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Annual Report

of the
Judge Advocate General

A Report to the Minister
of National Defence on the
Administration of Military Justice
from 1 April 2012 to 31 March 2013



Canada



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Dear Minister,

It is my honour to present you the fourteenth Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Armed Forces, made pursuant to section 9.3 of the *National Defence Act*. This report covers the period 1 April 2012 to 31 March 2013.

Yours truly,

A handwritten signature in blue ink, reading "Blaise Cathcart".

Blaise Cathcart, Q.C.
Major-General
Judge Advocate General

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Communiqué

It is with great pleasure that I present the report on the administration of military justice in the Canadian Armed Forces (CAF) for the period from 1 April 2012 to 31 March 2013.

The Supreme Court of Canada has recognized that to maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently.¹ This aim of the military justice system must always be carried out in a manner consistent with Canadian law, including the *Canadian Charter of Rights and Freedoms*.² During the reporting period, the Office of the Judge Advocate General (JAG) has carried on with its commitment to the responsible development and proactive oversight of the military justice system in Canada and wherever CAF members are deployed abroad.

As superintendent of the administration of military justice in the CAF, I am committed to the ongoing review of the fairness and effectiveness of the military justice system. Accordingly, during the reporting period, my office has devoted significant effort toward the principled advancement of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, which represents the most comprehensive change to Canada's military justice system since 1998.

I also note the report of the Second Independent Review Authority (SIRA), the Honourable Patrick LeSage, retired Chief Justice of the Superior Court of Ontario, which was tabled in Parliament during this reporting period. I am pleased to report that Chief Justice LeSage shared the overall views of two previous reports on the military justice system led by retired Chief Justices of Canada,



the Right Honourable Brian Dickson and the Right Honourable Antonio Lamer. Chief Justice LeSage found that the military justice system is sound while making recommendations to ensure that it will continue to be a strong, viable and fair justice system contributing to the operational effectiveness of the CAF. Resources from the Office of the JAG have been allocated to review the SIRA report and follow-up on its recommendations. Bill C-15 and the content of the report are discussed in more detail in Chapter 2 of this report.

As with the civilian criminal justice system, the military justice system continues to evolve as a result of legislative initiatives and jurisprudence. Along with Bill C-15, other legislative initiatives introduced or implemented during the reporting period serve to align the military

¹ *Généreux v. R.*, [1992] 1 S.C.R. 259.

² Chief Justice Brian Dickson et. al., Department of National Defence, *Report of the Special Advisory Group on Military Justice and Military Police Investigation Services*, 14 May 1997, at 11.

justice system with aspects of the civilian justice system while taking into account the unique requirements of the former. Noteworthy jurisprudence and legislative initiatives during the reporting period are outlined in further detail in Chapter 4.

While the focus of this report is necessarily on the military justice “pillar” of the Office of the JAG’s practice, I must also pay tribute to the legal officers and military and civilian support staff working in the other pillars of military administrative law and operational law in Ottawa, across Canada and around the world. Indeed, consistent with previous reporting periods, a number of legal officers were deployed on domestic and international

operations. Like their peers, they provided essential legal support to the chain of command in furtherance of Canadian values and the rule of law.

I remain confident in the ability of Canada’s military justice system to meet the needs of the Government of Canada, the Department of National Defence, the CAF and its members. I am proud of the commitment of all members of the Office of the JAG who assist me in my role as superintendent of the administration of military justice and of the dedication of all legal officers to the provision of independent, operationally focused, solution oriented legal advice and services, across the full spectrum of military law.

Fiat Justitia!



CHAPTER 1

WHO WE ARE: THE OFFICE OF THE JAG

The Judge Advocate General

The Judge Advocate General (JAG) is appointed by the Governor in Council and acts as legal adviser to the Governor General, the Minister of National Defence (MND), the Department of National Defence (DND) and the Canadian Forces in matters relating to military law. The term “military law” describes the broad legal discipline encompassing all international and domestic law relating to the Canadian Armed Forces (CAF), including its governance, administration and activities. In addition, the JAG also has a statutory mandate to superintend the administration of military justice in the CAF. In this capacity, the JAG conducts regular reviews of the military justice system, and provides regular updates to the MND on the administration of military justice in the CAF including the submission of an annual report.

Office of the Judge Advocate General

The Office of the JAG is composed of CAF regular and reserve force legal officers, civilian members of the Public Service, and a small number of CAF members from other military occupations. All legal officers serving in the Office of the JAG are members in good standing of their respective provincial or territorial law societies, and are officers ranging in rank

from Captain/Lieutenant (Navy) to Major-General.

The *National Defence Act* (NDA) provides that the JAG is responsible to the MND in the performance of his duties and functions. Pursuant to the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), every legal officer whose duty is the provision of legal services to the CAF shall be posted to a position established within the Office of the JAG. The JAG has command over all officers and non-commissioned members posted to a position established within the Office of the JAG. Therefore, the duties of a legal officer are determined by or under the authority of the JAG and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer. Thus, the requirements of the NDA and the QR&O reinforce the obligations of the legal profession and ensure that legal officers are able to provide independent legal advice.

The Office of the JAG is composed of the Directorate of Military Prosecutions, the Directorate of Defence Counsel Services, and the following five Divisions: Military Justice, Administrative Law, Operational Law, Regional Services, and Chief of Staff.

Director of Military Prosecutions

The Director of Military Prosecutions (DMP) is the senior military prosecutor in the CAF. He is responsible for preferring all charges to be tried by court martial and for the conduct of all prosecutions at court martial and also acts as counsel for the MND in respect of appeals to the Court Martial Appeal Court of Canada and the Supreme Court of Canada. The DMP also provides legal advice in support of investigations conducted by the Canadian Forces National Investigation Service, a military police service that reports to the Canadian Forces Provost Marshal.

The DMP is appointed by the MND for a fixed term. He acts independently from the JAG and other CAF and DND authorities when exercising his powers, duties and functions. The DMP is under the general supervision of the JAG and, in this regard, the JAG may issue written general instructions or guidelines in respect of prosecutions, which the DMP must ensure are made available to the public. The JAG may also issue instructions or guidelines in respect of a particular prosecution. The DMP must ensure that these instructions or guidelines are also available to the public, unless the DMP considers that doing so would not be in the best interest of the administration of military justice. During the reporting period, no general or specific instruction was issued to DMP.

In accordance with QR&O 110.11, the DMP has reported to JAG on the execution of his duties and functions during this reporting period.

Director of Defence Counsel Services

The Director of Defence Counsel Services (DDCS) is appointed by the MND for a

fixed term. His mandate is to supervise and direct the provision of legal services to persons who are liable to be charged, dealt with or tried under the *Code of Service Discipline*.

Although the DDCS acts under the general supervision of the JAG, he is independent of the JAG and other CAF and DND authorities when carrying out a wide array of prescribed duties and functions that pertain to providing defence counsel services to clients at each stage of the investigative and judicial processes. The JAG may issue written general instructions or guidelines in respect of defence counsel services. The DDCS is required to make the general instructions or guidelines available to the public. However, unlike with the DMP, the JAG has no authority to issue instructions or guidelines in respect of a particular defence case. During the reporting period, no general instruction was issued to DDCS.

In accordance with QR&O 101.20(5), the DDCS has reported to the JAG on the provision of legal services prescribed at QR&O 101.20(2) and the performance of any other duties under QR&O 101.20(4) during this reporting period.

Military Justice Division

The Military Justice Division assists the JAG in superintending the administration of military justice and ensuring its responsible development within the Canadian justice system. It comprises two directorates: Military Justice Operations and Military Justice Strategic. Military Justice Operations is responsible for key aspects of the superintendence of the administration of military justice, the provision of legal advice to the Canadian Forces Military Police Group Headquarters and to support the JAG with the day-to-day

operation of the military justice system. Military Justice Strategic is responsible for the development and implementation of a strategic military justice vision that will allow the Office of the JAG and the CAF to anticipate and respond to external and internal challenges while bringing positive change to the military justice system.

During this reporting period, the Division dedicated particular effort towards two strategic initiatives. First, it assisted in progressing Bill C-15, *Strengthening Military Justice in the Defence of Canada Act*, legislation that demonstrates the government's commitment to continually enhance the Canadian military justice system to ensure its fairness, efficiency, transparency and consistency with Canadian values and legal standards. Second, it supported the Second Independent Review Authority in his examination of the provisions and operation of Bills C-25 and C-60.

Administrative Law Division

Legal officers in the Administrative Law Division are responsible for advising on legal matters pertaining to the administration of the CAF. DND officials and CAF authorities derive their appointments and powers from statutory authorities largely contained in the NDA. Given the size and complexity of the CAF and the multitude of administrative decisions made each day, one of the objectives of providing legal advice in the administrative law realm is to ensure that these decisions are made in accordance with the applicable legislation, the rule of law and the procedural fairness requirements. The Division is composed of three directorates: Military Personnel, Administrative Law and Compensation, Benefits, Pensions and Estates. The Division provides legal services on

specific matters such as military personnel policies, administrative investigations, compensation, benefits, pensions and estates and advice on grievances to the Director General CF Grievance Authority.

Operational Law Division

The Operational Law Division is responsible for providing legal support to the CAF and DND in matters related to operational law. Operational law is the body of domestic and international law that applies to the conduct of all phases of CAF international or domestic operations at each level of command. Additionally, the Operational Law Division oversees all legal officers deployed on operations, who provide legal support to deployed CAF elements in terms of military law. During this reporting period, in addition to its work on every CAF operation, the Division provided continuous support to the planning of the end of the mission in Afghanistan.

Regional Services Division

The Regional Services Division is responsible for the delivery of legal services to CAF units in Canada, the United States and Europe. Its legal offices are divided into various regions, led by an Assistant Judge Advocate General, and provide general legal support and advice to regular and reserve force component commands, formations and units, on all areas of military law, including advice on military justice, administrative law and operational law matters.

Chief of Staff Division

The Chief of Staff Division is responsible for providing internal support and

administrative services to the Office of the JAG. This includes military personnel management, financial services, information management, library services and training, as well as overseeing all civilian staff in the Office of the JAG.

Legal Officers Serving Outside the Office of the JAG

In addition to the legal officers serving in the above-mentioned organizations, a number of legal officers serve outside the Office of the JAG. This includes those working at the Canadian Forces Military Law Centre in Kingston, Ontario, the Office of the Legal Adviser to the Department of National Defence and Canadian Forces, the Privy Council Office, the Department of Foreign Affairs, International Trade and Development.

During the reporting period, an arrangement was negotiated between the Office of the JAG and the Office of the Chief Military Judge (CMJ) whereby a legal officer is now working under the authority

of the CMJ. The legal advisor to the Court Martial Administrator (CMA) is seconded to the office of the CMJ and is responsible for providing independent legal advice to the CMA. The CMA holds a central position within the military justice system. Acting under the general supervision of the CMJ, the CMA is responsible for, among other things, convening courts martial, and, in cases of General Courts Martial, appointing the panel members.

Civilian Personnel of the Office of the Judge Advocate General

Civilian personnel contribute greatly to the Office of the JAG's continued excellence. They occupy positions located throughout CAF Bases and Wings in Canada and abroad, where they provide key support to legal officers, such as administrative, analytical, coordinating, clerical and technical tasks. The civilian personnel form an integral and essential part of the JAG team and are involved in the support and fulfillment of each Division's respective responsibilities.



CHAPTER 2

MILITARY JUSTICE STRATEGIC DEVELOPMENTS

As described in the annual report for 2010-2011, the Judge Advocate General (JAG) Mission and Vision document orients all members of the Office of the JAG toward JAG's strategic goals and objectives. This Chapter encompasses activities related to JAG Strategic Goal #2, "Lead proactive military justice oversight, responsible development and positive change." In light of this strategic goal and its accompanying objectives,³ this reporting period saw two key developments: Bill C-15 – *The Strengthening Military Justice in the Defence of Canada Act* and the Second Independent Review Authority (SIRA) on the Provisions and Operation of Bills C-25 (S.C. 1998, c. 35) and C-60 (S.C. 2008, c.29).

BILL C-15: THE STRENGTHENING MILITARY JUSTICE IN THE DEFENCE OF CANADA ACT

Bill C-15 represents the most recent of several efforts to effect comprehensive change to Canada's military justice system since the enactment of Bill C-25 in 1998. Bill C-25, which also made comprehensive amendments to the *National Defence Act* (NDA), requires an independent review of the provisions and operation of those amendments to be undertaken within five years following its Royal Assent and every five-year period from the tabling of a report.

The First Independent Review of the provisions and operation of Bill C-25 was conducted by the Right Honourable Antonio Lamer, former Chief Justice of Canada, and his report (the "Lamer Report") was submitted to the Minister of National Defence (MND) on 3 September 2003. The report made 88 recommendations and recognized that "as a result of the changes made by Bill C-25, Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence."

Legislative Response to the Lamer Report

In 2006, the government introduced Bill C-7 in response to the recommendations of the Lamer Report. However, the bill died on the Order Paper when Parliament

³ JAG Strategic Goal #2 - Lead proactive military justice oversight, responsible development and positive change, lists three strategic objectives; namely: 2.1 Discharge the statutorily mandated superintendence function in a manner that facilitates the fair and efficient administration of Canada's military justice system; 2.2 Advance the principled development of the military justice system ensuring it continues to be fair, efficient and responsive to the unique needs of the Canadian Armed Forces within Canada's free and democratic society; and 2.3 Promote a broad understanding of the military justice system.

was prorogued on 17 September 2007. Bill C-45, the successor bill to Bill C-7, was introduced on 3 March 2008 but did not advance beyond First Reading prior to Parliament being dissolved on 7 September 2008. Bill C-41, which largely reproduced the provisions in the former Bill C-45, was introduced in the House of Commons on 16 June 2010, but also died on the Order Paper when Parliament was dissolved on 26 March 2011. Bill C-15, which reproduces the core provisions of former Bill C-41, was introduced at First Reading on 7 October 2011. During the reporting period, the Standing Committee on National Defence completed its study of the bill and presented its report to Parliament.

Principal Amendments - Bill C-15

Bill C-15 adopts the majority of former Chief Justice Lamer's recommendations as well as several of those made in a May 2009 report of the Standing Senate Committee on Legal and Constitutional Affairs in its study of Bill C-60. The proposals to amend the NDA would continue the process on ongoing improvements to the military justice system by:

- Permitting the appointment of part-time military judges;
- Elaborating the purposes, objectives and principles of sentencing in the military justice system;
- Providing for additional sentencing options at court martial, including absolute discharges, intermittent sentences and restitution orders;
- Amending the limitation period for summary trials to require the charge

be laid within six months of the alleged offence;

- Reducing the senior member of a court martial panel from colonel to lieutenant-colonel in most cases;
- Allowing sergeants to serve on a court martial panel where a non-commissioned member is the accused;
- Providing the Court Martial Appeal Court of Canada (CMAC) the authority to suspend a sentence;
- Setting out the duties and functions of the Canadian Forces Provost Marshal;
- Enhancing the timeliness and fairness of the military police complaints process; and
- Providing a requirement to conduct future independent reviews of the military justice system, the military police complaints process and the grievance process.

THE REPORT OF THE SECOND INDEPENDENT REVIEW AUTHORITY

In March 2011, the MND, the Honourable Peter MacKay, appointed former Chief Justice of the Ontario Superior Court, the Honourable Patrick J. LeSage, as the SIRA of the provisions and operation of Bill C-25 with an additional mandate to review the provisions and operation of Bill C-60.⁴ Former Chief Justice LeSage's report (LeSage Report) was submitted to the MND on 22 December 2011 and was tabled in Parliament on 8 June 2012.

⁴ Bill C-60 was the legislative response to the 2008 CMAC decision in *R. v. Trépanier*. At issue were the provisions of the NDA that authorized the Director of Military Prosecutions to select the type of court martial to try an accused person and required the Court Martial Administrator to convene the type of court martial selected. The CMAC found these provisions unconstitutional. Bill C-60 amended the NDA such that the accused person now has the ability to elect the mode of trial by court martial. The bill also reduced the types of court martial from four to two, allowed military judges to deal with certain pre-trial matters and required the court martial panel to make key decisions on the basis of a unanimous vote.

The LeSage Report makes 55 recommendations: 35 pertaining to military justice, 3 specific to Military Police, 6 regarding the Military Police Complaints Commission, and 13 concerning the CAF grievance process.

While nearly two-thirds of the recommendations deal with the military justice system, Chief Justice LeSage accepted – as did Chief Justices Dickson and Lamer – that “the military justice system is sound but some modifications will assist in ensuring its continued strength and viability.” Importantly, the report also recognized the key role of the chain of command in the military justice system: “a critical component of the military justice system is the strong

and effective functioning of the chain of command.” More specifically, Chief Justice LeSage commented favourably on the summary trial process, finding that, “the summary trial system is vital to the maintenance of discipline at the unit level and therefore essential to the life and death work the military performs on a daily basis” and opining that the current system is constitutionally compliant.

The majority of the recommendations made in the LeSage Report were accepted by the government. As a result, the Department of National Defence and CAF officials are engaged in reviewing the recommendations with a view towards implementation in future reporting periods.



CHAPTER 3

THE CANADIAN MILITARY JUSTICE SYSTEM

Canada's military justice system is a separate and parallel system of justice that forms an integral part of the Canadian legal mosaic. It shares many of the same underlying principles with the civilian criminal justice system, and it is subject to the same constitutional framework including the *Canadian Charter of Rights and Freedoms (Charter)*. Indeed, the military justice system is expressly recognized in the *Charter*. On more than one occasion, the Supreme Court of Canada has directly addressed the requirement for a separate, distinct military justice system and has each time upheld the requirement for this type of justice system in the Canadian Armed Forces (CAF).⁵

The military justice system differs from its civilian counterpart in its objectives. In addition to ensuring that justice is administered fairly with respect for the rule of law, the military justice system is also designed to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale. These dual objectives of discipline and fairness give rise to many of the substantive and procedural differences that properly distinguish the military system from the civilian system.

The ability of Canada's military to operate effectively depends on the ability of its leadership to instil and maintain discipline. While training and leadership are central to the maintenance of discipline, the chain of command must also have a legal mechanism that it can employ to investigate and sanction disciplinary breaches that require a formal, fair, and prompt response. As the Supreme Court of

Canada observed in 1992, in *R. v. Généreux*, "breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. [...] There is thus a need for separate tribunals to enforce special disciplinary standards in the military." The military justice system is designed to meet those unique needs articulated by Canada's highest court.

THE STRUCTURE OF THE MILITARY JUSTICE SYSTEM

Code of Service Discipline and Service Offences

The *Code of Service Discipline (CSD)*, set out at Part III of the *National Defence Act (NDA)*,

⁵ *R. v. Généreux*, [1992] 1 S.C.R. 259; *Mackay v. R.*, [1980] 2 S.C.R. 370 at 399.

is the foundation of the Canadian military justice system. It sets out disciplinary jurisdiction and describes service offences that are essential to the maintenance of discipline and operational effectiveness. It also sets out punishments, powers of arrest, along with the organization and procedures for service tribunals, appeals, and post-trial review.

The term “service offence” means “an offence under the NDA, the *Criminal Code*, or any other Act of Parliament, committed by a person while subject to the CSD.” Thus, service offences include many disciplinary offences that are unique to the profession of arms, such as disobedience of a lawful command, absence without leave, and conduct to the prejudice of good order and discipline, in addition to more conventional offences that are created by the *Criminal Code* and other Acts of Parliament. The diverse scope of service offences that fall within the CSD permits the military justice system to foster discipline, efficiency and morale, while ensuring fair justice within the CAF.

Members of the Regular Force of the CAF are subject to the CSD everywhere and at all times, whereas members of the Reserve Force are subject to the CSD only in the circumstances specified in the NDA. Civilians may be subject to the CSD in limited circumstances, such as when accompanying a unit or other element of the CAF during an operation. In this reporting period, a court martial decision confirmed that the NDA provisions subjecting civilians to the CSD are not unconstitutional and do not infringe the rights conferred by the *Charter*.⁶

Investigations and Charge Laying Process

If there are reasons to believe that a service offence has been committed, an investigation is conducted to determine whether there may be sufficient grounds to lay a charge. If the complaint is of a serious or sensitive nature, the Canadian Forces National Investigation Service (CFNIS) will examine the complaint and investigate as appropriate. Otherwise, investigations are conducted either by Military Police (MP) or, where the matter is minor in nature, at the unit level.

The authorities and powers vested in MP members are conferred by the NDA, the *Criminal Code* and the *Queen's Regulations and Orders for the Canadian Forces* (QR&O). Amongst other duties, MP conduct investigations and report on criminal and service offences that were committed, or alleged to have been committed by those persons subject to the CSD. MP members maintain their professional independence and, as such, are not influenced by the chain of command in order to preserve and ensure the integrity of all investigations.

If a charge is to be laid, an officer or non-commissioned member having authority to lay a charge, which includes members of the CFNIS, is required to obtain advice from a Judge Advocate General (JAG) legal officer before laying a charge in respect of an offence that is not authorized to be tried by summary trial, is alleged to have been committed by an officer or a non-commissioned member above the rank of sergeant or, if a charge were laid, would give rise to a right to elect to be tried by court martial. The legal advice must address the sufficiency of the evidence,

⁶ *R. v. Wehmeier* (2012), CM 1005 and 1006. The decision has been appealed to the Court Martial Appeal Court.

whether or not in the circumstances a charge should be laid and, where a charge should be laid, the appropriate charge.

The Two Tiers of the Military Justice System

The military justice system has a two-tiered tribunal structure comprised of two types of service tribunals: summary trials and courts martial. The QR&O outline procedures for the disposal of a charge by summary trial or by court martial.

Summary Trials

The summary trial is the most common form of service tribunal. During the reporting period, 1210 summary trials were held, representing 95% of all military justice proceedings (See Annex A for a detailed statistical review). The summary trial process allows for relatively minor service offences to be tried and disposed of quickly and at the unit level.

Summary trials are presided over by members of the chain of command, who are trained and certified by the JAG as qualified to perform their duties as presiding officers in the administration of the CSD. All accused members are entitled to an assisting officer, who is appointed under the authority of a commanding officer to assist the accused in the preparation of his or her case and during the summary trial.

If it is determined that the accused can be tried by summary trial, except for cases involving a limited number of prescribed offences whose surrounding circumstances are sufficiently minor (for example, certain cases of insubordinate

behaviour, absence without leave, and drunkenness), an accused person by right will be offered an election to be tried by court martial. Before exercising this right, the accused will have the opportunity to consult with legal counsel (from Defence Counsel Services) before making this election.

During the reporting period, accused members elected trial by court martial 39 times out of the 415 cases (9.4 %) in which an election was offered. The relatively low number of elections for trial by court martial is consistent with past years, and continues to be indicative of the perceived fairness of the summary trial process.

The jurisdiction of a summary trial is limited by such things as: the rank of the accused, the type of offence the accused was charged with and whether the accused has elected to be tried by court martial. In those cases that cannot be dealt with by summary trial, the matter is referred to the Director of Military Prosecutions (DMP), who determines whether the charge will be disposed of by court martial.

The disposition of charges by summary trial is meant to occur expeditiously. Accordingly, a presiding officer may not try an accused person by summary trial unless the trial commences within one year after the day on which the service offence is alleged to have been committed.

The procedures at a summary trial are straightforward and the powers of punishment are limited in scope. This restriction on the severity of punishments reflects both the relatively minor nature of the offences involved, and the intent that the punishments be primarily corrective in nature.

Review of Summary Trials

All offenders convicted at summary trial have the right to apply to a review authority for a review of the findings, the punishment imposed, or both. The findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority. The review authority is a more senior officer in the chain of command designated by the QR&O. Review authorities acting under QR&O 108.45 must obtain legal advice before making any determination on requests for review.

Courts Martial

The court martial – a formal military court presided over by a military judge – is designed to deal with more serious offences. During the reporting period, 64 courts martial were held, representing 5% of service tribunals. Courts martial are conducted in accordance with rules and procedures similar to those of civilian criminal courts and have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of its jurisdiction.”⁷

At a court martial, the prosecution is conducted by a military prosecutor assigned by the DMP. The accused is entitled to have defence counsel assigned by the Directorate of Defence Counsel Services at no cost, or by civilian counsel at his or her expense. The accused can also choose not to be represented by a lawyer.

The NDA provides for two types of courts martial: General and Standing. The General Court Martial is composed of a military judge and a panel of five CAF

members. The panel of CAF members is selected randomly and is governed by rules that enhance the specific character of military panels. At a General Court Martial, the panel serves as the trier of fact while the military judge makes all legal rulings and imposes the sentence. Panels must reach unanimous decisions on any finding of guilt. At a Standing Court Martial, the military judge sits alone, makes any of the required findings, and if the accused person is convicted, imposes the sentence.

Appeal of a Court Martial Decision

Decisions made at courts martial may be appealed by the person subject to the CSD or the Minister of National Defence (or counsel instructed by the Minister) to the Court Martial Appeal Court of Canada (CMAC). The CMAC is composed of selected civilian judges who are designated from the Federal Court of Canada and the Federal Court of Appeal, as well as civilian judges of the Superior Courts and Courts of Appeal of the Provinces and Territories.

CMAC decisions may be appealed to the Supreme Court of Canada on any question of law on which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.

COMPLIANCE WITH THE OFFICIAL LANGUAGES ACT

In June 2012, the JAG undertook to the Chief of Military Personnel to include in JAG Annual Reports the military justice

⁷ See s.179 of the NDA.

system's regulatory framework which ensures that accused member be tried in their language of choice and to report on any service tribunal proceedings affected by non-compliance with the requirements of the *Official Languages Act* (OLA).

Note A to QR&O 108.06 states that an accused may, pursuant to the OLA, choose to have his summary trial conducted in either English or French. It further states that the presiding officer must be able to understand the official language in which the proceedings are to be conducted without the assistance of an interpreter and, should he or she determine that they so not have the required language ability, the officer should refer the charge

to another officer who has the required ability. QR&O 107.07 prescribes the form of a Record of Disciplinary Proceedings, in which the language of the proceedings of the accused must be recorded.

A similar provision exists for courts martial. QR&O 111.02(2)(b) requires that orders convening a court martial must indicate the language of proceedings chosen by the accused.

During the reporting period, one case was reported in which an accused person received a copy of the convening order that was not in the official language of their choice. The accused was tried by court martial in their official language.



CHAPTER 4

MILITARY JUSTICE: THE YEAR IN REVIEW

Along with the military justice strategic developments discussed in Chapter 2, this reporting period was highlighted by a number of significant decisions at both court martial and Court Martial Appeal Court of Canada (CMAC) level along with other legislative developments that enhance the military justice system.

CASES OF NOTE DURING THE REPORTING PERIOD

Court Martial Decisions

R. v. Wehmeier

R. v. Wehmeier is notable as a case dealing with a civilian subject to the *Code of Service Discipline* (CSD). Mr. Wehmeier, a civilian accompanying a unit of the Canadian Armed Forces (CAF) in Germany, was charged with sexual assault, uttering threats, and assault under the CSD. The accused argued that the court martial lacked jurisdiction to try him on the basis that the provisions of the *National Defence Act* (NDA) making him subject to the CSD were overbroad and violated his rights guaranteed by the *Canadian Charter of Rights and Freedoms* (Charter).

The court martial determined that Mr. Wehmeier was subject to the CSD at the time of the alleged offences and that it had jurisdiction. However, following a further application submitted by the

accused, the court martial held that the decision taken by the Director of Military Prosecutions to continue proceedings against Mr. Wehmeier instead of referring them to Canadian civilian authorities was arbitrary and amounted to an abuse of process. As a result, the court terminated the proceedings against Mr. Wehmeier. The case has been appealed to the CMAC.

R. v. Nauss

This case concerns the negligent discharge of a service weapon. The accused member was acquitted of charges related to failing to handle a C7 rifle in a safe manner. While performing the unload drill of his C7 rifle, the accused placed the barrel of the weapon into the steel tube of the clearing barrel and caused one live round to discharge into the clearing barrel. He was found not guilty of neglect to the prejudice of good order and discipline for failing to handle a C7 rifle in a safe manner. The court concluded that an omission (in conducting proper weapons drill) amounting to blameworthy negligence had not been proven beyond a reasonable doubt. On the contrary, it was held that

despite the fact that the accused did not properly unload his rifle, he handled the weapon in the safest manner he could, as the weapon was discharged in a clearing barrel and, as such, it did not pose a risk or danger. The court further added that improperly performing weapons drill and causing it to fire when it was not intended or not authorized, does not automatically constitute a penal negligence offence within the meaning of section 129 of the NDA.

R. v. Larouche

The accused was charged with service offences that included voyeurism, conduct to the prejudice of good order and discipline, disgraceful conduct, and possession of child pornography. Military Police, after obtaining search warrants, conducted a ten-hour search in the accused's home and found a large number of files containing child pornography on his computer. The accused alleged that the search and seizure violated his *Charter* rights, and sought exclusion of the evidence. A *voir dire* was held and the court martial ruled that the evidence was admissible. While the court martial found that the search warrant was invalid and the evidence was obtained in conditions that violated accused's right to be secure against an unreasonable search, the evidence consisted of over 1,000 files, involved physical and psychological integrity of numerous alleged victims, and the warrants were not obtained through unacceptable police behaviour but on grounds incorrectly considered. As such, the court martial held that the public's perception of the military justice system and courts martial in particular could be severely undermined if the evidence at issue were excluded. The court martial found that the admission of the evidence, under the circumstances, would not bring the administration of justice into disrepute.

The court martial found the accused guilty of voyeurism and possession of child pornography. Ex-Private Larouche was sentenced to 12 months imprisonment. The case has been appealed to the CMAC.

R. v. Ravensdale

A General Court Martial panel found then-WO (retired) Ravensdale guilty of three offences contrary to section 130 of the NDA; namely, two counts of breach of duty in relation to an explosive substance and one count of unlawfully causing bodily harm. The accused was also found guilty of one count contrary to section 124 of the NDA, negligently performing a military duty imposed on him. The charges resulted from a tragic incident on 12 February 2010 in Kan Kala, Afghanistan, when one CAF member was killed and four others were seriously wounded following the detonation of a Defensive Command Detonated Weapon (C-19). Among other things, then-WO (retired) Ravensdale was found to have negligently performed a military duty by giving the order to fire the C-19, without ensuring, as it was his duty to do, that all persons were either under cover or withdrawn from the danger area. Then-WO (retired) Ravensdale was sentenced to imprisonment for a period of six months, reduction to the rank of Sergeant and a two thousand dollar fine. The carrying out of the sentence of imprisonment was suspended. The court martial also ordered the taking of bodily samples for DNA analysis.

Court Martial Appeal Court Decisions

Tomczyk v. R.

This CMAC decision makes the distinction between medical treatment and medical assessments in the CAF. Bombardier

Tomczyk was convicted by a General Court Martial on a charge of conduct to the prejudice of good order and discipline, pursuant to NDA section 129, for failure to present himself for treatment as prescribed by his treating physician. The CMAC confirmed that under existing military instructions, military personnel are usually free to consent to or refuse medical treatment. Consequently, the refusal to present oneself for medical treatment cannot constitute conduct to the prejudice of good order and discipline under the meaning of subsection 129(1) of the NDA. Military personnel are obliged, however, to attend to medical assessments in order to ascertain their fitness for duties and the refusal to do so may constitute conduct to the prejudice of good order and discipline. In allowing the appeal and finding the accused not guilty, the CMAC determined that because the proper charge was not made against the Appellant, the military prosecutor should have amended the charge. Since no such amendment was made, the military judge erred in allowing the trial to proceed.

O'Toole v. R.

This is the first reported case of a review by the CMAC of a direction of a Military Judge to retain a person in pre-trial custody as provided in section 159.9 of the NDA. Following his arrest by military police for assault, Ordinary Seaman (OS) O'Toole was held in custody. Several charges were pending against him including failing to comply with prior conditions imposed to secure his release. A military judge directed that the member be retained in custody pending trial. OS O'Toole applied to the CMAC to have this direction reviewed and be released with conditions pending his trial. The CMAC determined that the applicable section of the NDA provides a wide discretion

including conducting a *de novo* review and rendering the appropriate decision where an error is made in the initial order. It also sets out the considerations for a review under section 159.9 of the NDA. Following review of the military judge's decision, the CMAC dismissed the application.

OTHER LEGISLATIVE INITIATIVES

Bill C-54: An Act to Amend the Criminal Code and the National Defence Act (Mental Disorder)

On 8 February 2013, Bill C-54, *Not Criminally Responsible Reform Act* was introduced in Parliament. This legislation addresses concerns raised by victims of crime with respect to accused persons found not criminally responsible on account of mental disorder. The new legislation would amend both the *Criminal Code* and the NDA mental disorder regimes, and has the following main components:

- The legislation would explicitly set out that public safety is the paramount consideration in the decision-making process relating to accused persons found to be not criminally responsible on account of mental disorder;
- Further, the legislation would create a new high-risk designation to protect the public from high-risk accused persons who are found not responsible for offences on account of mental disorder. Upon being designated by a court martial as high-risk, an accused person found not responsible on account of mental disorder would be held in custody and not be considered for release by a Review Board until his or her

designation is revoked by a court martial;

- Finally the legislation would enhance the safety of victims by ensuring that they are specifically considered when decisions are being made about accused persons found not responsible on account of mental disorder such as ensuring they are notified when such an accused person is discharged; and providing for non-communication orders between the accused person and the victim.

Access to treatment for any accused person found not responsible on account of mental disorder would not be affected by the proposed reforms. By the end of the reporting period, the bill was at Second Reading stage in the House of Commons.

Bill C-10: *Safe Streets and Communities Act*

On 13 March 2012, Bill C-10: *Safe Streets and Communities Act* (S.C. 2012, c. 1) received Royal Assent, with many provisions of the Act subsequently coming into force

during the reporting period in May, June, October and November of 2012, and February 2013. The Act amended laws dealing with many different aspects of the criminal justice system, but its impact on the military justice system is focused in following two areas:

- First, it increases mandatory minimum sentences for a number of sexual offences under the *Criminal Code* and for serious offences under the *Controlled Drugs and Substances Act*. These increased mandatory minimum sentences also apply within the military justice system in cases where convictions for the relevant offences result from charges under section 130 of the NDA;
- Further, it amends language and procedures within the *Criminal Records Act* that deals with pardons for criminal offences. The term “pardon” was replaced by the term “record suspension.” The periods of ineligibility to apply for record suspensions are now lengthened for different classes of offences and certain offences have become ineligible for a record suspension.



CHAPTER 5

THE WAY AHEAD

It is expected that during upcoming reporting periods, the Judge Advocate General (JAG), supported by the Office of the JAG, will continue to be at the forefront of responsible, proactive, military justice reform and will continue to provide legal advice related to the further enhancements of the military justice system either through amendments to the *National Defence Act* or subordinate regulations.

Bill C-15

It is anticipated that Bill C-15 will continue to progress during the next reporting period. Legal officers from the Military Justice Division will continue to support the Minister of National Defence, the JAG and departmental officials in advancing this important legislative initiative.

Government Response to the LeSage Report

As indicated in Chapter 2, the government accepted the majority of recommendations made in the LeSage Report. As a result, departmental officials, including legal officers from the Office of the JAG's Military Justice Division, will continue to develop legislative, regulatory and policy options for the implementation of the recommendations.

CONCLUSION

The 2012-13 reporting period was marked by the significant advancement

of the legislative response to the First Independent Review Authority. Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, signifies a further step in the JAG's ongoing efforts to assist the government of Canada in the principled development of the military justice system ensuring it continues to be fair, efficient and responsive to the unique needs of the Canadian Armed Forces (CAF) within Canada's free and democratic society.

The reporting period also included the tabling of the Second Independent Review Authority's report, which will be an important resource as the JAG continues to lead proactive military justice oversight, responsible development and positive change. Echoing comments from earlier independent reviews, Chief Justice LeSage found that the military justice system is sound and he accepted – without reservation – the uniqueness and importance of the military justice system. The independent reviews conducted by eminent jurists reinforce that the Canadian military justice system is critical to ensuring discipline within the CAF while adhering

to the *Canadian Charter of Rights and Freedoms* and meeting the expectations of Canadians.

Members of the Office of the JAG have displayed an unquestioned dedication to Canada, the CAF and the dual professions of arms and law. Whether deployed on international or domestic operations or fearlessly defending their client before a court martial, legal officers continue to deliver independent, operationally focused, solution oriented legal advice across the full spectrum of military law.

The military justice system will undoubtedly evolve in subsequent reporting periods. As the superintendent of the administration of military justice, the JAG, assisted by his team of world-class professionals, will continue to advance the principled development of the military justice system to ensure that the Canadian military justice system remains at the forefront of responsible development and positive change while serving as a model for military justice systems around the world.



ANNEX A

SUMMARY TRIALS, COURTS MARTIAL AND APPEALS

**Year in Review – Statistics:
1 April 2012 – 31 March 2013**

I. Summary Trials Reporting

1 April 2012 – 31 March 2013

For statistics relating to prior years, refer to previous JAG Annual Reports.
The statistics in this annex are current as of 2 June 2014.

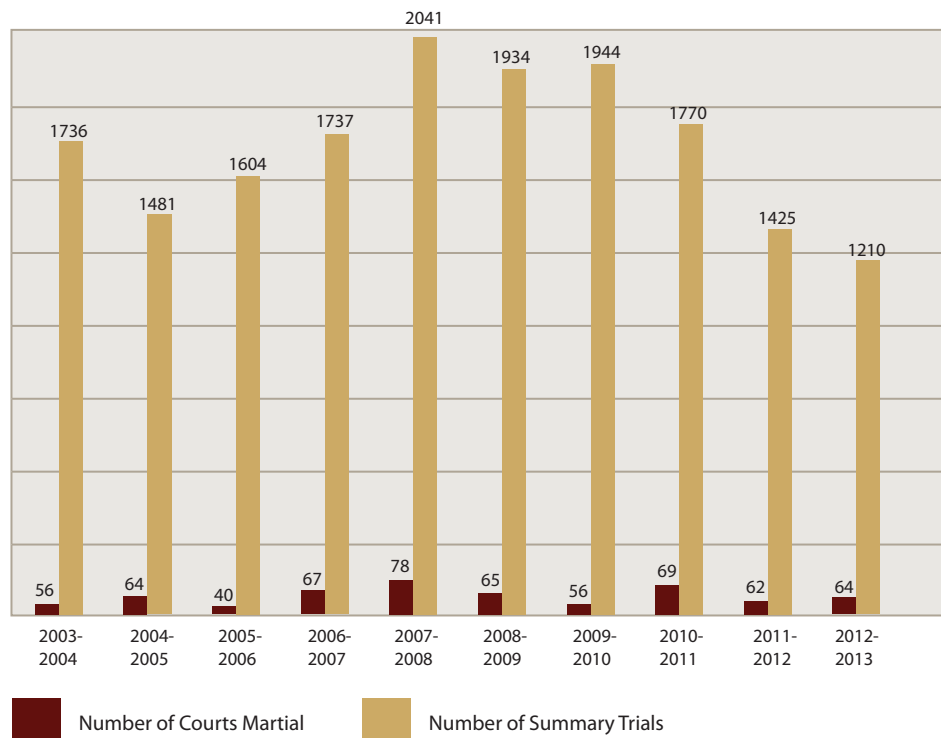
Distribution of Service Tribunals

	2011-2012		2012-2013	
	#	%	#	%
Number of courts martial	62	4	64	5
Number of summary trials	1425	96	1210	95
Total	1487	100	1274	100

Language of Summary Trials

	2011-2012		2012-2013	
	#	%	#	%
Number in English	1121	79	991	82
Number in French	304	21	218	18
Total	1425	100	1210	100

Distribution of Disciplinary Proceedings Year to Year Comparison



Referral and Disposition of Charges

	2011-2012		2012-2013	
	#	%	#	%
Number of cases directly referred to courts martial	108	6.77	82	6.15
Number of elections to be tried by courts martial by the accused	55	3.44	39	2.93
Number of summary trials	1425	89.23	1210	90.77
Cases not proceeded with at summary trial	9	0.56	2	0.15
Total	1597	100	1333	100
Number of elections offered to be tried by court martial	551		415	
Number of elections to be tried by courts martial by the accused	55	9.98	39	9.40

Summary Trials by Rank

	2011-2012		2012-2013	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1193	83.72	964	79.67
Sergeant to Chief Warrant Officer	68	4.77	68	5.62
Officer	164	11.51	178	14.71
Total	1425	100	1210	100

* Pursuant to QR&O 3.08, master corporal is not a rank but an appointment.

Summary of Charges

NDA Article	Description	2011-2012		2012-2013	
		#	%	#	%
83	Disobedience of lawful command	67	3.38	27	1.58
84	Striking or offering violence to a superior officer	3	0.15	8	0.47
85	Insubordinate behavior	80	4.03	54	3.16
86	Quarrels and disturbances	65	3.28	51	2.99
87	Resisting or escaping from arrest or custody	1	0.05	0	0.00
90	Absence without leave	655	33.01	614	35.95
91	False statement in respect of leave	0	0.00	1	0.06
93	Cruel or disgraceful conduct	5	0.25	4	0.23
95	Abuse of subordinates	7	0.35	6	0.35
97	Drunkenness	167	8.42	151	8.84
98	Malingering, aggravating disease or infirmity or injuring self or another	2	0.10	0	0.00
101	Escape from custody	2	0.10	0	0.00
101.1	Failure to comply with conditions	4	0.20	3	0.18
102	Hindering Arrest or Confinement or Withholding Assistance when called on	2	0.10	0	0.00
108	Signing inaccurate certificate	2	0.10	1	0.06
111	Improper driving of vehicles	3	0.15	6	0.35
112	Improper use of vehicles	13	0.66	14	0.82
113	Causing fires	0	0.00	1	0.06
114	Stealing	10	0.50	11	0.64
115	Receiving	0	0.00	1	0.06

NDA Article	Description	2011-2012		2012-2013	
		#	%	#	%
116	Destruction, damage, loss or improper disposal	11	0.55	8	0.47
117	Miscellaneous offences	10	0.50	28	1.64
118.1	Failure to Appear or Attend	0	0.00	1	0.06
122	False answers or false information	1	0.05	0	0.00
124	Negligent performance of duties	1	0.05	0	0.00
125	Offences in relation to documents	26	1.31	11	0.64
127	Injurious or destructive handling of dangerous substances	0	0.00	3	0.18
129*	Conduct to the prejudice of good order and discipline – Negligent discharge	256	12.92	254	14.87
129*	Conduct to the prejudice of good order and discipline – Excluding negligent discharge	556	28.03	422	24.71
130	Service trial of civil offences	35	1.76	28	1.63
Total		1984	100	1708	100

*A charge under s.129 of the NDA is typically set out on a Record of Disciplinary Proceedings (RDP) with brief particulars that do not necessarily capture all of the alleged circumstances. Prior to the 2010-2011 reporting period, s.129 charges were reported in JAG Annual Reports using broad classifications such as those of a sexual nature. Since it is difficult to use an RDP to make such classifications with reliable precision, and in order to minimize the risk of misrepresenting any statistics reported, it was decided to omit any breakdown of s.129 charges along these lines in reports after the 2009-2010 report. In contrast, charges arising from the negligent discharge of a weapon represent a significant proportion of all disciplinary proceedings in the Canadian Armed Forces (CAF) and can be easily identified from the particulars set out in the RDP.

While recognizing the challenges inherent in attempting to identify those s.129 charges which could be of a sexual nature and for the purposes of comparison with previous reports which did provide such a breakdown, the number of s.129 charges of a sexual nature since the 2009-2010 reporting period is believed to be as follows:

	# of charges	% of total
2010-2011	34	1.92
2011-2012	17	0.86
2012-2013	33	1.93

Summary Trials by Command

	2011-2012		2012-2013	
	#	%	#	%
Vice Chief of the Defence Staff	2	0.14	7	0.58
Canada Joint Operations Command (CJOC)*	148	10.39	70	5.78
Canada Special Operations Forces Command	18	1.26	18	1.49
Royal Canadian Navy**	226	15.86	237	19.59
Canadian Army***	589	41.33	533	44.05
Royal Canadian Air Force****	109	7.65	90	7.44
Chief of Military Personnel	326	22.88	250	20.66
Assistant Deputy Minister (Information Management)	5	0.35	5	0.41
Assistant Deputy Minister (Material)	1	0.07	0	0.00
Chief of Defence Intelligence	1	0.07	0	0.00
Total	1425	100	1210	100

* Effective October 2012, Canada Command, Canada Operational Support Command and Canada Expeditionary Force Command merged to form the Canada Joint Operations Command (CJOC).

** Effective 7 February 2012, Maritime Command became known as the Royal Canadian Navy.

*** Effective 17 January 2012, Land Forces Command became known as the Canadian Army.

**** Effective 17 January 2012, Air Command became known as the Royal Canadian Air Force.

Findings by Charge

	2011-2012		2012-2013	
	#	%	#	%
Guilty	1806	91.03	1534	89.82
Guilty – Special Finding	4	0.20	10	0.59
Guilty of related offences	0	0.00	1	0.06
Not guilty	124	6.25	114	6.68
Charge stayed	41	2.07	46	2.69
Charge not proceeded with	9	0.45	3	0.18
Total	1984	100	1708	100

Punishments

	2011-2012		2012-2013	
	#	%	#	%
Detention (suspended)	8	0.43	9	0.57
Detention	51	2.76	39	2.45
Reduction in rank	5	0.27	9	0.57
Severe reprimand	5	0.27	5	0.31
Reprimand	61	3.30	52	3.27
Fine	1099	59.50	985	61.99
Confinement to ship or barracks	436	23.61	340	21.40
Extra work and drill	128	6.93	104	6.54
Stoppage of leave	15	0.82	25	1.57
Caution	39	2.11	21	1.32
Total	1847	100	1589	100

Note: More than one type of punishment may be awarded in a sentence.

Requests for Review

	2011-2012		2012-2013	
	#	%	#	%
Requests for review based on finding	6	20.69	5	14.29
Requests for review based on sentence	12	41.38	19	54.29
Requests for review based on finding & sentence	11	37.93	11	31.43
Total	29	100	35	100

Note: An officer or non-commissioned member may request a review authority to set aside the finding of guilty or to alter the sentence.

Decisions of Review Authority

	2011-2012		2012-2013	
	#	%	#	%
Upholds decision	12	41.38	12	34.29
Quashes findings	9	31.03	14	40.00
Substitutes punishment	2	6.90	3	8.57
Mitigates / commutes / remits punishment	6	20.69	6	17.14
Total	29	100	35	100

II. COURT MARTIAL REPORTING

1 April 2012 – 31 March 2013

Courts Martial by Type

	2011-2012		2012-2013	
	#	%	#	%
Standing Court Martial	55	89	60	94
General Court Martial	7	11	4	6
Total	62	100	64	100

Language of Courts Martial

	2011-2012		2012-2013	
	#	%	#	%
English	52	84	50	78
French	10	16	14	22
Total	62	100	64	100

Courts Martial by Rank

	2011-2012	2012-2013
Private to Corporal (includes Master-Corporal*)	41	30
Sergeant to Chief Warrant Officer	9	17
Officer	11	16
Other	1	1
Total	62	64

* Pursuant to QR&O 3.08, master corporal is not a rank but an appointment.

Summary of Charges

NDA Article	Description	2011-2012	2012-2013
		#	#
83	Disobedience of lawful command	11	6
85	Insubordinate behaviour	7	4
86	Quarrels and disturbances	8	3
87	Resisted an escort whose duty it was to have him in charge	1	2
88	Desertion	0	3
90	Absent without leave	28	15
93	Cruel or disgraceful conduct	2	3
95	Abuse of subordinates	4	4
97	Drunkenness	10	6
101.1	Failure to comply with conditions	4	7
112	Improper use of vehicles	0	1
114	Stealing	1	13
115	Receiving	1	2
116	Destruction, damage, loss or improper disposal	0	7
117(f)	An act of a fraudulent nature	1	3
124	Negligent performance of a military duty	7	7
125(a)	Wilfully (or negligently) made a false entry	2	9
125(c)	With intent to deceive, altered a document issued for military purpose	1	3
127	Injurious or destructive handling of dangerous substances	0	3
128	Conspired to commit an offence	0	3
129	An act to the prejudice of good order and discipline	50	35
130 (4(1) CDSA)*	Possession of substance	13	4
130 (5(1) CDSA)	Trafficking in substance	6	2
130 (5(2) CDSA)	Possession for purpose of trafficking	1	0
130 (7 CDSA)	Production of substance	1	1
130 (80 CC)**	Breach of Duty	0	6
130 (82(1)CC)	Unlawful possession of an explosive	0	1
130 (87 CC)	Pointing a Firearm	4	1
130 (92(2) CC)	Possession of a prohibited weapon	0	1

NDA Article	Description	2011-2012	2012-2013
		#	#
130 (104(1) CC)	Unauthorized importing and exporting	1	0
130 (122 CC)	Breach of trust by public officer	4	5
130 (129 CC)	Offences relating to public or peace officer	1	2
130 (139 CC)	Obstructing justice – Wilful attempt to obstruct, pervert or defeat the course of justice	1	0
130 (140(1) CC)	Public mischief	0	1
130 (151 CC)	Sexual interference	0	1
130 (152 CC)	Invitation to sexual touching	0	1
130 (153 CC)	Sexual exploitation	0	2
130 (162 CC)	Voyeurism	0	3
130 (163.1(4)CC)	Possession of child pornography	1	1
130 (220(a) CC)	Criminal negligence causing death with a firearm	1	0
130 (236(a) CC)	Manslaughter while handling a firearm	1	0
130 (236(b) CC)	Manslaughter while handling a firearm	0	2
130 (253(a) CC)	Operation while impaired	1	2
130 (264.1 CC)	Uttering threats	3	2
130 (266 CC)	Assault	8	5
130 (267 CC)	Assault with a weapon or causing bodily harm	3	2
130 (269 CC)	Unlawfully causing bodily harm	1	3
130 (270 (1)(a) CC)	Assaulting a peace officer	0	1
130 (271 CC)	Sexual assault	9	7
130 (272(1)(b) CC)	Sexual assault with a threat to a third party	1	0
130 (334 CC)	Punishment for theft - value stolen does not exceed \$5000	1	4
130 (348 CC)	Breaking and entering	3	0
130(354 CC)	Possession of stolen property	1	0
130 (362 CC)	False pretense or false statement	0	1
130 (368 CC)	Uttering a forged document	2	2
130 (464 CC)	Counselling an offence that is not committed	0	2
Total Offences		206	204

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.

* *Controlled Drugs and Substances Act*, S.C. 1996, c. 19.

** *Criminal Code*, R.S.C., 1985, c. C-46.

Courts Martial by Command

	2011-2012		2012-2013	
Vice Chief of the Defence Staff	0	0.00	2	3.13
Canada Joint Operations Command (CJOC)*	8	12.90	7	10.94
Royal Canadian Navy**	10	16.13	13	20.31
Canadian Army***	30	48.39	25	39.06
Royal Canadian Air Force****	9	14.52	2	3.13
Chief of Military Personnel	5	8.06	14	21.88
Assistant Deputy Minister (Information Management)	0	0.00	1	1.56
Total	62	100	64	100

* Effective October 2012, Canada Command, Canada Operational Support Command and Canada Expeditionary Force Command merged to form the Canada Joint Operations Command (CJOC)

** Effective 7 February 2012, Maritime Command became known as the Royal Canadian Navy.

*** Effective 17 January 2012, Land Forces Command became known as the Canadian Army.

**** Effective 17 January 2012, Air Command became known as the Royal Canadian Air Force.

Disposition by Case

	2011-2012		2012-2013	
	#	%	#	%
Found/Plead Guilty to at least one charge	56	90.32	50	78.13
Not Guilty of all charges	6	9.68	10	15.63
Stay of all charges	0	0.00	1	1.56
Terminated	0	0.00	2	3.13
Not criminally responsible on account of mental disorder	0	0.00	1	1.56
Total	62	100	64	100

Sentences

	2011-2012	2012-2013
Dismissal	0	6
Imprisonment	11	8
Detention	4	1
Reduction in Rank	3	9
Severe Reprimand	7	14
Reprimand	17	13
Fine	45	34
Forfeiture of seniority	0	1
Minor punishments: Confinement to ship or barracks	1	0
Total	88	86

Note: More than one type of punishment can be included in a sentence.

III. APPEALS REPORTING

1 April 2012- 31 March 2013

For statistics relating to prior years, refer to previous JAG Annual Reports.

Decisions Rendered on Appeals

	2011-2012	2012-2013
Court Martial Appeal Court of Canada	5	6
Total	5	6

Appeals by Party

	2011-2012	2012-2013
Appeals by Crown	3	0
Appeals by Offender	2	6
Total	5	6

Nature of Appeal

	2011-2012	2012-2013
Finding	1	5
Finding and sentence	4	0
Release pending appeal	0	1
Total	5	6

Disposition

	2011-2012	2012-2013
Appeal allowed in whole or in part	5	3
Appeal dismissed	0	2
Appeal abandoned	0	1
Total	5	6

ANNEX B

DATA FOR SEXUAL ASSAULT AND SEXUAL EXPLOITATION CHARGES WITHIN THE CANADIAN FORCES AT COURTS MARTIAL

For Fiscal Years 1999 to 2013

Fiscal Year	Number of Sexual Assault/Exploitation Charges	Number of Guilty Verdicts on Sexual Assault/Exploitation Charges	Number of Guilty Verdicts on the Lesser But Included Offence	Number of Not Guilty Verdicts	Number of Cases Terminated	Number of Charges Stayed, Not Proceeded With or Withdrawn
1999-2000	1	0	0	1	0	0
2000-2001	4	3	0	1	0	0
2001-2002	6	6	0	0	0	0
2002-2003	7	3	1	2	0	1 ^a
2003-2004	11	4 ^b	2	5	0	0
2004-2005	12	4	0	5 ^c	0	3 ^d
2005-2006	7	0	0	4	0	3 ^e
2006-2007	9	1	1	3	0	4 ^f
2007-2008	7	2 ^g	0	4	0	1 ^h
2008-2009	7	1	0	6	0	0
2009-2010	13	0 ⁱ	2	6	0	5

^a The charge was stayed as a result of a guilty finding of the alternative s.129 charge.

^b Originally, there were 12 charges resulting in 5 guilty verdicts at Court Martial; one guilty verdict was appealed at the Court Martial Appeal Court (CMAC) and a new trial was ordered. The Director of Military Prosecution (DMP) exercised his prosecutorial discretion and did not prefer new charges.

^c From the 12 charges there were initially 5 guilty verdicts at Court Martial; one guilty verdict was appealed. The CMAC allowed the appeal and substituted a finding of not guilty.

^d From the 3 charges, 2 were stayed as a result of guilty findings of alternative s.95 charges.

^e From the 3 charges, 2 were stayed as a result of guilty findings of alternative s.129 charges, and 1 charge was stayed as a result of a guilty finding of an alternative s.95 charge.

^f All 4 charges were stayed as a result of guilty findings for alternative s.129 charges.

^g Originally, there were 8 charges resulting in 3 guilty verdicts at Court Martial; one guilty verdict was appealed at the CMAC and a new trial was ordered. The accused was found not guilty at a re-trial held in October 2009, which is captured in the 2009-2010 data.

^h The charge was stayed as a result of a guilty finding of the alternative s.95 charge.

ⁱ Originally, there were 14 charges resulting in 1 guilty verdict at Court Martial; the guilty verdict was appealed to the CMAC and a new trial was ordered. The accused was found not guilty at a re-trial held in April 2012, which is captured in the 2012-2013 data.

DATA FOR SEXUAL ASSAULT AND SEXUAL EXPLOITATION CHARGES WITHIN THE CANADIAN FORCES AT COURTS MARTIAL

For Fiscal Years 1999 to 2013

Fiscal Year	Number of Sexual Assault/Exploitation Charges	Number of Guilty Verdicts on Sexual Assault/Exploitation Charges	Number of Guilty Verdicts on the Lesser But Included Offence	Number of Not Guilty Verdicts	Number of Cases Terminated	Number of Charges Stayed, Not Proceeded With or Withdrawn
2010-2011	11	1	0	0	0	10 ^j
2011-2012	9	6 ^k	0	0	0	3 ^l
2012-2013	8	4	1	2	1	0

^j From the 10 charges, 4 were stayed as a result of a guilty finding of the alternative s.93 charges and 1 was stayed as a result of a guilty finding of an alternative s.95 charge.

^k Originally, there were 10 charges resulting in 7 guilty verdicts at Court Martial; one guilty verdict was appealed to the CMAC and a new trial was ordered. The DMP exercised his prosecutorial discretion and did not prefer new charges.

^l From the 3 charges, 1 was stayed as a result of a guilty finding of an alternative s.129 charge.