

DIRECTOR OF MILITARY PROSECUTIONS

ANNUAL REPORT

This report, covering the period of 1 April 2010 to 31 March 2011, is prepared in accordance with article 110.11 of the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*, which requires the Director of Military Prosecutions¹ (DMP) to report annually to the Judge Advocate General (JAG) on the execution of his duties and functions.² This report is organized into sections that will discuss the following:

- ❑ Organizational Profile
- ❑ Duties and Functions of the DMP
- ❑ Structure of the DMP
- ❑ Training and Policy Development
- ❑ Military Justice Proceedings: Trials, Appeals and Other Hearings
- ❑ Conclusion – DMP Comments

Organizational Profile

Our Mission

To provide competent, fair, swift and deployable prosecution services to the Canadian Forces in Canada and overseas.

Our Vision

“*ORDO PER JUSTITIA*” or “*DISCIPLINE THROUGH JUSTICE*”. The Director of Military Prosecutions is a key player in the Canadian military justice system helping to promote discipline, good order, high morale, esprit de corps, group cohesion and operational efficiency and capability.

Duties and Functions of the DMP

The Director of Military Prosecutions is appointed by the Minister of National Defence. Although the DMP acts under the general supervision of the Judge Advocate General, he exercises his duties and functions independently. Those duties and functions, which are set out in the *National Defence Act (NDA)*, the *Queen's Regulations and Orders for the Canadian Forces*, ministerial orders and other agreements, include:

- ❑ Reviewing all *Code of Service Discipline* charges referred to him through the Canadian Forces chain of command and determining whether:

¹ The DMP for the reporting period was Captain (Navy) J.C. Maguire, who was appointed to a four year term on 19 September 2009.

² Previous DMP Annual Reports, along with copies of DMP Policy Directives and other information can be found at the DMP website: <http://www.forces.gc.ca/jag/publications/pros-pour-eng.asp>.

- The charges or other charges founded on the evidence should be tried by court martial; or
- The charges should be dealt with by an officer who has jurisdiction to try the accused by summary trial.
- ❑ Conducting – within Canada or at deployed locations overseas – the prosecution of all charges tried by court martial.
- ❑ Acting as appellate counsel for the Minister of National Defence on all appeals from courts martial.
- ❑ Acting as the representative of the Canadian Forces at all custody review hearings conducted before a military judge.
- ❑ Acting as the representative of the Canadian Forces before other boards and tribunals whose jurisdiction touches upon matters relevant to the military justice system.
- ❑ Providing legal advice to military police personnel assigned to the Canadian Forces National Investigation Service (CFNIS).

Structure of the DMP

The DMP is assisted in his duties and functions by regular and reserve force legal officers appointed to act as military prosecutors, along with civilian paralegals and support staff. DMP is organized regionally, and consists of:

- ❑ DMP headquarters at National Defence Headquarters in Ottawa consisting of the DMP, the Assistant Director of Military Prosecutions (ADMP), two Deputy Directors of Military Prosecutions (DDMP(East) and DDMP (West)), an appellate counsel, a military prosecutor responsible for communications, training and policy development and a legal advisor working directly with the CFNIS;
- ❑ Regional Military Prosecutors' (RMP) offices, each with an establishment of two regular force military prosecutors, located at:
 - ❑ Halifax, Nova Scotia (Atlantic Region),
 - ❑ Valcartier, Quebec (Eastern Region),
 - ❑ Ottawa, Ontario (Central Region),
 - ❑ Edmonton, Alberta (Western Region);

- ❑ Reserve force military prosecutors located individually across Canada.

DMP Personnel

During this reporting period, DMP experienced a number of personnel and position changes at DMP headquarters. A position of ADMP was created. For the third consecutive year, the position of military prosecutor responsible for communications, training and policy development remained vacant, creating a void in an important position within the organization. We benefitted from the full time employment of a reserve force military prosecutor on secondment from the Ontario Attorney General. This experienced civilian Regional Crown attorney was assigned as co-counsel in the high profile court martial in *R. v. Semrau*.³

The Regional Military Prosecutions offices were also affected by significant personnel changes as four experienced military prosecutors left the DMP for other postings within the Office of the JAG. The arrival of new military prosecutors required training, mentoring and supervision. In addition, a military prosecutor from the Western Region was deployed on a ten month secondment to the Public Prosecution Service of Canada, in Edmonton.

JAGNet

During the previous reporting period, the members of DMP received web-based and classroom conducted JAGNet training in preparation for the roll-out of JAGNet in the current period. JAGNet is now being used on a daily basis by the members of the office. Although JAGNet has improved some aspects of electronic document organization, it does not provide prosecution case management software. Such case management capacity would improve the efficiency of the office of the DMP, facilitate the sharing of information between the regional offices and DMP and would standardize case management.

Training and Policy Development

Training

Regular force military prosecutors, not unlike legal officers, are posted to their positions for a limited period of time – usually three to five years. As such, the training that they receive must support both their current employment as military prosecutors as well as their professional development as officers and military lawyers. The relative brevity of a military prosecutor's posting with the DMP requires a significant and ongoing organizational commitment to provide him or her with the formal training and practical experience necessary to develop the skills, knowledge and judgment essential in an effective military prosecutor.

³ For more details about the court martial in *R. v. Semrau* see section Military Justice Proceedings below.

Given the small size of DMP, much of the required training is provided by organizations external to the Canadian Forces. During the present reporting period, military prosecutors participated in conferences and continuing legal education programs organized by federal, provincial and territorial Heads of Prosecution, the Canadian Bar Association and its provincial affiliates, the Federation of Law Societies of Canada, the Ontario Crown Attorneys Association and various provincial law societies. These programs benefited the Canadian Forces not only through the knowledge imparted and skills developed but also through the professional bonds forged by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

DMP holds an annual workshop for its regular and reserve force military prosecutors. The one day workshop, held in the fall, is part of the annual JAG Continuing Legal Education workshop.

Military prosecutors also took part in a variety of professional development activities, including the legal officer intermediate and advanced training programs, and the officer professional military education program. Finally, in order to maintain their readiness to deploy into a theatre of operations in support of DMP's mandate, military prosecutors conducted individual military skills training such as weapons familiarization and first aid training.

DMP also provides support to the training activities of other Canadian Forces entities. During the present reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior military lawyers from the Office of the Judge Advocate General, who completed a portion of their "on the job training" program by assisting in the prosecution at courts martial. Military prosecutors also provided presentations to JAG legal officers, military justice training to members of the CFNIS, and served as supervisors for law students articling with the Office of the JAG.

Policy Development

DMP publishes all of its policies. These policies are reviewed regularly. This has been a challenge during this reporting period as the position of the officer assigned to this task remained vacant.

Finally, military prosecutors also play a role in the development of Canadian military justice and criminal justice policy. The DMP continues to play a role in such efforts through his participation on a committee made up of the heads of all federal, provincial and territorial prosecution services.

Military Justice Proceedings

The nature of the operational tasks entrusted to the Canadian Forces requires the maintenance of a high degree of discipline among Canadian Forces members. Parliament and the courts have long recognized the importance of a separate military *Code of Service*

Discipline to govern the conduct of individual soldiers, sailors and air force personnel and prescribe punishment for disciplinary breaches.

The *Code of Service Discipline* is designed to assist commanders in the promotion and maintenance of good order, high morale, efficiency, discipline and operational effectiveness. To these ends, the *National Defence Act* creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are the courts martial and the Court Martial Appeal Court of Canada (CMAC).

During the present reporting period, military prosecutors represented the interests of the Canadian Forces and the general public in a number of different types of judicial proceedings related to the military justice system. These proceedings included courts martial, appeals from courts martial and reviews of pre-trial custody.

Courts Martial

During the reporting period, the DMP received 119 applications for disposal of a charge or charges from referral authorities. When an application for disposal is received, a military prosecutor is designated to perform a review of the case. Following this review, charges are preferred to court martial. A decision not to prefer any charges to court martial was made in respect of 16 applications.

For the period, 67 members of the Canadian Forces faced a total of 210 charges. Sixty-nine courts martial were held.

Out of the 69 courts martial held, 66 trials were held before a Standing Court Martial (SCM), composed of a military judge sitting alone. In addition, there were three trials held before a General Court Martial (GCM), composed of five Canadian Forces members as triers of fact and a military judge as the trier of law. One GCM was partially conducted in Afghanistan.

At the conclusion of 61 of the trials, the trier of fact made a finding of guilty in respect of at least one charge. The remaining eight trials had not guilty findings on all charges. There were no instances where there was either a stay or a withdrawal of all charges.

Appendix A provides additional information regarding the charges tried and the results of each court martial.

While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 61 sentences pronounced by courts martial during the reporting period involved 101 punishments. A fine was the most common punishment, with 49 fines being imposed. Seven punishments of imprisonment and six punishments of detention were also imposed by the courts. Of those 13; five were suspended sentences, which means, in the context of the Code of Service Discipline, that the offender does not have to serve out the sentence of imprisonment or detention.

The following court martial cases were of interest:

*R. v. Capt Semrau*⁴

Capt Semrau was a member of the Operational Mentoring and Liaison Team assigned to the 2nd Kandak (Battalion) of the Afghan National Army. In October 2008, during a patrol in Helmand Province, Capt Semrau fired his rifle into the body of a severely wounded suspected Taliban insurgent. Capt Semrau was tried by a General Court Martial on four charges: second degree murder, attempt to commit murder with a firearm, behaving in a disgraceful manner, and conduct to the prejudice of good order and discipline. As part of the proceedings, the court martial was partially held on location in Afghanistan. Capt Semrau was convicted on the charge of behaving in a disgraceful manner and sentenced to dismissal from Her Majesty's service and a reduction in rank to Second Lieutenant.

*R. v. BGen Ménard*⁵

Brigadier-General (BGen) Ménard was the Commander of Task Force Kandahar. In March 2010 at Kandahar Airfield (KAF), BGen Ménard negligently fired two rounds from his rifle while readying the weapon prior to departing KAF. A Standing Court Martial was convened and BGen Ménard pleaded guilty to a charge of neglect to the prejudice of good order and discipline pursuant to section 129 of the *NDA*. He was sentenced to a fine in the amount of \$3500.00.

Appeals

During the reporting period the Court Martial Appeal Court of Canada rendered a decision on seven appeals. Five appeals had been initiated by members of the Canadian Forces who had been convicted and sentenced by court martial; two were initiated by the Crown.

The following appeals cases are of particular interest:

*Ex-OS Ellis v. R.*⁶

Ex-OS Ellis faced, before a Standing Court Martial, two charges of trafficking in cocaine and two charges of conduct to the prejudice of good order and discipline for using cocaine. Ex-OS Ellis brought a motion to challenge the constitutionality of the scale of punishments under s.139 of the *NDA*. Section 139 enumerates the kind and range of punishments that a military court can impose for a service offence. The military judge found Ex-OS Ellis guilty on all charges, dismissed the constitutional challenge and sentenced him to nine months imprisonment.

⁴ *R. v. Semrau* 2010 CM 4010

⁵ *R. v. Ménard* 2010 CM 1012

⁶ *Ellis v. R.* 2010 CMAC 3

Ex-OS Ellis filed an appeal with the CMAC with respect to the legality of the sentence and an application for leave to appeal the fitness of his sentence. At the CMAC, the appellant argued that s. 139 of the NDA and the sentencing regime in place violated the right to life, liberty and security of the person (section 7) as well as the presumption of innocence (paragraph 11(d)) and subjected then accused to cruel and unusual treatment or punishment (section 12). The CMAC dismissed the appeal. The court concluded that the particular facts did not support the constitutional challenge as the punishment of imprisonment imposed was appropriate.

*Cpl Liwyj v. R.*⁷

Cpl Liwyj was tried by Standing Court Martial on three counts of disobedience of a lawful command under s.83 of the NDA. At trial, Cpl Liwyj argued that the orders that had been given to him to adjust brakes in a specific manner were not lawful being himself of the opinion that the method recommended was unsafe. Alternatively, he argued that he did not have the necessary blameworthy state of mind when he disobeyed the orders. The SCM found Cpl Liwyj guilty all three counts, and he was sentenced to a reprimand and a fine of \$750.

Cpl Liwyj filed a notice of appeal and an application for leave to appeal the severity of the sentence with the CMAC. At the CMAC, the appellant argued that the judge erred in finding that the orders given to him by his superiors were lawful. The appellant also argued that the judge erred in deciding that his defence of mistake of fact had no “air of reality”. The CMAC dismissed both grounds of appeal. The court did not interfere with the military judge finding of fact that the safety issue was not obvious. The court restated that an unlawful order is an order that meet the high threshold of being manifestly illegal; an order that offend the conscience of every reasonable, right-thinking person, and an order that is obviously and flagrantly wrong. A mere disagreement between fair-minded persons as to the method best suited to get a job done in a particular set of circumstances would not reach that threshold. The court stated as well that the reasonable belief of the appellant that he could disobey a lawful order simply because he personally considered it to be unsafe would constitute a mistake of law. Mistake of law is not a defence when it relates to obeying a manifestly unlawful command and it should not be when it relates to disobedience of a lawful command

The CMAC however varied the sentence imposed by removing the reprimand, leaving the fine of \$750.

Cpl Wilcox v. R.

Cpl Wilcox was charged with manslaughter, criminal negligence causing death, and negligent performance of a military duty, all arising from an incident in Afghanistan in March 2007. Cpl Wilcox was convicted of criminal negligence causing death and of negligent performance of a military duty. The GCM panel stayed the manslaughter

⁷ *Liwyj v. R.* 2010 CMAC 6

charge. Cpl Wilcox was sentenced to four years imprisonment and dismissal from Her Majesty's Service.

Corporal Wilcox appealed the legality of the findings of the GCM and the severity of the sentence imposed by the judge. Among the grounds of appeal, Cpl Wilcox argued that the panel that tried him was not properly constituted. At the beginning of the GCM, the military judge had excluded a panel member and refused to replace him with an alternate on the ground that the law did not allow him to do so.

The DMP conceded this ground of appeal. As a result, the Court ordered that the charges be retried at a new court martial.

*Capt Winters v. R.*⁸

The charge at the origin of this case was brought under section 129 of the NDA for an act prejudicial to good order and discipline. Capt Winters had connected an unauthorized electronic device to the Defence network contrary to the intranet security directives and caused the introduction of a virus in the computer network.

At a Standing Court Martial, Capt Winters initially entered a guilty plea which was accepted by the military judge. During the sentencing phase the judge held that the alleged contravention was not to a regulation, as specified in the particulars of the charge, but to a directive. The judge decided it was not in the interest of justice for the Court to accept the guilty plea. Having refused the requests of the military prosecutor for an amendment to the charge sheet or an adjournment to summon witnesses, the Court pronounced a not guilty verdict.

The DMP filed an appeal to the CMAC. In its decision, the CMAC held that s. 129 NDA does not create two distinct offences. Subsection 129 (2) of the NDA only creates a presumption of prejudice to good order and discipline as well as the existence of a causal relationship between the act and the prejudice. The prosecution's loss of the benefit of the presumption does not put an end to the prosecution and to the possibility of the accused pleading guilty. The court also held that the military judge erred in his reasoning when he concluded that he could not amend the charge sheet as requested by the prosecution and when refusing an adjournment. The CMAC restored the guilty plea and returned the case to court martial for sentencing.

Appendix B provides additional information regarding the appeals to the Court Martial Appeal Court of Canada.

R. v. Szczerbaniwicz

The Supreme Court of Canada (SCC) rendered a decision in the appeal of LCol Szczerbaniwicz that had been argued in the previous reporting period.⁹ In that case, the

⁸ *Winters v. R.* 2011 CMAC 1

appeal had been initiated by LCol Szczerbaniwicz whose appeal had been denied at the CMAC. The SCC ultimately upheld the military judge's original finding.

LCol Szczerbaniwicz was found guilty by a Standing Court Martial of one charge of assault contrary to section 266 of the *Criminal Code*. At trial, the military judge rejected the statutory defence of property pursuant to s. 39 of the Cr. C. concluding that the accused used excessive force. LCol Szczerbaniwicz appealed the verdict of guilty to the CMAC. In its decision, the majority of the CMAC rejected the appeal.¹⁰ However, one of the appellate judges delivered a dissenting judgment indicating that he would have granted the appeal.

LCol Szczerbaniwicz appealed to the SCC. On 6 May 2010, the SCC dismissed the appeal. The majority found that there was nothing in the trial judge's decision to suggest that he had misapplied the proper legal test set out in *R. v. D.(W.)* as it pertained to his assessment of the conflicting evidence and the concept of 'reasonable doubt'. The majority also concluded that, to be able to rely on the defence of property, an accused must establish that the force used was reasonable in the circumstances.

R. v. St-Onge

The DMP appealed to the SCC the decision of the CMAC in *R. v. St-Onge*¹¹. Ex-Pte St-Onge pleaded guilty at a Standing Court Martial to five charges including possession of cannabis, use of cannabis, use of methamphetamines, possession of military munitions and verbal threats to a superior. The military judge imposed a sentence of imprisonment for a period of 30 days. Ex-Pte St-Onge appealed to the CMAC. In its decision the majority granted the appeal on the severity of sentence and reduced it to a fine of \$3000.00. The dissenting judge would have dismissed the appeal as to sentence on the grounds that the applicable standard of review did not allow a court of appeal to intervene. The DMP filed a notice of appeal to the SCC. On 24 March 2011, the SCC held an oral hearing in the case. The SCC decision in *R. v. St-Onge* had not been released by the end of the reporting period.¹²

R. v. Savaria

During the reporting period, an application for leave to appeal was filed with the SCC by a convicted member whose appeal was denied at the CMAC.¹³ On 19 August 2010, the SCC dismissed the application for leave to appeal.

Appendix C provides information regarding appeals to the Supreme Court of Canada.

⁹ *R. v. Szczerbaniwicz* [2010] 1 S.C.R. 455

¹⁰ *Szczerbaniwicz v. R.* 2009 CMAC 4

¹¹ 2010 CMAC 7

¹² The judgment of the Supreme Court of Canada in *R. v. St-Onge*, [2011] 1 S.C.R. 625, was delivered on 1 April 2011.

¹³ *Savaria v. R.* 2010 CMAC 1

Custody Reviews

Military judges are, in certain circumstances, required to review orders made to retain a Canadian Forces member in service custody. DMP represents the interest of the Canadian Forces at such hearings. During the reporting period, military prosecutors appeared at three pre-trial custody review hearing.

Conclusion – DMP Comments

Throughout this year, the officers and supporting staff of the DMP from across Canada have continued to deliver positive results. We have consolidated the gains in terms of timelines from referral to preferral. There is still however some residual concern on the timelines from charge laying to referral to DMP. Recent efforts on means to accelerate trial scheduling processes have not completely resolve the issue of delay. It is also the intention of DMP to persist in pressing the previous initiatives to reduce court martial delays that were identified in prior DMP Annual Reports. As we must deal with cases coast to coast we will seek to establish new regional offices. I intend to make submissions for the establishment of two additional regional offices in Borden, Ontario and in Esquimalt, British-Columbia.

Military prosecutors' skills development through targeted professional initiatives, secondments, deployments and direct mentoring continues to be a priority. This is particularly important for the many new prosecutors who have joined our service this year. This should help build the core competencies of our prosecutors and assist this relatively new organization to grow in maturity as it enters its second decade of existence, in a way that will better serve the interests of military justice and promote fair trial outcomes.

I am pleased with the achievements during the reporting period. I continue to be very proud of our small yet remarkable team of civilian employees and military members. Our efforts, in the years ahead, will continue to focus on enhancing the professional development of our officers and ensuring that matters referred to DMP are dealt with without unreasonable delay.

[illegible]

[illegible]

Appendix A

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Withdrawn						
13	SCM	Cpl Gore	s. 125(a) NDA	Wilfully made a false entry	Guilty plea	Severe reprimand	N/A	Petawawa, ON	St-Jean-Sur-Richelieu, QC	CLS	English
14	SCM	AS Andrist	117(f) NDA	An act of fraudulent nature	Guilty plea	Severe reprimand and \$3500 fine	N/A	Halifax, NS	CFB Halifax	CMS	English
15	SCM	Ex-Spr Slusarchuk	s. 130 NDA (s. 368 Cr. Code)	Uttering a forged document	Withdrawn	Severe reprimand and \$1500 fine	N/A	Gatineau, QC	Valcartier, QC	CLS	English
			s. 130 NDA (s. 368 Cr. Code)	Uttering a forged document	Withdrawn						
			s. 130 NDA (s. 368 Cr. Code)	Uttering a forged document	Withdrawn						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Withdrawn						
			s. 117(f) NDA	An act of a fraudulent nature	Guilty plea						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Withdrawn						
			s. 117(f) NDA	An act of a fraudulent nature	Guilty plea						
16	SCM	BGen Menard	s. 129 NDA	Neglect to the prejudice	Guilty plea	\$3500 fine	N/A	Gatineau, QC	Kandahar Airfield, Afghanistan	CEFCOM	English
17	SCM	Sgt Belanger	s. 114 NDA	Stealing while entrusted	Withdrawn	\$1000 fine	N/A	Montreal, QC	Montreal, QC	CLS	French
			s. 116 NDA	Lost by neglect non-public property	Guilty plea						
			s. 129 NDA	Neglect to the prejudice	Withdrawn						
18	SCM	Cpl Beaulieu	s. 129 NDA	An act to the prejudice	Guilty plea	Reprimand and a \$1500 fine	N/A	Gatineau, QC	Pétion-ville, Haiti	VCDS	French
			s. 129 NDA	An act to the prejudice	Guilty plea						
19	SCM	LS McCabbe/ Cpl Gibson	s. 129 NDA	Conduct to the prejudice	Guilty plea	McCabe – Severe reprimand and a \$4000 fine Gibson – Severe reprimand and a \$3000 fine	N/A	Petawawa, ON	Chilliwack, BC	CMP	English
20	SCM	Cpl Tully-Hebert	s. 130 NDA (91(2) Cr. Code)	Unauthorized possession of a prohibited weapon	Withdrawn	30 days imprisonment and a \$2000 fine	N/A	Courcelette, QC	Afghanistan and Quebec City, QC	CLS	French

Appendix A

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 130 NDA (s. 91(2) Cr. Code)	Unauthorized possession of a restricted weapon	Withdrawn						
			s. 130 NDA (s. 104(1)(a) Cr. Code)	Unauthorized importing of a restricted weapon	Guilty plea						
			s. 129 NDA	An act to the prejudice	Stayed						
			s. 130 NDA (95 Cr. Code)	Unauthorized possession of a restricted weapon with ammunition	Guilty of lesser charge						
			s. 130 NDA (s. 87 Cr. Code)	Pointing a firearm	Guilty plea						
21	SCM	Bdr Gray	s. 114 NDA	Stealing	Guilty plea	Severe reprimand and a \$2001 fine	N/A	Vancouver, BC	Vancouver, Abbotsford, and Aldergrave BC	CLS	English
			s. 114 NDA	Stealing	Guilty plea						
			s. 114 NDA	Stealing	Guilty plea						
			s. 114 NDA	Stealing	Guilty plea						
			s. 114 NDA	Stealing	Guilty plea						
22	SCM	Cpl Ethier-Roy	s. 75(g) NDA	Improperly occasioned a false alarm	Withdrawn	Reprimand and a \$1500 fine	N/A	Gatineau, QC	CF Station Alert, Nunavut	CMP	English
			s. 130 NDA (s. 437 Cr. Code)	False alarm of fire	Withdrawn						
			s. 124 NDA	Negligent performance of a military duty	Withdrawn						
			s. 129 NDA	Neglect to the prejudice	Guilty plea						
			s. 129 NDA	Neglect to the prejudice	Withdrawn						
23	SCM	Capt Day	s. 124 NDA	Negligent performance of a military duty	Not Guilty	N/A	N/A	Gagetown, NB	Kandahar, Afghanistan	CEFCOM	English
			s. 124 NDA	Negligent performance of a military duty	Not Guilty						
			s. 129 NDA	Neglect to the prejudice	Not Guilty						
			s. 129 NDA	Neglect to the prejudice	Not Guilty						
24	SCM	2Lt Bakker	s. 90 NDA	Absent without leave	Guilty plea	Severe reprimand and a \$2000 fine	N/A	Gatineau, QC	Ottawa, ON	VCDS	English
			s. 90 NDA	Absent without leave	Guilty plea						
25	SCM	MCpl Louis	s. 130 NDA (s. 380 Cr. Code)	Fraud	Stayed	Severe reprimand and a \$2000 fine	N/A	Gatineau, QC	Gatineau, QC	CLS	French
			s. 117(f) NDA	An act of fraudulent nature	Guilty plea						
26	SCM	Cpl Smith	s. 117(f) NDA	An act of fraudulent nature	Guilty plea	Severe reprimand and a \$2800 fine	N/A	CFB Greenwood	CFB Greenwood, NS	CAS	English

Appendix A

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
27	SCM	Cpl Smith	s. 129 NDA	An act to the prejudice	Guilty plea	Reduction in rank (to private)	N/A	CFB Greenwood	CFB Greenwood, NS	CAS	English
			s. 90 NDA	Absent without leave	Guilty plea						
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
28	SCM	Cpl Grégoire	s. 90 NDA	Absent without leave	Guilty plea	\$600 fine	N/A	Edmonton, AB	Edmonton, AB	CLS	French
			s. 90 NDA	Absent without leave	Guilty plea						
			s. 90 NDA	Absent without leave	Guilty plea						
29	SCM	Pte Campion-Wright	s. 130 NDA (s. 91(2) Cr. Code)	Unauthorized possession of a weapon	Guilty plea	10 days detention (suspended)	N/A	Edmonton, AB	CFB Wainwright	CLS	English
			s. 130 NDA (s. 266 Cr. Code)	Assault	Stayed						
			s. 86 NDA	Fought with a person subject to the code of service discipline	Guilty plea						
			s. 130 NDA (s. 266 Cr. Code)	Assault	Stayed						
			s. 86 NDA	Fought with a person subject to the code of service discipline	Guilty plea						
			s. 97 NDA	Drunkenness	Withdrawn						
30	SCM	Lt Paas	s. 114 NDA	Stealing while entrusted	Guilty plea	Reduction in rank (to2Lt) and a \$1000 fine	N/A	Winnipeg, MB	Kingston, ON	CMP	English
31	SCM	Lt(N) McInnis	s. 129 NDA	Conduct to the prejudice	Guilty plea	Severe reprimand and a \$2000 fine	N/A	Gatineau, QC	North Bay, ON/ Borden, ON	CMP	English
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
32	SCM	MCpl Elliott	s. 130 NDA (s. 269 Cr. Code)	Unlawfully causing bodily harm	Withdrawn	10 days detention and a \$5000 fine	N/A	Shilo, MB	Afghanistan	CEFCOM	English
			s. 124 NDA	Negligent performance of a military duty	Guilty plea						
33	SCM	LS Mann	s. 129 NDA	Conduct to the prejudice	Guilty plea	Reprimand and a \$1000 fine	N/A	Borden, ON	CFB Borden, ON	CMP	English
34	SCM	Pte Orton	s. 130 NDA (s. 269 Cr. Code)	Unlawfully causing bodily harm	Withdrawn	60 days detention	N/A	Shilo, MB	Afghanistan	CEFCOM	English
			s. 130 NDA (s. 269 Cr. Code)	Unlawfully causing bodily harm	Withdrawn						
			s. 124 NDA	Negligent performance of a military duty	Guilty plea						
35	SCM	OS Wesley	s. 130 NDA (s. 271 Cr. Code)	Sexual assault	Stayed	Reprimand and a \$1500 fine	N/A	CFB Borden	CFB Borden	CMP	English

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
43	SCM	MCpl Leblanc	s. 83 NDA	Disobedience of a lawful command	Guilty plea	Severe reprimand and a \$500 fine	N/A	Laval, QC	Valcartier, QC	CLS	French
			s. 129 NDA	Act to the prejudice	Not Guilty						
			s. 129 NDA	An act to the prejudice	Not Guilty						
			s. s. 129 NDA	An act to the prejudice	Guilty plea						
44	SCM	Sgt MacDonald	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Stayed	Severe reprimand and a \$4500 fine	N/A	Kelowna, BC	Shilo, MB	CLS	English
			s. 93 NDA	Behaved in a disgraceful manner	Guilty plea						
			s. 97 NDA	Drunkenness	Withdrawn						
45	GCM	Capt Semrau	s. 130 NDA (s,. 235(1) Cr. Code)	Second degree murder	Not Guilty	Dismissal from the CF and reduction in rank (to 2Lt)	N/A	Gatineau, QC and Kandahar Afghanistan	Helmand Province, Afghanistan	CLS	English
			s. 130 NDA (s. 239(1)(a) Cr. Code)	Attempt to commit murder	Not Guilty						
			s. 93 NDA	Behaved in a disgraceful manner	Guilty						
			s. 124 NDA	Negligent performance of a military duty	Not Guilty						
46	SCM	WO Thibault	s. 130 NDA (s. 87(1) Cr. Code)	Possession of a firearm	Withdrawn	Severe reprimand and a \$2000 fine	N/A	Valcartier, QC	Kandahar province Afghanistan	CLS	French
			s. 130 NDA (s. 86(1) Cr. Code)	Negligent use of a firearm	Withdrawn						
			s. 124 NDA	Negligent performance of a military duty	Guilty plea						
			s. 124 NDA	Negligent performance of a military duty	Guilty plea						
			s. 129 NDA	An act to the prejudice	Withdrawn						
			s. 129 NDA	An act to the prejudice	Stayed						
47	SCM	Pte Lofta	s. 122(a) NDA	Provided false information on a document related to his enrolment	Guilty plea	Reprimand and a \$500 fine	N/A	Montreal. QC	Montreal, QC	CANOSCO M	French
48	SCM	LS Moreau	s. 85 NDA	Used insulting language toward a superior officer	Withdrawn	10 days imprisonment (suspended) and \$1000 fine	N/A	Esquimalt, BC	CFB Esquimalt, BC	CMS	English
			s. 84 NDA	Offered a weapon against a superior officer	Guilty plea						
			s. 116(a) NDA	Wilfully damaged public property	Guilty plea						
49	SCM	MWO Prosser	s. 130 NDA (s. 271 Cr. Code)	Sexual assault	Stay	Reprimand and a \$1500 fine	N/A	Borden, ON	CFB Borden, ON	CLS	English
			s. 95 NDA	Ill-treatment of a subordinate	Guilty plea						

Appendix A

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 97 NDA	Drunkenness	Withdrawn						
50	SCM	Pte Zammitti	s. 101.1 NDA	Failed to comply with conditions	Withdrawn	30 days imprisonment (suspended)	N/A	CFB Gagetown	Fredericton and Gagetown NB	CLS	English
			s. 101.1 NDA	Failed to comply with conditions	Withdrawn						
			s. 101.1 NDA	Failed to comply with conditions	Withdrawn						
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
			s. 101.1 NDA	Failed to comply with conditions	Withdrawn						
			s. 90 NDA	Absent without leave	Guilty plea						
51	SCM	MCpl Clark	s. 114 NDA	Stealing while entrusted	Guilty plea	90 days detention	N/A	CFB Dundurn	CFB Dundurn	CMP	English
52	SCM	Pte Cruz	s. 125(a) NDA	Wilfully made a false entry in a document	Not Guilty	N/A	N/A	Gatineau, QC	CFB Borden, ON	CEFCOM	English
			s. 125(a) NDA	Wilfully made a false entry in a document	Not Guilty						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Not Guilty						
			s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Not Guilty						
			s. 130 NDA (s. 139(2) Cr. Code)	Obstructing Justice	Not Guilty						
53	SCM	Sgt Marczewski	s. 83 NDA	Disobeyed a lawful command	Not Guilty	N/A	N/A	Hamilton, ON	CFB Borden, ON	CLS	English
54	SCM	Cpl Ngoviky	s. 83 NDA	Disobeyed a lawful command	Guilty plea	Reprimand and a \$500 fine	N/A	Petawawa, ON	CFB Petawawa, ON	CMP	French
			s. 85 NDA	Behaved with contempt toward a superior officer	Guilty plea						
			s. 129 NDA	Conduct to the prejudice	Stayed						
55	SCM	Ex-Lt Paradis	s. 130 NDA (s. 153(1)(a) Cr. Code)	Sexual exploitation	Guilty plea	45 days imprisonment	DNA Order	Valcartier, QC	Valcartier, QC	CLS	French
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
56	SCM	Ex-Pte Pratte	s. 90 NDA	Absent without leave	Guilty plea	Severe reprimand and a \$1000 fine	N/A	Valcartier, QC	Valcartier, QC	CLS	French
			s. 90 NDA	Absent without leave	Withdrawn						
			s. 90 NDA	Absent without leave	Guilty plea						
			s. 90 NDA	Absent without leave	Guilty plea						
57	SCM	Ex-Cpl Cheston	s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty plea	9 months imprisonment	DNA and weapons	Esquimalt, BC	Victoria, BC	CMP	English

Appendix A

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty plea		orders				
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty plea						
			s. 130 NDA (s. 5(1) CDSA)	Trafficking	Guilty plea						
58	SCM	Sgt Martinook	s. 130 NDA (s. 380(1) Cr. Code)	Fraud	Guilty plea	21 days imprisonment and reduction in rank (to Cpl)	N/A	Saskatoon, SK	Windsor, ON	CLS	English
59	SCM	Maj Anstey	s. 117(f) NDA	An act of fraudulent nature	Not Guilty	N/A	N/A	Edmonton, AB	Edmonton, AB	CLS	English
60	SCM	Capt Winters	s. 129 NDA	Act to the prejudice	Guilty plea	\$500 fine	N/A	Montreal, QC	Montreal, QC	CLS	French
61	SCM	MCpl Smith	s. 129 NDA	Neglect to the prejudice	Guilty plea	\$700 fine	N/A	CFB Halifax, NS	Halifax, NS	CMS	English
			s. 129 NDA	Neglect to the prejudice	Stayed						
			s. 125(a) NDA	Wilfully made a false statement	Withdrawn						
62	SCM	2Lt Avila	s. 130 NDA (s. 140 Cr. Code)	Public Mischief	Stayed	Reprimand and a \$1500 fine	N/A	CFB Gagetown, NB	Gagetown, NB	CLS	English
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
63	SCM	Capt Clark	s. 83 NDA	Disobeyed a lawful command	Guilty	Reprimand and a \$1000 fine	N/A	CFB Petawawa	CFB Petawawa	CLS	English
			s. 129 NDA	An act to the prejudice	Not Guilty						
			s. 129 NDA	An act to the prejudice	Guilty						
			s. 129 NDA	An act to the prejudice	Not Guilty						
			s. 129 NDA	An act to the prejudice	Guilty						
64	SCM	Pte Reade	s. 130 NDA (s. 271 Cr. Code)	Sexual assault	Withdrawn	Severe reprimand and a \$1500 fine	N/A	CFB Borden, ON	CFB Gagetown, NB	CLS	English
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
65	SCM	Cpl Lacharité	s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Withdrawn	Reprimand and a \$2400 fine	N/A	Montreal, QC	Saint-Jean-sur-Richelieu, QC, and Borden, ON	CMP	French
			s. 129 NDA	Conduct to the prejudice	Guilty plea						
			s. 130 NDA (s. 271 Cr. Code)	Sexual Assault	Stayed						
			s. 93 NDA	Behaved in a disgraceful manner	Guilty plea						
			s. 93 NDA	Behaved in a disgraceful manner	Guilty plea						
66	SCM	MWO Reedy	s. 116 NDA	Expanded wastefully public property	Not Guilty	N/A	N/A	Gatineau,	CFB Trenton, ON	CMP	English

Appendix A

#	Type	Rank	Offences	Description	Disposition	Sentence	Orders at CM	Location of Court Martial	Location of Offence	Command	Language of Trial
			s. 117(f) NDA	An act of fraudulent nature	Not Guilty			QC			
			s. 124 NDA	Negligent performance of a military duty	Not Guilty						
			s. 129 NDA	An act to the prejudice	Not Guilty						
67	SCM	Pte Fondren	s. 83 NDA	Disobeyed a lawful command	Guilty plea	\$50 fine	N/A	Borden, ON	CFB Borden, ON	CAS	English
68	SCM	Sgt Lalande	s. 95 NDA	Ill-treated a subordinate	Guilty	Reprimand	N/A	Greenwood, NS	Cold Lake, AB	CAS	English
			s. 130 NDA (s. 266 Cr. Code)	Assault	Stayed						
69	SCM	Sgt Harris	s. 129 NDA	An act to the prejudice	Guilty plea	\$1000 fine	N/A	St. Catharines, ON	Kandahar, Afghanistan	CLS	English

Appendix B: CMAC Appeals 2010-11

CMAC #	Appellant	Respondent	Type of Appeal	Result
517	Sdt St-Onge	Her Majesty the Queen	Legality of Finding/Severity of Sentence	Granted in part with dissent
523	OS Lee	Her Majesty the Queen	Legality of Finding/Severity of Sentence	Appeal dismissed
524	LS Reid	Her Majesty the Queen	Severity of Sentence	Appeal dismissed
526	LS Sinclair	Her Majesty the Queen	Severity of Sentence	Appeal dismissed
528	OS Ellis	Her Majesty the Queen	Legality of Finding/Severity of Sentence	Appeal dismissed
530	Cpl Liwyj	Her Majesty the Queen	Legality of Finding/Severity of Sentence	Legality of finding appeal dismissed/severity of sentence appeal granted
534	Cpl Wilcox	Her Majesty the Queen	Legality of Finding/Legality of Sentence/Severity of Sentence	Appeal granted, new trial ordered
535	Cpl Seifi	Her Majesty the Queen	Legality of Finding	Abandoned
537	Her Majesty the Queen	MS Boyle	Legality of Finding	Appeal granted
538	Cpl T. Leblanc	Her Majesty the Queen	Legality of Finding/Severity of Sentence	Ongoing
539	Cpl A. Leblanc	Her Majesty the Queen	Legality of Finding	Ongoing
540	Her Majesty the Queen	Captain Winters	Legality of Finding	Granted
542	Bdr Gray	Her Majesty the Queen	Severity of Sentence	Dismissed by CMAC before audition
543	Her Majesty the Queen	Captain Day	Legality of Finding	Ongoing
544	Cpl Lough	Her Majesty the Queen	Application to be released from custody	Granted
545	Captain Clark	Her Majesty the Queen	Legality of Finding	Ongoing

Appendix C: SCC Appeals 2010-11

SCC #	Appellant	Respondent	Type of Appeal	Result
33189	LCol Szczerbaniwicz	Her Majesty the Queen	Legality of Finding	Appeal dismissed with dissent
33611	Capt Savaria	Her Majesty the Queen	Permission to appeal to SCC on legality of finding	Application for leave to appeal dismissed
33864	Her Majesty the Queen	Ex-Pte St-Onge	Severity of sentence	Waiting for decision