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JUDGE ADVOCATE GENERAL



2016-2017 ANNUAL REPORT

of the **Judge Advocate General**
to the **Minister of National Defence**
on the Administration of Military Justice
from 1 April 2016 to 31 March 2017

Canada 



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Dear Minister,

It is my honour and privilege to present you the 18th 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 2016 to 31 March 2017.

Yours Truly,

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Communiqué

It 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 2016 to 31 March 2017. This is my seventh report, made pursuant to section 9.3 of the *National Defence Act* (NDA), since my appointment as Judge Advocate General (JAG) in 2010. It is also my final report as I will be retiring from the CAF in the summer of 2017.

The fundamental purpose of Canada's military justice system is to contribute to the operational effectiveness of the CAF. As stated by the Supreme Court of Canada in the recent decision of *R. v. Moriarity*, it does so by providing a process that assures "the maintenance of discipline, efficiency and morale of the military". To achieve this purpose it must operate expeditiously and fairly, remaining consistent with Canadian law, including the *Canadian Charter of Rights and Freedoms* (Charter). It is my role as superintendent of the administration of military justice to ensure that the Canadian military justice system operates efficiently, effectively and in accordance with the rule of law, and yet continues to be responsive to the unique needs of the CAF.

In order to do this, my team and I proactively support CAF commanders on legal and legal policy matters impacting on discipline, while being direct and fearless in promoting the rights and interests of CAF members in individual disciplinary cases. In that regard, this report not only provides a summary and analysis of the functioning of the military justice system for the current reporting period but it also sets out various initiatives undertaken by me to lead proactive military justice oversight, responsible development and positive change within the system.

This past reporting period has seen a number of developments including important decisions from both the Supreme Court of Canada and the Court Martial Appeal Court of Canada (CMAC). The Supreme Court of Canada, in *R. v. Cawthorne* and

R. v. Gagnon and Thibault, affirmed the authority of the Minister of National Defence (MND) to appeal decisions of a court martial and of the CMAC. Additionally, the CMAC decision in *R. v. Royes* concluded that 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) is an offence under military law triable by the military justice system. Finally, the Supreme Court of Canada in the case of *R. v. Jordan* provided a new framework for determining whether an accused is tried within a reasonable period of time. Although this is not a case that proceeded through the military justice system, it will nevertheless impact the military justice system by prescribing those timelines within which an accused person must be tried.

This reporting period shows a decrease in the number of summary trials and the number of charges disposed of by summary trial. As the proper maintenance of discipline through the rule of law is the cornerstone of an effective military force it is of key importance to conduct a proper analysis of this trend to determine its cause and whether any action may be appropriate moving forward. Therefore, in Chapter Two of this report I discuss this issue in further detail and also set out those actions that are being taken to further examine this issue.

In my previous report I announced a comprehensive review of the court martial system which was intended to advance responsible development and positive change within the military justice system. I am pleased to report that this initiative has progressed steadily over the course of the reporting period with the review team assessing the current court martial system along with a variety of options to enhance the effectiveness, efficiency, and legitimacy of that system. The review team has consulted with CAF leaders as well as with interested members of the Canadian public and has also

studied the military justice systems of various countries. The review team is diligently continuing its work to deliver a report that will provide a policy-based analysis and discussing options.

Over the reporting period, work has also been ongoing to examine ways to enhance my ability to superintend the administration of military justice within the CAF by improving our current system for data collection and case management. The intent is to allow me to maintain a better appreciation and awareness of the efficiency and effectiveness of the functioning of the military justice system so that I am better positioned to make evidence-based recommendations to effect positive change within the system. In addition, these improvements in data collection and case management would also improve the administration of military justice at the unit level by providing unit authorities with a complete picture of disciplinary proceedings within their unit thereby better engaging them in the disciplinary process.

In the previous reporting period the Chief of the Defence Staff (CDS) issued his order concerning Operation HONOUR to eliminate harmful and inappropriate sexual behaviour within the CAF. In order to complement and support the strategy of the CDS to address inappropriate sexual behaviour, this past reporting period, I met with the Canadian Forces Provost Marshal and the Director of Military Prosecutions (DMP) in order to discuss our individual responses as independent actors within the military justice system to address inappropriate sexual behaviour in the CAF. A number of topics were discussed including various legislative initiatives, the investigation and prosecution of offences of a sexual nature, training as well as the policy amendments made by the Director of Military Prosecutions concerning the conduct of prosecutions of offences of a sexual nature. Following the meeting I prepared a report for the CDS outlining those initiatives already undertaken and setting

out those areas of future discussion. It is my intent that the military justice system complements the important efforts undertaken under the umbrella of Operation HONOUR by providing commanders with a tool to address the unique needs of the CAF, including in the area of harmful and inappropriate sexual behaviour.

In the preparation of my final annual report as JAG, I have taken the occasion to reflect on my role as the JAG as well as my career in general. Over the course of my career I have been very proud to serve my country in a variety of positions within the Office of the JAG and have had several extraordinary experiences as a legal officer. I have been very lucky to both serve with and lead a number of exceptionally talented legal officers who have dedicated themselves to the pursuit of justice and the advancement of the rule of law. My role as superintendent of the administration of military justice has been a demanding one, but it has also been one that has been very rewarding. I have had the privilege of overseeing a military justice system that serves the particular needs of the CAF while ensuring that it does so in a manner that protects the individual rights of an accused in accordance with Canadian and international law. I take great pride in knowing that Canada's military justice system continues to reflect Canadian values and supports the rule of law in a free and democratic society.

Fiat Justitia.

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



CHAPTER 1

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, DND and the Canadian Armed Forces (CAF) 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.

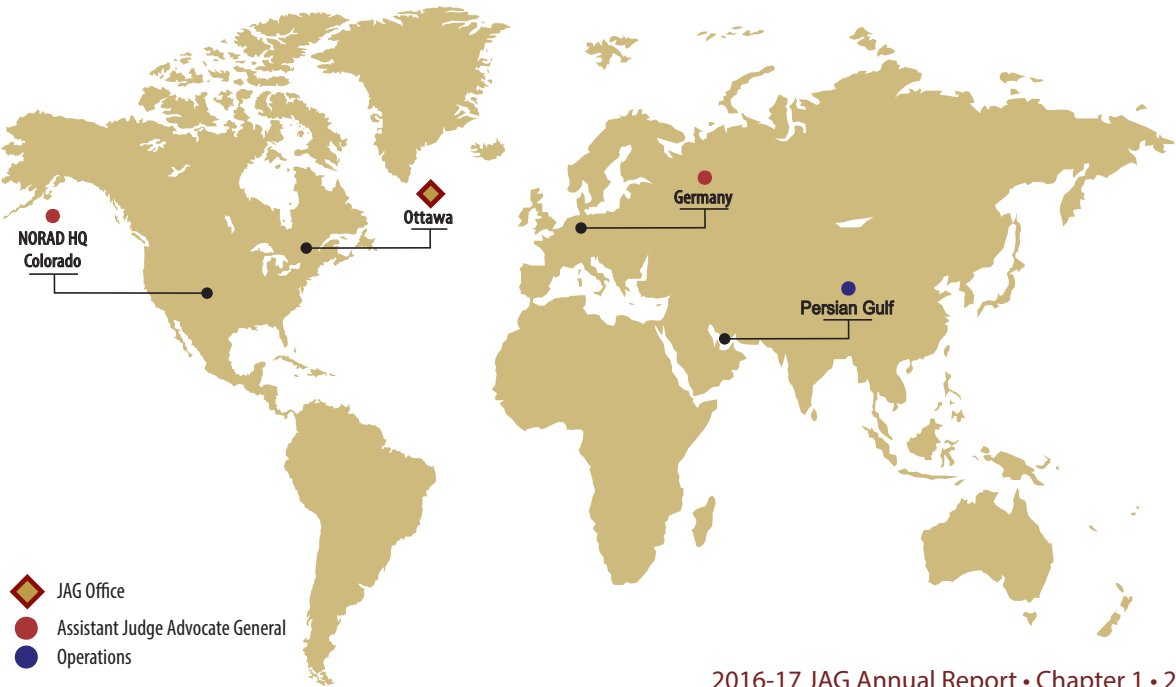
The Office of the JAG is composed of the Directorate of Military Prosecutions, the Directorate of Defence Counsel Services, and the following five Divisions: Military Justice, Administrative Law, Operational Law, Regional Services, and the Chief

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

Figure 1-1:
Canadian Offices Of The Judge Advocate General



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, including special prosecutors who may be appointed by the DMP in those cases where there is a risk of an actual or perceived conflict of interest in the conduct of military prosecution duties which may adversely impact public confidence in the administration of military justice. 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 for the Minister in respect of appeals to the Court Martial Appeal Court of Canada (CMAC) and the Supreme Court of Canada (SCC). 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 12 May 2017.

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 section 249.19 of the NDA, the DDCS provides, and supervises and directs the provision of legal services available, at no cost, under QR&O article 101.11 to persons who are liable to be charged, dealt with and tried under the *Code of Service Discipline*. This includes:

- 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.

The relationship between the DDCS and the JAG is provided for at section 249.2 of the NDA such that the DDCS acts under the general supervision of the JAG. The JAG may also 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 DDCCS is required to report annually 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 12 May 2017.

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 currently 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.

The Military Justice Operations directorate, subdivided into two separate teams, 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 provides legal services on matters pertaining to the administration of the CAF such as military personnel policies, administrative investigations, compensation, benefits, pensions and estates as well as on matters that pertain to the governance, organization and command structure of the CAF and the operation of the military grievance system. 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 four directorates: Military Personnel Operations,

which provides legal advice and support 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, which provides legal advice and support on the development and application of personnel policies and orders; Administrative Law, which provides legal advice and support in relation to military grievances, grievance-related litigation, administrative investigations, and the CAF organization and command structure; and Compensation, Benefits, Pensions and Estates, which provides legal advice and support on the full spectrum of financial and compensation policies and instructions that support the military human resources management framework.

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 (D/Law I&IO). In addition, during this reporting period legal officers were deployed in direct support of three overseas operations: OP IMPACT, OP REASSURANCE, and OP ARTEMIS.

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 engagement and use of force. The DIOL provides advice on the international and domestic legal framework 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 and supports all legal officers who are deployed to a theatre of operations. 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 Armed 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 principally 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. Also, in support of the JAG's role as the superintendent of the administration of military justice in the CAF, legal officers in the Regional Services Division conduct regular training to certify commanding officers, delegated officers and superior commanders to preside at summary trials. 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, Halifax, Montreal, Toronto, Winnipeg, Edmonton, Esquimalt, Geilenkirchen (Germany) and Colorado Springs (USA). 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 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 officer 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 the Department of National Defence/Canadian Armed 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 Armed Forces CWO, the JAG CWO also co-chairs the Canadian Armed Forces Discipline Advisory Council. This 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 level and the local legal office in addressing disciplinary and administrative matters.

Civilian Personnel of the Office of the Judge Advocate General

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



CHAPTER 2

The Canadian Military Justice System: Structure and 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.¹

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 importance of a separate, distinct military justice system to meet the specific needs of the CAF.²

The military justice system 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.

¹ The statistics reported and discussed in this report are current as of 6 June 2017.
² *R. v. Généreux*, [1992] 1 S.C.R. 259; *Mackay v. R.*, [1980] 2 S.C.R. 370 at 399; *R. v. Moriarity*, [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 a key part of 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 con-

ventional 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 certain circumstances, an accused person has a right to be offered an election to be tried by court martial.³ The election

³ 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

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.

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 months⁴, 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.

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.

⁴ See Note (B) to article 108.05 of the QR&O.

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.”⁵

The NDA provides for two types of court martial: General and Standing. These courts martial can be

⁵ See section 179 of the NDA.

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.⁶ The Court Martial Appeal Court is composed of civilian judges who are designated from the Federal Court

⁶ The Minister has instructed the DMP to act on his behalf for appeals to the Court Martial Appeal Court and the SCC.



and 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.

STATISTICS⁷

Summary Trials

Number of Summary Trials

Summary trials continue to be the most widely used form of service tribunal in the CAF to deal with service offences under the *Code of Service Discipline*. During this reporting period there were 553 summary trials in comparison to 56 courts martial. The overall percentage of all cases disposed of at summary trial this reporting period was approximately 91 percent. Figure 2-1 shows the number of summary trials and courts martial for the last two reporting periods as well as the corresponding percentage of cases tried by each type of service tribunal and Figure 2-2 shows the total number of summary trials by reporting period since 2012/13. Figure 2-3 shows the total number of summary trials for all commands for the last two reporting periods

⁷ All statistics contained in this Chapter were subject to a GBA+ analysis and no significant trends or findings were noted.

Figure 2-1: Distribution of Service Tribunals

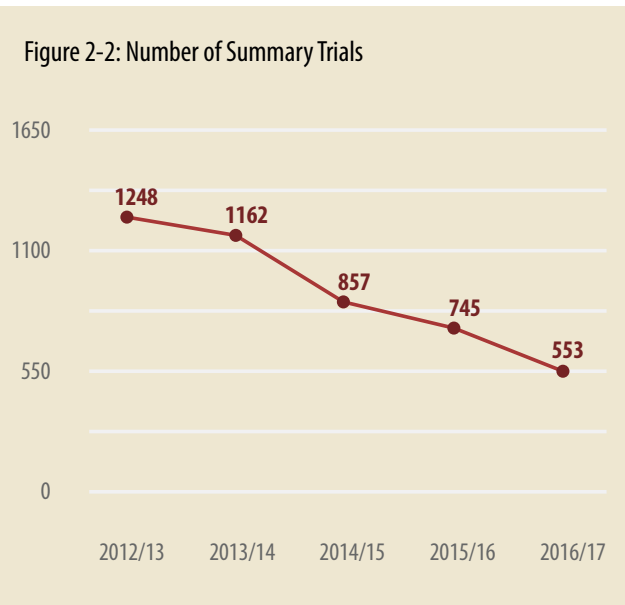
	2015-2016*		2016-2017	
	#	%	#	%
Number of Courts Martial	47	5.93	56	9.20
Number of Summary Trials	745	94.07	553	90.80
Total	792	100	609	100

* All summary trial statistics from the 2015/16 reporting period and which are reported in this report may differ from those statistics reported in the 2015/16 Annual Report of the Judge Advocate General as a result of late reporting by various units across the CAF.

and Figure 2-4 illustrates the number of summary trials specifically for the Canadian Army, the Royal Canadian Navy, the Chief of Military Personnel, the Canadian Joint Operations Command and the Royal Canadian Air Force from 2012/13.

For the Canadian Army, in this reporting period there were a total of 255 summary trials as opposed to 349 for the previous reporting period. That is a decrease of 94 summary trials which represents a decrease of approximately 27 percent in comparison to the previous reporting period.

When these numbers are examined at the unit level, it can be seen that there are fewer summary trials at various army training centers. For example, the number of summary trials at the Artillery School, located at Canadian Division Support Base Gagetown, has decreased over the past four reporting periods going from 20 summary trials in the



2013/14 reporting period to only four in the current reporting period. Similarly, the Infantry School, also located at Canadian Division Support Base Gagetown has had a decrease from 35 summary trials in the 2013/14 reporting period to three in the 2016/2017 reporting period. A significant portion of this decrease can be attributed to a reduction in the number of charges for unauthorized discharges pursuant to s.129 of the NDA.⁸ In the 2012/13 reporting period there were 26 such charges tried at the Infantry School. In the current reporting period there were no charges for unauthorized discharges.

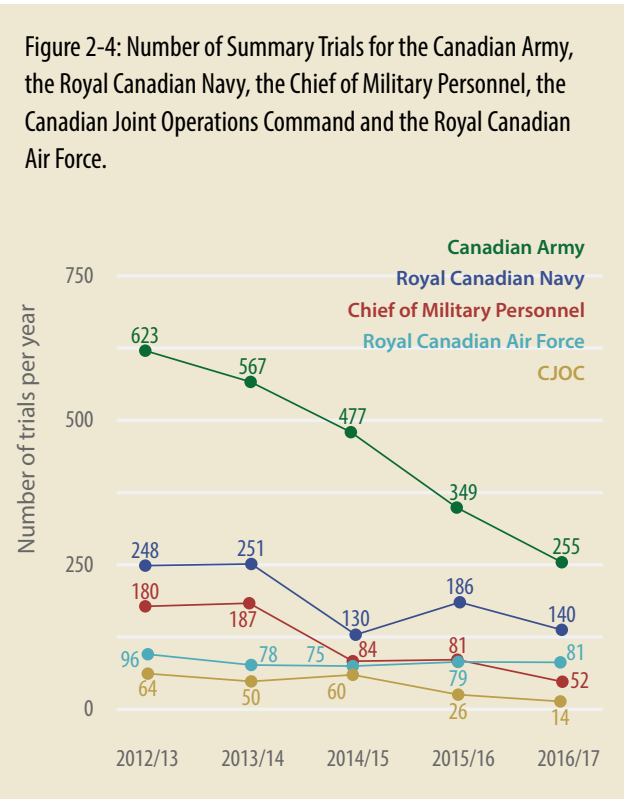
Several other units within the Canadian Army have also had decreases in the number of summary trials over the past several reporting periods. For example, the Royal Canadian Dragoons located at Garrison Petawawa reported four summary trials in the current reporting period compared to 16 in the 2015/16 reporting period. Similarly, the 4 Engineer Support Regiment, located at Canadian Division Support Base Gagetown, reported three summary trials this reporting period compared to 13 for the previous reporting period.

⁸ Following the court martial decisions in *R. v. Nauss*, 2013 CM 3008 and *R. v. Brideau*, 2014 CM 1005, the number of charges for unauthorized discharges pursuant to section 129 of the NDA decreased significantly in subsequent reporting periods. For further information on those decisions please refer to the 2012/13 and 2013/14 Annual Reports of the Judge Advocate General, respectively.

Figure 2-3: Number of Summary Trials by Command

	2015-2016		2016-2017	
	#	%	#	%
Canadian Army	349	46.85	255	46.11
Royal Canadian Navy	186	24.97	140	25.32
Chief of Military Personnel	81	10.87	52	9.40
Royal Canadian Air Force	79	10.60	81	14.65
Canada Joint Operations Command	26	3.49	14	2.53
Canada Special Operations Forces Command	7	0.94	4	0.72
Vice Chief of the Defence Staff	6	0.81	4	0.72
Assistant Deputy Minister (Information Management)	6	0.81	1	0.18
Canadian Forces Intelligence Command (CFINTCOM/CDI)	2	0.27	0	0.00
Assistant Deputy Minister (Material)	1	0.13	2	0.37
Assistant Deputy Minister (Public Affairs)	1	0.13	0	0.00
Assistant Deputy Minister (Infrastructure and Environment)	1	0.13	0	0.00
Total	745	100	553	100

The decrease in the total number of summary trials for the Royal Canadian Navy and the Chief of Military Personnel has been less prominent. For the Royal Canadian Navy, the total number of summary trials has fluctuated over the past ten reporting periods.



For the Chief of Military Personnel there is also a decrease in the total number of summary trials over the past several reporting periods. In the 2008/09 reporting period, the Chief of Military Personnel reported a high of 492 summary trials and that number has declined over the past nine years to the current reporting period when the Chief of Military Personnel reported only 52 summary trials.

Finally, for Canadian Joint Operations Command a decrease in the total number of summary trials is apparent from the 2010/11 reporting period through to the 2012/13 reporting period where the number of summary trials went from 247 to 64. This decrease coincides with the close out of the CAF mission in Afghanistan.

Number of Charges Disposed by Summary Trial

In this reporting period, there were a total of 817 charges disposed of at summary trial compared to 1118 charges disposed of at summary trial during the 2015/16 reporting period. Figure 2-5 shows the total number of charges disposed of at summary trial since 2012/13.

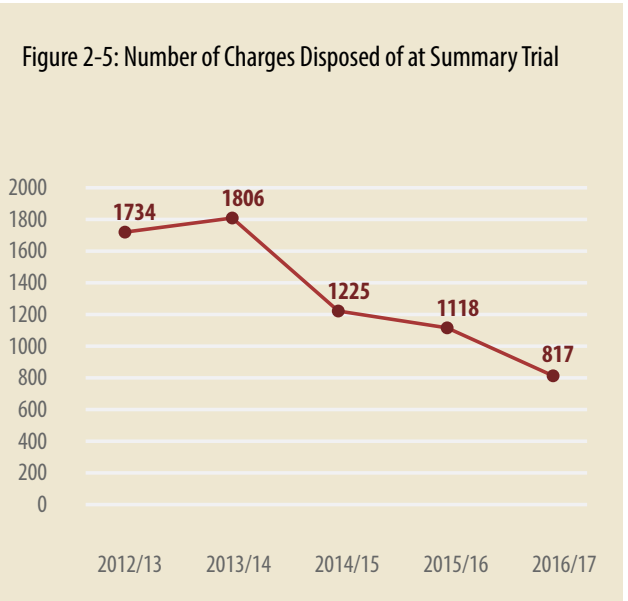
The two most common types of offences which account for approximately 65 percent of all charges in the summary trial system are absence without

leave and conduct or neglect to the prejudice of good order and discipline.⁹

In the current reporting period the total number of charges reported for absence without leave is 395. This is a decrease when compared to previous reporting periods where there was a high of 788 charges for absence without leave in the 2007/08 reporting period.

For the offence of conduct or neglect to the prejudice of good order and discipline, this reporting period there were a total of 124 charges. This is a decrease compared to previous reporting periods where there was a high of 1403 charges for conduct or neglect to the prejudice of good order and discipline in the 2007/08 reporting period. Figure 2-6 shows the number of charges for absence without leave and conduct or neglect to the prejudice of good order and discipline from 2012/13.

⁹ For the purposes of tabulating results, the offences of conduct or neglect to the prejudice of good order and discipline have been sub-divided into a number of categories including negligent discharges, sexual harassment, inappropriate relationships, alcohol offences, drug offences and other. For a detailed breakdown of the number of charges in each sub-category please refer to Annex A.



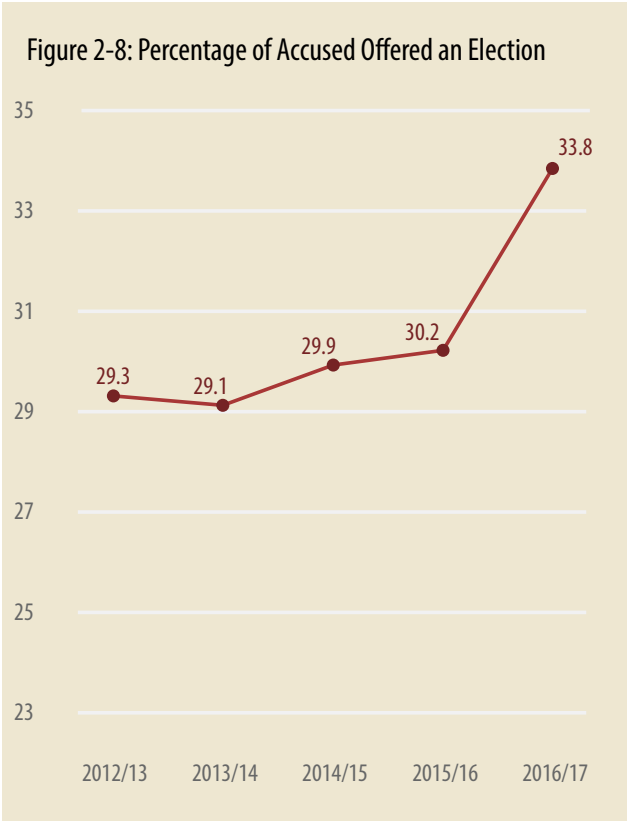
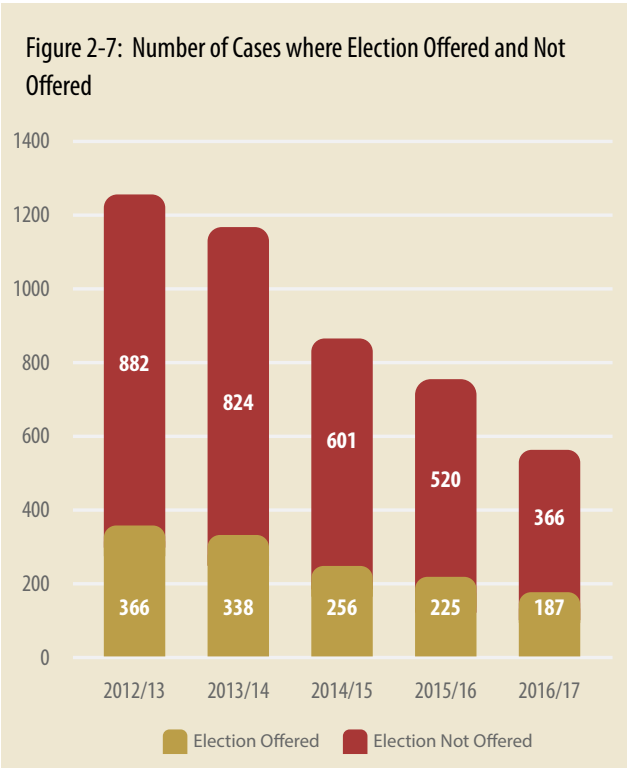
When examining the various sub-categories for charges of conduct or neglect to the prejudice of good order and discipline a decrease can be seen for alcohol and drug offences as well as inappropriate relationships. Additionally, over the past several reporting periods there has also been a decrease in the number of charges for unauthorized discharges pursuant to section 129 of the NDA. The number of charges for unauthorized discharges decreased from 213 in the 2013/14 reporting period to 107 in the following reporting period and those numbers continue to decline as in the current reporting period there were only seven charges for unauthorized discharges throughout the entire CAF.

These decreases in the number of summary trials as well as the number of charges disposed of at summary trial are of concern. Therefore, the Office of the JAG continues to investigate this decrease in the total number of summary trials as well as the number of charges disposed of by summary trial in order to determine the cause and whether any action may be appropriate moving forward.

In this regard, in last year's report, the JAG announced the creation of a team to develop a process for

conducting military justice audits to assist in this analysis. As explained in further detail in Chapter Three, the initial step to conducting such audits has been to work towards the creation of a military justice case management tool and database which will facilitate the collection of objective and measurable data at the unit level. Once complete, this case management tool and database will provide the Office of the JAG with key objective and measurable data that will aid in the audit of all CAF units. Moreover, this case management tool and database will provide timely information that will better enhance the JAG's ability to conduct detailed analysis into military justice statistics.

In addition, as will also be discussed in Chapter Three, during the previous reporting period the JAG coordinated the establishment of two working groups comprised of commanding officers and senior non-commissioned members to develop and consider options for the renewal of the summary trial system. The purpose of these working groups was to provide a command perspective on the administration of military justice at the unit level to ensure



that the summary trial system remains responsive to the disciplinary needs of the CAF. The feedback from the working groups will provide useful insight moving forward by assessing the effectiveness of the current summary trial system and also for ensuring that the military justice system remains a viable tool for commanders in the maintenance of discipline, efficiency and morale within their units.

Number of 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 rather than summary trial except where the accused: (1) has been charged with one of five minor service offences; and (2) 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 the accused’s monthly basic pay would not be warranted if the accused were found guilty of the offence.

The five minor offences are: (1) insubordinate behaviour, (2) quarrelling, (3) absence without leave, (4) drunkenness, and (5) 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.¹⁰ Figure 2-7 shows the number of summary trials for the past five reporting periods in which the accused person was offered an election as well as the number of cases in which no election was offered. Figure 2-8 shows the percentage of cases where an accused was offered an election.

During this reporting period, accused members elected to be tried by summary trial 141 times out of the 187 cases in which an election was offered, representing approximately 75 percent of accused members offered an election. That amounts to 46 members electing trial by court martial in the current reporting period.

There has been an increase in the percentage of accused members electing to be tried by court martial when an election is offered over the past several reporting periods. Figure 2-9 shows the per-

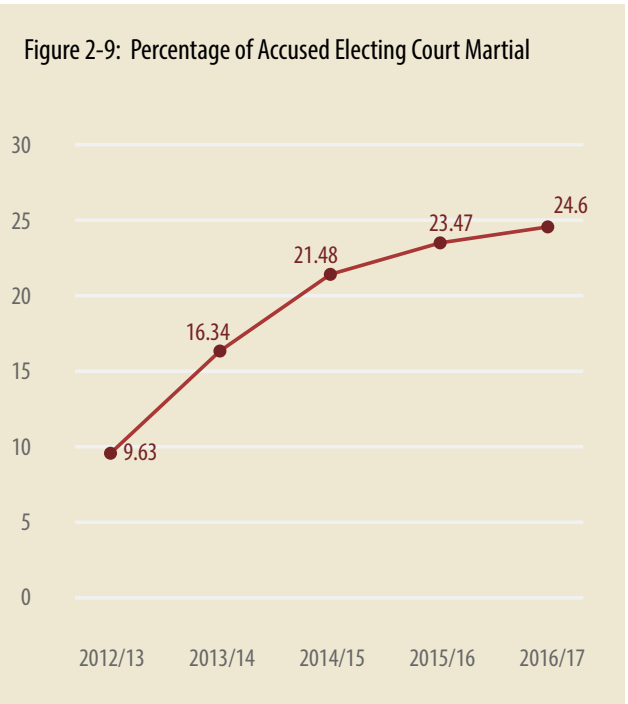


Figure 2-10: Findings by Charge

	2015-2016		2016-2017	
	#	%	#	%
Guilty	976	87.30	707	86.54
Guilty – Special Finding	6	0.54	8	0.98
Not guilty	96	8.59	80	9.79
Charge stayed	34	3.04	20	2.45
Charge not proceeded with	6	0.54	2	0.24
Total	1118	100	817	100

centage of accused persons electing court martial when an election was offered by reporting period since 2012/13.

Findings by Charge at Summary Trial

The percentages of all findings by charge has remained relatively constant on a year by year basis. For example, the percentage of guilty findings has remained relatively constant at approximately 87 percent compared to the previous reporting period. Similarly, the percentage of not guilty findings has remained relatively constant at approximately nine percent. A complete breakdown of the total number of findings by charge and the corresponding percentage for the last two reporting periods can be found at Figure 2-10.

Punishments at Summary Trial

This reporting period there were a total of 723 punishments awarded at summary trial.¹¹ Compared to the previous reporting period, there has been a decrease of 276 punishments as there were 999 punishments awarded in the previous reporting period.

Of those possible punishments which can be awarded at summary trial, fines and confinement to ship or barracks continue to be the most used punishments. Figure 2-11 shows the total number of

punishments for the last two reporting periods as well as the corresponding percentage of each punishment over that same period.

In this reporting period the punishment of detention was awarded nine times when compared to the 2012/13 reporting period where the punishment of detention was awarded 50 times. An overview of the number of times the punishment of detention was awarded over the past five years can be found in Figure 2-12.

Summary Trial Reviews

In the current reporting period, a total of 25 summary trials were reviewed based on requests by members found guilty at summary trial or on a review authority’s own initiative. Of those reviews, 12 were based on finding, nine on sentence, and four were based on both finding and sentence. As there was a total of 553 summary trials, the percentage of cases that were subject to a review was approximately 4.52 percent. This percentage is consistent with that of the previous reporting period when approximately 3.36 percent of cases were reviewed. Figure 2-13 shows the percentage of cases reviewed since 2012/13.

11 More than one type of punishment may be awarded at a summary trial.

Figure 2-11: Punishments at Summary Trial

	2015-2016		2016-2017	
	#	%	#	%
Detention	24	2.40	9	1.24
Reduction in rank	7	0.70	6	0.83
Severe reprimand	6	0.60	1	0.14
Reprimand	51	5.11	36	4.98
Fine	548	54.85	401	55.46
Confinement to ship or barracks	258	25.83	192	26.56
Extra work and drill	69	6.91	47	6.50
Stoppage of leave	17	1.70	13	1.80
Caution	19	1.90	18	2.49
Total	999	100	723	100

Based on the nature of the request for review, a review authority has several options available to him or her to deal with the matter including upholding the decision of the presiding officer, quashing the finding, and substituting the finding or punishment. In approximately 38 percent of all decisions a review authority quashed the decision of the presiding officer. In approximately another 38 percent of all decisions a review authority upheld

the decision of the presiding officer. In the previous reporting period approximately 42 percent of decisions by the review authority were to uphold the findings. A complete breakdown of all decisions of a review authority and the corresponding percentage of each decision for the past two reporting periods can be found at Figure 2-14.

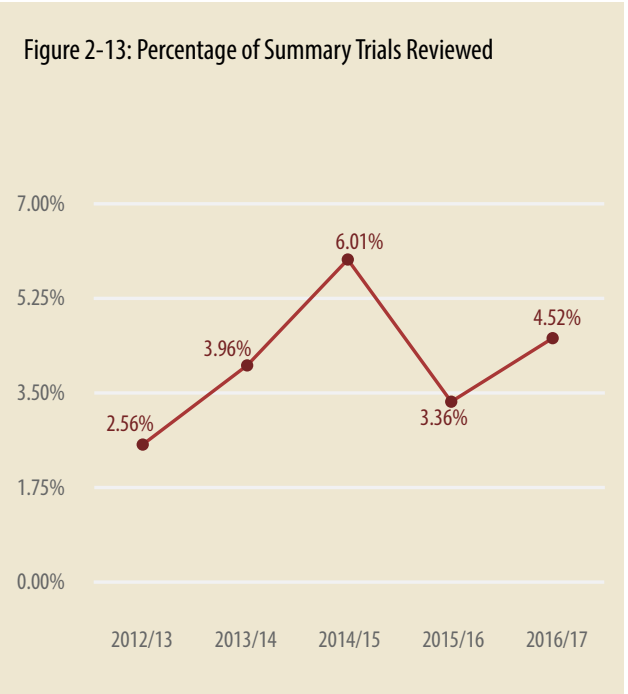
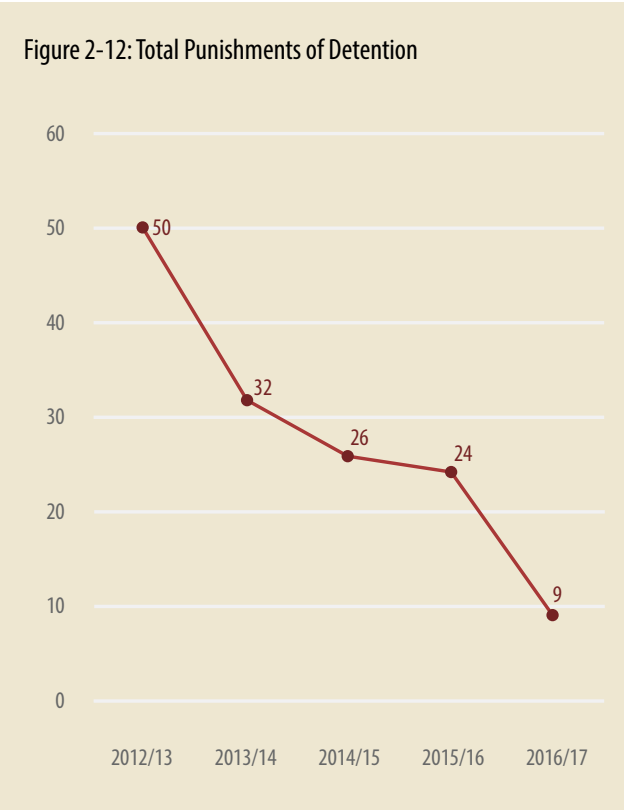


Figure 2-14: Decisions of Review Authority

	2015-2016		2016-2017	
	#	%	#	%
Upholds decision	13	41.94	10	38.46
Quashes findings	7	22.58	10	38.46
Substitutes findings	4	12.90	2	7.69
Substitutes punishment	3	9.68	0	0.00
Mitigates / commutes / remits punishment	4	12.90	4	15.39
Total	31*	100	26**	100

* In the 2015/16 reporting period there were 29 requests for review and 31 review decisions as review authorities may take multiple decisions in each case depending on the request for review. In one case the review authority upheld the finding one charge, substituted a finding on a second charge and mitigated the punishment awarded at summary trial. In another review, the review authority upheld the finding on one charge and also mitigated the sentence.

** In one case the review authority took two separate decisions in one request for review. The review authority reviewed requests to both the finding and punishment at the request of an accused.

Inappropriate Sexual Behaviour

Prior to the 2015/16 reporting period charges for inappropriate sexual behaviour were not subject to a separate reporting and analysis due to the nature by which these charges were captured by the summary trial database. However, improvements to the summary trial database now allow better tracking and reporting of such offences. Those charges for inappropriate sexual behaviour tried at the summary trial level are sexual harassment and inappropriate personal relationships.¹² In both cases, these offences are charged pursuant to s.129 of the NDA.

In the current reporting period there were a total of 23 charges for sexual harassment and two charges of inappropriate relationships tried by summary trial.¹³ There were 21 charges for sexual harassment in the previous reporting period. For those 23 charges of sexual harassment pursuant to s.129 of the NDA for the current reporting period, there were three charges for inappropriate touching, four charges for inappropriate acts or gestures, 13 charges for inappropriate sexual comments or jokes and three charges related to intimate images.¹⁴

The number of charges for inappropriate relationships has decreased. In the previous reporting period there were 15 charges pursuant to s.129 for inappropriate relationships as compared to two for the current reporting period.

Although there were a total of 25 charges for inappropriate sexual behaviour there were only eight separate accused members. The majority of members were non-commissioned members ranging in rank from private to warrant officer

12 An inappropriate relationship is defined as an unreported adverse personal relationship.

13 The two charges for inappropriate personal relationships stemmed from one incident where both members failed to report their personal relationship as required by Defence Administrative Order and Directive 5019-1: Personal Relationships and Fraternization.

14 In one instance two CAF members asked a subordinate to show them intimate pictures of a female CAF member without her knowledge. The junior member showed the images to the two senior members. All three individuals were charged pursuant to s.129. Two were charged for making the request and one was charged for making the images available.

with only two commissioned officers at the rank of captain tried for such offences. Of those 23 charges for sexual harassment, there were 19 guilty findings, two not guilty findings and two charges were stayed by the presiding officer. Both charges for inappropriate relationships resulted in a guilty finding.

In terms of sentence, for those summary trials for sexual harassment there were a total of ten fines ranging in amounts from \$200 to \$2500, two punishments of confinement to barracks for a period of seven days, two reprimands, one sentence of detention for a period of six days, one caution, and one reduction in rank. For those summary trials for inappropriate personal relationships, the two accused were sentenced to a fine in the amounts of \$600 and \$1000.¹⁵

Language of Summary Trials

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 language in which the proceedings are to be conducted without the assistance of an interpreter. Where the presiding officer lacks the required language ability, he or she should refer the case to another presiding officer to try the case.

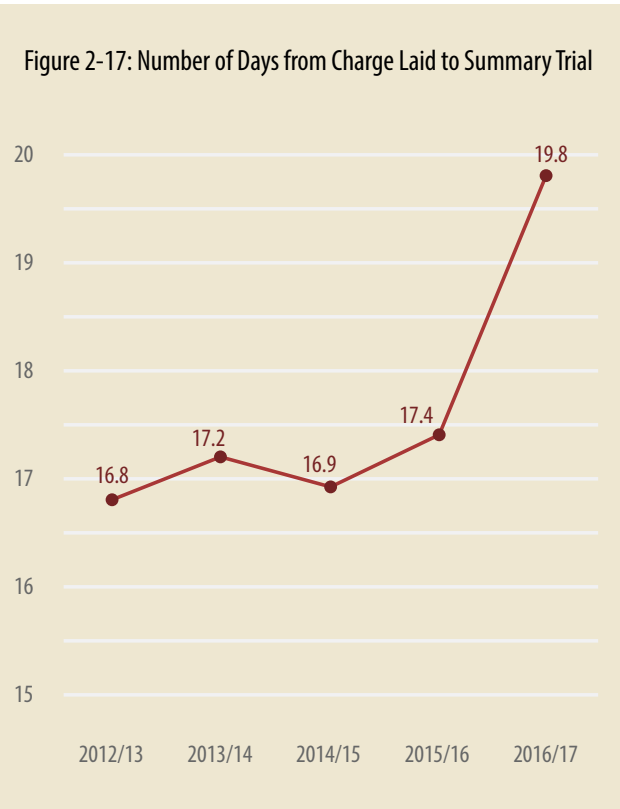
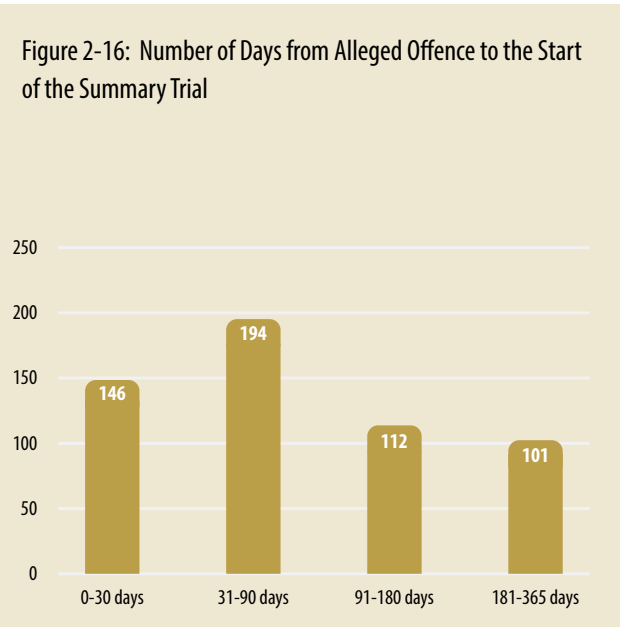
This reporting period, approximately 87 percent of summary trials were conducted in English and 13 percent were conducted in French. These percentages are consistent when compared to previous reporting periods. Figure 2-15 shows the number of summary trials conducted in both English and French for the past two reporting periods.

In this reporting period, there were three cases where there was a discrepancy between the language of the particulars of the charge on the Record of Disciplinary Proceedings and the choice of language for the proceedings selected by the accused. In two of these cases the accused was offered to have the charges re-drafted in his or her

15 The two members were of different ranks with the senior member receiving the higher amount.

Figure 2-15: Language of Summary Trials

	2015-2016		2016-2017	
	#	%	#	%
English	667	89.53	479	86.62
French	78	10.47	74	13.38
Total	745	100	553	100



language of choice but the accused declined, as in both cases the accused were bilingual and had the ability to understand the charges against them. However, the summary trial in both instances proceeded in the language selected by the accused.

In the one remaining case, the particulars of the charges were not drafted in the choice of language of the accused. However, the summary trial was conducted in the language as chosen by the accused. A review was conducted by the chain of command and it was determined that the accused did not suffer any prejudice as a result.

Timelines for Summary Trials

The purpose of the summary trial system is to provide prompt but fair justice in respect of minor service offences and as such, these trials are required to begin within one year of the date on which the offence is alleged to have been committed.¹⁶

This reporting period there were 553 summary trials and the average number of days from the date of the alleged offence to the start date of the summary trial was approximately 95 days. Of those 553 summary trials, 340 were disposed of within 90 days of the alleged incident, representing approximately 61 percent of all summary trials for the reporting period. Further, approximately 82 percent of all summary trials were commenced within 180 days of the alleged incident. Figure 2-16 shows a breakdown of the number of days from the date of the alleged offence to the commencement of the summary trial.

Once a charge has been laid by the appropriate authority and is referred to a presiding officer, the

¹⁶ See sections 163(1.1) and 164(1.1) of the NDA.

presiding officer is required to seek pre-trial legal advice before commencing the summary trial. Once that advice has been received from the unit legal advisor, the presiding officer may commence the summary trial.

Over the past five years, the number of days between the time of charge to the start of the summary trial has increased from an average of just under 17 days in the previous reporting period to an average of just under 20 days in the current reporting period. Figure 2-17 shows the average number of days from charge laid to the start of the summary trial over the last five reporting periods.

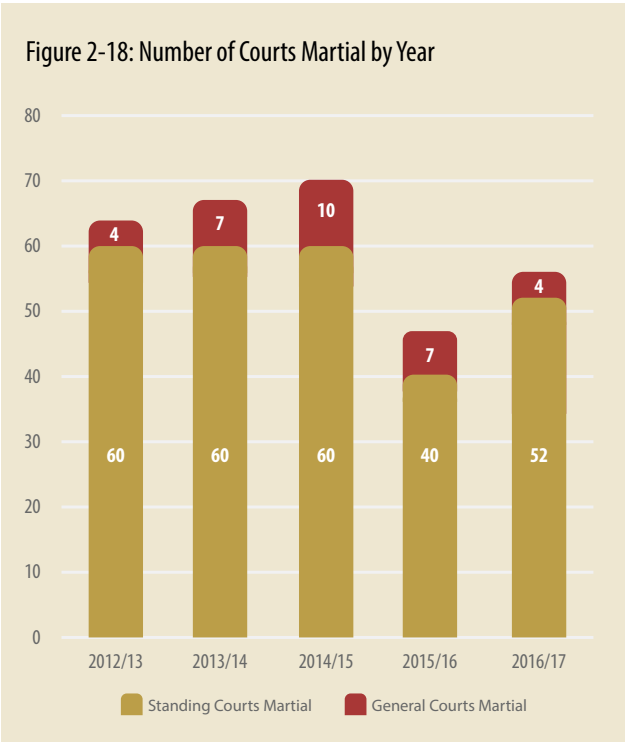


Figure 2-19: Disposition by Case

	2015-2016		2016-2017	
	#	%	#	%
Found Guilty of at Least One Charge	5	10.63	7	12.50
Pleaded Guilty to All Charges	36	76.59	39	69.64
Not Guilty of All Charges	6	12.77	8	14.29
Stay of All Charges	0	0	1	1.79
Withdrawal of All Charges	0	0	0	0
Mistrial	0	0	1	1.79
Total	47	100	56	100

Courts Martial

Number of Courts Martial

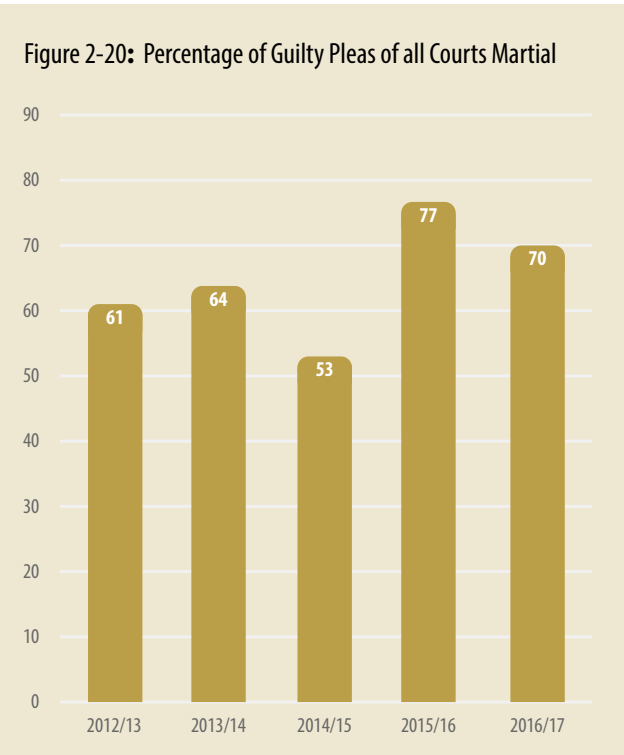
During this reporting period, there were a total of 56 courts martial completed - 52 Standing Courts Martial (SCM) and four General Courts Martial (GCM) - representing just over ten percent of all service tribunals. Figure 2-18 shows the number of courts martial by year since 2012/13.

Findings by Case at Court Martial

Of the 56 courts martial held during this reporting period, 46 of 56 accused persons were either found guilty or pleaded guilty to at least one charge and eight were found not guilty of all charges. One accused had all charges against him stayed, and in one case a mistrial was declared by the military judge. Figure 2-19 shows disposition by case over the past two reporting periods.

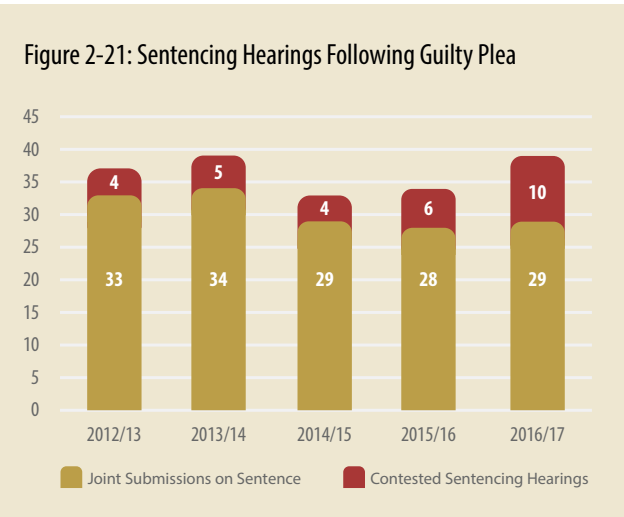
This reporting period, there were 39 guilty pleas, representing nearly 70 percent of all cases.¹⁷ As shown in Figure 2-20, the percentage of cases where the accused has pleaded guilty in such cases has fluctuated over the past five reporting periods between approximately 53 to 77 percent. The average number of guilty pleas in such cases for the current reporting period is higher than the five year average of 65 percent.

¹⁷ A guilty plea is defined as a court martial where the accused pleaded guilty to all charges where evidence was introduced by the prosecution. It does not include those cases where an accused pleaded guilty to some charges and yet other charges were contested.



In the current reporting period, counsel for the prosecution and defence made joint submissions on sentence in 29 of those 39 courts martial where the accused pleaded guilty.¹⁸ Figure 2-21 shows a

18 It has been stated by the Supreme Court of Canada in the case of *R. v. Anthony-Cook* (2016 SCC 43) that joint submissions play a vital role in contributing to the administration of justice by



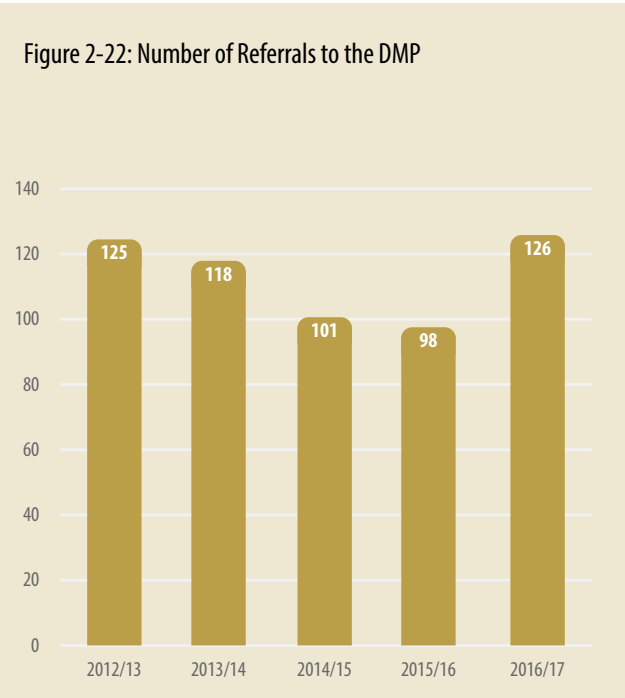
breakdown of the total number of courts martial where the accused pleaded guilty to all charges between those cases that proceeded by a joint submission and those cases where the sentencing hearing was contested.

DMP Case Management

Referrals

This reporting period there were 126 files that were referred to the DMP which represents an increase of 29 percent compared to the previous reporting period where there were only 98 files referred to the DMP.¹⁹ Figure 2-22 shows the number of referrals made to the DMP over the last five years.

19 A referral to the DMP is where a matter has been referred to the DMP for trial by court martial for any one of a variety of reasons including an election by an accused to be tried by court martial or in those situations where the presiding officer does not have the jurisdiction to try the accused.



Preferrals and Non-Preferrals

This reporting period there were 68 files preferred for trial by court martial and 34 cases in which no charges were preferred.²⁰ Of those 68 preferrals, 29 were referred to the DMP as a result of an accused electing to be tried by court martial and 39 were referred to the DMP as a result of a direct referral.²¹

The percentage of cases preferred for trial by court martial for this reporting period was approximately 67 percent.²² This is consistent with the past five reporting periods where the rate of preferrals has fluctuated from a high of 75 percent in 2012/13 to a low of 62 percent in 2014/15.

20 At the end of the reporting period there were still 24 cases awaiting a post-charge decision.
21 A direct referral means that the accused did not elect trial by court martial but had the charges referred to the DMP based on the nature of the charges, a determination by the presiding officer that he or she had insufficient powers of punishment to deal with the matter at summary trial, the rank of the accused or that the presiding officer had reasonable grounds to believe that the accused is unfit to stand trial or was suffering from a mental disorder at the time of the commission of the alleged offence.
22 This does not include those cases in which a decision had yet to be taken by the end of the reporting period.

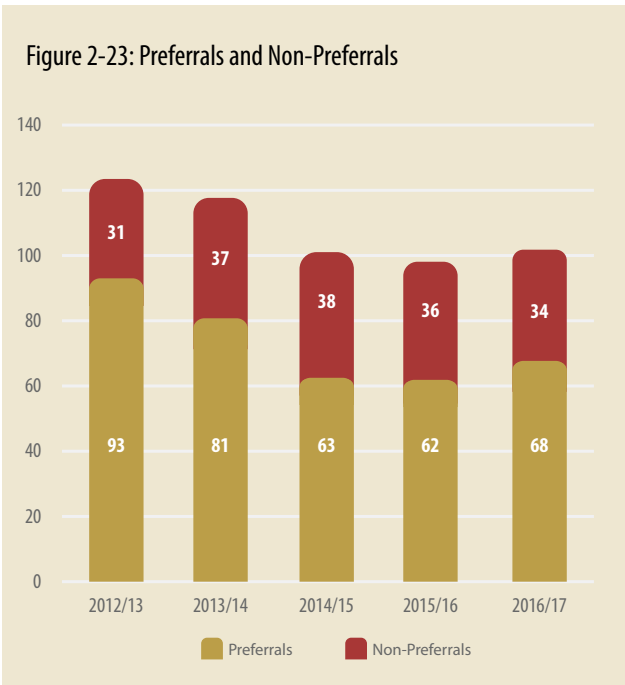
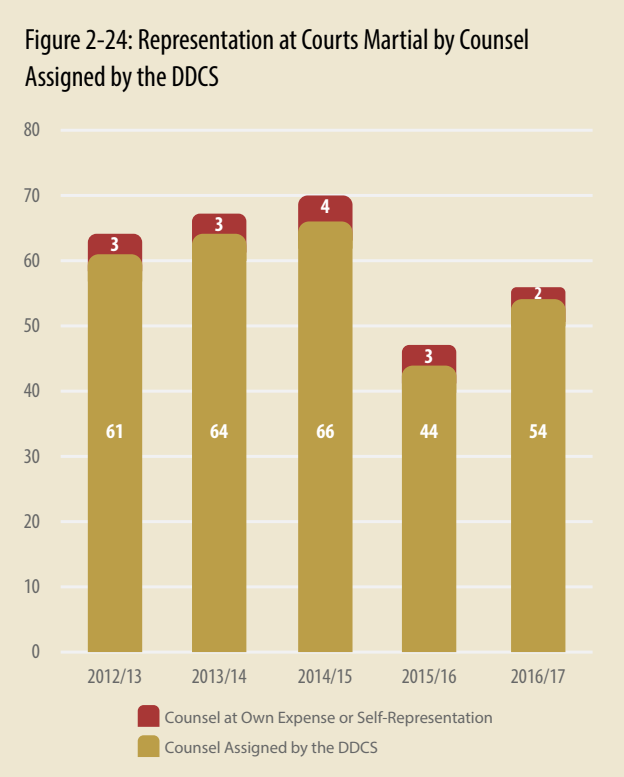


Figure 2-23 illustrates the number of files preferred by the DMP and the number of files where no charges were preferred over the past five reporting periods.²³

DDCS Representation

When facing trial by court martial, accused persons have the right to be represented by counsel assigned by the DDCS at public expense or they may retain civilian counsel at their own expense or choose not to be represented. This past reporting period, accused persons were represented by counsel assigned by the DDCS in 54 of 56 courts martial representing approximately 96 percent of all courts martial.²⁴ This high percentage of accused persons represented by counsel assigned by DDCS has remained consistent over the past five report-

23 In the 2012/13 reporting period one file that was referred to the DMP resulted in the member re-electing to be tried by summary trial. Therefore, this case is counted neither as a preferral nor as a non-preferral.
24 Counsel assigned by the DDCS may be uniformed members of the CAF or pursuant to s.249.21(2) of the NDA, the DDCS may engage the services of civilian counsel to represent accused persons.



ing periods. Figure 2-24 shows the number of courts martial where an accused was represented by counsel assigned by the DDCS for the past five reporting periods.

Court Martial Sitting Days

The total number of days all courts martial sat in this reporting period was 213 days for an average of 3.80 days per court martial. Over the past five reporting periods, the average number of sitting days has ranged from a high of 3.92 days per court martial to a low of 2.91 with the five year average being 3.52 sitting days per court martial. Figure 2-25 shows the total number of court martial sitting days over the past 5 years.

Timelines

During this reporting period the average number of days from referral of a matter to the DMP until charges against an accused were preferred was approximately 89 days. This represents a 17 percent increase in comparison to the 2015/16 reporting period where the average number of days it took to prefer charges once a file was referred to the DMP was approximately 69 days. The average number of days that it took to prefer a charge once a referral has been received by the DMP has increased over

each of the past four reporting periods.²⁵ In the 2013/14 reporting period the average number of days was 49 and that number has nearly doubled to 89 days in the current reporting period. Figure 2-26 illustrates the average number of days from referral to preferral for the past four reporting periods.

The average length of time that it took for a court martial to commence once charges against an accused were preferred also increased during the reporting period. In this reporting period the average number of days that it took for a court martial to commence once charges were preferred was 250 days. In the previous reporting period, the number of days between the preferral of charges and the start of court martial was 179 days. Therefore the average number of days that it took for a court martial to commence once charges were preferred increased by approximately 28 percent.

25 Statistics on the number of days from referral of a file to the DMP to the preferral of charges have only been tracked for the past four reporting periods.

Figure 2-26: Number of Days from Referral of File to DMP to Preferral of Charges

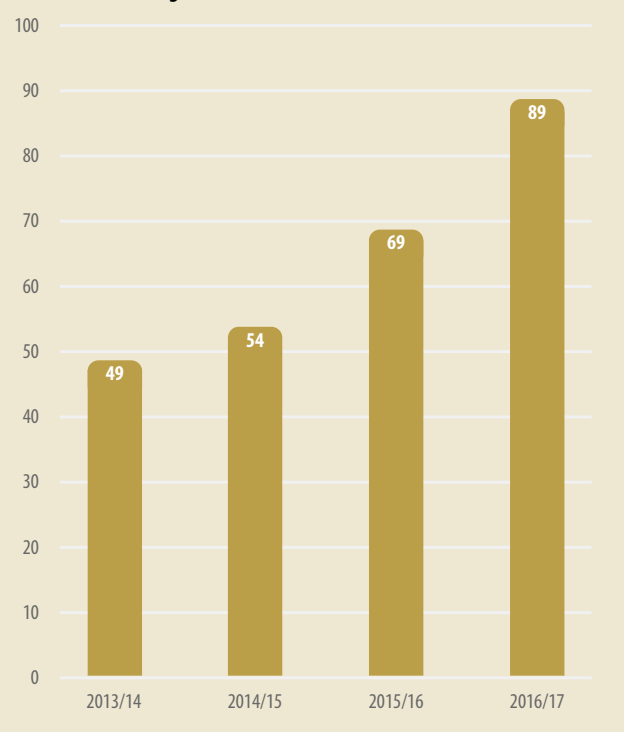


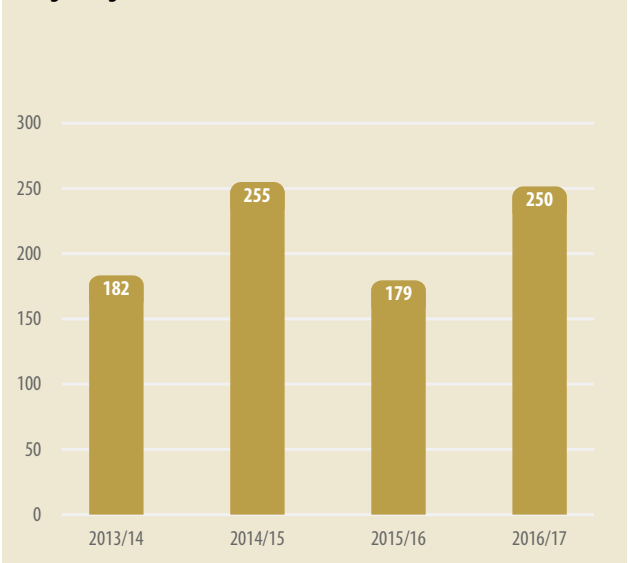
Figure 2-27 shows the average length of time for a court martial to commence once charges against an accused were preferred for the last four reporting periods.

Early in the reporting period the Supreme Court of Canada released its decision in the case of *R. v. Jordan*²⁶ which dealt with the right of an accused to be tried within a reasonable time. That decision created presumptive ceilings beyond which delay (measured from the time of charge to the actual or anticipated end of trial) is presumed to be unreasonable, unless exceptional circumstances exist. The court established a presumptive ceiling of 18 months where the delay is not attributable to an accused for cases tried in provincial court and 30 months for cases tried in the superior court. In the military justice system, the presumptive ceiling that applies has been held to be 18 months from the time of charge to the actual or anticipated end of trial.²⁷

For this reporting period the average number of days from time of charge to the completion of

26 2016 SCC 27.
27 See *R. v. Thiele*, 2016 CM 4015. This case is discussed in detail in Chapter Three.

Figure 2-27: Number of Days from Preferral of Charges to Beginning of Court Martial

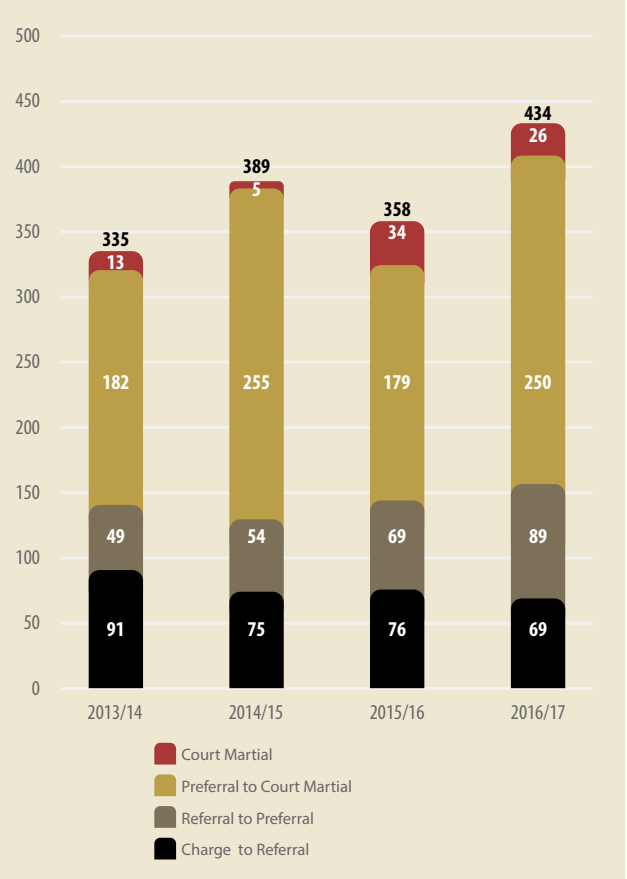


court martial was 434 days, or just over 14 months. Figure 2-28 shows the average number of days from the time of charge to the completion of the court martial for the past four reporting periods broken down by various timeframes.²⁸

It can be seen that over the past four reporting periods, the average time that it takes for a file to move through the referral process once a charge has been laid has decreased from an average of 91 days to 69 days. In addition, in the current reporting period, there was an average of 89 days from the time of referral to preferral and an additional

28 Statistics on the number of days from charge to completion of court martial have only been tracked for the past four reporting periods.

Figure 2-28: Average Number of Days from Charge to Completion of Court Martial



250 days, or just over eight months, between the preferral of charges and the beginning of the court martial. Therefore, the Office of the JAG is examining possible options to reduce overall delay in the court martial process.

Punishments at Court Martial

While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 46 sentences pronounced by courts martial during the reporting period involved 80 punishments. A fine was the most common punishment, with a fine being imposed in 39 cases. Four punishments of imprisonment and four punishments of detention were also imposed by courts martial. Of those eight custodial punishments, two were suspended. In the context of the *Code of Service Discipline*, this means that the offender does not have to 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 2-29 breaks down sentences at courts martial for the past two reporting periods.

Appeals to the Court Martial Appeal Court

During this reporting period, four new notices of appeal were filed with the Court Martial Appeal Court. Of those notices, two were initiated by the accused and two by the prosecution. This reporting period, the Court Martial Appeal Court rendered three decisions, one appeal on the merits

in *R. v. Royes* and two motions for judicial interim release. The case of *R. v. Royes* is discussed in detail in Chapter Three.

Appeals to the Supreme Court of Canada

This reporting period there was one application for leave to appeal to the Supreme Court by the accused in the case of *R. v. Royes*, however the application was dismissed.

Inappropriate Sexual Behaviour

There are a number of offences under the NDA and the *Criminal Code* which may be used to try an accused for inappropriate sexual behaviour at courts martial. These include, but are not limited to, sexual assault, assault, accessing or possessing child pornography, disgraceful conduct, prejudice to good order and discipline, and ill-treatment of subordinates. In most instances it will be clear based on the specific charge whether the alleged conduct constitutes an allegation of inappropriate sexual behaviour. However, in some cases, it may not be as clear whether a particular charge constitutes an allegation of inappropriate sexual behaviour. Such a determination must be made taking into consideration all the relevant circumstances at the time.

In the current reporting period, there were 12 courts martial for inappropriate sexual behaviour. In those 12 trials, there were 24 different charges of inappropriate sexual behaviour including ten

sexual assault charges, two charges of assault, four charges of prejudice to good order and discipline, seven charges of behaving in a disgraceful manner, and one charge of abuse of subordinates.²⁹ This is in comparison to the previous reporting period where there were seven courts martial involving 23 charges of inappropriate sexual behaviour.

During this reporting period, four of the courts martial for inappropriate sexual behavior were contested, resulting in two accused being found guilty and two acquittals. In *R. v. Beaudry*, the accused was found guilty of sexual assault and sentenced to imprisonment for 42 months and dismissal with disgrace from the CAF. In *R. v. Laferrière*, the accused was found guilty of assault, ill-treatment of a person who by reason of rank was subordinate to him, and drunkenness, and was sentenced to a severe reprimand and a fine of \$2500. The case of *R. v. Beaudry* is discussed in further detail in Chapter Three of this report.

In the remaining eight courts martial for inappropriate sexual behavior, the accused pleaded guilty to all charges on which evidence was brought by the prosecution. In seven of these eight courts martial, a joint submission on sentence was submitted by the prosecution and defence. All seven joint submissions were accepted by the military judge. Punishments

in these cases included a reprimand, reduction in rank, and fines ranging from \$500 to \$5000.

Also, in five of the 12 courts martial for inappropriate sexual behaviour, seven charges of sexual assault or assault were either withdrawn by the prosecution or stayed by the military judge. In all of those five cases, the accused pleaded guilty to a lesser offence. A complete breakdown of all courts martial for inappropriate sexual behaviour can be found in Annex C.

²⁹ A complete summary of all charges tried at court martial can be found in Annex B.

Figure 2-29: Punishments at Courts Martial

	2015-2016	2016-2017
Dismissal	2	1
Imprisonment	5*	4
Detention	4	4**
Reduction in Rank	3	9
Forfeiture of Seniority	0	0
Severe Reprimand	10	6
Reprimand	13	17
Fine	32	39
Minor Punishments: Confinement to Ship or Barracks	0	0
Total	69	80

* Two of these punishments of imprisonment were suspended by the Military Judge.
** One of these punishments was suspended by the Military Judge.



CHAPTER 3

Military Justice: Jurisprudence and Policy Initiatives

This chapter highlights key jurisprudence and policy initiatives which has had an impact during the reporting period on the military justice system.

JURISPRUDENCE

Supreme Court of Canada

Minister's right of appeal held to be constitutional – *R. v. Cawthorne*, *R. v. Gagnon* and *R. v. Thibault*, 2016 SCC 32

The panel of a general court martial found Ordinary Seaman (OS) Cawthorne guilty of two child pornography offences under section 130 of the NDA. He appealed the decision to the CMAC, which found that a mistrial should have been granted because of issues regarding answers provided by a witness at trial. Consequently, the CMAC ordered a new trial. The Minister appealed this decision to the Supreme Court of Canada and OS Cawthorne sought to quash the appeal on the basis that the Minister's right to appeal to the Supreme Court under subsection 245(2) of the NDA violates sections 7 and 11(d) of the *Charter*.

In two separate trials, Warrant Officer (WO) Gagnon and Corporal (Cpl) Thibault were each charged with sexual assault. WO Gagnon was found not guilty by a General Court Martial. Cpl Thibault made a plea in bar of trial, claiming insufficient nexus with military service, which was allowed by the military judge. In both cases, the Minister appealed to the CMAC.³⁰

³⁰ At the time of Cpl Thibault's trial, the Supreme Court of Canada had not yet issued its ruling in *R. v. Moriarity*. Therefore, the decision of the CMAC in that case was applicable. The CMAC decision in *Moriarity* held that a military nexus – or a link between the offence and the discipline, efficiency, and morale of the CAF – was required to try an individual under s. 130(1) of the NDA. However, the Supreme Court overturned that decision finding that military service was a sufficient connection to establish military nexus.

WO Gagnon and Cpl Thibault each brought motions to quash the appeal on the basis that the Minister's right to appeal to the CMAC pursuant to section 230.1 of the NDA violates section 7 of the *Charter*. In its decision, the CMAC determined that section 230.1 of the NDA violated the right to an independent prosecutor, which is a principle of fundamental justice under section 7 the *Charter*, and declared the provision invalid. However, the CMAC dismissed the respondents' motions to quash because to do so would be a consequence disproportionate to the societal interest in a determination of the merits of the appeals. Instead, the court adjourned the hearing of the appeals until after the six-month suspension period for the declaration of invalidity of section 230.1 of the NDA. The Minister appealed this decision to the Supreme Court of Canada.

The Supreme Court agreed that the power conferred on the Minister pursuant to ss. 230.1 and 245(2) of the NDA may effect a deprivation of liberty such that section 7 of the *Charter* is engaged. The Court recognized that prosecutors must not act for improper purposes, such as purely partisan motives, as a constitutional principle. A prosecutor, whether it be the Attorney General, a Crown prosecutor, or the Minister exercising a prosecutorial function, has a constitutional obligation to act independently of partisan concerns and other improper motives.

The Court found that the Minister, like any Attorney General, is entitled to a strong presumption that the exercise of prosecutorial discretion is independent of partisan concerns. The Minister's membership in Cabinet does not displace that presumption. The Court found no compelling reason to treat the Minister differently from any Attorney General, also a member of Cabinet, in which the law presumes that he or she can and does set aside partisan duties in exercising prosecutorial responsibilities required of the position. Accordingly, the Court found that the right of appeal conferred on the Minister in sections 230.1 and 245(2) of the NDA does not violate sections 7 or 11(d) of the *Charter*.

As a result of the combination of the Supreme Court's constitutional decision and its determination that the majority of the CMAC had erred

in quashing them, the convictions and sentence entered against OS Cawthorne at court martial were reinstated. The matters against WO Gagnon and Cpl Thibault were remitted to the CMAC for a hearing of the appeals on their merits and in light of the finding that section 230.1 of the NDA is constitutional.

Court Martial Appeal Court

Paragraph 130(1)(a) of the NDA does not violate section 11(f) of the Charter – *R. v. Royes*, 2016 CMAC 1

Master Corporal (MCpl) Royes was convicted in 2013 of one count of sexual assault, stemming from an incident that took place in Wainwright, Alberta in 2012. He appealed to the CMAC on both the legality of the guilty verdict and the constitutionality of paragraph 130(1)(a) of the NDA. The court severed the appeal and heard each basis of appeal separately. In 2014 the CMAC dismissed the appeal with respect to the legality of the guilty verdict. In June 2016, the CMAC dismissed all grounds of appeal on the constitutionality of the NDA, holding that paragraph 130(1)(a), interpreted without a military nexus does not violate section 11(f) of the *Charter*. As a result, the 36 month sentence imposed by court martial in 2013 was upheld.

Seeking to narrow the application of the Supreme Court's decision in *R. v. Moriarity*³¹, MCpl Royes argued that absent the requirement of a military nexus, paragraph 130(1)(a) was overbroad and violated section 11(f) of the *Charter*. The CMAC concluded that the Supreme Court's decision in *Moriarity* effectively dictates that paragraph 130(1)(a) of the NDA does not violate section 11(f) of the *Charter* for overbreadth. The Supreme Court of Canada's decision corrected the CMAC's past approach to the question of overbreadth and determined that, properly interpreted, paragraph 130(1)(a) does not contain a military nexus requirement and even without this requirement the provision is not overbroad.

³¹ 2015 SCC 15.

MCpl Royes applied for leave to appeal to the Supreme Court Canada. That application was denied on February 2, 2017.

On 26 April 2016, while the case of MCpl Royes was on reserve, a different panel of the CMAC heard a further 11 appeals where all accused similarly argued that their section 11(f) *Charter* rights had been violated. The decision of the court has been reserved and by the time of publication no decision has yet been rendered.

Court Martial

Right to be Tried Within a Reasonable Time-
R. v. Thiele, 2016 CM 4015

In June of 2014, Leading Seaman (LS) Thiele assisted another CAF member to purchase oxycodone and cocaine by putting her in touch with a known dealer. Subsequently, the other CAF member reported to the military police that LS Thiele was trafficking drugs. This CAF member eventually became a police agent for the military police in relation to an investigation targeting LS Thiele.

Shortly thereafter, this CAF member informed the accused that she had a friend who wanted to purchase drugs. Unbeknownst to the accused, the friend was an undercover officer (UCO) with the military police. When LS Thiele and the UCO were put in touch, the accused facilitated the purchase of three grams of cocaine for the UCO. A subse-

quent transaction was later arranged between the accused and the UCO for the purchase of heroin. At a public parking lot, the UCO gave the accused \$1800 following which the accused left the vehicle and returned with two bags of a substance later confirmed to be 7.5 grams of heroin. The accused was arrested upon completion of that transaction and was charged with three drug-related offences contrary to s. 130 of the NDA.

After 23 months and 7 days of delay due in part to each party, the matter was brought to trial, where the accused made a preliminary application alleging breach of his *Charter* right to be tried within a reasonable time. In his decision, the military judge acknowledged that the military justice system was not the object of the decision of the Supreme Court of Canada in *R. v. Jordan*³², but persons subject to the *Code of Service Discipline* are not second class citizens and should benefit from developments in the law regarding that issue. Their rights guaranteed by the *Charter* are the same as any other accused before any other court in Canada.

The court found the presumptive ceiling of 18 months as set out in *Jordan* applied as the upper limit for those cases that are tried within the military justice system. Applying those guidelines set out in *Jordan* to the case at hand, the military judge ruled that despite the fact that it took more than 23 months to bring the matter to trial, approximately six months of that delay was attributable to the

32 2016 SCC 27.

defence. Once this was subtracted from the overall delay, the military judge found that the time between the laying of the charge and trial was less than 17 months and fell below the presumptive ceiling. The application was dismissed and the accused subsequently pleaded guilty to all charges.

Following a sentencing hearing where the prosecution and defence proceeded by a joint submission, the accused was sentenced to 15 months imprisonment less two days for time served in pre-trial custody. The accused was also prohibited from possessing any firearm or other weapon for a period of ten years and was ordered to provide bodily substances for forensic DNA analysis pursuant to section 196.14 of the NDA.

Sexual offences – *R. v. Beaudry*, 2016 CM 4010

Corporal (Cpl) Beaudry was tried for sexual assault causing bodily harm and for overcoming resistance by choking. Despite repeated refusals, Cpl Beaudry engaged in non-consensual sexual intercourse with the victim while grabbing her throat.

Cpl Beaudry was convicted on the sexual assault charge and was found not guilty on the charge of overcoming resistance. In determining an appropriate sentence, the military judge held that the offender's behavior was unacceptable, both within society and the CAF. The accused was sentenced to imprisonment for 42 months and dismissal from Her Majesty's service. In addition, there was an order authorizing the taking of number of samples of bodily substances, to comply with the *Sex Offender Information Registration Act*, and a prohibition from him from possessing any weapons for 10 years.

Cpl Beaudry filed a Notice of Appeal and a motion to seek release at the CMAC. The court dismissed the motion for release pending appeal and heard the appeal on the merits on February 23, 2017. A decision on the appeal has yet to be rendered.

Derogatory Comments – *R. v. Crabtree-Megahy*, 2017 CM 1002

Corporal (Cpl) Crabtree-Megahy was charged with one count of conduct to the prejudice of good order and discipline under s. 129 of the NDA for making a series of derogatory comments of a sexual nature. At the dining hall at Canadian Forces Base Borden the accused made a series of derogatory sexual comments regarding the various women that passed by his table. These comments were observed by several CAF members, including a member of the CAF who was senior to the accused.

The accused pleaded guilty to the charge. The prosecution and defence counsel presented a joint submission for a fine in the amount of \$500. The military judge in accepting the joint submission noted that initial counselling for a conduct deficiency was initiated as a result of his actions requiring the accused to familiarize himself with CAF policy with regard to inappropriate sexual behavior in the workplace. The military judge was satisfied that it was in the public interest to accept the joint submission and sentenced Cpl Crabtree-Megahy to a fine of \$500.

Negligence Causing Bodily Injury – *R. v. Cadieux*, 2016 CM 4008

In early September 2014, Corporal (Cpl) Cadieux took part in a pre-deployment training exercise while serving with the Canadian Special Operations Regiment. The exercise occurred in a training area where movement drills were practiced using live rounds. These drills continued into the evening when night vision goggles were used by the participants. Under night-time conditions the accused, as part of a four-person team, completed a drill which involved moving towards a target while supported by other members tasked to provide covering fire. Every person in the training area was using night vision goggles and had a laser mounted on their rifles to assist them in locating their targets. The training participants were wearing two infrared glow sticks, one on each upper arm, to help identify them in the dark.



After engaging two groups of pop-up firing targets the team of four withdrew. During that withdrawal, the accused and another member of the team became separated from the other two members. When the accused saw two white dots in the darkness, he believed they were the lasers of the two other members, fixed on a target. However, the dots originated from the area where the participants providing supporting fire were situated. When the accused turned and fired two rounds in the direction of the dots, one round struck another CAF member who had been staffing a machine gun. The accused was charged with a negligence offence pursuant to s. 127 of the NDA and was subsequently tried by General Court Martial.

At trial, the evidence showed that the victim was seriously injured and that there was a high probability that he would be medically released from the CAF as a result. Following a guilty finding by the panel, counsel for the prosecution and defence made a joint submission on sentencing recommending a punishment of 21 days' detention. Having considered the nature and circumstances of the offence, the military judge encouraged the accused to remember the tragic events and the consequences of his actions, but to continue to live up to his potential as a member of the CAF. The military judge accepted the recommendation of the prosecution and defence and sentenced the accused to 21 days detention.

Joint Submissions – *R. v. Ledoux*, 2016 CM 1019

While deployed in a theatre of operations as a part of a team to train Ukrainian soldiers, Sergeant (Sgt) Ledoux participated in a cultural excursion to Lviv, Ukraine. Before departing, all members on the excursion were briefed that they were to remain in groups of no less than three and were reminded that they were not permitted to consume alcohol.

During the excursion, the accused decided to separate from the group as he did not want to eat at a location chosen by the rest of the group. Further, during the excursion, the accused consumed an unknown quantity of alcohol to the point that he was visibly intoxicated on the return trip to base.

The accused was observed by a number of other group members as having difficulty maintaining his balance, slurring his speech and had vomited several times on the return bus back to base. As a result of this incident, Sgt Ledoux was repatriated from theater prior to the end of his tour and was charged with two counts of conduct to the prejudice of good order and discipline pursuant to s.129 of the NDA as well as one count of drunkenness pursuant to s.97 of the NDA.

At trial the accused entered a guilty plea to the charge of drunkenness and the remaining two charges were withdrawn by the prosecution. At sentencing the prosecution and defence counsel proceeded with a joint submission recommending a reprimand and a fine in the amount of \$1500.

In deciding whether or not to accept the recommendation the military judge acknowledged the recent Supreme Court of Canada decision of *R. v. Anthony-Cook*³³ which dealt with the issue of joint submissions. In that decision the Supreme Court noted that joint submissions play a vital role in contributing to the administration of justice. They allow a high degree of certainty and save the justice system precious time, resources, and expenses, which can be channeled into other matters. This in turn allows the justice system to function more efficiently. However, the Court also noted that counsel must provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence, in order to give the judge a proper basis upon which to determine whether the joint submission should be accepted.

The military judge noted that the Supreme Court affirmed that the public interest test is the proper legal test that trial judges should apply, which means a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

³³ 2016 SCC 43



In the case at hand, the military judge applied the public interest test and accepted the recommendations of counsel. The accused was sentenced to a reprimand and a fine in the amount of \$1500.

Unauthorized Discharge – *R. v. Rouleau*, 2016 CM 3015

Major General (MGen) Rouleau, Commander of the Special Operation Forces Command, was charged with one count of conduct to the prejudice of good order and discipline, contrary to s. 129 of the NDA for an unauthorized discharge of his C8 Carbine occurring in the Canadian area of operations in Iraq on 19 December 2015.

Having arrived in Iraq for an official visit, MGen Rouleau was provided with a pistol and a C8 carbine rifle. He was informed by another member of the CAF, with whom he was travelling, that his C8 carbine rifle was loaded but did not have a round in the chamber. At the first stop of the visit, MGen Rouleau removed his weapon from the vehicle, cocked the action, and mistakenly fired one round into the ground approximately two feet from another CAF member. MGen Rouleau admitted full responsibility for the incident and entered a guilty plea at the earliest possible opportunity. A joint submission on sentencing was submitted by both parties, indicating a fine of \$2000 was appropriate in the circumstances.

The military judge stressed that all unauthorized discharges are treated seriously, regardless of the

member's rank, and considered aggravating and mitigating factors in assessing the appropriateness of the proposed sentence. Aggravating factors included the rank and position of the accused, his experience with the C8 carbine, and the location of the offence in an operational environment. Mitigating factors included a full admission of guilt, lack of criminal record, the incident was out of character, and MGen Rouleau's exceptional career with the CAF.

The court accepted the joint submission made by counsel and sentenced MGen Rouleau to a fine in the amount of \$2,000.

Possession of Prohibited Substances – *R. v. Curran*, 2016 CM 4013

In the early morning hours of August 16, 2014 Private (Pte) Curran was observed by a member of the military police (MP) driving his vehicle on Canadian Forces Base Gagetown with a burnt out headlight. He was stopped a short way off the base and informed of the reason for the stop. During the ensuing conversation between the MP and the accused, the MP noticed a large number of bills in the accused's wallet, and a faint to medium odor of marihuana emanating from the vehicle. The MP shined her flashlight around the vehicle and noticed a large Ziploc bag on the floor behind the driver's seat which appeared to contain marihuana.

The accused was placed under arrest for possession of marihuana, and the vehicle was photographed and searched. As a result of the search, the Ziploc

bag and eight small plastic bags containing beige crystal rocks and powder were seized. Analysis confirmed the large bag contained 82 grams of marihuana, and the smaller bags contained a combined 10 grams of crystal methamphetamine. The accused was charged with two counts of possession for the purpose of trafficking in a substance included in Schedule I, contrary to sections 5(2) of the *Controlled Drugs and Substances Act*, and two counts of possession of a substance included in Schedule I, contrary to section 4(1) of the *Controlled Drugs and Substances Act*.³⁴

The prosecution presented no evidence on the trafficking charges at court martial, and the accused pleaded guilty to two possession charges. Counsel for the prosecution and defence provided a joint submission proposing a sentence of 20 days imprisonment and a fine of \$1000. In accepting this submission, the military judge cited as an aggravating factor the fact that the accused possessed a significant quantity of controlled substances while on base, which directly engages the military community. The seriousness of the offence was further compounded by the accused's two previous convictions at summary trial for use of drugs, which resulted in his reduction in rank from Corporal to

³⁴ Offences under the *Controlled Drugs and Substances Act* are incorporated into the NDA through s. 130 of the NDA which incorporates any act or omission punishable under the *Criminal Code of Canada* or any other act of Parliament to be tried by as a service offence within the military justice system.



fully making a false entry in a document that was required for official purposes; and an act to the prejudice of good order and discipline.

The accused pleaded guilty to an act to the prejudice of good order and discipline and the prosecution withdrew the remaining four charges. The prosecution and defence proceeded by joint submission recommending a sentence of a severe reprimand and a fine in the amount of \$3000. In his sentencing decision, the military judge noted that the accused pleaded guilty and also that she suffered from a number of physical and mental health disorders and was to be medically released from the CAF in March of 2017. The military judge accepted the joint submission and sentenced the accused to a severe reprimand and a fine of \$3000.

Viewing Pornographic Material on Workplace Computer - *R. v. Hamelin*, 2017 CM 4005

In June 2015, a civilian information technician informed the Canadian Forces National Investigation Service (CFNIS) of suspicious activity on Major Hamelin's user log. A subsequent analysis of the accused's hard drive revealed that 90 files containing pornographic images were downloaded or viewed in June 2015 and were then subsequently deleted. During an interview with CFNIS investigators the accused admitted to having viewed the images in question on his workplace computer. He also indicated that he was aware that CAF policy

prohibits the use of workplace computers and networks to access pornography. Despite knowing his actions were wrong, the accused continued to access and download pornographic images for nearly two weeks. Major Hamelin was charged with one count of act to the prejudice of good order and discipline contrary to section 129 of the NDA.

The accused pleaded guilty to the offence and the prosecution and defence, in a joint recommendation to the military judge, recommended a punishment of a reprimand and fine in the amount of \$1800. The military judge in his decision noted that the actions of the accused indicated a significant lack of respect for the accused's functions as a senior officer and for his obligation to comply with orders pertaining to the protection of the security of DND computers and information systems. The military judge also noted that the offence involved 90 pornographic images accessed or downloaded over a period of several days as opposed to a one-time weakness. After considering these factors along with various mitigating factors such as the accused's guilty plea, the military judge accepted the joint submission and sentenced Major Hamelin to a reprimand and fine of \$1800.

Unauthorized Wearing of Medals - *R. v. Fancy*, 2016 CM 1010

On 11 November 2014, Master Warrant Officer (MWO) Fancy wore three Canadian Forces medals

and a specialist skill badge which he was not authorized to wear on his uniform while participating in a Remembrance Day parade. The medals in question were a Somalia medal, a General Campaign Star, and a South-West Asia medal.

The accused had previously worn the medals and decorations in question at a unit function in January of 2014, raising concern from a number of the accused's colleagues. When the accused was approached about the matter he indicated that he had earned the medals and decorations and stated that he would locate the required documentation to update his personnel records. When the accused wore the medals and decorations again on 11 November 14, without having provided such documentation, an investigation was commenced which determined that the accused was not permitted to wear them. MWO Fancy was charged with two counts of unlawful use of military uniforms pursuant to s.419 of the *Criminal Code* and three counts of conduct to the prejudice of good order and discipline pursuant to s.129 of the NDA.³⁵

At court martial the unlawful use of a military uniform charges were withdrawn and the accused pleaded guilty to the remaining s.129 charges. The prosecution and defence agreed to a joint submis-

sion on sentencing and recommended a fine of \$300 and a reduction in rank to the rank of warrant officer. The military judge considered the nature and circumstances of the offence, including the lack of integrity and respect shown to medals and decorations awarded to CAF members. The military judge accepted the recommendation and sentenced the accused to a fine of \$300 and a reduction in rank to warrant officer.

POLICY INITIATIVES

Court Martial Comprehensive Review

Pursuant to his statutory responsibilities for superintendence and for the conduct of regular reviews of the administration of military justice under subsections 9.2(1) and (2) of the NDA, on 13 May 2016, the JAG directed the Deputy Judge Advocate General for Military Justice (DJAG MJ) to conduct a comprehensive review of the CAF's court martial system. The purpose of this 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 analyze options to enhance the effectiveness, efficiency, and legitimacy of that system.

35 Offences under the *Criminal Code of Canada* are incorporated into the NDA through s. 130 of the NDA which incorporates any act or omission punishable under the *Criminal Code of Canada* or any other act of Parliament to be tried by as a service offence within the military justice system.

The comprehensive review commenced on 15 July 2016, and will produce a draft policy-based report for the JAG by 21 July 2017.³⁶

The Court Martial Comprehensive Review Team (CMCRT), comprised of legal officers from the Military Justice Division, is considering the following subject matter areas:

- 1. 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;
- 2. 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;
- 3. 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

36 Amendments to Terms of Reference – Court Martial Comprehensive Review, 11 July 2017.

part at public expense; and, capable of being provided within austere or hostile environments inside and outside of Canada;

- 4. 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;
- 5. 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;
- 6. The laws of evidence that ought to apply at trials in respect of service offences;
- 7. The rights, grounds, and mechanisms of appeal that ought to exist for the Crown and for persons subject to the CSD; and,
- 8. The special needs of any particular groups who may interact with the military justice system, including victims, young persons, and aboriginal offenders.

During the reporting period, the CMCRT conducted extensive public and internal CAF consultation to seek input on the subject matter areas to be reviewed and analyzed. Additionally, as part of



its review, the CMCRT conducted technical visits involving consultation with foreign subject matter experts from ten countries (United States, Australia, New Zealand, United Kingdom, Ireland, France, Netherlands, Denmark, Norway, and Finland). The CMCRT also took advantage of opportunities for less in-depth knowledge exchanges with military justice experts from Singapore and Israel, as part of other visits to these places that were being conducted by Office of the JAG legal officers. This comparative study by the CMCRT of how other states operate their military justice systems exposed the CMCRT to a full range of military justice considerations, structures, practices, and outcomes.

JAG Superintendence

In the previous reporting period the JAG announced the creation of a team to develop and pilot an audit process for the collection of objective and measurable data in order to better assess the unit level administration of the *Code of Service Discipline*. Upon commencing the work it became clear that in order to better audit specific units within the CAF on their obligations regarding the administration of military justice, a more comprehensive case management tool and database was necessary as one of its primary functions would be to facilitate the collection of measurable data at the unit level. This would benefit all commanders within the CAF by providing them with improved oversight of all

disciplinary matters within their area of responsibility while also making their military justice processes more efficient.

Therefore, the focus of the project has shifted to the creation of a military justice case management tool and database. Since that time, personnel within the MJ Division have examined several options such as purchasing an existing case management tool and database from one of several provincial jurisdictions, developing one in consultation with an external organization, or building one internally. These options continue to be canvassed in order to determine the most efficient and economical course of action.

It is envisioned that the military justice case management tool and database would be an electronic system designed to track military justice files from the reporting of an alleged infraction, through to investigation, charge laying, trial disposition and review in both the summary trial and court martial processes.

It would provide commanders at all levels with a user-friendly case management tool that would enhance the administration of military justice at the unit level by providing unit authorities with a real-time overview of discipline matters allowing them to track the progress of a file through all of the procedural steps within the process. This would allow unit authorities and legal officers to track the

progress of a file in real-time ensuring that a case proceeds through the system in a timely manner.

In addition, the military justice case management tool and database would also compile all relevant statistics on the administration of military justice by providing oversight of the entire military justice system. Such information would be available by commanders at all levels and allow them to maintain situational awareness of all disciplinary matters from the tactical level through to the strategic level.

The creation of a military justice case management tool and database would also enhance the JAG’s ability to superintend the administration of military justice by:

- allowing the JAG to maintain an overall appreciation and up-to-the-minute awareness of the efficiency and effectiveness of the functioning of the military justice system;
- identifying and implementing procedures to assist commanders at all levels in their responsibilities for the day-to-day administration of the military justice system by making specific recommendations to improve and enhance their military justice related processes;
- identifying larger trends in the administration of military justice, including those areas that may require further investigation; and,
- providing complete information allowing for evidence-based recommendations for the responsible development of the military justice system and ensuring positive change within the system.

Summary Trial Working Groups

Building on previous work undertaken by the Canadian Armed Forces Discipline Advisory Council, in the reporting period the JAG sought input from the chain of command to develop and consider options for the renewal of the summary trial system to promote the prompt and fair administration of military justice in respect of non-criminal breaches

of discipline. The JAG, with approval from the Chief of Defence Staff, coordinated the establishment of two working groups comprised of unit commanding officers and their most senior non-commissioned members with representation from all CAF environments. The issues discussed during these working groups covered a wide variety of topics focusing specifically on the summary trial system and included the structure of investigations, charge-laying authorities, disciplinary infractions and sanctions in the summary trial system and also included participation in hypothetical scenarios.

The information obtained from these working groups has provided the JAG with an additional command perspective on the administration of military justice at the unit level. This will be of assistance to the JAG in ensuring that the military justice system, particularly at the summary trial level, remains responsive to the needs of the CAF.

One of the primary observations of the working groups was delay in the summary trial process. It was believed that the requirement to offer an election as well as the requirement for legal advice at multiple stages in the process added time in the process and was counter to one of the main purposes of the summary trial system which is to administer justice in a prompt and efficient manner. Participants also commented on the referral process and questioned whether the requirement for a file to be sent to a referral authority before being referred to the DMP added any value to the process. It was believed that this step added time in the process and that there were other ways in which a referral authority could comment on public interest while still ensuring that a file was referred to the DMP in a more expedient manner.

Aside from issues of delay, the working groups also observed that the punishments available at summary trial are not as effective for maintaining discipline in the reserve context. It was noted that due to the part-time working nature of reservists misconduct is generally not properly dealt with through the military justice system as the system is designed to better deal with those full time



members of the Regular Force. As a result, reserve units are often turning to administrative measures and other forms of informal discipline to enforce and maintain discipline within their units.

Director of Military Prosecutions Policy Amendments

This reporting period, the DMP amended a number of his policy directives concerning the conduct of prosecutions of offences of a sexual nature. The two main objectives of that policy review were to ensure that offences of a sexual nature are prosecuted in the appropriate justice system and that the views of complainants are solicited, considered and addressed at all phases of the court martial process. As a result, the views of the victim are now formally incorporated into the list of factors that the prosecution must consider when determining whether the charges should proceed in the military or civilian justice system. The victim will also be informed of all decisions regarding the choice of jurisdiction, whether or not to prefer charges and of the reasons supporting those decisions.

Although it is inevitable that any process, whether in the military or civilian justice systems, will require a complainant to relive the circumstances of the

alleged offence, efforts can be made to minimize the effect that this will have on the complainant. Therefore, in order to ensure that the impact of the process is minimized as much as possible, the DMP has directed that offences of a sexual nature will be given scheduling priority in order to move those cases through the military justice system as expeditiously as possible. In addition, every effort is to be made to ensure that it is the same prosecutor handling the case from beginning to end in order to avoid the complainant having to recount their version of events on multiple occasions to different individuals.

The DMP has also re-issued his policy on interviewing witnesses reminding his prosecutors that the comfort of the witness during an interview is of key importance. As circumstances permit, interviews should be in private and prosecutors must maintain an approach that is professional and respectful. In addition, the DMP has reminded prosecutors that they shall treat all witnesses and complainants in particular with courtesy, sensitivity and respect, bearing in mind the emotional interest one might reasonably expect the complainant to have in the proceedings. Further the prosecutor shall:

- make all reasonable efforts to answer any questions posed by the complainant in respect of the proceedings;

- take all reasonable steps to ensure that the complainant understands the nature of the proceedings;
- where appropriate, inform the complainant of available support and counseling resources of which the prosecutor is aware;
- make all reasonable efforts to keep the complainant informed with respect to the proceedings including plea and sentence discussions undertaken, any verdict, sentence or other final decision in the case; and
- always consider the propriety of special accommodations, and shall discuss the availability of such matters with the complainant in appropriate cases.

In order to minimize the potential for additional trauma that a complainant may suffer while testifying at a court martial the DMP has directed that prosecutors consider additional measures to accommodate a complainant's security and comfort while testifying at court martial including:

- the exclusion of the public during the complainant's testimony;
- measures which could allow the complainant to testify out of public view;
- the use of a support person during testimony;
- the use of affidavit evidence;
- measures taken which could prevent an accused from personally cross-examining the complainant in those situations where an accused may be self-represented; and
- requesting an order from the court to ban the publication of any information that might tend to identify the victim.

All of the DMP Policy Directives can be found at <http://jag.mil.ca/justice/prosecutions-poursuites-eng.asp#cmpsDirectives>.



CHAPTER 4

The Way Ahead

In the upcoming reporting period the Office of the JAG, under the leadership of a new JAG, will continue to advance a number of initiatives designed to enhance the military justice system. For example, the Court Martial Comprehensive Review Team should complete its review of the court martial system's effectiveness, efficiency and legitimacy. Once a draft report has been submitted to the JAG, a thorough review and analysis of the draft report will be undertaken with a view to determining the next steps.

In addition, the Office of JAG will continue to work towards the development and implementation of a military justice case management tool and database which will assist the JAG in his overall superintendence of the administration of military justice in the CAF. It is envisioned that this case management tool and database will allow the JAG to maintain an overall awareness of the efficiency and effectiveness of the functioning of the military justice system. In addition, it will assist commanders at all levels in their responsibilities for the day-to-day administration of the military justice system by better positioning the JAG to make specific recommendations to improve and enhance their military justice related processes. Such evidence-based recommendations would ultimately promote the responsible development of the military justice system and ensure positive change within the system.

In relation to the summary trial system, the Office of the JAG will continue to investigate the decrease in the number of summary trials as well as the number of charges disposed of by summary trial in order to determine the cause and whether any action may be appropriate moving forward. It will also monitor the percentage of accused who elect trial by court martial to see if that number continues to increase in the next reporting period.

The Office of the JAG also continues to work with the Department of Justice towards the completion of the regulations required to bring the remaining provisions of Bill C-15, the *Strengthening Military Justice in the Defence*, into force. Bill C-15 comprises the most significant amendments to the NDA since 1998 and has required a number of extensive regulatory amendments in relation to military justice. Bill C-15 continues to improve various aspects of the military justice system including a number of provisions that, when brought into force, will provide victims of service offences with specific procedural rights such as their right to make victim impact statements during the sentencing phase of courts martial and the ability of a court martial to make an order for restitution similar to those provisions that exist in the *Criminal Code of Canada*.

Finally, the Office of the JAG will continue to support the CDS and the chain of command towards the elimination of harmful and inappropriate sexual behaviour within the CAF. Such behaviour not only undermines our ability to achieve our mission of defending Canadian interests at home and abroad, but it also impacts on the discipline, efficiency and morale of the CAF. The military justice system plays a complementary role to Operation HONOUR and provides a valuable tool for all commanders in the elimination of harmful and inappropriate sexual behaviour as any inappropriate and harmful misconduct can seriously undermine discipline and morale in the CAF. The Office of JAG remains committed to ensuring that the military justice system plays an important role in dealing with and supporting complainants and that those individuals who are alleged to have committed offences of a sexual nature are dealt with according to the rule of law.

CONCLUSION

This past year has been a busy one in terms of the development of military justice. Legal officers within the Office of the JAG have continued to advance a variety of policy and legislative initiatives while also responding to a number of other challenges within the military justice system. In doing so, they have proven themselves to be experts in the area of military justice and military law. However, despite the work that has been undertaken thus far, challenges remain such as the ongoing review of the court martial system and advancing the JAG's ability to superintend the administration of military justice in the CAF.

Canada's military justice system is a fair, efficient and essential element in promoting the operational effectiveness of the CAF and ensuring justice for its members. It protects and promotes our democratic values and the rule of law responsibly and in line with Canadian values. It is a first-class system designed for the unique requirements of a professional military force and is an effective tool to ensure that the discipline, efficiency and morale of the CAF is maintained to the highest possible standard. All Canadians, especially CAF members, can have the utmost confidence in Canada's system of military justice.

Summary of Charges Disposed of at Summary Trial

NDA SECTION	DESCRIPTION	2015-2016		2016-2017	
		#	%	#	%
83	Disobedience of lawful command	32	2.86	32	3.92
84	Striking or offering violence to a superior officer	3	0.27	2	0.24
85	Insubordinate behavior	72	6.44	44	5.39
86	Quarrels and disturbances	38	3.40	31	3.79
87	Resisting or Escaping from Arrest or Custody	0	0.00	1	0.12
90	Absence without leave	464	41.50	395	48.35
91	False statement in respect of leave	2	0.18	0	0
93	Cruel or Disgraceful Conduct	0	0	1	0.12
95	Abuse of subordinates	5	0.45	11	1.35
97	Drunkenness	136	12.16	109	13.34
101.1	Failure to comply with conditions	4	0.36	1	0.12
108	Signing Inaccurate Certificate	0	0.00	1	0.12
111	Improper driving of vehicles	2	0.18	4	0.49
112	Improper use of vehicles	8	0.72	10	1.22
114	Stealing	8	0.72	7	0.86
115	Receiving	2	0.18	0	0.00
116	Destruction, damage, loss or improper disposal	8	0.72	9	1.10
117	Miscellaneous offences	3	0.27	7	0.86
125	Willfully made a false statement in a document	6	0.54	11	1.35
127	Injurious or destructive handling of dangerous substances	2	0.18	1	0.12
129	Conduct to the prejudice of good order and discipline – Negligent discharge	13	1.16	5	0.61
129	Conduct to the prejudice of good order and discipline – Sexual Harassment	21	1.87	23	2.82
129	Conduct to the prejudice of good order and discipline – Inappropriate relationships	15	1.34	2	0.24
129	Conduct to the prejudice of good order and discipline – Alcohol related	48	4.29	25	3.06
129	Conduct to the prejudice of good order and discipline – Drug related	37	3.31	9	1.11
129	Conduct to the prejudice of good order and discipline – Other	178	15.92	60	7.34
130(4(1) CDSA)	Possession of a controlled substance	6	0.54	4	0.49
130(129 CC)	Offences Relating to Public or Peace Officer	1	0.09	0	0
130(266 CC)	Assault	2	0.18	8	0.98
130(267 CC)	Assault with a weapon or causing bodily harm	2	0.18	3	0.37
130(430 CC)	Mischief	0	0	1	0.12
Total		1118	100	817	100

Note: For statistics relating to prior years, refer to previous JAG Annual Reports.
* *Controlled Drugs and Substances Act*, (S.C. 1996, c. 19).
** *Criminal Code*, (R.S.C., 1985, c. C-46).

Summary of Charges Disposed of at Court Martial

NDA SECTION	DESCRIPTION	2015-2016	2016-2017
		#	#
83	Disobedience of lawful command	7	3
84	Striking or Offering Violence to a Superior	0	1
85	Insubordinate behaviour	7	7
86	Quarrels and disturbances	1	7
88	Desertion	2	2
90	Absent without leave	16	1
93	Cruel or disgraceful conduct	2	8
95	Abuse of subordinates	3	2
97	Drunkenness	4	9
98	Malingering, aggravating disease or infirmity or injuring self or another	0	2
101.1	Failure to comply with conditions	11	1
112	Improper use of vehicles	1	0
114	Stealing	3	3
115	Receiving	0	2
116	Destruction, damage, loss or improper disposal	3	3
117	Miscellaneous offences	5	5
124	Negligent performance of a military duty	0	2
125(a)	Wilfully (or negligently) made a false entry	8	5
125(c)	With intent to deceive, altered a document issued for military purpose	1	0
127	Injurious or destructive handling of dangerous substances	0	2
129	An act to the prejudice of good order and discipline	39	36
130(4(1) CDSA)	Possession of a controlled substance	0	4
130 (5(1) CDSA)	Trafficking in substance	0	3
130 (5(2) CDSA)	Possession for purpose of trafficking	0	3
130 (82(1) CC)	Possession without lawful excuse	0	2
130 (86(1) CC)	Negligent Handling of a Firearm	0	2
130 (86(2) CC)	Contravention of storage regulations	0	2
130 (91(1) CC)	Unauthorized possession of a firearm	0	1
130 (91(2) CC)	Unauthorized possession of prohibited weapon or restricted weapon	0	2
130 (92(2) CC)	Possession of a prohibited weapon	0	1
130 (95 CC)	Possession of a Prohibited or Restricted Firearm With Ammunition	0	1
130 (101(2) CC)	Transfer without authority	1	0
130 (104(2) CC)	Unauthorized importing	1	0
130 (221 CC)	Causing bodily harm by criminal negligence	0	1
130 (129 CC)	Offences relating to public or peace officer	3	1
130 (246(a) CC)	Bodily harm, overcoming resistance to commission of offence	0	1

NDA SECTION	DESCRIPTION	2015-2016	2016-2017
		#	#
130 (249.1(a) CC)	Dangerous operation of a motor vehicle	2	0
130 (153(a) CC)	False Statements, evasion of duties	1	0
130 (163.1(4)CC)	Possession of child pornography	1	0
130 (163(4.1) CC)	Accessing Child Pornography	1	0
130 (264.1 CC)	Uttering threats	3	2
130 (266 CC)	Assault	1	3
130 (267 CC)	Assault with a weapon or causing bodily harm	2	1
130 (268 CC)	Aggravated Assault	0	1
130 (270.01 CC)	Assaulting a peace officer causing bodily harm	1	0
130 (271 CC)	Sexual assault	4	9
130 (272 CC)	Sexual assault causing bodily harm	0	1
130 (334(a) CC)	Punishment for theft - value stolen does not exceed \$5000	1	1
130(354 CC)	Possession of stolen property	0	1
130(355.2 CC)	Trafficking in property obtained by crime	2	0
130 (342.1 CC)	Unauthorized use of a computer	7	0
130 (367 CC)	Commits Forgery	3	0
130 (368 CC)	Uttering a forged document	4	0
130 (380(1) CC)	Fraud	3	1
139 (419 CC)	Unlawful use of military uniforms and certificates	0	2
Total Offences		154	147

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.)).

Overview of Cases of Inappropriate Sexual Behaviour*

NAME	CHARGE	PLEA	DISPOSITION	JOINT SUBMISSION ON SENTENCE?	SENTENCE
Cpl Beaudry	Sexual assault causing bodily harm	Not guilty	Guilty	No	42 months imprisonment and dismissal
	Overcoming resistance by choking	Not Guilty	Not guilty		
2Lt Brunelle	Behaved in a disgraceful manner	Guilty	Guilty	Yes	Severe reprimand and \$3000 fine
MWO Chapman	Sexual Assault	Not Guilty	Stayed	Yes	Reduction in rank and \$2500 fine
	Behaved in a disgraceful manner	Guilty	Guilty		
Capt Christensen	Sexual assault	Not Guilty	Stayed	Yes	Reduction in rank
	Behaved in a disgraceful manner	Guilty	Guilty		
Cpl Crabtree-Megahy	Conduct to the prejudice of good order and discipline	Guilty	Guilty	Yes	\$500 fine
	Behaved with contempt toward a superior officer	N/A	With-drawn		
Sgt Laferrière	Sexual Assault	Guilty of the lesser but included offence of assault	Not Guilty	No	Severe reprimand and \$2500 fine
	Ill-treated a person who by reason of rank is a subordinate	Not Guilty	Guilty		
	Drunkenness	Not Guilty	Guilty		
Bdr Plante	Assault	Not Guilty	Stayed	Yes	Reprimand and \$1000 fine
	Conduct to the prejudice of good order and discipline	Guilty	Guilty		
MS Steven	Conduct to the prejudice of good order and discipline	Guilty	Guilty	Yes	Severe reprimand and \$3000 fine
	Drunkenness	Guilty	Guilty		

* A determination of which offences constitute inappropriate sexual behaviour is based on all of the circumstances of the case and is not related to any administrative decisions or actions that may be taken against a member in any particular case.

Overview of Cases of Inappropriate Sexual Behaviour

NAME	CHARGE	PLEA	DISPOSITION	JOINT SUBMISSION ON SENTENCE?	SENTENCE
Maj St-Pierre	Sexual Assault	Not Guilty	Stayed	Yes	Reduction in rank, severe reprimand, \$5000 fine
	Behaved in a disgraceful manner	Guilty	Guilty		
	Drunkenness	Guilty	Guilty		
	Sexual Assault	Not Guilty	Stayed		
	Behaved in a disgraceful manner	Guilty	Guilty		
	Drunkenness	Guilty	Guilty		
	Sexual Assault	Not Guilty	Stayed		
	Behaved in a disgraceful manner	Guilty	Guilty		
WO Wellowszky	Assault	N/A	With-drawn	No	Reduction in rank, reprimand, and \$1000 fine
	Behaved in a disgraceful manner	Guilty	Guilty		
	Conduct to the prejudice of good order and discipline	Guilty	Guilty		
MCpl Jackson	Sexual Assault	Not Guilty	Not Guilty	N/A	N/A
	Behaved in a disgraceful manner				
OCdt Whitehead	Sexual Assault	Not Guilty	Not Guilty	N/A	N/A