



Judge Advocate General

Juge-avocat général

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0160-1-06551-06-0034

13 May 2016

Distribution List

TERMS OF REFERENCE – COURT MARTIAL COMPREHENSIVE REVIEW

1. Pursuant to my statutory responsibilities for superintendence of the administration of military justice under section 9.2(1) of the *National Defence Act* (NDA), and for the conduct of regular reviews of the administration of military justice under section 9.2(2) of the NDA, I hereby direct the Deputy Judge Advocate General for Military Justice (DJAG MJ) to conduct a comprehensive review of the Canadian Armed Forces' (CAF) court martial system. The purpose of this comprehensive review is to conduct a legal and policy analysis of all aspects of the CAF's court martial system and, where appropriate, to develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system.

2. Timing of Review. The comprehensive review shall commence no later than 15 July 2016, and shall produce a completed report deliverable to me no later than 14 July 2017. The DJAG MJ is authorized to commence the review immediately, to the extent that his current personnel resources will permit an immediate start.

3. Composition of the Court Martial Comprehensive Review Team (CMCRT). The CMCRT shall be comprised of the following legal officers, assigned to the following roles:

- a. Col Rob Holman, CD, LL.B., LL.M: DJAG MJ and Director General (DG CMCRT)
- b. LCdr Mike Madden, CD, LL.B., LL.M.: Senior Legal and Policy Advisor
- c. LCdr Clark Colwell, CD, LL.B., LL.M.: Legal and Policy Advisor
- d. Lt(N) Amélie Aubut, LL.B., LL.M.: Legal and Policy Advisor

4. Scope of the Comprehensive Review. At the outset, the CMCRT shall assess the current court martial system's effectiveness, efficiency, and legitimacy. The CMCRT

shall then assess whether changes to any features of this system are required or advisable in order to promote greater systemic effectiveness, efficiency, or legitimacy. The CMCRT shall, as a minimum, consider the following subject matter areas:

- a. The status and institutional structure of tribunals/courts with jurisdiction over service offences, including whether they ought to be: military or civilian in character; permanent or ad hoc entities; and, capable of deploying to austere or hostile environments inside and outside of Canada;
- b. The status and institutional structure of a prosecution service with responsibility for prosecuting service offences, including whether this service ought to be military or civilian in character, and capable of deploying to austere or hostile environments inside and outside of Canada;
- c. The mechanism through which defence counsel services are provided to persons accused of committing service offences, including whether such services ought to be: provided by military or civilian lawyers; provided in whole or in part at public expense; and, capable of being provided within austere or hostile environments inside and outside of Canada;
- d. The substantive body of service offences, including full consideration of whether any current offences ought to be updated or repealed, and whether any additional offences ought to be added;
- e. The punishments, sanctions, and sentencing laws that apply in respect of service offences, including full consideration of whether any current sentencing provisions ought to be updated or repealed, and whether any additional sentencing options ought to be added;
- f. The laws of evidence that ought to apply at trials in respect of service offences;
- g. The rights, grounds, and mechanisms of appeal that ought to exist for the Crown and for persons subject to the CSD; and,
- h. The special needs of any particular groups who may interact with the military justice system, including victims, young persons, and aboriginal offenders.

5. Progress Reports. The DG CMCRT shall provide me with regular reports on the progress of the comprehensive review, and shall be prepared to support me in providing regular progress reports to Armed Forces Council. The DG CMCRT may also consult with me at any time for the purposes of clarifying any aspect of these terms of reference.

6. Public consultation. The DG CMCRT shall ensure that any interested members of the Canadian public have a reasonable opportunity to provide the CMCRT with written input on any of the subject matter areas described above at para 4. This public

consultation is to be completed no later than 15 December 2016. The CMCRT is also authorized to conduct further consultation with any member of the Canadian public who has a demonstrable expertise in a subject that is relevant to the comprehensive review, at the sole discretion of the DG CMCRT.

7. Consultation with other government departments. The CMCRT is authorized to consult with stakeholders from within relevant departments/organizations of any of the federal, provincial, or territorial governments in Canada, as approved by the DG CMCRT. The CMCRT shall consult with stakeholders within the federal Department of Justice (DoJ) who are responsible for the DoJ's criminal justice system review and sentencing law review, respectively.

8. Consultation with foreign subject matter experts. Comparison between military justice systems can be difficult since these systems tend to operate in ways that are reflective of the fundamental values and constitutional landscapes of the different countries and legal systems from which they emerge. Consequently, caution and analytical rigour must be applied when considering foreign examples. Nonetheless, a comparative study by the CMCRT of how other like-minded states operate their military justice systems will yield clear benefits by exposing the CMCRT to a full range of military justice considerations, structures, and practices that may assist the CMCRT in its comprehensive review of the Canadian military justice system. The CMCRT is therefore authorized to consult with foreign stakeholders from within the government, academic, military, and legal communities, as approved by the DG CMCRT.

9. Consultation with Senior Canadian Armed Forces (CAF) Leaders. The DG CMCRT shall, through me, seek an opportunity during the latter portion of the comprehensive review – ideally between January and March 2017 – to consult with senior CAF leaders on issues that are relevant to the comprehensive review.

10. Consistency with OP HONOUR. All members of the CMCRT shall be thoroughly familiar with the report prepared by Madame Marie Deschamps following her External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces, and with both the Chief of the Defence Staff's and my own orders relating to Operation HONOUR. Any options that are considered by the CMCRT as a means of achieving greater effectiveness, efficiency, or legitimacy within the court martial system should be consistent with efforts that are being undertaken by other CAF authorities in support of Operation HONOUR. To this end, the CMCRT is authorized to consult with the CAF Strategic Response Team on Sexual Misconduct as approved by the DG CMCRT.

11. Administrative and additional legal/informational support. Administrative support to the CMCRT shall be provided by the DJAG MJ. The CMCRT shall be granted access to any relevant information or data in the custody of the OJAG, the Office of the Director of Military Prosecutions (DMP), or the Office of the Director of Defence Counsel Services (DDCS) (unless access to this information would compromise solicitor-client privilege). All DJAGs and Directors within the offices of the JAG, DMP and DDCS are

further directed to facilitate the interaction between the CMCRT and the personnel of all ranks within their respective organizations.

12. Classification/Designation/Sensitivity of the CMCRT Final Report. To the greatest extent possible, the final report of the CMCRT shall be unclassified, and shall not require any protected designation. However, the report shall be marked and treated as a document that is subject to solicitor-client privilege.

13. Conclusion. The responsibilities for superintendence and for the conduct of regular reviews of the administration of military justice that Parliament has entrusted to the JAG are ones that I take very seriously. This comprehensive review represents a critical mechanism through which I will continue to discharge my statutory responsibilities, and through which the Minister of National Defence, the CAF, and the broader Canadian public can continue to have confidence in Canada's fair and effective military justice system. I expect that each member of the CMCRT will bring to bear the full extent of his or her legal and military expertise, imagination, and courage of conviction throughout the conduct of this comprehensive review. I will accept nothing less. *Fiat Justitia.*



Blaise Cathcart, Q.C.
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