge review.’ DMP has set a target date of 60 days for this review, however in the civilian justice system post charge review is conducted by prosecutors much differently: it only takes couple of minutes and prosecutors don’t interview witnesses at this stage and they don’t write lengthy memos to their superiors explaining their decision.

a. What are your thoughts about military versus civilian prosecutors ‘governing practices? Could similar practices apply to DMP practices?

Comments from DMP:

- (1) This question contains inaccurate information, presented as facts. It generated strong comments from CMPS prosecutors, including some with extensive and current experience in the civilian prosecution world. The comments below offer a better informed and thus more accurate view of both systems.
- (2) Both systems are the result of years of accumulated wisdom and experience applied towards different problem sets. Trying to import practices from one to the other without a deep understanding of both systems is fraught with peril.
- (3) Rules and practices in the civilian justice system have evolved to deal with their reality, where, for example, hundreds of individuals get arrested for a wide range of crimes, many of them very serious, every week. This requires courts sitting permanently, in some places 6 days a week, to proceed to bail hearings for instance. On the other hand, only a few CAF members commit serious crimes every year, with very few held in pre-trial custody. Each trial by court martial has a degree of “deliberateness” that only a fraction of civilian cases get.
- (4) Both systems complement each other within Canadian society, but they serve distinct purposes, even though there is some overlap. The MJS is ultimately designed to ensure that members of the CAF are disciplined and that the public

can rely on its armed forces. The civilian justice system is of broader application and meant to ensure the proper functioning of society at large. The civilian justice system would go bankrupt if it offered legal representations free of cost to all accused persons, even though it would be fairer. On the other hand, given the smaller number of individuals concerned, the MJS can afford to provide full access to legal representation to CAF members. The MJS is designed to give an important role to members of the CAF in its administration, whereas such requirement does not exist in the civilian justice system. And the list goes on.

- (5) I also note that since the Bronson report, the CMPS practice of systematically writing a long memo on post-charge reviews has stopped. It is not a major source of time expenditure.

Comments from CMPS prosecutors:

- (6) Different prosecution services handle post-charge review differently. Some of those look fairly similar to our post-charge review practice. I don't think it is correct to say that it only takes a civilian prosecutor a couple of minutes to conduct a post-charge review. Perhaps that is true for the most minor offences where a person is in custody and wants to plead guilty at the earliest possible moment. However, it is certainly not true as a general proposition.
- (7) Again they are two different systems and difficult to compare-moreover there is not only one way to conduct business. Also I am not sure that the facts used in the question are accurate. As for the lengthy memo part it is not true- they should have a look at our post charge policy-003; they would have realized that our policy are in line with other prosecution services. It is scary that they want to use the civilian system as a point of ref but do not seem to know very well how this system works. The question is based on their "idea" of the civ system and also on their "idea" about how court martial system work rather than real knowledge about the systems. A simple reading of their part of our 003 policy would have them realized that there are issues with this question.
- (8) It looks to me like they are comparing our system to the provincial court system rather than the more accurate comparison to Supreme Courts of each province. Charges that are going to Supreme Court go through a lengthy process usually including multiple appearances as well as a preliminary hearing. So, merely comparing against a review of a file prior to a first appearance is not an accurate comparison. Furthermore, files received in the referral process are in relation to those who have already been charged – they are already in legal jeopardy so again, it is more similar to what happens at a preliminary inquiry. Finally, it is clear that the institutional interest also needs to

be taken into account. We are well aware that a decision to prefer a charge, including a charge for a purely disciplinary offence, in our system can have significant implications for the CAF and also for individual CAF members who are victims as well as those charged. This requires a careful weighing of the public interest, including the military interest, which may take longer than the time generally allotted to it in the criminal justice system.

- (9) Not all provinces conduct their file screening in the same way. Some provinces, such as British Columbia, have pre-charge screening. Most provinces, such as Ontario, do not. It is NOT correct to say that post-charge screening takes a couple of minutes, unless the charges are of a very minor nature and the evidence is not complicated – as might be the case in a simple shop-lifting charge. The types of civilian files that take a few minutes to screen are not the type of files that would typically end up before a Court Martial. To compare more similar types of offences, there is in the civilian system often a requirement to meet with witnesses for post-charge screening purposes. In Ontario, where an accused person is not held for a show cause hearing, but released after arrest with a promise to appear in court, the first appearance normally occurs around 6 weeks later. It is during that time period that civilian prosecutors conduct their post-charge screening. So the reality is that even if the actual screening may not take a lot of time, the matter is not actually “in the system” for about 6 weeks, which is much more similar to the 60 days in the military system. For cases where an accused person is held in custody following a bail hearing, the process may be accelerated, but for more complex charges, it may still take weeks to obtain significant disclosure from the police in order for a complete post-charge review. Further, the time for post-charge review is somewhat misleading: although a prosecutor may look at very basic disclosure and “screen” a file for summary vs indictable proceedings, the post-charge review is more of a process than a discreet event, and it depends heavily on how much disclosure is available and how quickly. Because of the pressures to get disclosure made to defence as quickly as possible, the true evaluation of reasonable prospect of conviction and interests of justice to proceed may only occur at the pretrial stage, which could be a few months after arrest and charge. Often there is a delay while the investigator is asked to conduct further investigation or to arrange for an interview with a prospective witness, such as in the case of sexual assault, domestic abuse or prosecutions involving child witnesses. Further, it is NOT accurate to say that prosecutors do not write lengthy memos to their superiors. If a charge is to be withdrawn or proceeded with differently from the initial charges, the Ontario crown’s policy manual will frequently require justification in the form of a memo to file following a discussion with a senior crown. In contrast, in the military justice system, having a 60 day timeline for a thorough post-charge review may even lead to LESS delay than in the civilian system, with fewer charges being ultimately withdrawn close to trial dates due to lack of reasonable prospect of conviction or not in interests of justice.

- (10) It is NOT correct to say that post-charge review “only takes couple of minutes”. Pre-charge review in BC, MB and PQ (the 3 charge-approval provinces) may be a relatively brief process on minor cases, but a more detailed post-charge review still takes place on those files. This is important because not all of the disclosure may be available to the Crown immediately, e.g. drug analysis, post-arrest wiretap evidence, evidence seized during the takedown, analysis of seized cell phones, MLAT evidence, etc. It is also NOT correct to say that prosecutors don’t interview witnesses at this stage and they don’t write lengthy memos to their superiors explaining their decision. In fact, those things do occur with frequency in the post-charge review process, given the importance of accountability within prosecution services.

Efficiency and Economy:

Resources

4. The review conducted by the Bronson Consulting Group (2009) underlined that lack of resources was not a contributing factor to the delays at court Martial. What are your thoughts on this finding?

Comments from DMP:

- a. For the reasons discussed above, I believe that there is a strong correlation between the number of military judges and the ability of the court martial system to conduct trials in a timely manner after charges are laid.
- b. Numbers and experience also suggests that the greater quality of investigations is, the more efficient the subsequent prosecution will be. Therefore, having more resources in terms of qualified and experienced investigators should improve the time it takes to investigate, reduce the requirement for additional investigation and the number of cases the prosecutors must decide not to prefer due to investigatory flaws. All of this would contribute to improving delays.
- c. At equal talent and skills, either more prosecutors and/or prosecutors with more experience would also logically contribute to improving the functioning of the court martial system, including delays.

Comments from CMPS prosecutors:

- d. We could certainly decrease the time it takes to process files by having more prosecutors. But without more judges, the overall delay likely won't decrease. Additional resources throughout the system would certainly reduce delays.
 - e. Agree.
 - f. We should mention that we have had prosecutors in court for the same number of days this year as last year, despite the lack of a fourth military judge and despite the fact that the number of completed courts martial is less than last year. The lower number of completed courts is due to increased numbers of trial continuations due at least in part to an extremely marked increase in the number, complexity and length of pre-trial applications. In addition, although dealt with as pre-trial applications at court martial due to the provisions of QR&O Chapter 112, the subject matter of these pre-trial applications would be included within the regular trial portions of criminal trials in the civilian justice system. Additional court time is being used for these applications resulting in a longer queue for other court martial dates.
 - g. Having additional prosecutors could decrease delay in some of our processes. A larger or more complex workload for each prosecutor generally creates less time to work on each file. More prosecutors would not mean that cases would necessarily get to trial faster as that depends on many factors, most importantly availability of court time and defence counsel calendars. However we could improve timelines for pre-charge and prefferal decisions, disclosure, initial offers and get to the point that we are fully prepared to go to trial quicker if we had more prosecution resources (numbers and experience). Having these additional resources and decreasing these timelines would allow those cases that should not go forward to be dealt with more quickly and could demonstrate where other issues exist within the system, such as the impact of having only three judges.
5. Do you know the average number of days of court experience of the military prosecutors in your team? Do you think lack of court experience might cause further delays in the system (e.g. in assessing files)?

Comments from DMP:

- a. On average, the 16 Regular Force prosecutors currently part of the CMPS have an average of 2 years 11 months years of litigation experience within the military justice system (as prosecutor or defence counsel). However, this is simply an average. For instance, there is a couple of "outliers" who between them total 19 years and 8 months of

experience, and 10 prosecutors who have occupied litigation positions within the military justice system for only 18 months or less.

- b. The 9 Reserve Force prosecutors are all civilian Crown prosecutors (with the exception of 1, who is nevertheless a retired military prosecutor, but whose current civilian employment is not that of prosecutor).
- c. To date this fiscal year, the 41 courts martial that have been completed required a total of 112 days of court. There is, however, a number of courts martial that are ongoing: the days spent on those so far are not included in this figure. Not included in this figure is also the number of days that courts martial set to begin before the end of this fiscal year will take. We can, however, anticipate and approximate that the ongoing and scheduled courts martial may necessitate a further 65 number of days.
- d. The 9 Regular Force Regional Military Prosecutors currently posted to CMPS have prosecuted the majority of the 41 completed courts martial to date in this fiscal year, but not all (some were prosecuted by RMP who have seen been posted out, some were prosecuted by CMPS prosecutors assigned to non-RMP positions such as legal advisor to CFNIS). With respect to the 112 days of court time associated with the 41 completed courts martial, those 9 RMP have spent an average of 12 days in court to date, during this fiscal year. This figure does not include time spent in court for cases that are not yet completed.
- e. Note that some trials have two prosecutors (Regular Force and/or Reservists) appearing before the court, for the entirety or part of the proceedings.
- f. These figures, however, do not fully account for the time spent by these 9 RMPs and all other CMPS prosecutors on other prosecutorial tasks that are nevertheless highly relevant to build experience.
- g. For instance, time spent on pre or post-charge review, on negotiation with defence, on meeting and preparing witnesses, on researching legal issues, on providing legal advice to investigators, on writing memoranda of fact and law for specific applications at court martial, or for appeals before the Court Martial Appeal Court and/or the Supreme Court of Canada, etc.

- h. It also does not include time spent on receiving training. Total Training Days – At the end of FY 2016/17 CMPS prosecutors will have received over 347 days of training, over the course of 35 different training events such as those offered by the Ontario Crown Attorney Association, the Directeur des Poursuites Criminelles et Pénales du Québec, the Federation of Law Societies of Canada. Every prosecutor took part in at least one training event. On average, each prosecutor (including those who have left the CMPS in the course of the FY) will have received over 12 days of training in FY 2016/17.
- i. Finally, I refer you to my comments at pages 19 and 20 concerning the impact I assess the intake of a great number of new prosecutors in the same FY has had on time taken post-charge review, and effect that was compounded by the unforeseen absence of a number of experienced prosecutors and supervisors during the same period. This situation, however, is resorbing. Assistance from colleagues, including very experienced reservists, high quality training, and the great talent and dedication of those new prosecutors are all factors mitigated the impact of their lack of experience. In FY 2017/18, I expect to see the benefits of the experience they gained translating into a reduction of the time spent on post-charge review.
- j. In his 2011 report Chief Justice Lesage generally agreed with the recommendations of the Bronson Report concerning the experience of military prosecutors. The Bronson Report noted that: “it must be recognized that the position of a military prosecutor is a very specialized one that encompasses the acquiring of a considerable amount of knowledge and expertise with respect to advocacy skills, the rules of evidence, substantive criminal law and the Charter of Rights.” The current practice of the Office of the JAG (OJAG) usually aligns with the recommendation that the Bronson Report made that “the initial appointment to the position of (regional military prosecutor) should be for a minimum of five years.”
- k. My experience confirms the wisdom of this approach, which in my view should be formalized. I also see the wisdom of the Bronson Report recommendation that “the military prosecutors be encouraged to stay as long as possible in the RMP position. They should be permitted to spend their career as military prosecutors if they so wish”.
- l. I also recognize, however, the challenges that this recommendation presents. For instance, given its small size, career progression opportunities uniquely within the CMPS would be more limited than within the broader OJAG from whence prosecutors come. This could act as an obstacle to attracting interesting and interested candidates.

Also, being exposed, as legal advisor, to various facets of the CAF's "business" enhances the quality of military prosecutors.

- m. Therefore, I am of the view that it would be beneficial to the efficiency of the prosecution function to have a formalized system to manage the career of legal officers posted as prosecutors. Such a system could, for instance, provide that legal officers selected to be military prosecutors would act in that capacity for five years. Following that period, the individual would be posted elsewhere within the establishment of the OJAG (or that of the Canadian Forces Military Law Centre, within the Canadian Defence Academy), with a possibility for rejoining the prosecution team after a set period of time, if that is something that the DMP and the individual wish. This would entail setting out the details concerning selection of candidates from the OJAG, considering the needs of other Divisions within the OJAG, something that I am convinced is within the realm of the feasible. This would not require legislative or regulatory amendments.
- n. Until then, I will do everything possible within the current posting selection process to ensure that upcoming posting in an out of the CMPS provide a balance between building experienced prosecutors and taking in new personnel, with a view of avoiding a sudden and massive loss of experience.

Comments from CMPS prosecutors:

- o. Perhaps, but I don't think this is the biggest contributing factor. In my view, lack of judicial resources and quality of investigations are bigger factors.
- p. We also have to look at what they mean by average number of days in court: in my view they are not only using trial per se, including applications but also use first appearance-disclosure, setting hearing date, remand, preliminary inquiry- all different procedure that require the Crown to be in court but that do not exist in our system- again a comparison that is difficult or maybe not accurate.
- q. Experience generally and particularly in the criminal law is crucial and the lack of it is a contributing factor to the work of some of our folks taking longer, including file review and trial preparation. However, this question displays an inaccurate, overly simplistic view of what criminal law experience applies to prosecution practice. While appearing in court provides absolutely necessary experience, other legal experience is also relevant and valuable – for example, the "Administrative Crown" in the BC prosecution service (the CJB) – a very experienced lawyer, does

“charge approval” review and at that stage of their career, appears in court far less than they would have done as regular trial counsel. All of that work would also be counted as valuable and applicable experience in this tally, as would the work our DDMPs do in providing higher level review on RMP files, even though those are they are not appearing in court on those days. What would be included in such an assessment for our folks, or the folks in the criminal justice system against which we would be compared? Would it include all court days ever worked? Some prosecutions are even undertaken by lawyers in law firms on a contractual basis (federal crown) – how would these be counted? The results of any such an analysis would be very difficult to assess and comparison between different systems and institutions would be fraught with error. We have very few prosecutors and a fairly compressed pyramid of experience as compared to other prosecution services which would skew our results (and perhaps theirs).

6. Would greater on the job training, possibly by co-locating with civilian prosecutors, improve the performance of the office of the DMP?

Comments from DMP:

- a. In FY 2016/17, DMP obtained the concurrence from the Public Prosecution Service of Canada, of the Ontario’s Criminal Law Division, and of the Directeur des Poursuites Criminelles et Pénales du Québec to have military prosecutors temporarily employed as a crown prosecutors with these civilian prosecution services, for the purposes of maintaining and enhancing legal skills as prosecutors, including in areas such as sexual offences. The required paperwork is currently being generated with a view of having a number of military prosecutors working on civilian cases starting in the upcoming months. DMP plans on subsequently expanding such cooperation with other provincial prosecution services. DMP will be careful that the number of prosecutors who will undertake responsibilities with civilian prosecution services at any given time, as well as the amount of time spent on those tasks, do not unduly affect the conduct of military prosecutions.
- b. The additional experience and expertise gained should translate in increased quality of prosecutorial work within the court martial system. Aside from potentially improving the quality of the prosecutor’s work, the very fact of having worked along civilian prosecutors could also improve the public confidence in military prosecutors (which goes to the legitimacy of the court martial system), provided that the public is informed of that fact.

Comments from CMPS prosecutors:

- c. More training and more experience would without a doubt improve performance. The real question is cost versus reward. Time in civilian court will help with advocacy skills and understanding of the criminal law, but there is still a component to court martial experience that can only be attained by being in a court martial. Additionally, while military prosecutors are training with civilian prosecution services, we will have less prosecutors working military files.
 - d. Our prosecutors would undoubtedly benefit from such an experience as it would increase their advocacy skills, criminal law and evidence law knowledge. However, it would definitely require an augmentation to the number of prosecutors assigned to CMPS in order to allow these training opportunities to be pursued while also continuing to operate the MJS at an appropriate pace.
 - e. One thing that would improve the performance of the office of the DMP would be to take greater care in the posting cycle. It takes several years for trial lawyers to thoroughly learn their trade. Realistically, a three year posting to prosecutions is an inefficient use of resources if a prosecutor is posted out just as he/she is beginning to become comfortable in a courtroom. Further, it would be optimal to ensure that in any posting cycle there is overlap between new and experienced prosecutors.
7. One alternative to the organizational model of the DMP is to co-locate prosecutors with civilian offices in the provinces. Do you foresee any issue that might arise from that model?

Comments from DMP:

- a. If what is meant by co-location is in fact having military prosecutors part of a provincial prosecution service, the major issue I see is the diversion of resources dedicated to the needs of the CAF towards dealing with the high volume of cases facing provincial prosecution services. CAF cases would 'compete' with civilian cases. While the addition of a few military prosecutors to the workforce of the civilian prosecution service would help in dealing with their workload, it will have a marginal impact. It would, however, have a dramatic impact on the level of work devoted to the disciplinary needs of the CAF.
- b. If, on the other hand, co-location simply means that, being located at the same place, I do not see benefits arising out of that model.

- c. If what is meant is the pooling of some resources, there could be some marginal advantages. However, there would be very concrete limits to sharing resources given the differences in the offences prosecuted, the rules governing trials, the informatics systems used, etc.

Comments from CMPS prosecutors:

- d. Aside from the practical issues that would likely arise (i.e, office space and logistical support), there is an issue of independence. However, there would be some interesting opportunities for cross-service cooperation and training if independent DMP/RMP offices were established close to Crown offices.
- e. We have to be careful to not take out the “military” out of the military prosecutors.
- f. There could be some advantage to being closer to other prosecutors and other prosecution services and, while unnecessary in point of fact, this could increase the appearance of independence of CMPS. Co-location could also increase interagency cooperation and logistically, we could be located anywhere. However I do not necessarily see the added value of being specifically co-located with provincial crown offices given the difference in jurisdiction and the potential issues relating to independence and various privileges. Provincial crown could not prosecute our cases unless they were appointed under the NDA and competent in military law. Similarly, our legal officers could not prosecute provincial cases without being specifically appointed. Many differences exist, of course, relating to our prosecutions of offences committed anywhere by those subject to the Code of Service Discipline versus the provincial crown who are jurisdiction bound in terms of where offences occurred. Furthermore, we can conduct trials anywhere and make determinations as to the location of the trial based on particular factors, while all provincially based trials are held within the same province and normally, absent a successful change of venue application, in the geographic area in which they occurred.
- g. While we do prosecute some cases incorporating the *Criminal Code*, we also prosecute drug cases (which are prosecuted by the federal Public Prosecution Service of Canada). For jurisdictional, financial, and logistical reasons, we might be better placed if we were co-located with the PPSC offices.

h. I fail to see how simple co-location within civilian prosecution offices would contribute to the effectiveness, efficiency, and cost-efficiency of military justice system. The real issues in the post-*Jordan* paradigm, as I see them, are adequate resources (investigative, prosecution & judicial) for quick investigations (and disclosure prep), quick case review & prep and quick court dates.