



National  
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JUDGE ADVOCATE GENERAL



# 2015-2016

## ANNUAL REPORT of the Judge Advocate General

A Report to the Minister of National Defence on the Administration of Military Justice  
from 1 April 2015 to 31 March 2016



Canada



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Dear Minister,

It is my honour to present you the 17<sup>th</sup> 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 of 1 April 2015 to 31 March 2016.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Blaise Cathcart', with a long horizontal flourish extending to the right.

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





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# Communiqué



**I**t is with great pleasure that I present my report on the administration of military justice in the Canadian Armed Forces (CAF) for the period from 1 April 2015 to 31 March 2016. This is my sixth report, made pursuant to section 9.3 of the *National Defence Act* (NDA), since my appointment as Judge Advocate General (JAG) in 2010.

Section 9.2 of the NDA provides that the JAG is responsible for the superintendence of the administration of military justice in the CAF. As such, it is my responsibility to ensure that the Canadian military justice system operates efficiently, effectively and in accordance with the rule of law. In addition, my legislatively mandated stewardship function requires me to ensure that the military justice system continues to be both fair and responsive to the unique needs of the CAF while remaining consistent with Canadian law, including the *Canadian Charter of Rights and Freedoms* (Charter).

The Canadian military justice system is a unique, self-contained system that is designed to promote the operational effectiveness of the CAF. While it shares with Canada's criminal justice system the purpose of maintaining a just, peaceful and safe society, its fundamental purpose is the maintenance of discipline, efficiency and morale of those who serve in uniform.

This past reporting period has been a particularly eventful one for Canada's military justice system. Aside from the Supreme Court of Canada decision in *R. v. Moriarity* that affirmed the constitutionality of paragraph 130(1)(a) of the NDA (which incorporates all offences under the *Criminal Code* or any other Act of Parliament into the military justice system as "service offences" triable within the military justice system) there were a number of important decisions both from the Court Martial Appeal Court and various courts martial held across Canada. Additionally, a number of significant legislative and regulatory developments have occurred. For example, the development of the regulatory amendments to implement the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, continues and has taken a number of steps forward. In addition, in June of 2015, Bill C-71, the *Victims Rights in the Military Justice System Act* was introduced. This Bill, which died on the order paper when Parliament was dissolved, would have enacted a statutory "Declaration of Victims Rights" within the NDA that would have substantially mirrored the *Canadian Victims Bill of Rights*. It would have also made a series of procedural changes to the *Code of Service Discipline* – mostly in relation to courts martial – in order to implement the Declaration of Victims Rights. Finally, the Bill would have enhanced the effectiveness of summary trials in dealing with minor

service misconduct by establishing them as non-criminal, non-penal service tribunals.

Also in this reporting period the Chief of the Defence Staff (CDS) issued his order concerning Operation HONOUR which is aimed at eliminating harmful and inappropriate sexual behaviour within the CAF. Inappropriate sexual behaviour of any kind is contrary to the values of the profession of arms, the profession of law, the ethical principles of the Department of National Defence (DND) and the CAF. Accordingly, I have directed the implementation of Operation HONOUR within the Office of the JAG in order to eliminate inappropriate sexual behaviour, to ensure that efforts to implement the CDS's direction by the chain of command occur with a complete understanding of applicable law and consequent legal risk and to ensure that those individuals who are alleged to have committed a service offence of a sexual nature contrary to the *Code of Service Discipline* are properly dealt with according to the rule of law.

Although Canada has a strong military justice system supported by ongoing efforts toward responsible policy development and proactive oversight, the system cannot remain static. Therefore, in order to ensure that the military justice system continues to serve the needs of the CAF, during the upcoming reporting period I will initiate two, year-long efforts aimed at furthering my strategic goals for the administration of military justice. The first initiative is a comprehensive review of the court martial system which is intended to advance responsible development and positive change within the military justice system. Led by the Deputy JAG for Military Justice, the Court Martial Comprehensive Review

Team will conduct a comprehensive review of the court martial system by conducting a legal and policy analysis of all aspects of the court martial system and, where appropriate, to develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system.

The second initiative, focusing on proactive military justice oversight, is the development of a process for conducting audits of how military justice is administered at the unit level. This will enable me to collect objective and measurable data in order to assess the effectiveness of the administration of military justice at the unit level. Ultimately, this data will allow me to assist units in improving their military justice related processes, to identify larger trends in the administration of military justice, and to make better informed recommendations for responsible development and positive change within the system.

As I look back on the number of positive developments that have taken place over the course of the reporting period I am proud to be the superintendent for the administration of military justice in Canada. Our system of military justice is one that is admired across the globe and serves as an example of one that balances the requirement to serve the particular needs of the military while continuing to ensure that it does so in a manner that is fair and consistent with international and Canadian law. I take great pride in knowing that Canada has a military justice system that reflects Canadian values and remains one in which all Canadians can have trust and confidence.



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





## CHAPTER ONE

# Who We Are: The Office of the Judge Advocate General

### The Judge Advocate General

The JAG is appointed by the Governor in Council and acts as legal advisor to the Governor General, the Minister of National Defence (the Minister), DND and the Canadian Forces in matters relating to military law. In addition, the JAG has a statutory mandate to superintend the administration of military justice. He 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. The duties of those legal officers 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 working within the Office of the JAG are able to provide independent legal advice.

### Office of the Judge Advocate General

The Office of the JAG supports the JAG in carrying out his duties and functions. It 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 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,

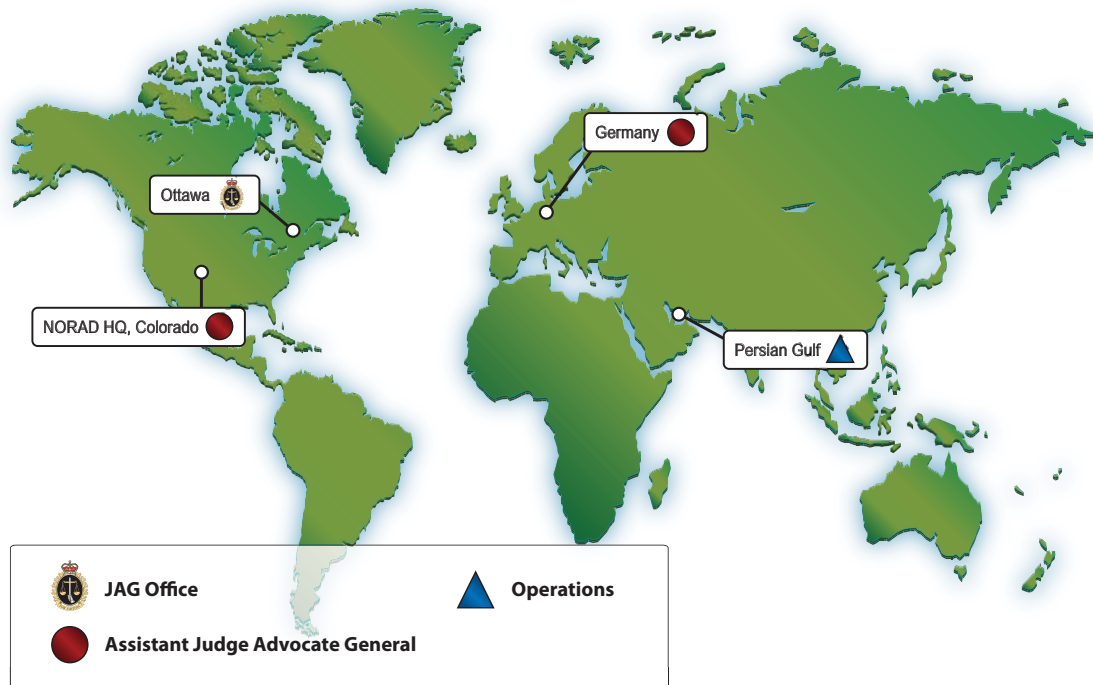
Regional Services, and the Chief of Staff. Offices of the Office of the JAG are located both across Canada and internationally. Figure 1-1 shows a map of all of the different offices within the Office of the JAG.

**FIGURE 1-1: CANADIAN OFFICES OF THE JUDGE ADVOCATE GENERAL**





**FIGURE 1-1: OFFICES OF THE JUDGE ADVOCATE GENERAL OUTSIDE OF CANADA**



## Director of Military Prosecutions

The Director of Military Prosecutions (DMP), the senior military prosecutor in the CAF, is appointed by the Minister for a fixed term pursuant to subsection 165.1(1) of the NDA. The DMP acts independently from CAF and DND authorities when exercising his prosecutorial powers, duties and functions. In accordance with section 165.15 of the NDA, the DMP may be assisted and represented, to the extent determined by the DMP, by officers who are barristers or advocates with standing at the bar of a province. In this regard the DMP is assisted by a number of Regular

and Reserve Force legal officers appointed to act as military prosecutors, along with a civilian paralegal and support staff. This organization, known as the Canadian Military Prosecution Service, is organized regionally with Regional Military Prosecutors located in Halifax, Valcartier, Ottawa, Edmonton and Esquimalt.

It is the responsibility of the DMP, with the assistance of those legal officers appointed to act as military prosecutors, to prefer all charges to be tried by court martial, to conduct all prosecutions at court martial and for acting as counsel, when instructed, in respect of appeals to the Court Martial Appeal Court and the Supreme Court of Canada. The DMP

is also responsible to provide 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 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 the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 110.11 the DMP reported to the JAG on the execution of his duties and functions for this reporting period. This report was received by the JAG on 13 May 2016.

## Director of Defence Counsel Services

The Director of Defence Counsel Services (DDCS) is appointed by the Minister for a fixed term pursuant to subsection 249.18(1) of the NDA. The DDCS acts independently from CAF and DND authorities when exercising his powers, duties and functions. In accordance with section 249.21 of the NDA, the DDCS may be assisted in his duties and functions by persons who are barristers or advocates with standing at the bar of a province. In this regard the DDCS, located in the National Capital Region, is assisted by a number

of Regular and Reserve Force legal officers who act as defence counsel, along with a civilian paralegal and support staff.

In accordance with QR&O article 101.11, it is the responsibility of the DDCS to provide legal services, including full legal representation at no cost to the individual, to all persons who are liable to be charged, dealt with and tried under the *Code of Service Discipline* including:

- the provision of legal advice to persons arrested or detained in respect of a service offence;
- the provision of legal counsel to an accused person where there are reasonable grounds to believe that the accused person is unfit to stand trial;
- the provision of legal advice of a general nature to an assisting officer or accused person on matters relating to summary trials;
- the provision of legal advice with respect to the making of an election to be tried by court martial;
- the provision of legal counsel to an accused person in respect of whom an application to a referral authority has been made;
- the provision of legal counsel to the respondent on an appeal or an application for leave to appeal;
- the provision of legal counsel to a person on an appeal or an application for leave to appeal with the approval of the Appeal Committee; and
- the provision of legal advice to a person who is the subject of an investigation under the *Code of Service Discipline*, a summary investigation or a board of inquiry.



Although under the general supervision of the JAG, the DDCS 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*. 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 case. During the reporting period, no general instructions were issued to the DDCS.

In accordance with QR&O paragraph 101.11(4) the DDCS is required to report to the JAG on the provision of legal services prescribed by regulations and the performance of any other duties that are not incompatible with the duties as defence counsel. This report was received by the JAG on 25 May 2016.

## 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 is comprised of three directorates: Military Justice Strategic, Military Justice Policy and Military Justice Operations. The Military Justice Strategic directorate 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. In addition, the Military Justice Strategic directorate plays a key role in the development of legislation related to the

military justice system. The Military Justice Policy directorate is focused entirely on the development of military justice regulations, including but not limited to amendments to the QR&O required to bring the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, into force.

During the reporting period, the Military Justice Operations directorate was subdivided into two separate teams. One team is located at National Defence Headquarters, which is responsible for supporting the JAG with key aspects of the superintendence of the administration of military justice and the day-to-day operation of the military justice system. The second team is embedded with the Canadian Forces Military Police Group and provides legal advice on matters related to military policing.

## Administrative Law Division

The Administrative Law Division advises on legal matters pertaining to the administration of the CAF such as military personnel policies, administrative investigations, compensation, benefits, pensions and estates. 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 Administrative Law Division is composed of three directorates: Military Personnel, Administrative Law and Compensation, Benefits, Pensions and

Estates. During the reporting period, the Military Personnel Directorate was divided into two separate directorates: Military Personnel Operations and Military Personnel Strategic Policy. Military Personnel Operations is responsible to provide legal advice on the application of existing personnel policies and orders in areas that include recruitment, promotion, administrative reviews for conduct or performance deficiencies and release. Military Personnel Strategic Policy is responsible to provide legal advice on the development and application of personnel policies and orders that impact CAF members.

## Operational Law Division

The Operational Law Division is responsible for the provision of legal support for all domestic and international operations. 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.

The Operational Law Division is comprised of five directorates: The Strategic Joint Staff (SJS) Legal Advisor, the Directorate of International and Operational Law (DIOL), the Canadian Joint Operations Command (CJOC) Legal Advisor, the Canadian Special Operations Forces Command (CANSOFCOM) Legal Advisor, and the Directorate of Law, Intelligence and Information Operations (DLaw I&IO). In addition, during this reporting period the Operational Law Division was responsible to provide legal support on two overseas operations: OP IMPACT and OP REASSURANCE.

The SJS Legal Advisor provides legal advice on all strategic level operational issues affecting CAF

operations around the world including domestic and international legal authorities, rules of engagement and use of force. The DIOL provides advice on the international and domestic legal frameworks for CAF activities including the law of armed conflict, international human rights law and international criminal law. The CJOC Legal Advisor provides legal advice to Commander CJOC on all legal matters related to the conduct of military operations at the operational level, in both continental and expeditionary contexts. The CANSOFCOM Legal Advisor provides legal advice in all aspects of military law to CANSOFCOM including its mandated response to all domestic and international terrorist attacks, international crisis and associated threats. The DLaw I&IO is the primary legal advisor to the Canadian Forces Intelligence Command and provides legal advice on strategic, operational and tactical level issues relating to both domestic and international matters of an intelligence nature. Key areas of legal advice include information sharing, open source intelligence, counter-intelligence investigations, and the development of future cyber capabilities.

## Regional Services Division

The Regional Services Division delivers legal services to CAF commanders in Canada, Europe and the United States and has legal offices divided into various regions, each led by an Assistant Judge Advocate General (AJAG). Legal advisors in the Regional Services Division provide legal advice to Regular and Reserve Force commands, formations and units on many aspects of the administration of military justice including at the pre-charge and pre-trial phases, to referral authorities when charges are referred to the DMP, to presiding officers during the course of a summary trial and to review authorities where there

is a request for review by an accused or a review has been independently initiated by a review authority. In addition, legal advisors in the Regional Services Division also provide legal advice to CAF commanders on administrative law and operational law matters.

The regional AJAG offices are located in Ottawa, Germany, Halifax, Montreal, Toronto, Winnipeg, Edmonton, Esquimalt and Colorado Springs. In addition, there are a number of Deputy Judge Advocate offices located across Canada which report directly to their respective regional AJAG.

## 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. The non-legal military personnel are an essential part of this division and key contributors to our success in administrative and financial tasks.

## Legal Officers Serving Outside the Office of the Judge Advocate General

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, Global Affairs Canada, the Canadian Forces Military Law Centre and at the Department of National Defence/Canadian Forces Legal Advisor with the Department of Justice.

## Office of the Judge Advocate General Chief Warrant Officer

The JAG Chief Warrant Officer (CWO) serves as the senior non-commissioned member 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 the Office of the JAG.

Together with the Canadian Forces CWO, the JAG CWO also co-chairs the Canadian Armed Forces Discipline Advisory Council. This recently formed council includes the most senior non-commissioned members from each command, and from other key level one organizations. The council meets to discuss strategic issues relevant to the maintenance of discipline, and provides input to both Armed Forces Council and the JAG.

Other experienced CWOs and Chief Petty Officers First Class (CPO1) are posted to positions in the AJAG offices within Canada and in some Deputy Judge Advocate offices. The AJAG and Deputy Judge Advocate CWOs/CPO1s provide an invaluable link between senior non-commissioned members at the unit, base and formation levels and the local legal office in addressing disciplinary matters.

## 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 and provide key support to legal officers and their non-legal military personnel through their work in administrative, analytical and technical tasks.





## CHAPTER TWO

# Superintendence and Regular Reviews of the Administration of Military Justice<sup>1</sup>

Under the NDA, the JAG acts as the legal advisor to the Governor General, the Minister, the DND and the CAF in matters relating to military law. The JAG also has several other statutory responsibilities, including separate responsibilities for the superintendence, and for the conduct of regular reviews, of the administration of military justice. In all of these statutory duties and functions, the JAG is responsible, not to the CDS or anyone in the military chain of command, but to the Minister, and through him to Parliament.

### Superintendence of the Military Justice System

The NDA provides that the JAG has superintendence of the administration of military justice in the CAF, in much the same terms that the Minister of Justice, by virtue of the *Department of Justice Act*, is responsible within the civilian system for “superintendence of all matters connected with the administration of justice in Canada, not within the jurisdiction of the governments of the provinces.”

The term “superintendence” is not defined in statute. In older English common law, and now in the British *Prosecution of Offences Act*, “superintendence” refers to the Attorney General’s power to supervise the

<sup>1</sup> A significant portion of the text from this Chapter on superintendence of the military justice system is derived from the remarks made by the JAG at the University of Ottawa on 13 November 2015. The full text of that speech can be found at: <http://www.forces.gc.ca/en/about-reports-pubs-military-law/jag-remarks-military-law-conference-2015.page>.

Director of Public Prosecutions. However, Canadian law has taken a different approach.

In the federal *Department of Justice Act*, it is the Minister of Justice, not the Attorney General, who has superintendence of the administration of justice in Canada. Indeed it is a different section of the Act that sets out the Attorney General's responsibilities for supervising and conducting litigation in the name of the Crown, and a different Act (*Director of Public Prosecutions Act*) that deals with the Attorney General's responsibilities and authorities in respect of prosecutions. The NDA mirrors this pattern of separately creating a superintendence responsibility in subsection 9.2(1) of the NDA, and responsibilities to supervise and instruct the Director of Military Prosecutions elsewhere in the NDA. In other words, "superintendence" in Canada means something different than an authority to generally supervise a Director of Prosecutions.

Specifically, the JAG's superintendence responsibility entails an obligation to ensure that the military justice system is appropriately resourced, and that it operates efficiently, effectively, and in accordance with the rule of law.

In order to discharge this superintendence responsibility, the JAG engages with a variety of individuals, including the DMP, the DDCS, the Court Martial Administrator, senior CAF leaders, the Canadian Forces Provost Marshal, and the legal officers under his command. The JAG also draws information from a variety of sources, such as unit records of disciplinary proceedings, and the reports of different reviews of the administration of military justice.

## Regular Reviews of the Administration of Military Justice

Subsection 9.2(2) of the NDA provides that the JAG shall conduct, or cause to be conducted, regular reviews of the administration of military justice. This responsibility is closely linked to the JAG's superintendence responsibility, both in the NDA (where it is provided for in subsection 9.2(2)) and conceptually. These responsibilities for superintendence and regular reviews are mutually supportive: initiatives to enhance the military justice system that flow from the JAG's superintendence responsibility should be regularly reviewed in order to assess the effectiveness of the initiatives, and the product of regular reviews will often form the basis for recommended changes to further enhance the military justice system in fulfillment of the JAG's superintendence responsibilities. Ultimately, the JAG's strategic goal in discharging his responsibilities for superintendence and regular reviews is to lead proactive military justice oversight, responsible development, and positive change.

Over the past decade, the reviews of the administration of military justice that the JAG has caused to be conducted have included military justice stakeholder interviews, the creation of *ad hoc* strategic "tiger" teams to consider and recommend focused legislative changes in response to statutory independent reviews and court decisions, and a standing effort to collect, analyze, and report on summary trial and court martial statistics.

During the upcoming reporting period, the JAG will initiate two separate year-long efforts aimed at

furthering his strategic goals for the administration of military justice by two dedicated teams of legal officers: a comprehensive review of the court martial system and the design of a military justice audit program. The comprehensive review is intended to drive responsible development and positive change within the military justice system, while the audit program is focused on proactive military justice oversight.

## Court Martial Comprehensive Review

The Court Martial Comprehensive Review Team, to be led by the Deputy JAG for Military Justice and additionally comprised of three legal officers, will be conducted in accordance with Terms of Reference issued by the JAG. The purpose of the comprehensive review is to conduct a legal and policy analysis of all aspects of the CAF's court martial system and, where appropriate, to develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system.

At the outset, the Court Martial Comprehensive Review Team will assess the current court martial system's effectiveness, efficiency, and legitimacy and then will assess whether changes to any features of this system are required or advisable in order to promote greater systemic effectiveness, efficiency, or legitimacy. The Court Martial Comprehensive Review Team will consider the following subject matter areas:

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



The comprehensive review will commence no later than July 2016 and will produce a completed report deliverable to the JAG by July 2017.

## Military Justice Audits

The military justice audit team, comprised of two legal officers, will develop and pilot a process for conducting unit visits aimed at collecting objective and measurable data from a variety of sources and through a variety of mechanisms in order to assess unit level administration of the *Code of Service Discipline*. This data will provide Office of the JAG legal advisors with the ability to assist commanders by providing direct and specific recommendations to improve and enhance the administration of military justice specifically, particularly as it relates to the summary trial system. It will also allow the JAG to identify larger trends in the administration of military justice, including those areas that may require further investigation, so that he can make better informed, evidence-based recommendations for responsible development and positive change within the system.

The military justice audits will target all aspects of the military justice system from investigation of service offences through to post-trial administration conducted at the unit level and will focus on key

players within the military justice system such as commanding officers, delegated officers, charge layers, unit investigators, assisting officers, custody review officers and accused members.

These two formalized and purposive reviews of the administration of military justice should position the JAG to provide optimal legal and policy advice to the Minister, the CDS, and the CAF about the military justice system today and for the future.

## Conclusion

The JAG's statutory responsibilities for superintendence and regular reviews of the administration of military justice are two of the means through which Parliament has sought to ensure that Canada's military justice system remains fair and effective. The JAG and the legal officers under his command remain vigilant in their efforts to achieve proactive oversight, responsible development, and positive change within the military justice system, so that the system can continue to fulfill the expectations of the Canadian public and meet the needs of the Government of Canada, the CAF and its members.



## CHAPTER THREE

# The Canadian Military Justice System: Structure and Analysis of Statistics

This chapter describes the structure of the Canadian military justice system and analyzes key statistical information in the administration of military justice over the course of the reporting period.<sup>2</sup>

### Canada's 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 *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 CAF.<sup>3</sup>

While the military justice system is equal and not subservient to the civilian justice system, it differs from its civilian counterpart in respect of some of 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 objectives give rise to many of the substantive and procedural differences that properly distinguish the military justice system from the civilian justice system.

<sup>2</sup> The statistics reported and discussed in this report are current as of 18 May 2016.

<sup>3</sup> *R. v. Généreux*, [1992] 1 S.C.R. 259; *Mackay v. R.*, [1980] 2 S.C.R. 370 at 399; *R. v. Moriarty*, [2015] 3 S.C.R. 485.

The ability of the CAF to operate effectively depends on the ability of its leadership to instill and maintain discipline. This particular need for discipline in the CAF is the *raison d'être* of the military justice system. Indeed, 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 *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 and recently reiterated in *R. v. Moriarity*.

## The Structure of the Military Justice System

### The Code of Service Discipline

The *Code of Service Discipline*, Part III of the NDA, is the foundation of the Canadian military justice system. It sets out disciplinary jurisdiction and provides for service offences that are essential to the maintenance of discipline and the operational effectiveness of the CAF. 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 *Code of Service Discipline*.” 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 *Code of Service Discipline* 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 *Code of Service Discipline* everywhere and at all times, whereas members of the Reserve Force are subject to the *Code of Service Discipline* only in the circumstances specified in the NDA. Civilians may be subject to the *Code of Service Discipline* 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, then 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, then the Canadian Forces National Investigation Service 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 those of a peace officer, are conferred by the NDA, the *Criminal Code* and the 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 *Code of Service Discipline*. Military Police members are professionally independent 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, then an officer or non-commissioned member having authority to lay a charge is required to obtain legal advice before laying a charge in those circumstances set out in article 107.03 of the QR&O. Those circumstances where pre-charge legal advice is required are where 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, it 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. It allows for less serious service offences to be tried and disposed of quickly 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 *Code of Service Discipline*. 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.

After a charge is laid by an authorized charge layer, if it is determined that the accused can be tried by summary trial then, except in a certain circumstances, an accused person has a right to be offered an election to be tried by court martial.<sup>4</sup> The election process was designed to provide the accused with the opportunity to make an informed choice regarding the type of trial to be held, bearing in mind that an accused who elects not to be tried by court martial is, in effect, waiving the right to be tried by that form of trial with full knowledge of the implications.

There are many differences between summary trials and courts martial. Courts martial are more formal and provide the accused more procedural safeguards than those available at summary trial, such as the right to be represented by legal counsel. The election process was designed to provide the accused with a reasonable opportunity to be informed about both types of tribunals in order to decide whether to exercise the right to be tried by court martial and to communicate and record their choice.

The jurisdiction of a summary trial is limited by factors such 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 DMP, who determines whether the matter will be disposed of by court martial.

<sup>4</sup> An accused does not have the right to elect his or her mode of trial in two instances. First, where the accused has been charged with one of five minor service offences and the circumstances surrounding the commission of the offence are sufficiently minor in nature that the officer exercising summary trial jurisdiction over the accused concludes that a punishment of detention, reduction in rank or a fine in excess of 25 percent of monthly basic pay would not be warranted if the accused were found guilty of the offence. Second, where the charges are more serious in nature and require a direct referral to court martial.

The disposition of charges by summary trial is meant to occur expeditiously. Accordingly, other than for two civil offences for which the limitation period is six-months<sup>5</sup>, 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 less serious nature of the offences involved, and the intent that the punishments be primarily corrective in nature.

### **Review of a Finding Made and/or Sentence Imposed at Summary Trial**

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/or punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority. A review authority is a more senior officer in the chain of command of the officer who presided over the summary trial, as designated by the QR&O. A review authority may quash any findings made at summary trial, substitute any finding or punishment or may mitigate, commute or remit any punishment awarded at summary trial. Before making any determination, a review authority must obtain legal advice.

### **Courts Martial**

The court martial – a formal military court presided over by a military judge – is designed to deal with more serious offences. 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.”<sup>6</sup>

The NDA provides for two types of court martial: General and Standing. These courts martial can be convened anywhere, in Canada and abroad. 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.

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

### **Appeal of a Court Martial Decision**

Decisions made at courts martial may be appealed by the person subject to the *Code of Service Discipline* or by the Minister or counsel instructed by the Minister to the Court Martial Appeal Court.<sup>7</sup> The Court Martial Appeal Court is composed of civilian judges who are designated from the Federal Court of Canada and

<sup>5</sup> See Note (B) to article 108.05 of the QR&O.

<sup>6</sup> See section 179 of the NDA.

<sup>7</sup> The Minister has instructed the DMP to act on his behalf for appeals to the Court Martial Appeal Court and the Supreme Court of Canada.

the Federal Court of Appeal, or appointed from the Superior Courts and Courts of Appeal of the provinces and territories.

Court Martial Appeal Court decisions may be appealed to the Supreme Court of Canada on any question of law on which a judge of the Court Martial Appeal Court dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.<sup>8</sup>

## Analysis of Key Issues

### Decrease in Number of Charges Tried by Summary Trial

Summary trials remain the most widely used service tribunal to deal with service offences under the *Code of Service Discipline*. In this reporting period there were 721 summary trials as compared to 47 courts martial. Therefore, almost 94 percent of all cases were disposed of at summary trial. A summary of the number of service tribunals divided between court martial and summary trial for the last two reporting periods can be found at Figure 3-1.

During the reporting period, there were a total of 1078 charges that were disposed of at 721 summary trials. This is a decrease of 147 charges and 136 summary

trials in comparison to the last reporting period. This downward trend in the number of charges that are disposed of at summary trial as well as the total number of summary trials has been a feature of the past several reporting periods. For example, the total number of charges laid that are tried by summary trial in the 2013/2014 and 2014/15 reporting periods were 1806 and 1225, respectively. The total number of summary trials in the 2013/2014 and 2014/15 reporting periods were 1162 and 857, respectively. Figure 3-2 shows the number of summary trials by year since 2011/12 and Figure 3-3 shows the number of charges disposed of at summary trial by year since 2011/12.

When looking at this trend by examining the number of summary trials broken down by command a significant decrease can be seen in the number of summary trials conducted by the Canadian Army. In this reporting period the total number of summary trials conducted by the Canadian Army was 334. This is a decrease in comparison to the 2013/2014 and 2014/15 reporting periods where there were 567 and 477 summary trials conducted by the Canadian Army, respectively. Examining this further by looking at specific regions, both 5<sup>th</sup> Canadian Division Support Base Gagetown and Garrison Petawawa have reported a decrease in the number of summary trials

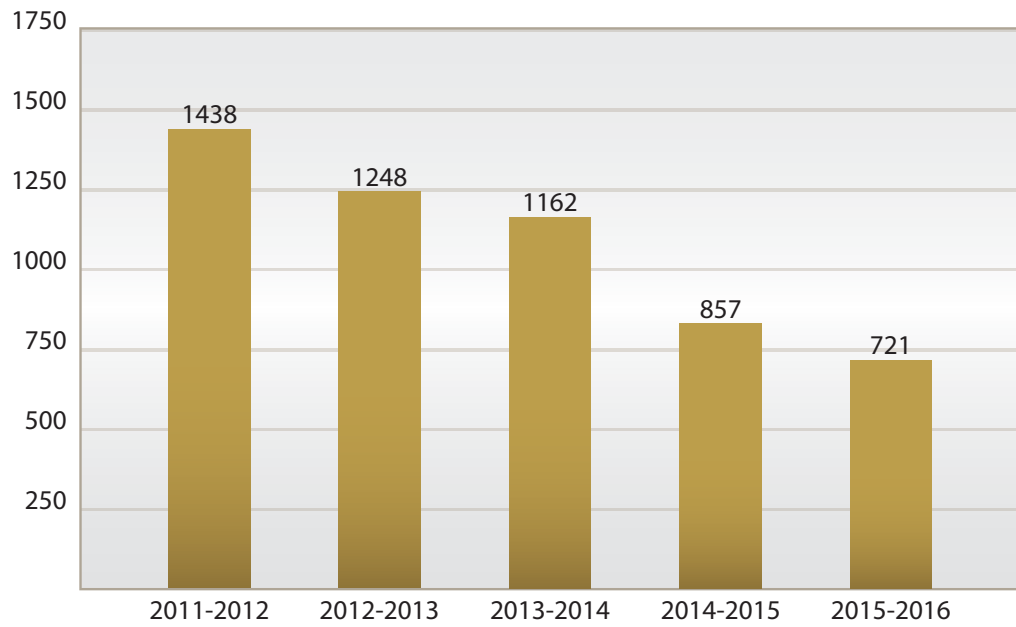
**Figure 3-1: Distribution of Service Tribunals**

	2014-2015		2015-2016	
	#	%	#	%
Number of courts martial	70	7.55	47	6.12
Number of summary trials	857	92.45	721	93.88
<b>Total</b>	<b>927</b>	<b>100</b>	<b>768</b>	<b>100</b>

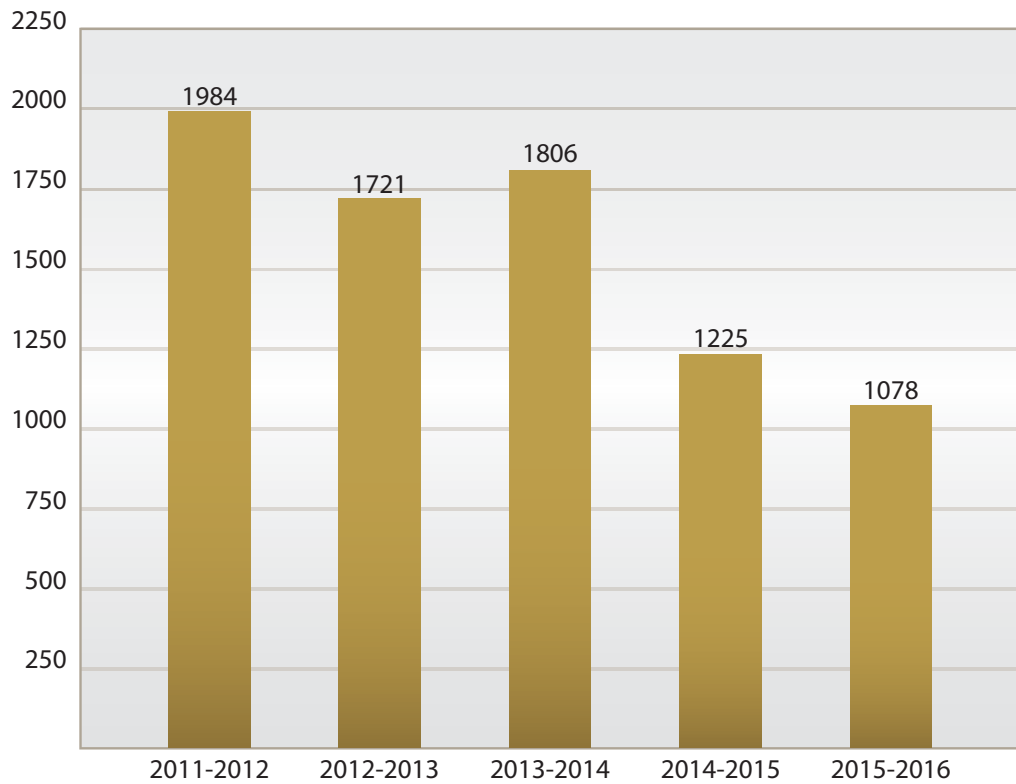
<sup>8</sup> As will be described in Chapter Four, the Minister's right of appeal to the Court Martial Appeal Court and to the Supreme Court of Canada was challenged in *R. v. Gagnon and Thibault* and *R. v. Cawthorne*. In these cases, counsel for the accused persons applied to have the appeals dismissed on the grounds that the right to appeal must be attributed to an independent prosecutor and that it is contrary to sections 7 and 11(d) of the *Charter* to confer the right to appeal to the Minister. The cases were jointly heard at the Supreme Court of Canada on April 25, 2016 and the judgement was taken under reserve.



**Figure 3-2: Number of Summary Trials**



**Figure 3-3: Number of Charges Disposed at a Summary Trial**



over the course of the last several reporting periods which accounts for roughly half of the decrease. For example, in this reporting period there were 84 summary trials conducted at 5<sup>th</sup> Canadian Division Support Base Gagetown. This is compared to 111 and 121 summary trials conducted in the 2014/15 and 2013/14 reporting periods, respectively. Similarly, there were 63 summary trials conducted at Garrison Petawawa this reporting period compared to 136 and 119 for the 2014/15 and 2013/14 reporting periods, respectively.

In contrast, the Royal Canadian Navy has seen a slight increase in the number of summary trials compared to the previous reporting period. This reporting period there were 184 summary trials conducted by the Royal Canadian Navy compared to 130 for the previous reporting period. The Royal Canadian Air Force has

remained relatively constant with 78 summary trials in 2015/16 compared to 75 in the 2014/15 reporting period and 78 in the 2013/14 reporting period. Finally, the Chief of Military Personnel reported 74 summary trials this year in comparison with 84 summary trials in 2014/15 and 187 in 2013/14.

Figure 3-4 shows a chart containing the number of summary trials by command by year for the past two reporting periods.

A review of the number of charges that were disposed of by summary trial shows that there has been a decrease in the number of charges for specific offences such as absence without leave, under section 90 of the NDA as well as prejudice to good order and discipline under section 129 of the NDA.

**Figure 3-4: Number of Summary Trials by Command**

	2014-2015		2015-2016	
	#	%	#	%
Vice Chief of the Defence Staff	13	1.52	6	0.84
Canada Joint Operations Command (CJOC)	60	7.00	28	3.88
Canada Special Operations Forces Command	11	1.28	6	0.84
Royal Canadian Navy	130	15.17	184	25.52
Canadian Army	477	55.66	334	46.32
Royal Canadian Air Force	75	8.75	78	10.82
Chief of Military Personnel	84	9.80	74	10.26
Assistant Deputy Minister (Information Management)	1	0.12	6	0.83
Assistant Deputy Minister (Material)	1	0.12	1	0.14
Assistant Deputy Minister (Public Affairs)	1	0.12	1	0.14
Assistant Deputy Minister (Infrastructure and Environment)	0	0	1	0.14
Canadian Forces Intelligence Command (CFINTCOM / CDI)	4	0.12	2	0.27
<b>Total</b>	<b>857</b>	<b>100</b>	<b>721</b>	<b>100</b>

The number of charges laid for the offence of absence without leave in this reporting period was 446. This is a decrease in comparison to the 2013/14 and 2014/15 reporting periods where the number of charges for absence without leave was 667 and 475, respectively. However, the percentage of charges for absence without leave compared to total number of charges has remained relatively consistent over the past several reporting periods (41.4 percent in 2015/16, 38.7 percent in 2014/15 and 36.9 percent in 2013/14).

The number of charges laid for the offence of conduct to the prejudice of good order and discipline in this reporting period was 294.<sup>9</sup> Again, the downward in the number of charges for this offence is clear as the number of charges, excluding any charges for negligent discharges, for the offence of conduct to the prejudice of good order and discipline in the 2013/14 and 2014/15 reporting periods was 498 and 297, respectively. Yet, the percentage of charges for the offence of conduct to the prejudice of good order and discipline compared to total number of charges has also remained relatively consistent over the past several reporting periods (27.3 percent in 2015/16, 24.2 percent in 2014/15 and 27.6 percent in 2013/14). A complete summary of all charges tried by summary trial during this reporting period can be found in Annex A.

The exact reason for this trend is not known and will be the subject of further investigation. As discussed in Chapter Two, the Military Justice Division of the Office of the JAG will be developing a process for conducting military justice audits at the unit level that should assist in the analysis of why there has been a decrease in

the number of charges laid that are tried by summary trial as well as the total number of summary trials. By visiting with various units across the CAF and speaking with key players in the military justice system at the unit level, members of the Military Justice Division of the Office of the JAG will be able to better identify why there has been an overall decrease in the number of summary trials.

As this initiative is launched, the number of charges laid that are tried by summary trial as well as the total number of summary trials will be closely monitored to determine whether these audits are having an impact on the administration of the *Code of Service Discipline* at the unit level.

## Elections to be Tried by Court Martial

Pursuant to QR&O article 108.17, an accused person has the right to elect to be tried by court martial except where the accused has been charged with one of five minor service offences and the circumstances surrounding the commission of the offence are sufficiently minor in nature that the officer exercising summary trial jurisdiction over the accused concludes that a punishment of detention, reduction in rank or a fine in excess of 25 percent of monthly basic pay would not be warranted if the accused were found guilty of the offence. Those five minor offences are insubordinate behaviour, quarrelling, absence without leave, drunkenness or conduct or neglect to the prejudice of good order and discipline where the offence relates to military training, maintenance of personal equipment, quarters or work space, or dress and deportment.<sup>10</sup>

<sup>9</sup> This number does not include any charges for negligent discharges that were laid pursuant to section 129 of the NDA. Following the court martial decisions in *R. v. Nauss*, 2013 CM 3008 and *R. v. Brideau*, 2014 CM 1005, the number of charges for negligent discharges pursuant to section 129 of the NDA decreased significantly in subsequent reporting periods. Therefore, so as to provide an accurate picture of the decrease in the number of charges for conduct to the prejudice of good order and discipline it was determined that those charges for negligent discharges would have to be excluded in order to properly capture the downward trend for remaining charges pursuant to section 129 of the NDA.

<sup>10</sup> An accused will also not have the right to choose between summary trial and court martial in those circumstances where the charges are more serious in nature and require a direct referral to court martial. During this reporting period there were 28 direct referrals where the matter was referred to court martial without an accused having the right to elect trial by court martial.



During the reporting period, accused members elected trial by court martial 51 times out of the 250 cases in which an election was offered, representing just over 20 percent of accused electing trial by court martial where an election was offered. The percentage of accused members electing trial by court martial has increased over the past few reporting periods as accused members have elected trial by court martial 18 percent (55 times out of 311 cases of an election being offered) in the 2014/15 reporting period and just over 15 percent (65 times out of 421 cases of an election being offered) in the 2013/14 reporting period. A summary of the number of elections to be tried by summary trial and court martial for the past two reporting periods can be found in Figure 3-5.

### Requests for Review

This reporting period, reviews were conducted based on a request for review made by a member found guilty at summary trial or on a review authority's own initiative 11 times based on finding, 11 times based on sentence, and six times based on both finding and sentence. The results of these reviews were as follows: 12 of the original decisions were upheld; seven findings were quashed; three findings were substituted; two punishments were substituted; and, five punishments were mitigated, commuted or remitted. The overall number of reviews this reporting period (28) is significantly lower than the number of reviews during the last reporting period (52). However, the percentage of cases reviewed is just under four percent compared to approximately six percent from last year. Figure 3-6 shows the number and type of requests for review for the past two reporting periods.

**Figure 3-5: Elections to Court Martial offered to accused**

	2014-2015		2015-2016	
	#	%	#	%
Elections to be tried by summary trial	256*	82.3	199	79.6
Elections to be tried by courts martial	55	17.7	51	20.4
<b>Total</b>	<b>311</b>	<b>100</b>	<b>250</b>	<b>100</b>

\* Includes one case where the accused elected summary trial but the matter was subsequently referred to court martial pursuant to QR&O article 108.16(1)a.iii.

**Figure 3-6: Types of Reviews**

	2014-2015		2015-2016	
	#	%	#	%
Reviews based on finding	20	38.46	11	39.29
Reviews based on sentence	17	32.69	11	39.29
Reviews based on finding & sentence	15	28.85	6	21.42
<b>Total</b>	<b>52</b>	<b>100</b>	<b>28</b>	<b>100</b>

A summary of the decisions of the review authorities for the past two reporting periods can be found in Figure 3-7.

## Courts Martial

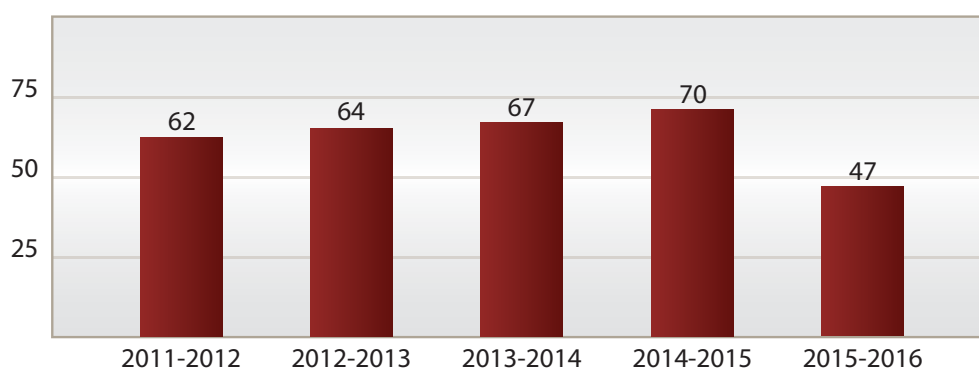
During this reporting period, there were a total of 47 courts martial - 40 Standing Courts Martial and seven General Courts Martial - representing just over six percent of all service tribunals. This is a significant

decrease of 23 courts martial, or approximately 33 percent fewer courts martial, in comparison to the last reporting period where 61 Standing Courts Martial and nine General Courts Martial were held. The decrease in the number of courts martial appears to be related to the fact that there were only three sitting military judges for the entire reporting period compared to four for the majority of the previous reporting period.<sup>11</sup> Figure 3-8 shows the number of courts martial by year since 2011/12.

**Figure 3-7: Decisions of Review Authority**

	2014-2015		2015-2016	
	#	%	#	%
Upholds decision	16	30.77	12	41.38
Quashes findings	25	48.08	7	24.14
Substitutes punishment	3	5.77	2	6.90
Substitutes findings	0	0	3	10.34
Mitigates / commutes / remits punishment	8	15.38	5	17.24
<b>Total</b>	<b>52</b>	<b>100</b>	<b>29<sup>12</sup></b>	<b>100</b>

**Figure 3-8: Number of Courts Martial by Year**



<sup>11</sup> Colonel Michael Gibson was appointed to the Ontario Superior Court of Justice on 5 February 2015.

<sup>12</sup> In one request for review made by a member found guilty at summary trial, the review authority took two separate decisions on two different charges for which the member was found guilty.

This reporting period the average number of court days spent on contested trials doubled from an average of approximately five days per contested trial in the previous reporting period to an average of over ten days in court days per contested trial for this reporting period. However, it is unlikely that this contributed to the decrease in number of courts martial as there were fewer contested courts martial in this reporting period as compared to previous reporting periods. In this reporting period only 11 out of 47 courts martial were contested representing 23 percent of all courts martial. In the 2014/15 reporting period 48 percent of all courts martial were contested (34 out of 71) and in the 2013/14 reporting period 36 percent of courts martial were contested (24 out of 67). Therefore, the number of contested courts martial in this reporting period is significantly lower than in previous years.

This reporting period the average number of days from referral of a matter to the DMP until charges against an accused were preferred remained relatively constant in comparison to the previous reporting period. In the 2014/15 reporting period the average number of days it took to prefer charges once a file was referred to the DMP was approximately 54 days. In this reporting period that number increased to approximately 63 days.

However, the average length of time that it took to complete a court martial once charges against an accused were preferred decreased significantly. In this reporting period, the average number of days that it took to complete a court martial once charges were preferred was 138 days. In the 2014/15 reporting period, the length of time from preferal to the completion of the court martial was 185 days.

Of the 47 courts martial held during this reporting period, 41 accused persons were either found guilty or pleaded guilty to at least one charge and six were found not guilty of all charges. Figure 3-9 shows the disposition of all cases tried by courts martial for the past two reporting periods.

While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 41 sentences pronounced by courts martial during the reporting period involved 69 punishments. A fine was the most common punishment, with 32 fines being imposed. Five punishments of imprisonment and four punishments of detention were also imposed by the courts. Of those 9 custodial punishments, two were suspended. This means, in the context of the *Code of Service Discipline*, that the offender does not have to

**Figure 3-9: Disposition by Case**

	2014-2015		2015-2016	
	#	%	#	%
Found Guilty of at least one charge	55	77.46	41	87.23
Not Guilty of all charges	12	16.90	6	12.77
Stay of all charges	2	2.82	0	0
Withdrawal of all charges	2	2.92	0	0
<b>Total</b>	<b>71</b>	<b>100</b>	<b>47</b>	<b>100</b>

serve out the sentence of imprisonment or detention as long as he or she remains of good behaviour during the period of the sentence. Figure 3-10 summarizes those sentences that were awarded at courts martial for the past two reporting periods.

In this reporting period there were 12 *Charter* applications made in eight separate cases by an accused alleging that there was a violation of his or her *Charter* rights.<sup>13</sup> This means that at least one *Charter* application was made in approximately 17

percent of all cases heard at court martial. Of those 12 applications, nine were dismissed by the military judge, one was withdrawn by the accused and the accused person was successful in establishing a *Charter* violation in two of those applications.<sup>14</sup> In the previous reporting period there were a total of 16 *Charter* applications made in 15 separate cases representing at least one *Charter* application in approximately 21 percent of all cases heard at court martial.

**Figure 3-10: Sentences at Court Martial**

	2014-2015	2015-2016
Dismissal	1	2
Imprisonment	6	3
Imprisonment (suspended)	2	2
Detention	4	4
Detention (suspended)	4	0
Reduction in Rank	1	3
Forfeiture of seniority	0	0
Severe Reprimand	18	10
Reprimand	13	13
Fine	39	32
Minor punishments: Confinement to ship or barracks	0	0
<b>Total</b>	<b>88</b>	<b>69</b>

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

<sup>13</sup> This statistic only reflects the number of *Charter* applications made in those cases where the court martial was completed by the end of the reporting period.

<sup>14</sup> In *R. v. Korolyk*, the accused successfully argued that subsection 129(2) of the NDA was unconstitutional as it violated her right to be innocent until proven guilty as guaranteed by section 11(d) of the *Charter*. In *R. v. Levi-Gould*, the accused successfully argued that subsection 157(1) of the NDA violated his rights under sections 7 and 8 of the *Charter* which protect his rights to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice as well as his rights to be secure against unreasonable search or seizure. Both of these cases are discussed in detail in Chapter Four.



## Appeals to the Court Martial Appeal Court

During the reporting period, two new notices of appeal were filed with the Court Martial Appeal Court. Of those notices, both were initiated by the convicted person.<sup>15</sup> Also, a third member filed a motion to extend the time to file his notice of appeal.

This reporting period, the Court Martial Appeal Court rendered two decisions, one appeal and one motion to quash. The appeal was the case of *R. v. Cawthorne* and the motion to quash was *R. v. Gagnon and Thibault*. Both of those decisions were appealed to the Supreme Court of Canada. They are discussed in detail in Chapter Four.

## Appeals to the Supreme Court of Canada

This reporting period there was one request for leave to appeal to the Supreme Court by the Minister in the case of *R. v. Gagnon and Thibault* and one appeal by the Minister as of right in the case of *R. v. Cawthorne*. These cases are discussed in detail in Chapter Four.

## Language of Proceedings

As an accused may choose to have his or her summary trial conducted in either official language, 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. Should the presiding officer determine that he or she does not have the required language ability, then the presiding officer should refer the charge to another presiding officer who has the required ability.

In the 2014/15 Annual Report, it was reported that there were 13 instances where there was a discrepancy

between the choice of language of proceedings by the accused and the language of the particulars of the offence as recorded on the Record of Disciplinary Proceedings. Notwithstanding these discrepancies, there were no reports of an accused CAF member tried by a service tribunal other than in the official language of their choice. This suggests that the discrepancy was limited to the language of the particulars of the offence and the choice of language of proceedings by the accused as recorded on the Record of Disciplinary Proceedings and did not affect the language of trial as selected by the accused.

During the 2015/16 reporting period, there was one instance where the particulars of a charge as recorded on the Record of Disciplinary Proceedings did not match the choice of language as selected by the accused. However, despite this discrepancy, the CAF member was tried in the official language of his choice.

## Sexual Misconduct

In the 2014/15 Annual Report, it was reported that summary trial statistics related to “offences of a sexual nature” pursuant to section 129 of the NDA were not specifically included in the breakdown of section 129 offences of that annual report. Although the determination of whether a specific charge is one that is of a sexual nature or not is not always clear as it may involve an element of subjective interpretation of the particulars of a charge, improvements to the summary trial database now allow better tracking and reporting of such offences.

For the purposes of tracking in the summary trial database, all offences of a sexual nature are characterized as either sexual misconduct, which

<sup>15</sup> The applications were filed by Petty Officer Second Class Blackman and Second Lieutenant Soudri who both challenged the legality of the finding made at court martial.

is defined as offences related to either sexual harassment, or ones involving improper personal relationships. Over the course of the upcoming reporting period further study will be undertaken to determine whether this method of tracking offences of a sexual nature meets the intended aim with a view to examining whether any improvements can be made to enhance reporting in this area.

In this reporting period there were 12 charges related to sexual harassment and 12 charges involving

improper personal relationships that were disposed of at summary trial. At court martial there were four charges of sexual assault, nine charges for conduct to the prejudice of good order and discipline for sexual harassment, one charge of possession of child pornography and one charge of accessing child pornography.



## CHAPTER FOUR

# Military Justice: Jurisprudence and Developments

This chapter highlights key jurisprudence with broad impact from the reporting period, as well as legislative and regulatory developments.

### Jurisprudence – Supreme Court of Canada

#### Offence Punishable by Non-military Law – *R. v. Moriarity*, 2015 SCC 55

Second Lieutenant Moriarity, Private Hannah, Private Vezina, and Sergeant Arsenault were each convicted at courts martial of having committed unrelated offences punishable under the *Criminal Code*, the *Controlled Drug and Substances Act* and the *Food and Drugs Act* pursuant to paragraph 130(1)(a) of the

NDA. Paragraph 130(1)(a) of the NDA incorporates all offences under the *Criminal Code* or any other Act of Parliament into the military justice system as “service offences” triable within the military justice system.

All four members appealed to the Court Martial Appeal Court on constitutional grounds, arguing that paragraph 130(1)(a) of the NDA was overly broad to achieve its purpose of enforcing discipline, efficiency and morale in that it incorporates civilian offences unrelated to military service into the *Code of Service Discipline*. The Court Martial Appeal Court, in a series of decisions, determined that properly interpreted, paragraph 130(1)(a) of the NDA incorporates a requirement for a military nexus to the offence, which exists when there is a direct link to the circumstances of an alleged offence and the

discipline, efficiency or morale of the military<sup>16</sup>. As such a nexus existed in each of the appellants cases, the convictions were upheld. The offenders appealed to the Supreme Court of Canada.

In a unanimous decision, the Supreme Court of Canada dismissed all four appeals and held that there is no requirement for a military nexus in order for paragraph 130(1)(a) of the NDA to be consistent with the *Charter*. The Court reasoned that the effect of paragraph 130(1)(a) is to extend the jurisdiction of service tribunals in relation to all underlying federal offences to everyone subject to the *Code of Service Discipline*. There is nothing explicitly in the text of paragraph 130(1)(a) to suggest that the offence must have been committed in a military context. Instead, it transforms the underlying offence into a service offence “irrespective of its nature and the circumstances of its commission”.

The Court explained that there was no apparent intent in the NDA to limit the application of these provisions to situations in which there is a “direct link” between the circumstances of the offence and the military. Had Parliament intended otherwise, it could have provided for a narrower application of the *Code of Service Discipline*. It must therefore be concluded that Parliament turned its mind to the circumstances in which it is appropriate to subject members of the CAF to the military justice system.

In upholding the constitutionality of paragraph 130(1)(a), the Court held that the purpose of the military justice system is “to provide processes that would assure the maintenance of discipline, efficiency and morale of the military,” and that criminal conduct “even when committed in circumstances that are not

directly related to military duties, may have an impact on the standard of discipline, efficiency and morale.” The behaviour of members of the military relates to discipline, efficiency and morale even when they are not on duty, in uniform, or on a military base.

This is an important decision as during the 2015/16 reporting period, approximately 27 percent of charges tried by courts martial were under paragraph 130(1)(a) of the NDA. Accordingly, the ability to deal with offences under paragraph 130(1)(a) is significant to users of the military justice system.

## Jurisprudence – Court Martial Appeal Court

### Minister of National Defence’s Right to Appeal – *R. v. Cawthorne*, 2015 CMAC 1

Ordinary Seaman Cawthorne was a crew member serving aboard HMCS Algonquin. While on exercise a cell phone containing child pornography was discovered on board the ship. The phone belonged to Ordinary Seaman Cawthorne who admitted to possessing pornography, but denied that it was child pornography. Ordinary Seaman Cawthorne was found guilty of possessing and accessing child pornography contrary to the *Criminal Code* and punishable under section 130 of the NDA.

Ordinary Seaman Cawthorne appealed to Court Martial Appeal Court where a majority of the judges hearing his appeal directed that there be a new trial on the two charges laid against Ordinary Seaman Cawthorne. The DMP filed a notice of appeal to the Supreme Court of Canada and shortly thereafter,

<sup>16</sup> In *R. v. Moriarity* and *R. v. Hannah*, 2014 CMAC 1, the Court Martial Appeal Court found that paragraph 130(1)(a) of the NDA was not overbroad and that properly interpreted, it included a military nexus. In terms of outlining what constitutes a military nexus, the Court stated that a military nexus exists if the offence is so connected with military service that it would tend to affect the general standard of discipline and efficiency of the service. In *R. v. Vezina*, 2014 CMAC 3 and *R. v. Arsenault*, 2014 CMAC 8, the Court considered itself bound to follow the decision in *Moriarity*. In *R. v. Larouche*, 2014 CMAC 6, the Court found that “subsection 130(1) of the NDA violates sections 7 and 11(f) of the *Charter* because it is overbroad, which is likely – without applying the military nexus test – to deprive Canadian military personnel of their constitutional right to the benefit of a trial by jury.”



Ordinary Seaman Cawthorne filed a notice of motion to quash the notice of appeal from the Minister on the grounds that the authority of the Minister to appeal to the Supreme Court of Canada found at paragraph 245(2) of the NDA violated sections 7 and 11(d) of the *Charter* in that the Minister is not an independent prosecutor with sufficient autonomy to act in that capacity. The Supreme Court of Canada granted leave to appeal and the matter was heard on April 25, 2016. A decision on the matter has been reserved.

### **Minister of National Defence's Right to Appeal – *R. v. Gagnon and Thibault*, 2015 CMAC 2**

These cases involved two military members who were charged with unrelated sexual assault offences. At courts martial Warrant Officer Gagnon was acquitted and the proceedings against Corporal Thibault were terminated. The Crown appealed both of these court martial decisions.

Counsel for the accused persons applied to have the appeals dismissed on the grounds that the right to appeal must be attributed to an independent prosecutor and that it is contrary to section 7 of the *Charter* to confer the right to appeal on the Minister.

The Court Martial Appeal Court found that the Minister's role and duties under the NDA are inconsistent with the exercise of his authority concerning a prosecution against one of his own "employees". It held that the Minister cannot reasonably be perceived as an independent prosecutor who can act in a manner that is autonomous and independent from the chain of command, because he or she is at the apex of it. The court declared that section 230.1 of the NDA, which confers on the Minister the right to appeal,

does not satisfy the constitutional requirement of prosecutorial independence and, therefore is of no force and effect. The court suspended this declaration of invalidity for a period of six months from the date of the decision, but declined to grant the accused's applications to dismiss the Minister's appeals as that would be disproportionate to the societal interest in a determination of the merits of the appeals.

In partially concurring reasons, Chief Justice Bell expressed the view that the Minister had to maintain a supervisory power over prosecutions in the Canadian military justice system, a power that had to be limited by parameters similar to those on the Attorney General in the *Director of Public Prosecutions Act*.

The Crown sought leave to appeal the decision to the Supreme Court of Canada. Leave to appeal was granted and the case was heard jointly with *R. v. Cawthorne* on April 25, 2016. A decision on the matter has been reserved, and the Court Martial Appeal Court's declaration of invalidity will remain suspended until the Supreme Court's decision.

## **Jurisprudence – Court Martial**

### **Sexual Offences – *R. v. Morgan*, 2015 CM 4005**

Sergeant Morgan was a medical technician charged with having sexually harassed three subordinates on different occasions between 2005 and 2012. The victims experienced various forms of flirting, repetitive requests for dates and personal relationships and over-the-clothing touching of their buttocks. The circumstances of the offences were found to demonstrate a pattern of sexually harassing behaviour towards three of Sergeant Morgan's female subordinates.

Sergeant Morgan pleaded guilty at court martial to three charges of conduct to the prejudice of good order and discipline, contrary to section 129 of the NDA. He was sentenced to a severe reprimand and a fine of \$2,000.

### **Sexual Offences – *R. v. Scott*, 2015 CM 1005**

At the time of the offence, Officer Cadet Scott was a student at the Royal Military College of Canada in Kingston. In March of 2013, Officer Cadet Scott was, on two separate occasions, alleged to have inappropriately touched the complainant and to have made sexually suggestive comments to her. He touched, without her consent, various parts of the complainant's upper body.

Officer Cadet Scott pleaded guilty to one charge of assault under section 266 of the *Criminal Code*, an offence punishable under section 130 of the NDA and two counts of conduct to the prejudice of good order and discipline under section 129 of the NDA for sexual harassment. Following a joint submission on sentence, the court sentenced the offender to a severe reprimand and a fine in the amount of \$2,000 payable in \$200 equal monthly instalments.

### **Fraud - *R. v. Jackson*, 2015 CM 4012**

Master Corporal Jackson, a member of the Regular Force, was issued a DND credit card for the purchase of fuel in connection with his employment. He was informed that the credit card was for the sole use of fuel purchases as required in the course of his regular military duties. In January 2011, due to financial hardship, Master Corporal Jackson started using the credit card for personal fuel purchases. The total amount spent by Master Corporal Jackson for his

personal benefit through the use of the credit card was approximately \$20,000.

Master Corporal Jackson pleaded guilty to one charge under paragraph 117(f) of the NDA for having committed an act of a fraudulent nature. Following a joint submission by both prosecution and defence, the court sentenced the offender to detention for a period of 60 days. In the court's opinion, the period of detention was within the appropriate range given that the accused indicated his intent to plead guilty at the earliest opportunity, that he was a first-time offender and that he cooperated with the investigators throughout the investigation.

### **Fraud – *R. v. Boire*, 2015 CM 4010**

Master Seaman Boire was a cook in the regular force and during two different postings to CFB Petawawa in 2009 and to CFB Borden in 2013, he claimed separation expense benefits without entitlement.<sup>17</sup> Master Seaman Boire fraudulently received over \$48,000 in total. At court martial Master Seaman Boire pleaded guilty to two counts of fraud pursuant to subsection 380(1) of the *Criminal Code*, contrary to section 130 of the NDA. He was sentenced to imprisonment for a period of 60 days and to a fine of \$2,400. In addition to the sentence, Master Seaman Boire is in the process of reimbursing the Crown for the funds fraudulently obtained.

At sentencing the accused argued that as a result of his several medical conditions, that his sentence of imprisonment should be suspended. Evidence was presented at sentencing to indicate that his incarceration would be counter therapeutic and would have a negative effect on his well-being and mental health. As a result, the prosecution and

<sup>17</sup> Separation expense benefits are a monetary benefit designed to reimburse CAF members for additional living expenses that result from short-term separation from their dependents as a result of relocation within Canada for service reasons.

defence jointly recommended that the period of imprisonment be suspended. Taking into account the exceptional circumstances in this case the military judge determined that the period of imprisonment should be suspended.

### **Conduct to the Prejudice of Good Order and Discipline - *R. v. Korolyk*, 2016 CM 1002**

Leading Seaman Korolyk was living in Victoria, BC and was entitled to a Post Living Differential (PLD).<sup>18</sup> However, she did not disclose that she was jointly occupying a home with another service member and was therefore only entitled to 75 percent of her PLD allowance. Leading Seaman Korolyk was charged with one count of conduct to the prejudice of good order and discipline pursuant to section 129 of the NDA as a result of failing to report the domestic event relevant to her PLD allowance. Alternatively, she was also charged for an act of a fraudulent nature contrary to paragraph 117(f) of the NDA.

At her court martial, Leading Seaman Korolyk challenged the constitutionality of subsection 129(2) of the NDA. She argued that subsection 129(2) of the NDA, which requires a trier of fact to find the existence of prejudice to good order and discipline where the alleged act contravened any provision of the NDA, any regulation, order or instruction is contrary to the *Charter* since it dispenses with the requirement to prove prejudice to good order and discipline beyond a reasonable doubt.

The military judge agreed with Leading Seaman Korolyk and found that subsection 129(2) of the NDA violated the presumption of innocence protected by the *Charter*. He declared the provision to be void

insofar as it makes an accused liable to be convicted despite the existence of a reasonable doubt on that essential element of the offence. As a result the prosecution withdrew the charge pursuant to section 129. The court found Leading Seaman Korolyk not guilty of the remaining alternative charge.

### **Conduct – *R. v. Buckley*, 2016 CM 1001**

Master Warrant Officer Buckley was the Wing Superintendent Clerk of 19 Wing Comox. In this job she was responsible for overseeing the 35 clerks working across the Wing and the Base and, among other duties, was the non-commissioned member appointed as the Personnel Evaluation Report Monitor. This position gave her privileged access to the CAF's personnel management software, known as the Human Resources Management System (HRMS).

In 2014, Master Warrant Officer Buckley used the password of a co-worker to enter HRMS and change her personal record indicating that she had passed the FORCE fitness test, when this was not true. She then perpetuated the inaccuracy to her chain of command by stating that she had completed her FORCE test. Master Warrant Officer Buckley made the false entry into HRMS, knowing that it would be relied upon for her next Performance Evaluation Report, which would be used for promotion purposes, as well as for verifying her readiness prior to a deployment to Canadian Forces Station Alert.

Master Warrant Officer Buckley pleaded guilty to two offences under section 125 of the NDA for altering a document with intent to deceive and wilfully making a false entry in a document. The court martial found that Master Warrant Officer Buckley abused the trust

<sup>18</sup> PLD is an allowance designed to stabilize the cost of living of CAF members and their families to ensure that they enjoy a relative and predictable cost of living no matter where they serve in Canada.

and confidence vested in her rank and position and sentenced her to a severe reprimand and a fine of \$3,000.

### **Desertion and Commanding Officers Arrest Warrants – *R. v. Levi-Gould*, 2016 CM 4002**

On 7 January 2014, following his period of Christmas leave, Ordinary Seaman Levi-Gould failed to report for duty as required. A warrant for Ordinary Seaman Levi-Gould's arrest was issued by his commanding officer that authorized the arrest of Ordinary Seaman Levi-Gould within a dwelling house. A subsequent warrant for arrest was issued to reflect the fact that the member had been charged with desertion and disobedience of a lawful command but did not authorize the arrest of Ordinary Seaman Levi-Gould within a dwelling house. On 1 April 2015, Ordinary Seaman Levi-Gould was arrested by the RCMP for unrelated alleged criminal offences. He was released on conditions by a provincial court judge and was subsequently arrested by the military police at the courthouse pursuant to the second warrant issued by his commanding officer.

At court martial, Ordinary Seaman Levi-Gould argued that subsection 157(1) of the NDA, the provision that allows a commanding officer to issue an arrest warrant, was unconstitutional on the grounds that an arrest warrant must be authorized by a person capable of acting judicially and that commanding officers are incapable of acting judicially as they are neither impartial nor independent.

The military judge determined that subsection 157(1) of the NDA does not provide for any limit as to when a commanding officer may exercise his or her power to authorize a warrant into a dwelling house. In his view, a commanding officer is so involved in the

investigatory functions performed by members of his or her unit that he or she cannot act in a judicial capacity when authorizing an arrest warrant under subsection 157(1). The military judge found that subsection 157(1) of the NDA violated sections 7 and 8 of the *Charter* and made a declaration of invalidity pursuant to subsection 52(1) of the *Charter*.

Despite the finding that s.157(1) of the NDA was unconstitutional, the court determined that the individual *Charter* rights of the accused were not violated. The accused pleaded guilty to the charges of desertion and disobedience of a lawful command. At sentencing the court took note of a number of challenges that the accused was facing at the time of the commission of the offences as well as the difficult background of the accused and sentenced him to a severe reprimand. Ordinary Seaman Levi-Gould had been released from the CAF on 16 October 2014 and administrative action was taken to suspend his pay during his period of absence without leave.

## **Legislative and Regulatory Developments**

### **Bill C-71: An Act to amend the *National Defence Act* and the *Criminal Code***

On June 15, 2015, the Minister introduced Bill C-71, *An Act to amend the National Defence Act and the Criminal Code (Victims Rights in the Military Justice System Act)*, in the House of Commons and it was given first reading.

Bill C-71 would have amended provisions of the NDA governing the military justice system. It would have added, among other things, a "Declaration of Victims Rights" granting victims of service offences the rights



to information, protection, participation and to seek restitution in respect of service offences in much the same way as the *Canadian Victims Bill of Rights* grants these rights to victims of certain criminal offences within the civilian criminal justice system.

Bill C-71 would have also made a number of changes to the processes through which service offences are dealt with under the *Code of Service Discipline*, mostly at courts martial, in order to give effect to the Declaration of Victims Rights. For instance, the Bill would have authorized, and in some cases would have required, military judges to make orders for the protection of victims, including no-contact orders, publication bans, orders permitting a witness to have a support person present while testifying, and orders prohibiting an accused person from personally cross-examining a witness.

Additionally, Bill C-71 would have altered the summary trial process to clearly establish summary

trials as an effective form of non-criminal, non-penal service tribunal for the purpose of dealing with minor service misconduct. Specifically, the Bill would have eliminated summary trial jurisdiction to try service offences, and would have replaced it with jurisdiction to try only a new class of “disciplinary infractions” that would be created in regulations made by the Governor in Council. The Bill would also have eliminated a summary trial presiding officer’s authority to impose punishments (such as detention and fines), and would have replaced it with authority to impose new disciplinary sanctions that were non-criminal and non-penal in character.

The Bill died on the order paper when Parliament was dissolved on August 2, 2015.



## CHAPTER FIVE

### The Way Ahead

The year ahead should see the advancement of a number of efforts to continue to enhance the military justice system, including the court martial comprehensive review which will conduct a legal and policy analysis of all aspects of the CAF's court martial system and, where appropriate, develop and analyse options to enhance the effectiveness, efficiency, and legitimacy of that system. In addition, it is anticipated that the military justice audit framework, the development of which will commence over the course of the upcoming reporting period will enable the JAG to be proactive in leading military justice oversight, while contributing to responsible development and positive change within the military justice system.

In terms of legislative development, the Office of the JAG will continue to work with the Department of Justice toward preparing the regulatory provisions

required to bring the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence of Canada Act*, into force. These provisions, among other things, focus on the military justice system, making amendments in areas such as pre-trial custody, the composition of court martial panels, and sentencing. Of particular note, these provisions will also reduce the range of those service offences and punishments that result in a CAF offender being liable to receiving a criminal record.

The JAG will continue to support the CDS and other members of the chain of command in the execution of Operation HONOUR. In addition to taking the necessary steps to implement the strategy of the CDS to eliminate inappropriate sexual behaviour within the CAF, the Office of the JAG will work to ensure that efforts to implement Operation HONOUR occur with a complete understanding of applicable law

and consequent legal risk. Additionally, the Office of the JAG will ensure that any efforts to develop the military justice system complement efforts that are being undertaken by other CAF authorities in support of Operation HONOUR.

## Conclusion

The ability of the CAF to achieve its mission, in Canada and around the world, is enabled by Canada's

strong military justice system. Designed to be fair, efficient, and effective, the military justice system is continuously evolving to be a relevant and useful tool for the chain of command to maintain the discipline, efficiency, and morale of the CAF. Canada's military justice system is a world-class system that aligns with Canadian values and the rule of law while ensuring that it continues to serve the particular needs of the CAF.

# ANNEX A

## Summary Trials - Year in Review

Statistics: 1 April 2015 - 31 March 2016

### Language of Summary Trials

	2014-2015		2015-2016	
	#	%	#	%
English	728	84.95	649	90.0
French	129	15.05	72	10.0
<b>Total</b>	<b>857</b>	<b>100</b>	<b>721</b>	<b>100</b>

### Summary Trials by Rank

	2014-2015		2015-2016	
	#	%	#	%
Private and Corporal (includes Master Corporal*)	726	84.52	608	84.32
Sergeant to Chief Warrant Officer	54	6.29	32	4.44
Officer	77	9.19	81	11.24
<b>Total</b>	<b>857</b>	<b>100</b>	<b>721</b>	<b>100</b>

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



## Summary of Charges Disposed of at Summary Trial

NDA Section	Description	2014-2015		2015-2016	
		#	%	#	%
83	Disobedience of lawful command	31	2.53	31	2.88
84	Striking or offering violence to a superior officer	2	0.16	3	0.28
85	Insubordinate behavior	53	4.33	67	6.21
86	Quarrels and disturbances	41	3.35	37	3.43
90	Absence without leave	475	38.78	446	41.37
91	False statement in respect of leave	5	0.41	2	0.19
93	Cruel or disgraceful conduct	0	0	0	0
95	Abuse of subordinates	2	0.16	3	0.28
97	Drunkenness	130	10.61	131	12.15
101.1	Failure to comply with conditions	6	0.49	4	0.37
107	Wrongful acts in relation to aircraft or aircraft material	1	0.08	0	0
111	Improper driving of vehicles	2	0.16	2	0.19
112	Improper use of vehicles	10	0.82	8	0.74
114	Stealing	11	0.90	8	0.74
115	Receiving	0	0	2	0.19
116	Destruction, damage, loss or improper disposal	10	0.82	8	0.74
117	Miscellaneous offences	5	0.41	3	0.28
125	Offences in relation to documents	11	0.90	6	0.56
127	Injurious or destructive handling of dangerous substances	1	0.08	1	0.09
129	Conduct to the prejudice of good order and discipline – Negligent discharge	107	8.73	11	1.02
129	Conduct to the prejudice of good order and discipline – Sexual Harassment	N/A*	N/A	12	1.11
129	Conduct to the prejudice of good order and discipline – Inappropriate Relationships	N/A*	N/A	12	1.11
129	Conduct to the prejudice of good order and discipline – Other	297	24.24	270	25.05

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NDA Section	Description	2014-2015		2015-2016	
		#	%	#	%
130 (4 CDSA)**	Possession of a substance	7	0.57	6	0.55
130 (129 CC) ***	Offences relating to public or peace officer	3	0.25	1	0.09
130 (265 CC)	Assault	1	0.08	0	0
130 (266 CC)	Assault	8	0.65	2	0.19
130 (267 CC)	Assault with a weapon or causing bodily harm	3	0.25	2	0.19
130 (270 CC)	Assaulting a peace officer causing bodily harm	2	0.16	0	0
130 (334(b) CC)	Punishment for theft - value stolen does not exceed \$5000	1	0.08	0	0
<b>Total</b>		<b>1225</b>	<b>100</b>	<b>1078</b>	<b>100</b>

\* This statistic was not tracked in the previous reporting period.

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

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

## Findings by Charge

	2014-2015		2015-2016	
	#	%	#	%
Guilty	1096	89.47	942	87.38
Guilty – Special Finding	6	0.49	7	0.65
Guilty of included offence	2	0.16	0	0
Not guilty	77	6.29	92	8.53
Charge stayed / Stay of Proceedings	21	1.71	31	2.88
Charge not proceeded with	23	1.88	6	0.56
<b>Total</b>	<b>1225</b>	<b>100</b>	<b>1078</b>	<b>100</b>

## Punishments at Summary Trial

	2014-2015		2015-2016	
	#	%	#	%
Detention (suspended)	7	0.62	0	0
Detention	19	1.67	23	2.37
Reduction in rank	4	0.35	4	0.41
Severe reprimand	3	0.26	6	0.62
Reprimand	55	4.83	48	4.94
Fine	633	55.57	535	55.09
Confinement to ship or barracks	292	25.64	254	26.16
Extra work and drill	81	7.11	66	6.80
Stoppage of leave	27	2.37	16	1.65
Caution	18	1.58	19	1.96
<b>Total</b>	<b>1139</b>	<b>100</b>	<b>971</b>	<b>100</b>

# ANNEX B

## Courts Martial - Year in Review

Statistics: 1 April 2015 - 31 March 2016

### Courts Martial by Type

	2014-2015		2015-2016	
	#	%	#	%
Standing Court Martial	61	87	40	85.1
General Court Martial	9	13	7	14.9
<b>Total</b>	<b>70*</b>	<b>100</b>	<b>47</b>	<b>100</b>

\* There were 70 courts martial and 71 accused (1 joint trial).

### Language of Courts Martial

	2014-2015		2015-2016	
	#	%	#	%
English	55	79	40	85.1
French	15	21	7	14.9
<b>Total</b>	<b>70</b>	<b>100</b>	<b>47</b>	<b>100</b>

### Courts Martial by Rank

	2014-2015	2015-2016
Private and Corporal (includes Master Corporal*)	50	32
Sergeant to Chief Warrant Officer	11	7
Officer	10	8
<b>Total</b>	<b>71**</b>	<b>47</b>

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

\*\* There were 70 courts martial and 71 accused (1 joint trial).

## Summary of Charges Disposed of at Court Martial

NDA Section	Description	2014-2015	2015-2016
83	Disobedience of lawful command	16	7
84	Striking or offering violence to a superior	7	0
85	Insubordinate behaviour	14	7
86	Quarrels and disturbances	6	1
87	Resisted an escort whose duty it was to have him in charge	0	0
88	Desertion	1	2
90	Absence without leave	19	16
93	Cruel or disgraceful conduct	4	2
95	Abuse of subordinates	6	3
97	Drunkenness	5	4
101.1	Failure to comply with conditions	11	11
102	Resisted a non-commissioned member in performing arrest of a person subject to the <i>Code of Service Discipline</i>	1	0
111	Improper driving of vehicles	0	0
112	Improper use of vehicles	0	1
114	Stealing	8	3
115	Receiving	1	0
116	Destruction, damage, loss or improper disposal	5	3
117	Miscellaneous offences	7	5
124	Negligent performance of a military duty	0	0
125(a)	Wilfully (or negligently) made a false entry	4	8
125(c)	With intent to deceive, altered a document issued for military purpose	1	1

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NDA Section	Description	2014-2015	2015-2016
127	Injurious or destructive handling of dangerous substances	0	0
128	Conspired to commit an offence	0	0
129	Conduct to the prejudice of good order and discipline	44	39
130 (4 CDSA)*	Possession of a substance	7	0
130 (5(1) CDSA)	Trafficking in substance	3	0
130 (5(2) CDSA)	Possession for purpose of trafficking	1	0
130 (6 CDSA)	Exporting / Exportation substances	2	0
130 (7 CDSA)	Production of substance	1	0
130 (31 FDA)**	Unlawfully setting a substance	0	0
130 (80(d) CC) ***	Dangerous handling of explosive substance	0	0
130 (85(1) CC)	Using a firearm in the commission of an offence	0	0
130 (86 CC)	Careless storage	0	0
130 (86(1) CC)	Negligent handling of a firearm	4	0
130 (86(2) CC)	Contravention of storage regulations	6	0
130 (90 CC)	Carrying a concealed weapon	2	0
130 (91(2) CC)	Unauthorized possession of prohibited weapon or restricted weapon	6	0
130 (92(2) CC)	Possession of a prohibited weapon	2	0
130 (93 CC)	Possession of a firearm at an unauthorized place	2	0
130 (94(1) CC)	Unauthorized possession in motor vehicle	1	0
130 (95 CC)	Possession of a prohibited or restricted firearm with ammunition	3	0
130 (101(2) CC)	Transfer without authority	0	1
130 (104(2) CC)	Unauthorized importing	0	1
130 (122 CC)	Breach of trust by public officer	18	0

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NDA Section	Description	2014-2015	2015-2016
130 (129 CC)	Offences relating to public or peace officer	1	3
130 (131 CC)	Perjury	1	0
130 (139 CC)	Obstructing justice – Wilful attempt to obstruct, pervert or defeat the course of justice	1	0
130 (153(a) CC) ****	False Statements, evasion of duties	0	1
130 (163.1(4) CC)	Possession of child pornography	3	1
130 (163(4.1) CC)	Accessing child pornography	2	1
130 (184(1) CC)	Interception of private communication	1	0
130 (249.1(a) CC)	Dangerous operation of a motor vehicle	0	2
130 (264.1 CC)	Uttering threats	3	3
130 (264(2)(d) CC)	Criminal harassment	1	0
130 (266 CC)	Assault	10	1
130 (267 CC)	Assault with a weapon or causing bodily harm	4	2
130 (268 CC)	Aggravated assault	0	0
130 (269 CC)	Unlawfully causing bodily harm	0	0
130 (270.01 CC)	Assaulting a peace officer causing bodily harm	2	1
130 (271 CC)	Sexual assault	19	4
130 (334(a) CC)	Punishment for theft - value stolen exceeds \$5000	0	1
130 (334(b) CC)	Punishment for theft - value stolen does not exceed \$5000	2	7
130 (342.1 CC)	Unauthorized use of a computer	0	7
130(354 CC)	Possession of stolen property	0	0
130(355.2 CC)	Trafficking in property obtained by crime	0	2
130 (367 CC)	Commits forgery	0	3
130 (368 CC)	Uttering a forged document	9	4

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NDA Section	Description	2014-2015	2015-2016
130 (380(1) CC)	Fraud	3	3
139 (419 CC)	Unlawful use of military uniforms and certificates	3	0
130 (430(4) CC)	Mischief	1	0
<b>Total Offences</b>		<b>284</b>	<b>154</b>

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).

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

\*\*\*\* *Customs Act*, (R.S.C., 1985, c. 1 (2nd Supp.)).

## Courts Martial by Command

	2014-2015		2015-2016	
Vice Chief of the Defence Staff	6	8.46	3	6.38
Canada Joint Operations Command (CJOC)	0	0	1	2.13
Royal Canadian Navy	16	22.53	8	17.02
Canadian Army	29	40.84	20	42.55
Royal Canadian Air Force	8	11.27	9	19.15
Chief of Military Personnel	12	16.90	5	10.64
Assistant Deputy Minister (Information Management)	0	0	1	2.13
<b>Total</b>	<b>71</b>	<b>100</b>	<b>47</b>	<b>100</b>