



National Défense
Defence nationale



Annual Report

of the
Judge Advocate General



A Report to the Minister of National Defence
on the Administration of Military Justice
from 1 April 2013 to 31 March 2014



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Dear Minister,

It is my honour to present you the fifteenth 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 2013 to 31 March 2014.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Blaise Cathcart'.

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

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Communiqué

I am very pleased to present the report on the administration of military justice in the Canadian Armed Forces (CAF) for the period from 1 April 2013 to 31 March 2014.

The reporting period marked the conclusion of Canada's military mission in Afghanistan where, for more than 12 years, CAF personnel were involved in combat, security, development, support and training operations. From the outset, legal officers from the Office of the JAG were involved in the mission delivering responsive, force enabling legal advice and services in all areas of military law. Over 100 legal officers deployed to Afghanistan while others supported the mission from Canada. I am extremely proud of the Office of the JAG's contributions to this historic mission. Those contributions are further detailed in Chapter 2.

As the superintendent of the administration of military justice, I am committed to leading proactive oversight, responsible development of, and positive change to, Canada's military justice system. In this regard, this reporting period marked the passage of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*. Bill C-15 comprises the most significant amendments to the *National Defence Act* since 1988. The amendments in the bill ensure that Canada's military justice system remains one in which Canadians can have trust and confidence. Legislative initiatives such as Bill C-15 further serve to align the military justice system within the larger Canadian legal mosaic while taking into account the unique requirements of that system. Bill C-15 and noteworthy jurisprudence during the reporting period are highlighted in Chapter 4.



This separate system of military justice is designed to deal expeditiously and fairly with service offences, while remaining consistent with Canadian law, including the *Canadian Charter of Rights and Freedoms*. As stated by the Supreme Court of Canada, "the safety and well being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security....As a result, the military has its own *Code of Service Discipline* to allow it to meet its particular disciplinary needs."¹

Reflecting on the conclusion of Canada's mission in Afghanistan supports the continued need for a separate, deployable Canadian

¹ *R. v. Généreux*, [1992] 1 S.C.R. 259 at 293.

military justice system. Whether in a remote Forward Operating Base or within the confines of a larger military camp, the military justice system proved to be essential in promoting the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale while fully respecting Canadian law.

It is with this in mind that I remain confident that Canada's military justice system remains responsive to the needs of the Government of Canada, the Department of National Defence and the CAF. Canadians can be proud of a military justice system that is second to none in the world.

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 (the Minister), the Department of National Defence (DND) and the Canadian Armed Forces (CAF) in matters relating to military law. The term “military law” describes the broad legal discipline encompassing all international and domestic law relating to the 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 Minister 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 Judge Advocate General 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 qualified 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 JAG is responsible to the Minister in the performance of his duties and functions.



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. This structure reinforces the obligations of the legal profession and ensures 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, for the conduct of all prosecutions at court martial and acts as counsel for the Minister 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 Minister for a fixed term and acts independently from CAF and DND authorities when exercising his prosecutorial powers, duties and functions. The DMP is under the general supervision of the JAG and, in this regard, the JAG may issue general instructions or guidelines in writing in respect of prosecutions, which the DMP must ensure are made available to the public. The JAG may also issue instructions or guidelines in writing 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 instructions were issued to the DMP.

In accordance with QR&O 110.11, the DMP has reported to the 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) supervises and directs the provision of legal services to persons who are liable to be charged, dealt with or tried under the *Code of Service Discipline*. These legal services are provided at no cost to the individual.

The DDCS is appointed by the Minister for a fixed term. Although he acts under the general supervision of the JAG, he is independent of the JAG and other CAF and DND authorities when carrying out the wide array of prescribed duties and functions that pertain to providing defence counsel services to persons subject to the *Code of Service Discipline* 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 these 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 the 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.²



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 assists with 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 supports 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 allows 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.

Administrative Law Division

The Administrative Law Division advises 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 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

² As of 1 June 2014, this reporting requirement is now found at QR&O 101.11(4).

matters, such as military personnel policies, administrative investigations, compensation, benefits, pensions and estates, and advice on grievances.

Operational Law Division

The Operational Law Division provides 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. These legal officers provide legal support to deployed CAF elements in all aspects of military law, including the military justice system.

Regional Services Division

The Regional Services Division delivers 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 (AJAG), 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 composed of legal officers, other CAF officers and non-commissioned members along with civilian staff. This 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.

JAG Chief Warrant Officer (CWO) and Office of the JAG's CWO's and Chief Petty Officers 1st Class (CPO1s)

The JAG CWO serves as the senior non-commissioned member (NCM) advisor to the JAG. Based on the command team concept, the JAG CWO provides perspective to the JAG and his leadership team on strategic issues related to the JAG's statutory roles, the CAF and OJAG. Other experienced CWOs and CPO1s are posted to positions in the AJAG offices within Canada and in some Deputy Judge Advocate offices. The AJAG and DJA CWOs/CPO1s provide an invaluable link between senior NCMs and disciplinarians at the unit, base and formation levels and the local legal office in addressing disciplinary matters. With the assistance of OJAG legal officers, they also



provide military justice training to their clients and assist legal officers in their objectives to provide solution oriented and operationally focused legal advice.

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. They include those working at the Privy Council Office, the Department of Foreign Affairs, Trade and Development, the Office of the Department of National Defence and the

Canadian Forces Legal Advisor, the Canadian Forces Military Law Centre, and the Court Martial Administrator.³

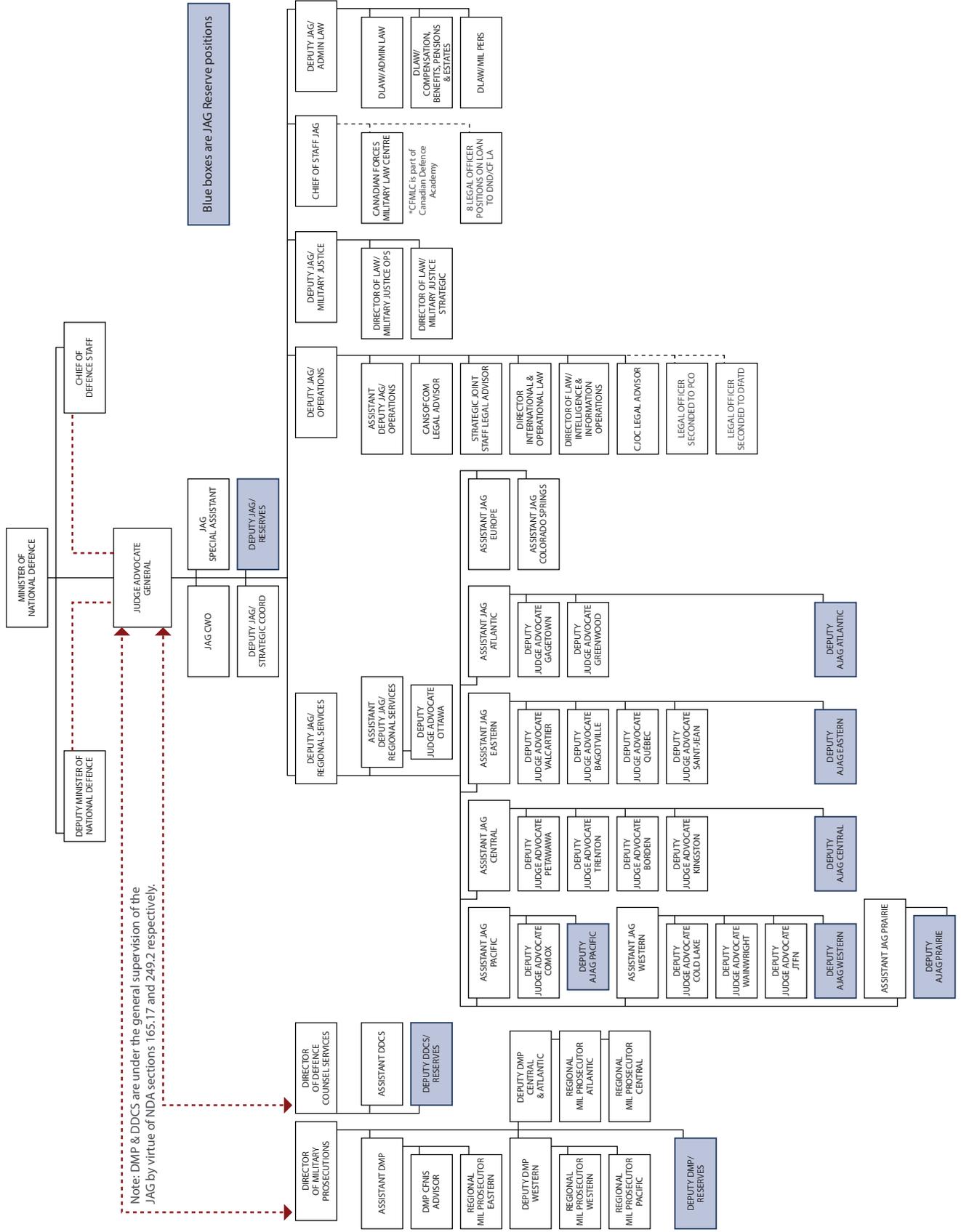
Civilian Personnel of the Office of the Judge Advocate General

Civilian personnel form an integral and essential part of the Office of the JAG and contribute greatly to its continued success. 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 and technical tasks.

³ The legal advisor to the Court Martial Administrator provides legal advice independently from the Office of the JAG.



ORGANIZATION CHART OFFICE OF THE JUDGE ADVOCATE GENERAL

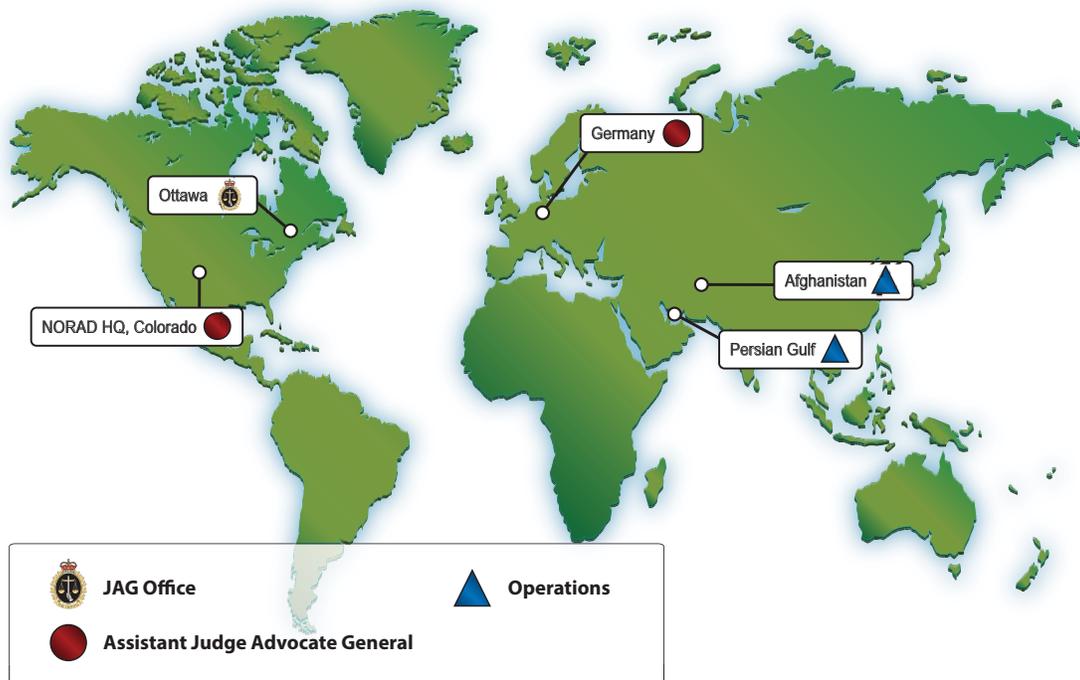


Blue boxes are JAG Reserve positions

CANADIAN OFFICES OF THE JUDGE ADVOCATE GENERAL



OFFICES OF THE JUDGE ADVOCATE GENERAL OUTSIDE OF CANADA





Chapter 2

The Office of the Judge Advocate General and Canada's Mission in Afghanistan

Canada's military engagement in Afghanistan began in late 2001, after the September 11 attacks on the United States and formally concluded in March 2014. From the very beginning, legal considerations shaped the nature and the extent of Canada's involvement in Afghanistan. The timely resolution of many complex legal issues assisted in the effective conduct of the Canadian Armed Forces' (CAF) extensive and varied military operations. Throughout the campaign, legal officers led by the Judge Advocate General (JAG) addressed varied and complex legal issues involving a challenging theatre of operations.

The Office of the JAG's contribution to the CAF mission in Afghanistan was not limited



only to those who deployed. For instance, the JAG and legal officers working in the Operational Law Division provided strategic level support to the Government of Canada, including the Minister of National Defence and senior leadership within the Department



of National Defence and the CAF. Other legal officers provided advice on military justice and administrative law issues that impacted the mission. Finally, those legal officers working on bases across the country supported rear parties and related mission activities.

AN EMERGING AND EVOLVING MISSION

September 11, 2001

Following the September 11, 2001 attacks, the United Nations Security Council (UNSC) adopted Resolution 1368 that supported efforts to root out terrorism in Afghanistan.⁴ Shortly thereafter, Canada announced that it would contribute air, land and sea forces to the international force being formed to conduct a campaign against terrorism.⁵ The

Canadian contribution to the campaign in southern Afghanistan was Operation APOLLO that involved combat operations within a multi-national coalition. From the beginning, these operations had integrated legal support from deployed military lawyers from the Office of the JAG.

The International Security Assistance Force (ISAF)

On December 20, 2001, the UN Security Council authorized ISAF with a mandate to assist the Afghan Transitional Authority (ATA) in providing for security in the Kabul region and its surrounding areas.⁶

The objective of Operation ATHENA, Canada's participation in ISAF, was initially to contribute troops to the UN authorized mission in Kabul. From 2003 to 2005, the CAF's main effort in Afghanistan under ISAF was concentrated in Kabul. During this period, a Canadian Battle Group was based in Camp Julien and was supported by a legal officer for each of the rotations of this contribution.

In late 2005, the CAF's main effort transitioned from security operations in Kabul to full spectrum combat operations in Kandahar province. This was accompanied by a significant increase in the threat faced by CAF personnel. The Office of the JAG's operational tempo also increased with deployed legal officers providing support on numerous issues including targeting, detention, the rule of law and Afghan capacity building.

Following the cessation of combat operations in 2011, CAF efforts transitioned to Operation

⁴ UNSCR 1368 (2001).

⁵ On October 7, 2001, Prime Minister, The Right Honourable Jean Chrétien announced that Canada would contribute air, land and sea forces to the international force being formed to conduct a campaign against terrorism. <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=3034719&File=129&Language=E&Mode=1&Parl=39&Ses=1>.

⁶ UNSCR 1386 (2001).



ATTENTION, a Kabul-centered training and capacity building mission. Legal officers continued to support Afghan National Army (ANA) legal development while advising mission commanders in a challenging security environment until termination of the mission in March 2014. The final legal officer from the Office of the JAG to serve in Afghanistan left the country on 15 March 2014.

LEGAL SUPPORT IN THE THEATRE OF OPERATIONS AND BEYOND

Camp Mirage

Between 2001 and 2010 the CAF operated a staging base, Camp Mirage, for the Afghan mission within a Middle East partner state.

Legal officers, both in Canada and in theatre, supported the establishment of Camp Mirage and its operations in furtherance of the Afghan mission.

Provincial Reconstruction Teams

International efforts in Afghanistan included the establishment of Provincial Reconstruction Teams (PRT) to provide assistance to the Afghan government in increasing its ability to govern, rebuild the nation and provide services to its citizens. Canada's contribution of a PRT in Kandahar province was based in Kandahar City. The PRT legal officer's responsibilities were numerous and diverse, including working with officials from Afghan and international authorities to advance these objectives and evaluating claims for *ex gratia* payments made by Afghan citizens.

Mentorship

Canada's engagement in Afghanistan included efforts to strengthen the rule of law and human rights. In this regard, legal officers provided valuable mentorship to a wide variety of Afghan officials - from senior levels of the Afghan government to tactical level staff judge advocates of the ANA.

For example, legal officers who served with Canada's Strategic Advisory Team - Afghanistan (SAT-A), provided valuable guidance to senior officials in Afghan government ministries in order to assist in strengthening the government of Afghanistan.

In contrast, other legal officers served in various mentorship roles. Those serving in Kabul with the US-led Combined Security Transition Command - Afghanistan (CSTC-A) mentored senior legal advisors from the Ministry of Defence and ANA, as well as judges from the Court of Military Appeals. Legal officers serving in Operational Mentor and Liaison Teams (OMLT) provided guidance in Kandahar province at the brigade, battalion and company levels. These legal officers travelled widely alongside their ANA counterparts, guiding them through military law issues. Other legal officers worked as advisors and mentors to the ANA Training and



Education Command in support of the ANA Legal School in Kabul.

Service at Home

Whether at National Defence Headquarters or AJAG offices on bases in every part of Canada, the steady stream of deployments called upon the remaining legal officers and civilian staff to sustain the provision of legal advice to the CAF and DND. The members of the Office of the JAG responded to this demanding environment with poise and professionalism.

For instance, new and revised CAF programs involving financial and medical benefits, assistance to and recognition of, CAF members were among the myriad of administrative law issues flowing from the mission that challenged the legal officers serving in the Administrative Law Division.

Within the military justice system, legal officers serving in the Canadian Military Prosecution Service, Defence Counsel Services and the Military Justice Division faced challenging legal issues related to proceedings arising from the Afghan mission. This was exemplified in July 2010 during the General Court Martial of Captain Semrau in theatre. The demonstration of the expeditionary character of military justice reaffirmed its indispensable role as a part of the larger Canadian justice system.

CONCLUSION

The Canadian involvement in Afghanistan was transformational for the CAF and the Office of the JAG. During the course of almost thirteen years of CAF involvement in Afghanistan, a generation of legal officers provided legal advice and support to commanders at all levels. Frequently, advice was provided under very

stressful circumstances where commanders were seized with matters of life and death. In providing legal support to the mission, the Office of the JAG played a significant role in the defence of Canada and its allies, in the fulfillment of the mandate given to the CAF by the Government of Canada, and contributed to building respect for the rule of law.

The mission was challenging, not only for those legal officers who deployed, but also for

those who stayed behind and for the families who supported them. The Office of the JAG and its members can take pride in their contribution to the campaign in Afghanistan. They provided the CAF with what it needed: legal officers who punched above their weight by delivering timely, operationally focused and solution oriented, independent legal advice.





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 to meet the specific needs of the Canadian Armed Forces (CAF).⁷

The military justice system differs from its civilian counterpart in its objectives. In addition

to ensuring that justice is administered fairly and 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 justice system from the civilian system.

The ability of the CAF 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

⁷ *R. v. Généreux*, [1992] 1 S.C.R. 259; *Mackay v. R.*, [1980] 2 S.C.R. 370 at 399.

that require a formal, fair, and prompt response. As the Supreme Court of Canada observed 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 requirements articulated by Canada’s highest court.

THE STRUCTURE OF THE MILITARY JUSTICE SYSTEM

The Code of Service Discipline and Service Offences

The *Code of Service Discipline* (CSD), Part III of the *National Defence Act* (NDA), 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 and powers of arrest, along with the organization and procedures of service tribunals, appeals, and post-trial review.

The term “service offence” is defined in the NDA as “an offence under this Act, 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.

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 or, where the matter is minor in nature, at the unit level.

The authorities and powers vested in Military Police members, such as peace officer status, are conferred by the NDA, the *Criminal Code* and the *Queen’s Regulations and Orders for the Canadian Forces* (QR&O). Amongst other duties, Military Police members conduct investigations and report on service offences that were committed, or alleged to have been committed by persons subject to the CSD. Military Police members maintain their professional independence in carrying out policing duties 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 legal advice 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, 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 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 each type of service tribunal.

Summary Trials

The summary trial is the most common form of service tribunal. During the reporting period, 1128 summary trials were held, representing 94% of all military justice proceedings (See the Annex 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 Judge Advocate General 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, then, 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, or 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.

During the reporting period, accused members elected trial by court martial 66 times out of the 404 cases (16.34%) in which an election was offered. This is an increase in the rate of elections taken from that reported in previous reporting periods; further analysis will be required.

The jurisdiction of a summary trial is limited

by such factors as: the rank of the accused, the type of offence the accused is 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 matter 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 summary trial are straightforward and the powers of punishment are limited. This limitation 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 must obtain legal advice before making any determination.

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, 67 courts martial were held, representing 6% 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 [their] jurisdiction.”⁸

At a court martial, the prosecution is conducted by a military prosecutor authorized by the Director of Military Prosecutions. The accused is entitled to be represented by 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 court martial: General and Standing. The General Court Martial is composed of a military judge and a panel of five CAF members. The panel is selected randomly by the Court Martial Administrator and is governed by rules that reinforce its military character. 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 to the Court Martial Appeal Court of Canada (CMAC). The CMAC is composed of civilian judges who are designated from the Federal Court of Canada and the Federal Court of Appeal, or appointed from 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

An accused may, pursuant to the *Official Languages Act*, choose to have his or her summary trial conducted in either English or French. Note A to QR&O 108.16 states that the

⁸ See section 179 of the NDA.

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 do 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, there were no reports of an accused person tried by a service tribunal other than in the official language of their choice.





Chapter 4

Military Justice: The Year in Review

This chapter highlights a number of significant decisions at both the court martial and the Court Martial Appeal Court of Canada (CMAC), along with legislative and regulatory developments during the reporting period.

JURISPRUDENCE

Court Martial Decisions

R. v. Brideau

Warrant Officer Brideau was acquitted of two charges under the NDA that related to the mishandling of a 9mm pistol during weapons training in Afghanistan.

One of the charges alleged that the

mishandling was an act to the prejudice of good order and discipline contrary to section 129 of the NDA. Even though the wording of the charge specified an “act,” the military judge framed the issue as “neglect” to the prejudice of good order and discipline. The military judge’s rationale was that the procedure for clearing a weapon involves a succession of actions, and not only a single act. Consequently, the military judge commented that the choice of the word “act” to deal with failures in the course of a procedure was of no assistance.

The military judge generally agreed with the legal approach set out in *R. v. Nauss*, which provides that the concept of neglect under section 129 imports the standard of care associated with criminal negligence – a marked departure from the norm.⁹ In *Brideau*,

⁹ 2013 CM 3008.

the military judge was not satisfied that the facts proved criminal negligence beyond a reasonable doubt. Additionally, the Court concluded that actual prejudice to good order and discipline was probable, but was not proven beyond a reasonable doubt.

In finding the accused not guilty of the alternate charge under section 124, negligent performance of a military duty imposed on him, the military judge held that a general order requiring that deployed personnel complete monthly weapons handling training was not a specific duty within the meaning set forth in the NDA. He then suggested that the circumstances might have been more appropriately addressed through a charge under section 127 of the NDA.

R. v. Stillman

Master Corporal Stillman was drinking after hours with two other CAF members. After a fight arose between Stillman and one of these members, Stillman went home, retrieved his registered personal firearm and fired two shots. The first shot hit one member in the leg and the second shot narrowly missed the second member. A court martial found Stillman guilty of five NDA s. 130 service offences, namely: discharging a firearm with intent, discharging a firearm recklessly, aggravated assault, using a firearm in the commission of an offence and possession of a loaded restricted firearm. Stillman was sentenced to imprisonment for a period of six years and dismissal from Her Majesty's service. The Court ordered the taking of a DNA sample, a weapons prohibition and forfeiture of the seized weapon.

This decision is under appeal.

R. v. Wilks

Ex-Petty Officer 2nd Class Wilks was charged with ten service offences punishable under section 130 of the NDA for sexual assault contrary to section 271 of the *Criminal Code*, and with sixteen offences punishable under section 130 of the NDA for breach of trust contrary to section 122 of the *Criminal Code*.

As a medical assistant, one of Mr. Wilks' duties was to perform health examinations for potential new recruits and CAF members. The Court held that during these examinations, he performed breast exams on sixteen women that were not required and that he was not authorized to conduct.

Mr. Wilks was convicted on ten counts of sexual assault and on fifteen counts of breach of trust. In passing sentence, the Court considered the military context and the nature of the offender's position in which the abuse took place as aggravating factors and imposed a sentence of 30 months imprisonment.¹⁰

Court Martial Appeal Court Decisions

R. v. Courneyea

Corporal Courneyea was charged under section 130 of the NDA with three offences contrary to the *Criminal Code*: assault with a weapon, pointing a firearm and uttering threats. Regarding the first charge, the court martial found him not responsible on account of mental disorder (NRAMD) based on a finding that he had suffered from post traumatic stress disorder at the time of the alleged offence. On the second and third charges, the member was found not guilty. The Court Martial Appeal

¹⁰ Ex-PO2 Wilks was found guilty during the reporting period (15 November 2013) and was sentenced on 28 April 2014. Mr. Wilks was previously found guilty of one count of sexual assault and four counts of breach of trust by a public officer, and sentenced to nine months in prison in December 2011. See <http://news.gc.ca/web/article-en.do?nid=843709>.



Court of Canada (CMAC) dismissed the appeal, upholding the NRAMD finding.

Moriarity v. R. and Hannah v. R.

Second Lieutenant Moriarity was convicted under section 130 of the NDA with four offences contrary to the *Criminal Code*: two relating to sexual exploitation, a third for sexual assault and a fourth offence for invitation to sexual touching. Sapper Hannah was charged with two offences punishable under section 130 of the NDA, contrary to the *Controlled Drugs and Substances Act* and the *Food and Drugs Act* for the trafficking and unlawful selling of a controlled substance. Paragraph 130(1)(a) makes an act or omission that is punishable under federal legislation, such as the *Criminal Code* or the *Controlled Drugs and Substances Act*, a service offence under the *Code of Service Discipline* (CSD). Their appeals were heard together.

Among other things, the appellants Moriarity

and Hannah argued that their liberty rights under section 7 of the *Canadian Charter of Rights and Freedoms* were violated. The appellants submitted that by incorporating civil offences to the CSD, such as those in the *Criminal Code*, that are unrelated to military service, paragraph 130(1)(a) employs an unconstitutionally broad means to achieve its purpose: enforcing discipline, efficiency and morale in the CAF.

In dismissing the appeal, the Court found that paragraph 130(1)(a) was not overbroad. The Court held that properly interpreted, paragraph 130(1)(a) included a “military nexus” that ensures the provision is no broader than necessary to achieve the NDA’s purpose. In terms of outlining what constitutes a “military nexus”, the Court cited with approval a concurring judgment from the Supreme Court of Canada in *R. v. McKay* that stated a military nexus exists if “the offence is so connected with the [military] service in its nature, and in



the circumstances...it would tend to affect the general standard of discipline and efficiency of the service.”¹¹ The Court cautioned, however, that it is not possible to list all circumstances in which there would be a military nexus; therefore, it must be determined on a case-by-case basis.

The appellants sought permission to appeal the decision to the Supreme Court of Canada.

Vézina v. R.

This appeal concerned a decision of a Standing Court Martial dismissing an application for a stay of proceedings on the basis of entrapment by the Military Police. It also dealt with a question as to whether paragraph 130(1)(a) of the NDA is overbroad and contrary to section 7 of the *Charter*.

¹¹ *MacKay v. The Queen*, [1980] 2 S.C.R. 370.

The Court dismissed the appeal. On the question of entrapment, the CMAC found that the actions of the Military Police were proper. In terms of whether paragraph 130(1)(a) of the NDA is overbroad, the panel stated that it was bound to follow the Court’s previous decision in *Moriarity v. R.* as the appellant had not discharged the evidentiary burden of showing manifest error on the part of the Court.

R. v. Wehmeier

Mr. Wehmeier, a civilian accompanying a unit of the Canadian Armed Forces in Germany, was charged under section 130 of the NDA contrary to three *Criminal Code* offences, namely, sexual assault, uttering threats, and assault.

At court martial, the military judge found

that the proceedings against Mr. Wehmeier amounted to an abuse of process on the grounds that included: the Director of Military Prosecutions' (DMP) denial of Mr. Wehmeier's request to transfer the matter to civilian authorities; and DMP's refusal to disclose further information with regard to the rationale behind the decision to continue the prosecution in the military justice system. The court martial terminated the proceedings. The decision was appealed.

In dismissing the appeal, the CMAC rejected the court martial's conclusion that there had been an abuse of process in the exercise of the DMP's prosecutorial discretion. The Court stated that the decision to prefer charges and the decision to continue with a Standing Court Martial in the military justice system came within the core of prosecutorial discretion.

The Court then determined that the prosecution of Mr. Wehmeier in the military justice system was arbitrary as it lacked any connection with the objectives sought to be achieved by making civilians accompanying CAF units subject to the CSD. The Court found that Parliament's objective in enacting the provisions of the NDA that retained primary jurisdiction over civilians who accompany a unit of the CAF is to protect their interests and have them tried according to Canadian law and not according to foreign penal law. Given that Mr. Wehmeier was repatriated to Canada within 5 days after the occurrence of the alleged offences, the Court stated that his prosecution in the military courts was not necessary to protect him from foreign penal jurisdiction.

The Court determined that the effect of prosecuting Mr. Wehmeier in the military

justice system had a disproportionate effect on him relative to the state's interest in the proceeding due to a loss of certain procedural rights if he was tried under the CSD as opposed to the *Criminal Code*. The Court concluded that the prosecution violated the principles of fundamental justice protected by section 7 of the *Charter* and that the appropriate remedy was termination of the proceedings without adjudication.

LEGISLATIVE INITIATIVES

Bill C-15: Strengthening Military Justice in the Defence of Canada Act

The *Strengthening Military Justice in the Defence of Canada Act*, S.C. 2013, c. 24, which was introduced in October 2011, received Royal Assent on 19 June 2013. This important and comprehensive legislative initiative represents the most significant amendments to the NDA since 1998. Bill C-15 is the Government's legislative response to the recommendations made by the former Chief Justice of Canada, the Right Honourable Antonio Lamer, in his 2003 independent report on the provisions and operation of Bill C-25. Bill C-15 also addressed the recommendation put forth by the Standing Senate Committee on Legal and Constitutional Affairs following a study of Bill C-60, which responded to a decision issued by the Court Martial Appeal Court.¹²

The amendments in Bill C-15 continue the process of ongoing improvements to the military justice system, the military police complaints process and the grievance process by:

- further enhancing the independence of military judges;

¹² *Trépanier v. R.* (2008) CMAC 3.

- expressly providing the purposes, principles and objectives of sentencing in the military justice system;
- expanding the pool of Canadian Armed Forces members eligible to serve on a court martial panel;
- amending the limitation period for summary trials to require the charge to be laid within six months of the alleged offence and to allow an accused person to waive the limitation periods;
- providing for additional sentencing options, including absolute discharges, intermittent sentences and restitution orders, as well as the ability to submit victim impact statements at courts martial;
- permitting the appointment of part-time military judges, should the need arise as a result of mobilization or other unforeseen circumstances;
- improving the efficiency of the grievance and military police complaints processes; and
- setting out the duties and functions of the Canadian Forces Provost Marshal and specifying the Provost Marshal's responsibilities.

Certain provisions of the bill came into force on 19 June 2013 and 18 October 2013 respectively. The remaining provisions of Bill C-15 will come into force at a future day or days that will be determined by the Governor in Council.





Chapter 5

The Way Ahead: Looking Forward

The Office of the JAG will continue to support the ongoing legislative and regulatory work and independent reviews that contribute to the continued development of the military justice system. These efforts continue to provide Canada with a military justice system that is operationally effective while respecting Canadian law.

The Office of the JAG will continue its commitment towards the responsible development and proactive oversight of the military justice system during future reporting periods. For example, implementation of the statutory and regulatory amendments stemming from Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, along with other recommendations provided by the Second Independent Review



Authority, retired Chief Justice Patrick LeSage, will advance during the next reporting period. Finally, it is expected that the Office of the JAG will continue to support other government initiatives that involve the military justice system such as Bill C-14 (*Not Criminally Responsible Reform Act*) and Bill C-24 (*Strengthening Canadian Citizenship Act*). Should these bills receive Royal Assent, work towards implementing the necessary legislative and regulatory amendments to the *National Defence Act* and the *Queen's Regulations and Orders for the Canadian Forces* would begin in future reporting periods.

CONCLUSION

The Canadian mission in Afghanistan provides an excellent example of the need for a separate system of military justice. After more than a decade of operations in Afghanistan, Canada's military justice system has been "battle tested"

and has proven itself to be a key tool for maintaining discipline.

The contributions made by the Office of the JAG to support the effective functioning of the military justice system have contributed to the overall operational effectiveness of the Canadian Armed Forces (CAF). In reflecting upon the Afghan mission, members of the Office of the JAG will continue to draw upon the lessons learned during the mission and with a view towards the responsible development of the Canadian military justice system. Similar to the civilian criminal justice system, the military justice system will continue to evolve in light of legislative and jurisprudential developments. This unique, *sui generis* system of justice that is designed to be a fair, efficient and effective mechanism to instil discipline and support operational effectiveness remains a world-class system that is responsive to the needs of the Government of Canada, the Department of National Defence and the CAF.



Annex

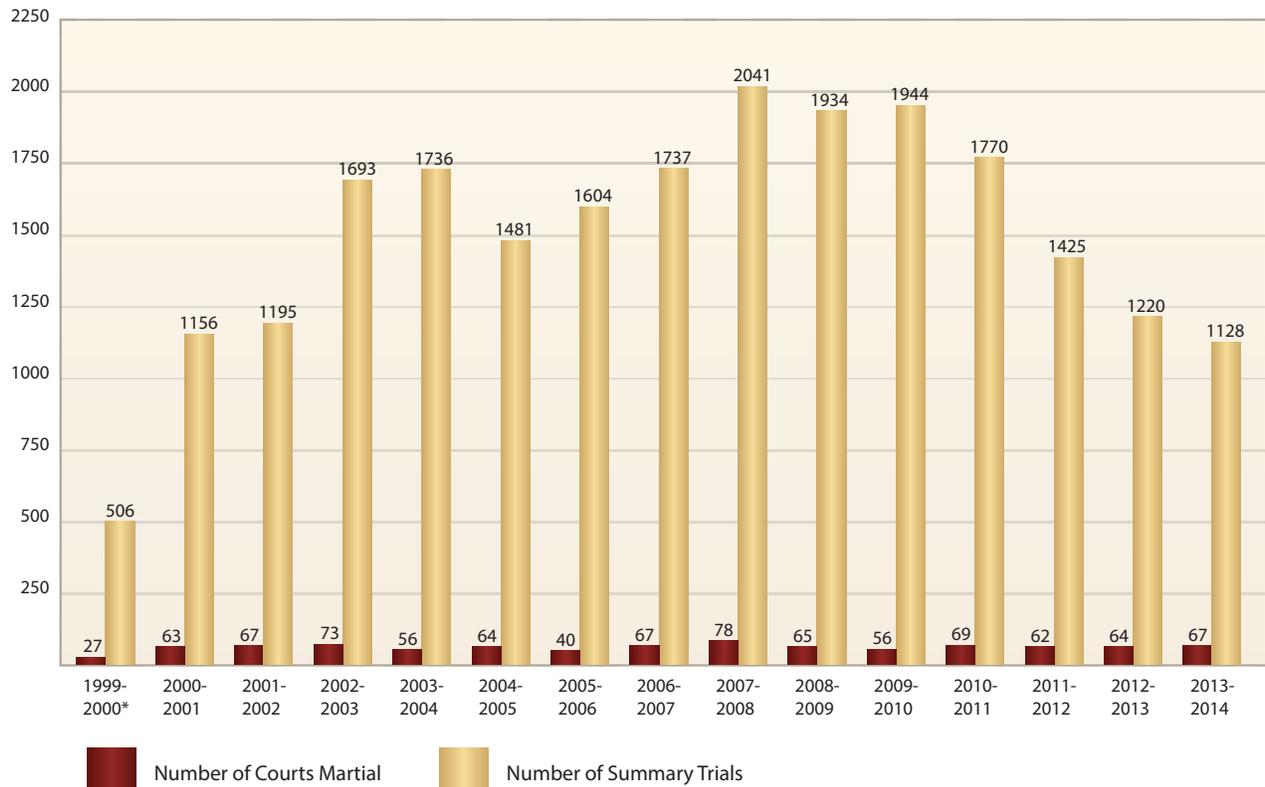
Summary Trials, Courts Martial and Appeals

Year in Review - Statistics:
1 April 2013 - 31 March 2014

Distribution of Service Tribunals

	2012-2013		2013-2014	
	#	%	#	%
Number of courts martial	64	5	67	6
Number of summary trials	1220	95	1128	94
Total	1284	100	1195	100

Distribution of Disciplinary Proceedings Year to Year Comparison



* Note: The statistics for 1999-2000 reflect the period of 1 September 1999 to 31 March 2000.

I. SUMMARY TRIALS REPORTING**1 April 2013 - 31 March 2014**

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

The statistics in this annex are current as of 22 July 2014.

Elections

	2013-2014	
	#	%
Elections to be tried by summary trial	338	83.66
Elections to be tried by courts martial	66	16.34
Total	404	100

Disposition of Cases at the Unit Level

	2013-2014
	#
Cases directly referred to courts martial	48
Elections to be tried by courts martial	66
Elections to be tried by summary trial	338
Summary trials without an election	790
Cases not proceeded with at summary trial	7
Total	1249

Language of Summary Trials

	2012-2013		2013-2014	
	#	%	#	%
Number in English	1000	82	955	85
Number in French	220	18	173	15
Total	1220	100	1128	100

Summary Trials by Rank

	2012-2013		2013-2014	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	973	79.75	914	81.03
Sergeant to Chief Warrant Officer	68	5.57	72	6.38
Officer	179	14.68	142	12.59
Total	1220	100	1128	100

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

Summary of Charges

NDA Article	Description	2012-2013		2013-2014	
		#	%	#	%
83	Disobedience of lawful command	27	1.57	57	3.25
84	Striking or offering violence to a superior officer	8	0.46	1	0.06
85	Insubordinate behavior	55	3.20	57	3.25
86	Quarrels and disturbances	53	3.08	62	3.53
90	Absence without leave	618	35.91	653	37.19
91	False statement in respect of leave	1	0.06	0	0.00
93	Cruel or disgraceful conduct	4	0.23	3	0.17
95	Abuse of subordinates	6	0.35	2	0.11
97	Drunkenness	153	8.89	126	7.18
101.1	Failure to comply with conditions	3	0.17	4	0.23
108	Signing inaccurate certificate	1	0.06	0	0.00
111	Improper driving of vehicles	6	0.35	1	0.06
112	Improper use of vehicles	14	0.81	17	0.97
113	Causing fires	1	0.06	0	0.00
114	Stealing	11	0.64	18	1.03
115	Receiving	1	0.06	0	0.00
116	Destruction, damage, loss or improper disposal	8	0.46	9	0.51
117	Miscellaneous offences	27	1.57	15	0.85
118.1	Failure to appear or attend	1	0.06	0	0.00
124	Negligent performance of duties	0	0.00	1	0.06

NDA Article	Description	2012-2013		2013-2014	
		#	%	#	%
125	Offences in relation to documents	13	0.76	17	0.97
127	Injurious or destructive handling of dangerous substances	3	0.17	0	0.00
129*	Conduct to the prejudice of good order and discipline – Negligent discharge	254	14.76	211	12.02
129*	Conduct to the prejudice of good order and discipline – Excluding negligent discharge	425	24.69	483	27.51
130	Service trial of civil offences	28	1.63	19	1.08
Total		1721	100	1756	100

* An offence 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 2010-2011 reporting period, s.129 offences were reported in the JAG Annual Reports using broad classifications such as offences of a sexual nature. Since it is difficult to identify these offences on an RDP 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 offences along these lines in reports after the 2009-2010 report. In contrast, offences 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.

Summary Trials by Command

	2012-2013		2013-2014	
	#	%	#	%
Vice Chief of the Defence Staff	7	0.57	9	0.80
Canada Joint Operations Command (CJOC)	70	5.74	47	4.17
Canada Special Operations Forces Command	18	1.48	10	0.89
Royal Canadian Navy	241	19.75	244	21.63
Canadian Army	536	43.93	545	48.32
Royal Canadian Air Force	91	7.46	77	6.83
Military Personnel Command	252	20.66	187	16.58
Assistant Deputy Minister (Information Management)	5	0.41	4	0.35
Assistant Deputy Minister (Material)	0	0.00	5	0.44
Total	1220	100	1128	100

Findings by Charge

	2012-2013		2013-2014	
	#	%	#	%
Guilty	1544	89.72	1548	88.15
Guilty – Special finding	10	0.58	10	0.57
Guilty of related offences	1	0.06	0	0
Not guilty	115	6.68	128	7.29
Charge stayed	48	2.79	39	2.22
Charge not proceeded with	3	0.17	31	1.77
Total	1721	100	1756	100

Punishments

	2012-2013		2013-2014	
	#	%	#	%
Detention (suspended)	9	0.56	1	0.07
Detention	39	2.43	28	1.93
Reduction in rank	9	0.56	7	0.48
Severe reprimand	5	0.31	4	0.28
Reprimand	53	3.30	52	3.58
Fine	994	61.93	859	59.12
Confinement to ship or barracks	344	21.43	338	23.26
Extra work and drill	105	6.54	99	6.81
Stoppage of leave	25	1.56	28	1.93
Caution	22	1.37	37	2.55
Total	1605	100	1453	100

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

Reviews

	2012-2013		2013-2014	
	#	%	#	%
Review based on finding	5	13.89	11	24.44
Review based on sentence	19	52.78	12	26.67
Review based on finding & sentence	12	33.33	22	48.89
Total	36	100	45	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

	2012-2013		2013-2014	
	#	%	#	%
Upholds decision	13	36.11	13	28.89
Quashes findings	14	38.89	23	51.11
Substitutes punishment	3	8.33	7	15.56
Mitigates / commutes / remits punishment	6	16.67	2	4.44
Total	36	100	45	100

II. COURT MARTIAL REPORTING

1 April 2013 - 31 March 2014

Courts Martial by Type

	2012-2013		2013-2014	
	#	%	#	%
Standing Court Martial	60	94	60	90
General Court Martial	4	6	7	10
Total	64	100	67	100

Language of Courts Martial

	2012-2013		2013-2014	
	#	%	#	%
English	50	78	52	78
French	14	22	15	22
Total	64	100	67	100

Courts Martial by Rank

	2012-2013		2013-2014	
	#		#	
Private to Corporal (includes Master Corporal*)	30		43	
Sergeant to Chief Warrant Officer	17		11	
Officer	16		13	
Other	1		0	
Total	64		67	

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

Summary of Charges

NDA Article	Description	2012-2013	2013-2014
		#	#
83	Disobedience of lawful command	6	11
84	Striking or offering violence to a superior	0	2
85	Insubordinate behaviour	4	5
86	Quarrels and disturbances	3	0
87	Resisted an escort whose duty it was to have him in charge	2	1
88	Desertion	3	2
90	Absent without leave	15	37
93	Cruel or disgraceful conduct	3	2
95	Abuse of subordinates	4	2
97	Drunkenness	6	8
101.1	Failure to comply with conditions	7	9
111	Improper driving of vehicles	0	1
112	Improper use of vehicles	1	0
114	Stealing	13	4
115	Receiving	2	0
116	Destruction, damage, loss or improper disposal	7	1
117(f)	An act of a fraudulent nature	3	8
124	Negligent performance of a military duty	7	2
125(a)	Wilfully (or negligently) made a false entry	9	15
125(c)	With intent to deceive, altered a document issued for military purpose	3	2
127	Injurious or destructive handling of dangerous substances	3	1
128	Conspired to commit an offence	3	0
129	An act to the prejudice of good order and discipline	35	41
130 (4(1) CDSA)*	Possession of substance	4	2
130 (5(1) CDSA)	Trafficking in substance	2	8
130 (7 CDSA)	Production of substance	1	0
130 (31 FDA)**	Unlawfully selling a substance	0	1
130 (80 CC)***	Breach of duty	6	1

ANNEX

NDA Article	Description	2012-2013	2013-2014
		#	#
130 (82(1) CC)	Unlawful possession of an explosive	1	0
130 (85(1) CC)	Using a firearm in the commission of an offence	0	1
130 (86(1) CC)	Careless storage of a firearm	0	1
130 (86(1) CC)	Careless handling of a firearm	0	5
130 (87 CC)	Pointing a firearm	1	0
130 (90 CC)	Carrying a concealed weapon	0	1
130 (91(2) CC)	Unauthorized possession of prohibited weapon or restricted weapon	0	2
130 (92(2) CC)	Possession of a prohibited weapon	1	0
130 (93 CC)	Possession of a firearm at an unauthorized place	0	1
130 (95 CC)	Possession of a prohibited or restricted firearm with ammunition	0	1
130 (122 CC)	Breach of trust by public officer	5	0
130 (129 CC)	Offences relating to public or peace officer	2	3
130 (139 CC)	Obstructing justice – Wilful attempt to obstruct, pervert or defeat the course of justice	0	4
130 (140(1) CC)	Public mischief	1	0
130 (151 CC)	Sexual interference	1	0
130 (152 CC)	Invitation to sexual touching	1	0
130 (153 CC)	Sexual exploitation	2	0
130 (162 CC)	Voyeurism	3	0
130 (163.1(4) CC)	Possession of child pornography	1	1
130 (163(4.1) CC)	Accessing child pornography	0	1
130 (236(b)) CC)	Manslaughter while handling a firearm	2	0
130 (244 CC)	Discharging a firearm with intent	0	2
130 (244.2 CC)	Discharging a firearm recklessly	0	2
130 (253(a) CC)	Operation while impaired	2	0
130 (264.1 CC)	Uttering threats	2	0
130 (266 CC)	Assault	5	1
130 (267 CC)	Assault with a weapon or causing bodily harm	2	1
130 (268 CC)	Aggravated assault	0	1
130 (269 CC)	Unlawfully causing bodily harm	3	1
130 (270(1)(a) CC)	Assaulting a peace officer	1	0

NDA Article	Description	2012-2013	2013-2014
		#	#
130 (271 CC)	Sexual assault	7	4
130 (334 CC)	Theft - Value stolen does not exceed \$5000	4	3
130(354(1) CC)	Possession of stolen property	0	3
130 (362 CC)	False pretence or false statement	1	0
130 (367 CC)	Commits forgery	0	2
130 (368 CC)	Uttering a forged document	2	2
130 (380(1) CC)	Fraud	0	7
130 (430(4) CC)	Mischief	0	1
130 (464 CC)	Counselling an offence that is not committed	2	0
Total Offences		204	217

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

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

***Food and Drugs Act*, R.S.C., 1985, c. F-27, CRC, c.870, s.C.01.041(1.1).

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

Courts Martial by Command

	2012-2013		2013-2014	
	#	%	#	%
Vice Chief of the Defence Staff	2	3.13	6	8.96
Canada Joint Operations Command (CJOC)	7	10.94	4	5.97
Royal Canadian Navy	13	20.31	13	19.40
Canadian Army	25	39.06	30	44.78
Royal Canadian Air Force	2	3.13	9	13.43
Military Personnel Command	14	21.88	3	4.48
Canadian Forces Intelligence Command	0	0	1	1.49
Assistant Deputy Minister (Information Management)	1	1.56	1	1.49
Total	64	100	67	100

Disposition by Case

	2012-2013		2013-2014	
	#	%	#	%
Found/Plead Guilty of at least one charge	50	78.13	54	80.60
Not Guilty of all charges	10	15.63	13	19.40
Stay of all charges	1	1.56	0	0
Terminated	2	3.13	0	0
Not criminally responsible on account of mental disorder	1	1.56	0	0
Total	64	100	67	100

Sentences

	2012-2013		2013-2014	
	#	#	#	#
Dismissal	6	2		
Imprisonment	8	11		
Detention	1	4		
Reduction in rank	9	5		
Severe reprimand	14	11		
Reprimand	13	18		
Fine	34	37		
Forfeiture of seniority	1	0		
Minor punishments: Confinement to ship or barracks	0	0		
Total	86	88		

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

III. APPEALS REPORTING

1 April 2013 - 31 March 2014

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

Appellate Cases Concluded

	2012-2013	2013-2014
	#	#
Court Martial Appeal Court of Canada	6	8
Total	6	8

Appeals by Party

	2012-2013	2013-2014
	#	#
Appeals by Crown	0	2
Appeals by Offender	6	6
Total	6	8

Nature of Appeal

	2012-2013	2013-2014
	#	#
Finding	5	4
Sentence (severity and/or legality)	0	1
Finding and sentence	0	0
Constitutional issue	0	2
Appointment of Defence Counsel	0	1
Total	5*	8

* Unlike previous periods, appeals to the Court Martial Appeal Court of Canada from a refused Application for Release pending appeal by the court martial are no longer being reported as a distinct appeal in this table. In the previous reporting period there was one such appeal amongst the six reported. In the current reporting period, Second-Lieutenant Moriarity was granted release pending appeal to the Supreme Court of Canada.

Disposition

	2012-2013	2013-2014
	#	#
Overtaken trial decision in whole or part	0	2
Appeal granted	3	1
Appeal dismissed	2	4
Abandoned	1	1
Total	6	8