



National
Defence

Défense
nationale

A review from 1 April 2002 to 31 March 2003

Annual Report

of the Judge Advocate General to
the Minister of National Defence
on the administration of military
justice in the Canadian Forces



Canada



Office of the
Judge Advocate General

Cabinet du
Juge-avocat général

ISBN D1-16/2003 0-662-67322-0

Art Direction: DGPA Creative Services CS02-0566

Judge Advocate General



Juge-avocat général

National Defence
Headquarters
Constitution Building
305 Rideau Street
Ottawa, Ontario
K1A 0K2

Quartier général de
la Défense nationale
Edifice Constitution
305, rue Rideau
Ottawa (Ontario)
K1A 0K2

23 May 2003

The Honourable John McCallum
Minister of National Defence
National Defence Headquarters
101 Colonel By Drive
Ottawa ON K1A 0K2

Dear Minister,

It is my honour to present to you the fourth Annual Report of the Judge Advocate General on the Administration of Military Justice in the Canadian Forces, made pursuant to Section 9.3 of the *National Defence Act*.

Yours truly,

A handwritten signature in cursive script, appearing to read "Pitzul".

Jerry S.T. Pitzul, Q.C.
Major-General

Canada 



The maple leaves framing the badge of the Canadian Forces Legal Branch represent service to Canada, and the Crown, service to the Sovereign. The dark background of the central device signifies the blindfolded figure of justice, and symbolizes the impartiality of the justice system. Against the background the scales of justice are held aloft on a pointless curtana sword by a mailed right hand. The mailed hand represents military justice, while the pointless sword denotes the mercy that we trust prevails in judgment.

The motto "*FIAT JUSTITIA*" means, "*LET JUSTICE PREVAIL*".



Table of Contents

Judge Advocate General Communiqué	iv
Chapter 1: The Office of the Judge Advocate General	1
1.1 Duties and Powers of the JAG in Canadian Law	1
1.2 Statutory Responsibility	2
1.3 Organization of the Office of the JAG	2
1.4 Areas of the Office of the JAG Involved in Military Justice.....	4
1.5 Department of National Defence/ Canadian Forces Legal Advisor	8
Chapter 2: Superintendence and Review of the Canadian Military Justice System.....	9
2.1 The Two Tiers of the Military Justice System	9
2.2 Analysis of Summary Trial Statistics	9
2.3 Analysis of Court Martial Statistics	13
2.4 Review and Reporting Framework	15
2.5 KPMG Survey on the Summary Trial System	15
2.6 Interview Survey of Stakeholders.....	19
2.7 Client Satisfaction Survey	20
2.8 Committees on Military Justice.....	20

Chapter 3: Judge Advocate General Initiatives	23
3.1 Introduction	23
3.2 Court Martial Delay	23
3.3 Statutory Amendments	25
3.4 Changes in Regulations	26
3.5 Judge Advocate General Policy Guidance	27
3.6 Military Justice Education and Training	27
3.7 Other Military Justice Initiatives	32
Chapter 4: The Office of the Chief Military Judge	37
4.1 Military Judges	37
4.2 Designation of the Chief Military Judge	37
4.3 Military Judges Compensation	38
4.4 Reserve Military Judges Panel	39
Chapter 5: Appeals from Courts Martial to the Court Martial Appeal Court of Canada and the Supreme Court of Canada	41
5.1 The CMAC Year in Review: 1 April 2002 to 31 March 2003....	41
5.2 CMAC Decisions of Note.....	42
Chapter 6: Conclusion	45
Annex A: A Précis of the Canadian Military Justice System.....	49
Annex B: Organization Chart of the Office of the Judge Advocate General and Maps and Addresses/Phone Numbers of Judge Advocate General Offices.....	69
Annex C: Organization Chart Displaying the Relationship of the Judge Advocate General to the Minister, the Chief of the Defence Staff and the Deputy Minister	79

Annex D:	Summary Trial Year in Review — Statistics: 1 April 2002 to 31 March 2003	81
Annex E:	Court Martial Year in Review — Statistics: 1 April 2002 to 31 March 2003	89
Annex F:	Court Martial Appeal Court Year in Review — Statistics: 1 April 2002 to 31 March 2003	97
Annex G:	Certification Training Year in Review — Statistics: 1 April 2002 to 31 March 2003	99
Annex H:	Judge Advocate General Directive	101
Annex I:	Annual Report of the Director of Defence Counsel Services for the period of 1 April 2002 to 31 March 2003.....	105
Annex J:	Report of the Director of Military Prosecutions for the period of 1 April 2002 to 31 March 2003.....	115

Judge Advocate General Communiqué



Once again I have the honour and privilege of delivering the Judge Advocate General's annual report to the Minister of National Defence on the administration of military justice in the Canadian Forces. As the statutory and regulatory amendments made in 1999 mature and take hold, my office continues to observe improvement in the system.

Last year I specifically commented on the unprecedented challenges and demands being placed on the Office of the Judge Advocate General, due in part to the changing global security environment. Those demands have grown over the last twelve months as the office continues to support the ongoing campaign against terrorism and respond to a significant increase in client demands for dedicated legal services.

Despite the increased demands on Judge Advocate General resources, progress has been made on a number of important longer-term issues such as ongoing internal education and reducing delay before courts martial. This report highlights these and other matters, including:

- an overview of service tribunal activity within the military justice system;
- the performance of the military justice committee structure and surveys undertaken in support of the review function;
- military justice training and outreach activities; and
- other initiatives aimed at enhancing the responsiveness and credibility of the military justice system, including the report of the Chief of Review Services on the implementation of sentences.

The visibility of the military justice system outside the Canadian Forces, particularly within other government departments and the broader legal community, is essential in ensuring that the system

continues to reflect the values and norms of Canadian society. Unfortunately, insufficient awareness has seen the introduction of statutory reform in some areas where the military justice system has subsequently had to “catch-up”. Similarly, a recent initiative of the Federation of Law Societies aimed at improving the mobility of lawyers between Canadian jurisdictions initially did not consider the impact on those practicing in the area of military law. These situations demonstrate the importance of our outreach program and the need to continue our efforts in this area.

Within the Canadian Forces, we have seen a continuation of our education efforts with the updating of the *Guide for Accused and Assisting Officers*, and the distribution of several military justice pamphlets designed to assist Canadian Forces members in their understanding of the military justice system.

The military justice committee structure has remained active with the individual committees continuing to make positive contributions. For example, the Code of Service Discipline Committee identified the need for referral authority training and requested the development of an appropriate program. On the basis of this request the Directorate of Law/Military Justice Policy and Research, with the assistance and support of the Director of Military Prosecutions and the Canadian Forces Provost Marshal, coordinated and conducted a seminar for referral authorities in the fall of 2002. The seminar was a success with all participants gaining a better understanding of their important role in the system.

On 21 March 2003 the Minister of National Defence announced that the former Chief Justice of the Supreme Court of Canada, the Right Honourable Antonio Lamer, had been selected to conduct the legislatively mandated review of the Bill C-25 amendments to the *National Defence Act*. A significant amount of work has been undertaken during the reporting period in preparation for this review and this effort will continue.

Our allies view the Canadian military justice system as a model that has successfully balanced the norms and expectations of society with the unique needs of a military force. This recognition provides a clear endorsement for the changes that have been implemented. However, as I have noted in many forums since being appointed Judge Advocate General, reform of the military justice system is not a one-time event but rather an ongoing process. For this reason the reform process has been and remains one of my key strategic objectives.

Much has been accomplished in the last year thanks to the work and efforts of all those involved in advancing the cause of military justice. Without their dedication and commitment to the service of Canada, the Office of the Judge Advocate General would be unable to carry out its mission of providing effective and efficient legal advice and services in respect of military law and to superintend the military justice system.

A handwritten signature in cursive script, appearing to read "Pitzul".

Jerry S.T. Pitzul
Major-General, Q.C.
Judge Advocate General



Chapter 1

The Office of the Judge Advocate General

1.1 Duties and Powers of the JAG in Canadian Law

The Minister of National Defence, as an elected Member of Parliament and member of the executive, is accountable to Parliament for the proper functioning of the Department of National Defence (DND) and the Canadian Forces (CF), including the administration of military justice. However, due to the constitutional requirement to maintain an appropriate separation between the executive and the judiciary, the *National Defence Act* (NDA) deliberately insulates the Minister and other members of the executive from the military judiciary.

To ensure transparent accountability to the Minister of National Defence, the NDA provides for the appointment of the Judge Advocate General (JAG) by the Governor in Council,¹ and sets out the duties, powers and functions of the JAG in Canadian law. In addition to being the legal adviser to the Governor General, the Minister of National Defence, DND and the CF in matters relating to military law,² the JAG is also charged explicitly and specifically with the superintendence of the military justice system in the CF.³

1 NDA section 9(1).

2 NDA section 9.1.

3 NDA section 9.2.

1.2 Statutory Responsibility

The JAG is statutorily responsible to the Minister of National Defence and “accountable”⁴ for the legal advice given to the Chief of the Defence Staff, the military chain of command, and to the Deputy Minister. This accountability structure was designed to ensure the independence of the Office of the JAG from the chain of command in the provision of legal advice in all areas, including military justice.

This independent role is reinforced in *Queen’s Regulations and Orders* (QR&O) articles 4.081(1) and (4), which provide that all legal officers whose duty is the provision of legal services shall be posted to a position established within the Office 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.

An organization chart illustrating the JAG’s position within both the CF and DND is contained at Annex C.

1.3 Organization of the Office of the JAG

The Office of the JAG comprises 117 regular force legal officer positions and 68 reserve force legal officer positions. The regular force legal officers are employed throughout the CF, in Canada and abroad as follows:

- National Defence Headquarters in Ottawa;
- eight Assistant Judge Advocate General (AJAG) offices, seven in Canada and one in Germany;
- eleven Deputy Judge Advocate (DJA) offices across Canada, including a new DJA office established at the CF Leadership and Recruit School in Saint Jean;
- four Regional Military Prosecutor (RMP) offices across Canada;
- Supreme Headquarters Allied Powers (Europe) in Belgium;

⁴ For a detailed description of the concepts of responsibility, authority and accountability within the CF and DND, see the DND publication “Organization and Accountability”, 2nd edition, September 1999.

- CF Joint Operations Group Headquarters and the Royal Military College of Canada (RMC) in Kingston;
- Deputy Commander-in-Chief North American Aerospace Defence Command Headquarters in Colorado Springs;
- International Institute of Humanitarian Law in San Remo, Italy;
- with CF contingents deployed overseas — during 2002–2003, four locations in Bosnia, Afghanistan, the Gulf of Oman, and at MacDill Air Force Base in Florida; and
- in training with CF formations and units participating in major national and international exercises.

Like their regular force colleagues, reserve force legal officers are employed throughout the CF and on operations. They are also integrated into the defence and prosecution functions of the military justice system.

Organization charts for the regular and reserve components of the legal branch and contact/location information for all JAG offices are included at Annex B.

Strategic Use of Resources by the Office of the JAG

Over the course of the past year, several principal clients have requested dedicated legal services from the Office of the JAG. These clients include the CF Grievance Authority, which requires legal support to process the increasing backlog of grievances, and the office of the Assistant Deputy Minister (Human Resources – Military), which requires litigation support to address key policy issues within the framework of military service. Additional requests for dedicated services came from the CF Provost Marshal, and the CF Leadership and Recruit School in Saint Jean, Québec. Internationally, a Canadian legal officer assumed the duties of the Deputy Director of the Military Law Department at the International Institute of Humanitarian Law in San Remo, Italy. Pursuant to Canada's international obligation to support the International Criminal Tribunal for the Former Yugoslavia, a legal officer position has been established within the Office of the JAG for that purpose.

To address short term requirements, JAG resources were temporarily made available to some of these clients, pending the approval of additional resources through the DND/CF business planning process. Owing to the importance of these initiatives, all requested positions received final approval in March 2003 and personnel have been or will be assigned to fill these positions as soon as practicable.

The assignment of dedicated resources in this manner did have an impact on resource management within the Office of the JAG. Priorities for JAG services continue to be driven first and foremost by the Minister of National Defence, the DND and CF response to world events, and by military justice commitments. To date, the JAG's performance measurement system indicates that, while longer-term projects are not progressing as rapidly as anticipated, demands for services by clients are still being met.

1.4 Areas of the Office of the JAG Involved in Military Justice

The Canadian Military Prosecution Service

The Director of Military Prosecutions (DMP) holds office upon appointment by the Minister, who is the sole authority with the power to appoint and remove the DMP.⁵ The DMP may only be removed from office by the Minister for cause, on the recommendation of an Inquiry Committee.⁶

Under the provisions of the NDA, the DMP is responsible for the preferring of all charges to be tried by court martial and the conduct of all prosecutions at courts martial. On 1 September 1999, the Minister

5 NDA section 165.1. The DMP holds office for a term not exceeding four years. Captain (Navy) William Reed was appointed DMP on 16 January 2001.

6 NDA section 165.1(2) and QR&O 101.18. The Inquiry Committee was not required to sit during 2002–2003.

instructed the DMP to act as counsel in respect of appeals.⁷ In addition to these statutory responsibilities, the DMP is also the legal adviser to the Canadian Forces National Investigation Service in the conduct of their investigations.

In exercising prosecutorial discretion in relation to the preferral of charges and the conduct of prosecutions, the DMP's independence is protected by the institutional structures in both the NDA and common law.⁸ In this way, the DMP's situation is analogous to that of a Director of Public Prosecutions in the civilian criminal justice system.

The NDA provides that the DMP is under the general supervision of the JAG, who may issue general instructions or guidelines in writing in respect of prosecutions or in respect of a particular prosecution.⁹ During the reporting period, one such general instruction was issued in respect of reserve court allowances (see Annex H). The purpose of this instruction is to provide for the payment of court allowances to reserve force legal officers in order to offset the cost to their civilian practice of appearing at courts martial.

Annex J of this report contains the Report of the DMP.

7 NDA section 165.11.

8 After the decision in *Balderson v. R.* (1983), 8 C.C.C. (3d) 532 (Man. C.A.), Canadian courts have placed significant legal restrictions on the review of the exercise of prosecutorial discretion. Courts will undertake such reviews only in the clearest case of abuse of process.

9 NDA section 165.17. The JAG must give a copy of every such instruction to the Minister. The DMP must ensure that such instructions are made available to the public, except in limited cases where the DMP decides that release to the public of an instruction or guideline would not be in the best interest of the administration of military justice.

Director of Defence Counsel Services

The Director of Defence Counsel Services (DDCS) is appointed by the Minister and holds office on good behaviour for a term not exceeding four years.¹⁰ The DDCS provides, supervises and directs the provision of legal services to accused persons, as defined in regulations.¹¹

The DDCS is statutorily insulated from other CF and DND authorities to protect the DDCS from potentially inappropriate influence. DDCS lawyers represent their clients and their clients' interests in accordance with DDCS and JAG policies, which are designed to preserve and enhance the legal and ethical obligations that defence counsel owe to their clients. Communications with their clients are protected at law by solicitor-client privilege.

The DDCS acts under the general supervision of the JAG, who may issue general instructions or guidelines in writing in respect of defence counsel services.¹² However, the JAG may not instruct the DDCS in respect of a particular defence or court martial. As indicated above, the JAG issued one general instruction in 2002–2003, relating to the administration of court allowances for reserve legal officers.

The Annual Report of the DDCS is found at Annex I.

10 NDA section 249.18. On 1 September 1999, Lieutenant-Colonel Denis Couture was appointed DDCS.

11 QR&O article 101.20.

12 NDA section 249.2. The DDCS must make any general instructions or guidelines available to the public.

Deputy Judge Advocate General/Operations

The Deputy Judge Advocate General/Operations (DJAG/Ops) is responsible for providing DND officials and CF authorities with legal advice on international and operational law issues, and for providing the Military Police and CF formations and units with legal advice on military justice issues. In addition to the above, DJAG/OPS oversees the eight AJAG offices and all of the subordinate field offices, including all legal officers deployed on operations.

Deputy Judge Advocate General/Human Resources

The Deputy Judge Advocate General/Human Resources (DJAG/HR) is responsible for providing DND officials and CF members with legal advice on military personnel issues through the Directorate of Law/Human Resources. DJAG/HR is also responsible for the provision of military legal training for members of the CF, through the Office of Military Legal Education in Kingston, and oversees the Deputy Director of the International Institute of Humanitarian Law in San Remo, Italy. Through the Directorate of Law/Training, DJAG/HR is also responsible for developing and delivering military justice training, in particular the certification course for presiding officers.

Deputy Judge Advocate General/Chief of Staff

The Deputy Judge Advocate General/Chief of Staff (DJAG/COS) provides legal research and policy development services through the Directorate of Law/Military Justice Policy and Research (DLAW/MJP&R). DLAW/MJP&R assists the JAG in carrying out his military justice system superintendence and review functions, and supports the production of the JAG's Annual Report. DJAG/COS also oversees the provision of all support services to the Office of the JAG.

Judge Advocate General Chief Warrant Officer

The JAG Chief Warrant Officer serves as an information contact between the JAG, the chain of command and non-commissioned members in respect of the administration of military discipline. This appointment is part of an ongoing initiative to ensure that the Office of the JAG benefits from the disciplinary knowledge and experience of senior non-commissioned members of the CF. The JAG Chief Warrant Officer is a key component of the network of chief warrant officers and chief petty officers first class in the regional AJAG offices and the DJA offices in Borden and Gagetown.

1.5 Department of National Defence/ Canadian Forces Legal Advisor

The JAG is responsible for supervising the administration of military justice in the CF and for providing the Governor General, the Minister of National Defence, DND and the CF with legal advice in all matters relating to military law.¹³ The Department of National Defence/ Canadian Forces Legal Advisor (DND/CF LA) is responsible to the Minister of Justice for providing DND and the CF with legal advice on matters falling outside the JAG's area of responsibility. The staff of DND/CF LA includes civilian lawyers from the Department of Justice as well as military lawyers. DND/CF LA and the Office of the JAG cooperate to deliver seamless legal services to their DND and CF clients. The drafting and coordination of legislation and regulations relating to military justice is a collaborative effort between DND/CF LA and the Office of the JAG.

¹³ NDA section 9.1 and 9.2.



Chapter 2

Superintendence and Review of the Canadian Military Justice System

2.1 The Two Tiers of the Military Justice System

The NDA creates a two-tier system of military justice. The first tier, where most disciplinary matters are dealt with, is the summary trial system. The second tier is the more formal court martial system. The term “service tribunal” means either a court martial or a person presiding at a summary trial.¹

2.2 Analysis of Summary Trial Statistics

Where a member is charged with a service offence, a summary trial permits the case to be dealt with quickly and, as a general rule, at the unit or formation level.² As in previous years, the summary trial remained the most commonly used form of service tribunal in the military justice system in 2002–2003.

1 NDA section 2.

2 Summary trials are presided over by delegated officers, commanding officers or superior commanders. For a comprehensive overview of the military justice system, see the Précis in Annex A.

During the reporting period, 1615 disciplinary proceedings were initiated, of which 1568 were completed as summary trials. The percentage of service tribunals conducted as summary trials increased from 94% in 2001–2002 to 97% in 2002–2003.

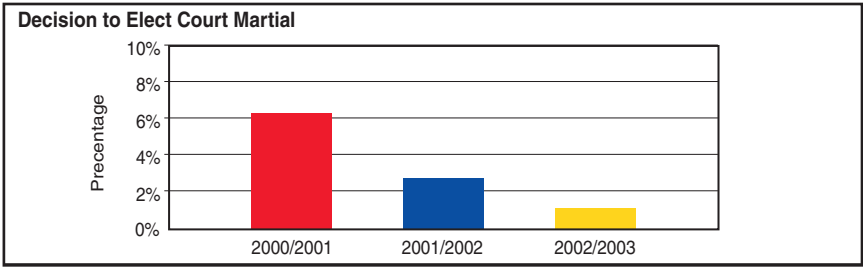
Summary Trials in 2002–2003

The number of summary trials conducted during the period (1568) represents a significant increase over the previous reporting period (1122). There are several likely explanations for this increase. One reason could be that presiding officers are continuing to become more comfortable with the revised summary trial process and do not hesitate to use it when required.

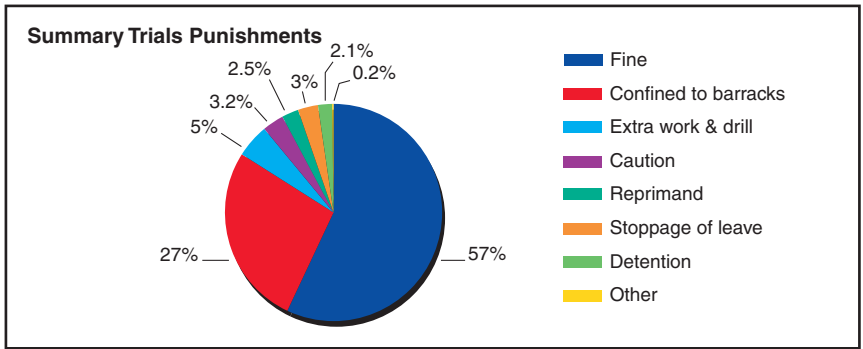
Another probable reason for the increase is simply the higher number of recruits in the training system during the reporting period, along with the commensurate increase in the number of minor training-related offences for which no election for court martial is given.³ The numbers of each of these minor offences increased in 2002–2003, including absence without leave (34.5% of all charges) and charges under section 129 of the NDA (conduct to the prejudice of good order and discipline) for which no election is given (24.7%). This is also reflected in the higher numbers of summary trials listed for the Chiefs of the Maritime, Land and Air Staff, as some of the recruit training was decentralized to the command level.

This increase in the number of very minor offences for which no election is offered also provides an explanation for the significant decrease in the number of direct referrals to court martial (32, as compared to 52 in 2001–2002). Of the 432 accused offered the election, only 7 (1.6%) chose court martial over summary trial. This number is an almost 50% reduction as compared to the previous reporting period and may be seen as a reflection of the continuing confidence that personnel place in the summary trial process.

3 These offences include NDA sections 85 (insubordinate behaviour), 86 (quarrels and disturbances), 90 (absence without leave), 97 (drunkenness), and 129 (conduct to the prejudice of good order and discipline, where the offence relates to military training, maintenance of personal equipment, quarter or work space, or dress and department).



Minor punishments and fines once again accounted for the vast majority of the sentences awarded at summary trials. Detention was imposed in 2.1% of cases, as compared to 1.1% in 2001–2002. This is consistent with historical trends wherein detention accounts for only a very small percentage of punishments awarded. The punishment imposed most often at summary trial was a fine. Punishments such as fines and minor punishments permit the offender to serve their sentence while still remaining an effective member of their unit. The use of such punishments is consistent with the overall goals of the summary trial system.



Alcohol and drug related charges accounted for less than 10% of all charges at summary trial (a decrease of 2%). The percentage of such charges for operationally deployed units increased slightly to 26% from 25%.

The average time from the date of the laying of charges to final disposition by summary trial decreased to 9 days from 11 days⁴ in 2001–2002. Summary trials by deployed units were, on average, conducted in 7 days, once again indicating that the summary trial system is able to provide unit commanders with an effective tool to deal with minor service offences in a prompt manner.

Detailed statistics for summary trials conducted during the reporting period 1 April 2002 to 31 March 2003 are included at Annex D.

Applications for Review of Summary Trials in 2002–2003

All offenders convicted at summary trial have the right to apply to the presiding officer's next superior in the disciplinary chain of command for a review of the finding, the punishment imposed, or both.⁵ Review authorities acting under QR&O article 108.45 must obtain legal advice before making any determinations on requests for review.⁶ The findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority.⁷

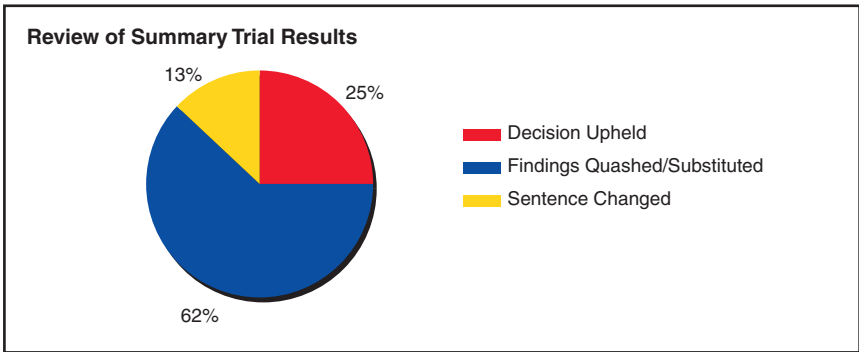
During the reporting period, 8 convicted persons made requests for review, of which 6 related to the finding, 1 related to the sentence, and 1 related to both the finding and the sentence. Review authorities reversed or modified the finding, punishment imposed or both in 6 of the 8 cases. Although the issue of the number of convicted persons aware of their right to request a review is discussed later in this chapter, these figures do indicate that the review system, when called upon, does operate effectively to ensure that the appropriate finding and sentence have been awarded.

4 This figure was mistakenly reported as 31 days in the 2001–2002 JAG Annual Report.

5 QR&O article 108.45.

6 QR&O article 108.45(8).

7 NDA section 249 and QR&O article 116.02.



Persons convicted at summary trial may also request judicial review from the Federal Court or from the Superior Court in any province.⁸ During 2002–2003, one application for judicial review was brought before the Quebec Superior Court. A former CF member filed an application seeking an order quashing a summary trial decision and a declaration pursuant to section 52(1) of the *Constitution Act, 1982* to the effect that the summary trial process is unconstitutional. The former member had been found guilty at summary trial in 1998 of two charges under the NDA. The Office of the JAG worked in cooperation with the Department of Justice to respond to this application, which was dismissed by the court. The court held that the Quebec Superior Court and the Federal Court of Canada had concurrent jurisdiction over the matter, but cited a decision of the Supreme Court of Canada⁹ in finding that the Federal Court would be best suited to determine the case due to its expertise and experience in administering the NDA. The former member appealed to the Quebec Court of Appeal and the appeal was dismissed.

2.3 Analysis of Court Martial Statistics

While the summary trial system is designed to provide unit commanders with the ability to deal with minor service offences in a prompt but fair manner, the court martial procedure is more formalized and is normally

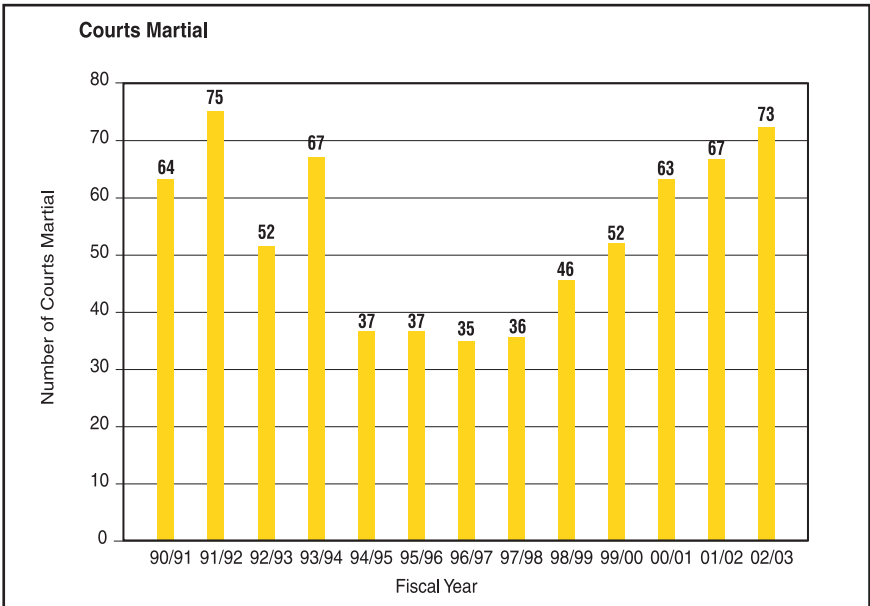
8 *Federal Court Act*, R.S.C. 1985, c. F-7, sections 18 and 18.1.

9 *Reza v. Canada*, [1994] 2 S.C.R. 324.

reserved for more serious cases. Each court martial is presided over by a military judge and is conducted outside the chain of command. The accused is entitled to be represented by defence counsel provided by the Director of Defence Counsel Services, or the accused can choose to be represented by civilian counsel at his or her own expense.

Courts Martial in 2002–2003

During 2002–2003, 73 courts martial were conducted across the CF. This represents an increase from 67 in the previous period, and continues a steady trend of increases that began in 1998–1999. During the reporting period, there were 32 direct referrals and 7 accused elected to be tried by court martial, although one of those elections did not result in a trial. Thus, 35 of the 73 courts martial conducted were actually referred prior to the current reporting period. This conclusion also indicates that prosecutors have been able to deal successfully with some of the backlog of cases.



Information on courts martial is publicly available through the web sites of both the JAG and the Office of the Chief Military Judge.¹⁰ Detailed statistics for courts martial conducted during the reporting period 1 April 2002 to 31 March 2003 are included at Annex E.

2.4 Review and Reporting Framework

The JAG is tasked with the superintendence of the military justice system. This task requires the monitoring and assessment of the system using methods such as statistical analysis, independent professional analysis and standardized quantitative and qualitative reports from the system's key participants.

2.5 KPMG Survey on the Summary Trial System

As in previous reporting periods, the Office of the JAG engaged the private sector consulting firm KPMG to conduct a CF-wide survey on the administration of summary trials. The survey was designed to:

- indicate how well CF members and units are complying with the regulations concerning the conduct of summary trials;
- contribute to the establishment of baseline statistics against which the performance of the military justice system can be monitored;
- contribute to the five year review of the NDA reforms; and
- determine the effect of enhanced military justice training over the past 42 months.

The survey questionnaire targeted all commanding officers and persons who have been involved in the summary trial process in the past 12 months as accused persons, assisting officers, presiding officers (delegated officers, commanding officers or superior commanders), commanding officers, review authorities or charging authorities.

¹⁰ The JAG web site is www.forces.gc.ca/jag/ and the web site of the Office of the Chief Military Judge is www.forces.gc.ca/cmj/.

The questionnaire was electronically accessible through the DND/CF internet web site and the DND/CF intranet. Paper copies were also mailed out to the units that were frequent users of the summary trial system over the previous year.

The survey drew a very good response from all levels of participants. The responses are detailed as follows:

Data source	Response on paper	Response by e-mail	Number of responses	Share of responses
Accused	46	94	140	15.7%
Assisting Officer	46	182	228	25.5%
Presiding Officer	50	130	180	20.2%
Commanding Officer	10	143	153	17.1%
Review Authority	2	5	7	0.8%
Charging Authority	28	157	185	20.7%
Total	182	711	893	100.0%

Survey Results

This third survey builds upon the data compiled over the previous two reporting periods, and provides information that will assist in the upcoming five year review of the 1999 amendments to the NDA. The survey measures adherence to the three tenets of fairness in the summary trial system as detailed below:

Tenet 1: Compliance with regulatory requirements relating to the administration of military justice.

- a. Commanding officers are certified by the Office of the JAG to perform their duties in the administration of Code of Service Discipline.
- b. Each unit maintains a Unit Registry of Disciplinary Proceedings.
- c. Records of Disciplinary Proceedings (RDPs) are completed correctly, including the final disposition of all charges, and submitted for review to the local AJAG or DJA and, ultimately, to the JAG.
- d. Legal advisers and review authorities give timely feedback.
- e. Requests from the public for access to the Unit Registry of Disciplinary Proceedings are handled appropriately.

This year's survey results indicate once again that units are complying with the regulatory requirements relating to the administration of summary trials. As in previous surveys, there were some concerns about the timeliness of the provision of legal advice by unit legal advisers. This is an area that the Office of the JAG continues to monitor.

Tenet 2: Each accused receives fair treatment at summary trial.

- a. Trials are held in the official language chosen by the accused.
- b. Accused persons who are entitled to elect trial by court martial are given the opportunity and legal support to do so.
- c. Accused persons receive:
 - (1) all information identified in the regulations,
 - (2) access to the evidence that will be used to support the charge, and
 - (3) a list of witnesses who will testify to support the charge.
- d. Accused persons are given the opportunity to exercise their right to put their case to the presiding officer before a finding is made.
- e. Accused persons are given the opportunity to exercise their right to present evidence of mitigating considerations before sentence is passed.

As in the survey conducted in 2001–2002, this year's results demonstrate substantial compliance in these areas. The percentage of accused responding that they have been given access to all the evidence that would be used against them at summary trial continues to increase. Already a substantial percentage, this figure should continue to increase following the publication of new pamphlets aimed at providing military justice information to members of the CF, and the distribution of the revised edition of the *Guide for Accused and Assisting Officers*.

Tenet 3: The system for reviewing the decisions made at summary trial is fair and responsive.

- a. All accused persons are informed of their right to seek review.
- b. The review process is efficient.

The responses on this issue continue to be mixed. It is apparent that education efforts in this regard are having some success in that more assisting officers are aware of the right of the accused to request a review of the results of their summary trial. However, the actual percentage of accused responding that they were aware of this right dropped slightly. The right to seek a review of a summary trial is an important element of the process and as such, this issue will continue to be closely monitored in the next reporting period.

Analysis of Survey Results

The results of this survey indicate that efforts to educate participants in the military justice system must continue. Of greatest concern is the drop in the percentage of accused responding that they were aware of their right to request a review of their summary trial. Several steps were taken to address this education requirement during the reporting period, including the publication of the revised edition of the *Guide for Accused and Assisting Officers*, and new pamphlets on *Investigating and Charging* and *The Code of Service Discipline and Me*. However, the results of these education efforts may not be apparent until the next reporting period. Clearly however, this is an area that requires careful monitoring.

As in the survey conducted in 2001–2002, assisting officers and charging authorities responded that they would be interested in formal training similar to the certification training provided for presiding officers. To address this issue, presiding officer certification training has now been made available to all junior officers and senior non-commissioned members. In addition, a training package has been made available on the JAG web site for unit level training of assisting officers.

This survey on the administration of summary trials builds on the information obtained in 2001 and 2002. Given the nature of this survey, the information gathered serves only as a rough indicator of issues and potential problem areas. Further information must be gathered to confirm any problems or concerns identified by this survey. The Office of the JAG will continue to monitor the administration of military justice to ensure all members are treated fairly and in accordance with the law.

2.6 Interview Survey of Stakeholders

As part of the review of the administration of military justice, the JAG has conducted an interview survey of various participants in the military justice system for the past two years. These participants have included commanding officers, charge laying authorities and referral authorities. In January 2003, the JAG determined that after these two series of interviews, that there was no need for a similar survey to be conducted again this year. Preparation and support of the upcoming five year review of the Bill C-25 amendments to the NDA also influenced this decision.

In last year's interview survey, several issues were raised that require follow-up. These include timeliness, unique unit needs, communications and training. While the issue of timeliness of the court martial process is reported on in Chapter 3, the question of the unique needs of training establishments with regard to jurisdiction over officer cadets will be addressed as part of the upcoming five year review. The particular issue for reserve units in 2001–2002 involved breaches of discipline that were being left to the member's unit, rather than being dealt with at the training establishment prior to the member's return. Further study was undertaken in 2002–2003 to determine the full extent of the problem, and the best course of action to deal with it. The issue of communications between the unit, referral authority, prosecutor and the Court Martial Administrator in the court martial referral process was discussed at the

seminar for referral authorities in November 2002, and this area will continue to be monitored. As for training of senior non-commissioned members serving in leadership positions within units, all are now eligible to attend certification training. Further details can be found in the report on training and education in Chapter 3.

2.7 Client Satisfaction Survey

The JAG client satisfaction survey was undertaken again in 2003. While the results of the survey were still being tabulated at the printing of this report, the initial results indicate that again this year there is a significant degree of satisfaction with the quality of JAG legal services. The results will be promulgated in the JAG Annual Performance Report.

2.8 Committees on Military Justice

The Military Justice Stakeholders' Committee

The Military Justice Stakeholders' Committee is a forum for the discussion of a wide variety of long-term strategic issues related to military justice. It is chaired by the Chief Justice of the Court Martial Appeal Court, and includes the Minister of National Defence, the JAG, the Chief of the Defence Staff, the Vice Chief of the Defence Staff, the Chief Military Judge, the Director of Defence Counsel Services, the Director of Military Prosecutions, and the Canadian Forces Provost Marshal.

The Military Justice Stakeholders' Committee met 20 January 2003 to review and discuss several long-term strategic issues. These included the presentation of the strategic plan for the five year review of the Bill C-25 amendments to the NDA, the approval in principle of the proposed regulation to introduce victim impact statements in the court martial process, as well as the principles for the policy setting out how concurrent jurisdiction cases will be addressed within the military justice system. The committee was also briefed on the government's current legislative initiatives, including the lack of consideration given to the military justice system by actors outside the department when

developing legislation that impacts upon the military justice system. The committee was briefed on the latest military justice statistics, which indicated that the initiatives taken to address the problem of court martial delay have had a positive impact.

The CF Code of Service Discipline Committee

The CF Code of Service Discipline Committee is co-chaired by the Chief of the Defence Staff and the JAG. The committee members include the senior leadership of the CF (officers as well as chief warrant officers and chief petty officers first class) and other key players in the military justice system, such as the Director of Military Prosecutions, the Canadian Forces Provost Marshal and the JAG Chief Warrant Officer.

At the 14 June 2002 meeting, the committee was updated on the status of several proposed legislative amendments, including the reserve military judges panel, and the proposed revisions to the Internet acceptable use policy. The committee determined that referral authorities would benefit from a seminar on their role in identifying the public interest and the CF interest in the Director of Military Prosecutions charge screening process. The JAG also briefed the committee on the activity in the military justice system in 2001–2002.

A second meeting was held on 17 January 2003, at which the committee reviewed the statistics on the issue of court martial delay, provided comments on the proposed policy regarding the employment of civilian defence counsel in foreign criminal courts, and was briefed on the chain of command authority for suspending a sentence of incarceration imposed by a military judge at a court martial. The committee was also briefed on the successful seminar for referral authorities that was conducted in November 2002.

The JAG Advisory Panel on Military Justice

The mandate of the JAG Advisory Panel is to review new military justice initiatives and provide an external perspective before they are

implemented. In doing so, the structure of the panel ensures that the military justice system has the benefit of the ideas and experience from the civilian criminal justice system. The panel is currently chaired by a sitting Superior Court Judge with broad experience in the military justice system. The members of the panel are all civilian lawyers with extensive criminal law experience.

The panel met 29 November 2002 to discuss concurrent jurisdiction, *Military Rules of Evidence*, and the impact of proposed federal legislation, including amendments to the mental disorder provisions of the *Criminal Code* and the *National Defence Act*, as well as the introduction of a national sex offender registry. Two vacancies have been created by the departure of members of the panel whose other duties and functions prevent them from continuing to sit as members. Mr. James O'Reilly was appointed to the Federal Court, and Mr. Guy Cournoyer has taken up work that may conflict with his Advisory Panel duties, and has therefore withdrawn from the panel. Ms. Elise Groulx from Montreal has kindly accepted to join the panel. A civilian practitioner of superb experience, she is currently president of the international criminal bar. The Office of the JAG is pleased to have Ms. Groulx as part of the JAG Advisory Panel. Efforts are underway to fill the vacancy of Justice O'Reilly.

Military Justice Round Table

The Military Justice Round Table is an internal forum designed to integrate legal officers' views and recommendations into policy, regulation and legislation, as appropriate. It is comprised of senior legal officers from the Office of the JAG, the Director of Defence Counsel Services, the Director of Military Prosecutions, and DND/CF Legal Advisor, as well as additional members as required when dealing with specific issues.

Two meetings were held during the reporting period, dealing with the completion of the project to review and update the *Military Rules of Evidence*, as well as the development of regulations on the use of victim impact statements at courts martial.



Chapter 3

Judge Advocate General Initiatives

3.1 Introduction

The data collected and analyzed as part of the JAG's superintendence of the administration of military justice is critical in the identification of issues that require attention. This chapter highlights the progress on some of the initiatives to deal with these issues, including:

- court martial delay;
- statutory and regulatory changes related to military justice;
- policy guidance promulgated during the reporting period;
- military justice training and education; and
- other military justice superintendence and review initiatives undertaken during the 2002–2003 reporting period.

3.2 Court Martial Delay

The last two JAG Annual Reports have reported on the issue of unacceptable delay in the court martial process. An analysis of the 2002–2003 statistics indicates that progress has been made in dealing with this issue. The timelines clearly indicate that the average number of days from the charge being laid to the disposition at court martial is decreasing.

One of the reasons for this improvement is the added training and experience that the new prosecutors introduced into the Regional Military Prosecutor offices in 2001, gained through late 2001 and early 2002. As anticipated in last year's JAG Annual Report, this has permitted the military justice system to take full advantage of these additional resources.

As reported in the 2001–2002 JAG Annual Report, the Court Martial Administrator has established a policy that allows prosecution and defence counsel two weeks after the preferral of charges to agree on a date for the court martial. If, after two weeks, counsel have not reached an agreement, the Court Martial Administrator will set the date and convene the trial to begin within 60 days. After a full reporting period utilizing this new policy, the policy appears to be having a significant impact, as the average time between the Director of Military Prosecutions decision to proceed with charges and the start of the court martial has been reduced by approximately 40 days.

One of the other recommendations to reduce court martial delay was to broaden the circumstances in which CF National Investigation Service investigators may lay charges without first having to obtain pre-charge legal advice. This issue has generated some debate and will be considered as part of the five year review of the 1999 amendments to the NDA.

While the institutional concerns relating to court martial delay continue to be addressed, the legal impact of delay has also been argued before the courts in a number of cases. In these cases the courts have regularly held that the delay in question is not unreasonable from a *Charter* perspective. For example, in *Lachance v. R.*, the Court Martial Appeal Court of Canada expressed the view that the 13 month post-charge delay had not been unreasonable in that case, and that the appellant had not suffered any actual harm as a result.¹ Nevertheless, the delay issue continues to be a matter of focus for the military justice system.

¹ *Lachance v. R.*, [2002] CMAC-451.

3.3 Statutory Amendments

Bill C-15A

With the coming into force of the amendments to the *Criminal Code* and the NDA contained in Bill C-15A, *An Act to amend the Criminal Code and other Acts*, there is now statutory authority to permit designated service offences to be recorded and banked in the national data bank created by the *Identification of Criminals Act*. The coming into force of these most recent amendments to the NDA is a further example of the efforts that continue to be made in aligning the military justice system, where appropriate, with the practices and standards applied in the civilian criminal justice system. The implementation of the Bill C-15A amendments will also allow for the development of a comprehensive policy to guide policing and prosecution authorities when addressing the question of whether or not the military justice system should exercise its jurisdiction in those cases where concurrent military and civilian jurisdiction exists. This policy will balance the requirement of the military justice system to exercise jurisdiction where the matter is relevant to the maintenance of discipline and morale, with the broader civilian community interest when dealing with a particular offence.

Bill C-17 Reserve Military Judges Panel

The proposal to create a Reserve Military Judges Panel that would allow for appropriately qualified reserve force officers to augment the military judiciary was reported in the 2001–2002 JAG Annual Report. This proposed amendment to the NDA is now part of Bill C-17, the *Public Safety Act, 2002*, which is currently before Parliament.

Bill C-23 Sex Offender Information Registration Act

On 11 December 2002, Bill C-23, the *Sex Offender Information Registration Act*, was tabled in Parliament. This Bill would create a national sex offender registry, designed to aid police in the protection of Canadians, particularly children, from future crimes of convicted sex offenders. As it is important that the military justice system remains

aligned with the civilian criminal justice system in this regard, it is anticipated that the NDA will be amended to create a parallel scheme for military offenders convicted of designated offences.

3.4 Changes in Regulations

Military Rules of Evidence

A project was commenced in 2001 to update the *Military Rules of Evidence*, which govern evidentiary questions at courts martial. The JAG review of these regulations was finalized in 2002, and the recommended changes are expected to come into force in the next reporting period.

Victim Impact Statements

As reported in the previous JAG Annual Report, an initiative has been underway to create regulations for the use of victim impact statements at courts martial, in order to ensure that the military justice process includes a mechanism for victims to describe how they have been harmed by the commission of a service offence. The detailed proposal was reviewed by the Military Justice Round Table in 2002, and it is anticipated that the proposal will be finalized early in the next reporting period.

Internet Use Policy

The 2002–2003 reporting period saw the finalization of the new DND/CF Internet use policy,² following a comprehensive review of the existing policy by the Office of the JAG in 2001–2002. The new policy provides for four categories of use, which will better guide commanding officers on when disciplinary action as opposed to administrative action is appropriate in dealing with breaches of the order by CF members.

2 DAOD 6001-1 Acceptable Use of the Internet, Defence Intranet and Other Electronic Networks, and Computers.

3.5 Judge Advocate General Policy Guidance

During the 2002–2003 reporting period, the JAG issued the following new policy directive (see Annex H):

Directive 028/03 — Reserve Force Court Allowance.

3.6 Military Justice Education and Training

Training and education in military justice and the Code of Service Discipline is provided to the CF community at all levels, providing the foundation knowledge required for the proper functioning of the military justice system. This training and education includes formal certification training, briefings, seminars, and the professional development program for all junior officers.

Presiding Officer Certification Training (POCT)

All superior commanders, commanding officers, and appointed delegated officers are required to be trained and certified by the JAG in the administration of the Code of Service Discipline. To date, over 4187 officers and 653 senior non-commissioned members have undergone this training. In response to input from junior officers and senior non-commissioned members, the opportunity to participate in POCT has now been extended to include all junior officers and those of the rank of sergeant/petty officer second class and above. This training will provide these members with a more thorough understanding of the military justice system.

As reported in the 2001–2002 JAG Annual Report, the first presiding officer certifications will expire in 2003. Following consultation with various authorities, a number of options were developed for the re-certification of these officers. The preferred option would have officers requiring re-certification undertake a computer-based test. Successful completion of the test would automatically renew the certification for another four year period. Those officers who do not successfully complete the test would be required to undergo the full certification process once again.

During the 2002–2003 reporting period, 617 regular and reserve force officers received the presiding officer certification. Nine officers below the rank of captain/lieutenant (navy) and 178 non-commissioned members also participated in the training program (see Annex G). The POCT program was delivered 46 times at 20 locations inside and outside Canada. Six courses were conducted in French.

Other Military Justice Training

CF personnel receive military justice training as part of their ongoing professional development, including the basic recruit course, leadership courses, and at specialized supervisory courses. Training is also provided at the unit level in the form of professional development briefings, normally focusing on the purpose of military justice, the rights and entitlements of CF members under the Code of Service Discipline, and specialized subjects such as the laying of charges and assisting officer responsibilities. The information pamphlets *The Code of Service Discipline and Me* and *Investigating and Charging* were updated and broadly distributed in the reporting period, and are available to be used as resource tools in unit training. Legal officers and the chief warrant officers and chief petty officers first class from the JAG field offices regularly contribute to unit level training.

In recent surveys, assisting officers have requested formal training similar to the presiding officer certification training. After consulting various training authorities, it has been determined that the best approach would be to provide a training package that units could use to conduct their own assisting officer training. Such a package has been developed, including a presentation with speaking notes, and is now accessible on the JAG web site. This package, in addition to the recently published update of the *Guide for Accused and Assisting Officers*, should provide sufficient resource material to address this issue.

Education

A basic course in military law is a compulsory component of the Officer Professional Military Education program for all junior officers. The military justice portion of the course is intended to provide these officers with the fundamentals of military law as it relates to the officer's responsibility to maintain good order and discipline. Legal officers at the Office of Military Legal Education in Kingston support the Royal Military College in the conduct of the correspondence course. Currently there are approximately 300 students registered for the 2003 winter session. In addition, an on-site version of the course was conducted in Esquimalt in March 2003, with additional on-site courses planned for 2003–2004.

Training and Education for Legal Officers

Given that lawyers do not study military justice at law school or during bar admission programs, new legal officers undergo a period of on-the-job training to become familiar with the Code of Service Discipline and the military justice system. Following their occupation qualification and some work experience, legal officers attend the Military Justice and Military Administrative Law Course to further develop their understanding of the military justice system. This is a two week intensive program held at the Nav Canada Training Institute in Cornwall, Ontario.

Additional training is provided to legal officers in the Canadian Military Prosecution Service and the office of the Director of Defence Counsel Services, to enhance their knowledge of criminal law and their advocacy skills at the trial and appellate levels. Further training and education in the field of criminal law is provided at a postgraduate level. During this reporting period, one officer completed his postgraduate training at the University of Ottawa, and was posted to the office of the Director of Military Prosecutions.

Continuing Legal Education

The Office of the JAG has played an active role in the Canadian Bar Association (CBA) during the reporting period. The CBA annual meeting was held in London in August 2002, with 16 legal officers attending. The National Military Law Section sponsored a panel discussion of the case of a CF member who refused an order to undergo vaccination. The panel included military lawyers as well as representatives of the civilian defence bar.

In addition, the Office of the JAG participates in as many activities of the provincial law societies as possible. In September 2002, the Director of Law/Military Justice, Policy and Research attended a meeting of the Military Law Section of the Nova Scotia Barrister's Society in Halifax, at which several topics related to military justice were discussed.

The Office of the JAG conducted its annual continuing legal education workshop in October 2002 in Ottawa. The first day of the workshop was reserved for a meeting of the National Military Law Section of the CBA, including formal presentations and panel discussions of topics related to the upcoming five year review of the 1999 amendments to the NDA. Two members of the civilian defence bar presented unique perspectives on some of these military justice issues. In all, 132 legal officers and 27 others attended the conference. The remaining days of the workshop involved discussions of the application of current policies that affect military justice, as well as several operational law subjects.

Communications and External Links

The JAG website (www.forces.gc.ca/jag/) has become an important source of information regarding the military justice system, with access to CF military justice publications, summary trial statistics, courts martial and courts martial appeal information. It includes a link to POCT materials, to the Chief Military Judge web site (www.forces.gc.ca/cmj/), and to the Court Martial Appeal Court web site (www.cmac-cacm.ca). During 2002–2003, the JAG web site was modified extensively to reflect the standard DND look and feel, and provides the latest amendments to orders, regulations, policies and up-to-date information.

It was reported in the 2001–2002 JAG Annual Report that the workshop involving the Director of Military Prosecutions, the CF National Investigation Service and the regional AJAGs would become an annual event. A legal officer was integrated into the office of the CF Provost Marshal late in 2002. Due to this enhanced contact, and a significant number of competing priorities, the workshop did not take place this year, but the intention is to conduct it again in 2003–2004 to ensure that the issue of effective cooperation between these participants continues to be explored.

On 17 April 2002, the Office of the JAG, in conjunction with the office of the DND/CF Legal Advisor, conducted a Law Day conference for CF members, DND employees and the general public. This event highlighted the 20th anniversary of the *Canadian Charter of Rights and Freedoms*, and involved presentations on the impact of the *Charter* on military justice and the CF in general.

In 2002, the JAG representatives of several nations expressed interest in the Canadian military justice system. The United Kingdom sent their *Tri-Service Act* team to visit the Office of the JAG in 2002, with the goal of gathering as much information as possible about Canada's military justice system. The United Kingdom is currently going through a process similar to that which Canada went through to incorporate the Army, Navy and Air Force discipline systems into the tri-service NDA in 1950.

A group of Russian legal officers visited the Office of the JAG in Ottawa in 2002 to learn about the Canadian military justice system. Interested in learning about other models to assist them in considering reform of their own system, the Japanese National Institute of Defence Studies invited a Canadian legal officer to make several presentations on the Canadian military justice system and the general requisites of a military justice system to a group of Japanese academics, civilian officials and senior military officers.

In November 2002, the JAG hosted a symposium of senior legal officers from Australia, New Zealand, United States and United Kingdom in Ottawa. This forum provided an opportunity for the exchange of ideas and discussion of complex military justice and other legal issues involving our respective nations.

3.7 Other Military Justice Initiatives

Chief of Review Services Audit with Regard to Sentencing

After receiving anecdotal evidence during the previous reporting period that some punishments imposed upon service members were not being carried out, the JAG requested that the Chief of Review Services (CRS) carry out an audit of punishments imposed between 1 September 1999 and 31 December 2001. The CRS final audit report was received in July 2002, and confirmed those indications. The review found that a total of 19 punishments were not implemented or could not be confirmed, with a majority of those punishments being fines. The CRS recommendations to correct this situation included the following:

- standardization of court martial result messages;
- appointment of the JAG as a national level monitoring authority; and
- guidance on post-court martial administrative procedures be developed for commanding officers and unit administrative staff.

One of the institutional difficulties in imposing a punishment of a fine on a member of the reserve force can be highlighted by a particular case. In this instance, the member did not pay a fine of \$2000 imposed at a court martial in 2000. When the member was found guilty at court martial on a subsequent offence in 2002, the fine had still not been collected. The problem is that there is no administrative process for the collection of a fine from a reserve member who ceases to attend the unit, except where the member voluntarily pays. At the second court martial in this particular case, and given that the offender had not paid

the initial fine, the military judge imposed a sentence of 45 days imprisonment. This sentence was appealed by the offender. The Court Martial Appeal Court allowed the appeal and substituted a fine of \$4500.

As the national monitoring authority, the Office of the JAG has been working on implementing these recommendations as expeditiously as possible. With the standardization of the court martial results messages, commanding officers are now required to report to the JAG when a sentence has been implemented. Over the course of the next year, the Office of the JAG will follow up with all units to ensure that all punishments have been implemented. With these changes in place, the ability of the military justice system to fairly dispose of charges and enforce punishments will be reinforced.

Five Year Review

The report of the independent review of the operation of the provisions of the Bill C-25 amendments to the NDA is due before Parliament in 2003. An internal JAG review team has been established to identify and develop comprehensive JAG positions on military justice and military law issues related to the five year review.

In addition to the issues that were identified in the 2001–2002 JAG Annual Report, the JAG internal review team has been considering a wide variety of issues, including the following:

- whether to expand the jurisdiction of delegated officers over officer cadets, in order to address the unique needs of training institutions;
- whether to retain the requirement to obtain legal advice both at the pre-charge and the post-charge points in the disciplinary process; and
- the list of offences that may be tried by summary trial, and those offences for which there is no election for court martial offered to the accused.

Access to Information Review

A review of the *Access to Information Act* is underway, led by the Department of Justice and Treasury Board. The key issues for the Office of the JAG relate to judicial independence, solicitor/client privilege, and the treatment of the military justice system in a manner analogous to that of the civilian criminal justice system. The Office of the JAG will continue to monitor the progress of these issues.

DMP & DDCS Pay

Both the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS) function independently of the executive (both political and the military chain of command), and this independence is in part ensured through the appointment, tenure and removal schemes established in the NDA. However, the NDA does not expressly address the question of compensation for the officers filling these positions. After much work and lengthy discussions with Treasury Board officials it has been determined that the most effective way of ensuring the compensation structure does not generate a perception that DMP or DDCS might be inappropriately influenced is to provide direct statutory authority for their compensation.

Paralegal Occupation

Over the course of the past several years, positions for chief warrant officers and chief petty officers first class have been established in the regional AJAG offices and at the DJA offices in Borden and Gagetown. These senior personnel come from an operational background and bring years of disciplinary experience to the JAG organization.

Further to this development, the Office of the JAG is proceeding with another initiative that would involve the creation of a paralegal occupation for non-commissioned members. The goal is to streamline the administration of military law by incorporating 20 to 30 military paralegals into the JAG organization. Personnel for this occupation would be of the rank of sergeant/petty officer second class to master warrant officer/chief petty officer second class and could be selected from any

military occupation. Candidates would attend paralegal training at a community college, and upon graduation, would be employed to assist military legal officers in all aspects of military law, including military justice.

National Mobility Agreement

At the annual meeting of the Federation of Law Societies of Canada in August of last year, the Federation accepted the report of a task force established to study the removal of barriers to inter-jurisdictional mobility of lawyers within Canada. The report included a draft agreement that has subsequently been signed by the majority of provincial law societies. While the mobility agreement will undoubtedly facilitate the temporary and permanent mobility of lawyers between Canadian jurisdictions, ironically it will complicate mobility for lawyers practicing military law within the Office of the JAG. The Office of the JAG appeared before the Federation's National Mobility Task Force in January of this year to express its concerns. The Chairman of the task force has agreed with the JAG's submission that the law societies should include an exemption either within their rules or by way of memorandum of understanding.

Post-Traumatic Stress Disorder

The Office of the JAG has reviewed the decision of the Alberta Court of Queen's Bench in *R. v. McEachern* with interest.³ Mr. McEachern was a CF member who was tried in civilian criminal court on charges related to his operation of a motor vehicle on 15 March 2001. His defence was based on automatism, brought on by post traumatic stress disorder (PTSD). After a thorough analysis of the case law in this area, including the Supreme Court of Canada decision in *R. v. Stone*⁴ and an earlier decision of the Alberta Provincial Court,⁵ the court found that automatism was not made out in this case. However, the decision in *McEachern* does indicate that PTSD will continue to be relevant in judicial determinations.

3 *R. v. McEachern*, [2003] A.J. No. 170 (Alta. Q.B.).

4 *R. v. Stone*, [1999] 2 S.C.R. 290.

5 *R. v. MacInnes* (2000), 13 M.V.R. (4th) 29 (Alta. P.C.).



Chapter 4

The Office of the Chief Military Judge

4.1 Military Judges

The Governor in Council may appoint any CF officer who is a barrister or advocate of at least 10 years standing at the bar of a province to the military judiciary.¹ A process similar to that followed for other federal judicial appointments ensures that only competent, deserving officers are considered for military judicial appointments.

4.2 Designation of the Chief Military Judge

Section 165.24 of the NDA vests responsibility and authority for the designation of the Chief Military Judge in the Governor in Council. On 16 July 2002, the Governor in Council designated Colonel Kim Carter as the Chief Military Judge of the Canadian Forces.

In making his recommendation to the Governor in Council, the Minister relied on the report of the Military Judges Selection Committee. Members of the Military Judges Selection Committee are appointed by the Minister of National Defence to represent the Bench, the civilian bar and the military community. The committee is composed of a lawyer or judge nominated by the JAG, a civilian lawyer

¹ NDA section 165.21(1).

nominated by the Canadian Bar Association, a civilian judge nominated by the Chief Military Judge, an officer holding the rank of major-general or higher, and a chief warrant officer or chief petty officer first class nominated by the Chief of the Defence Staff.

4.3 Military Judges Compensation

Regulations provide that the Military Judges Compensation Committee must conduct a quadrennial inquiry into the adequacy of the remuneration of military judges, with the next inquiry commencing 1 September 2003.² The committee consists of three part-time members appointed by the Governor in Council, with one person nominated by the military judges, one person nominated by the Minister, and the third member nominated by the first two members.

The committee must consider the following issues in the review of the adequacy of the compensation of military judges:

- the prevailing economic conditions in Canada, including the cost of living, and the overall economic and current financial position of the federal government;
- the role of financial security in ensuring the judicial independence of military judges; and
- the need to attract outstanding officers to the military judiciary.

Judicial compensation commissions, responsible for reviewing and providing recommendations to government regarding the compensation of judges, have regularly recommended pay adjustments be made effective to the point in time when the committee commenced the compensation review. Where this recommendation is accepted the government in question is required to provide for pay adjustments retroactively.

² QR&O articles 204.23 and 204.24.

The NDA requires that the pay of military judges be prescribed in regulations, however there is no clear authority in the NDA to make regulations retroactively. This matter is being addressed through an amendment to the Act that will provide express authority to enact regulations that will, in those situations where such a recommendation is made by the Military Judges Compensation Committee and in turn accepted by the Government, allow these pay regulations to have a retroactive effect. This amendment will clarify the current ambiguity in this area and ensure that, as is the case for other CF members, employees of the public service and civilian judges, military judges may receive retroactive pay adjustments. The amendment is currently before Parliament as Bill C-35.

4.4 Reserve Military Judges Panel

As reported in the 2001–2002 JAG Annual Report, legislation has been introduced in Parliament to establish a Reserve Military Judges Panel, as part of Bill C-17 (*Public Safety Act, 2002*).³ This legislation, if adopted, will provide the Chief Military Judge with the authority to select any officer named to the panel to perform any duties referred to in section 165.23 of the NDA. The establishment of this panel will ensure that the CF remains in a position to effectively and efficiently maintain discipline in the event of temporary or short term increases in demand that might result from sudden changes in operational tempo or commitments. The panel will accomplish this and also provide flexibility in other situations, such as circumstances where competing demands or conflicts severely limit the availability of military judges to hear a particular case.

³ This initiative was originally introduced as part of Bill C-42, re-introduced as Bill C-55, and then as part of Bill C-17 (*Public Safety Act, 2002*).



Chapter 5

Appeals from Courts Martial to the Court Martial Appeal Court of Canada and the Supreme Court of Canada

5.1 The CMAC Year in Review – 1 April 2002 to 31 March 2003

The Court Martial Appeal Court of Canada (CMAC) consists of not less than four civilian judges of the Federal Court of Canada and such additional judges of a superior court of criminal jurisdiction as are designated by the Governor in Council.¹

In 2002–2003, nine appeals were argued before the CMAC. The Supreme Court of Canada did not hear any appeals from the CMAC during this period, and dismissed an application by a CF member for leave to appeal a decision of the CMAC.

In all nine cases argued before the CMAC, the appellant was a CF member convicted at court martial. In two of the nine cases, both the legality of the guilty finding and sentence were appealed. In five cases, only the legality of the finding was appealed, and in two cases, only the sentence was appealed. More details of the CMAC appeals can be found at Annex F and in the report of the Director of Military Prosecutions at Annex J.

¹ NDA section 234.

A convicted person initiating an appeal may apply to the Appeal Committee for representation by legal counsel at public expense. This committee consists of a person appointed by the JAG and a person appointed by the Chief of the Defence Staff. During the 2002–2003 reporting period, the Appeal Committee assessed twelve applications from appellants. In four of the twelve cases, the Appeal Committee found that there was professional merit in the appeal and approved the provision of legal counsel by the Director of Defence Counsel Services.

5.2 CMAC Decisions of Note

On 14 May 2002, the CMAC dismissed the appeal of Corporal Lachance, who had been convicted at court martial of using insulting language to a superior officer.² Corporal Lachance appealed the decision of the military judge to dismiss his motion for a stay of proceedings based on his right to be tried within a reasonable time under subsection 11(b) of the *Charter*. There are two findings of note in this decision. The first is that the CMAC affirmed that an unconditional plea of guilty is a waiver of a person's 11(b) *Charter* right, although the court left open the possibility that an accused may, under the *Military Rules of Evidence*, confess his or her guilt subject to variation and exception, thereby preserving his or her right to appeal the military judge's decision on the motion. The second key part of the decision relates to the issue of pre-charge and post-charge delay in court martial proceedings. Although the appeal could have been dismissed on the basis of the guilty plea without dealing with the merits of the case, the CMAC decided to discuss the issue of delay as this case had been the fourth appeal on this basis within a short period of time. The CMAC expressed the view that the post-charge delay of 13 months was not unreasonable in this case, and that the appellant suffered no actual harm as a result of the delay. As was his right, the appellant had opted

² *Lachance v. R.*, [2002] CMAC-451.

for a court martial, as opposed to summary trial, but the court recognized that there are inherent institutional delays associated with this election, similar to those resulting from the choice of a civilian accused for a jury trial as opposed to judge alone.

Captain Loughrey appealed the severity of his sentence of four months imprisonment awarded at court martial. The CMAC dismissed the appeal on the basis that, although this was the appellant's first offence, he was in a position of trust over administrative matters within his unit and they were serious offences.³ This case is of note in that the military judge awarded and the CMAC did not interfere with a custodial sentence awarded for first time offences involving stealing and fraud, departing from a previous line of cases in which non-custodial sentences were imposed.⁴

Sergeant Jones was convicted at court martial on a charge under section 129(1) of the NDA of conduct to the prejudice of good order and discipline, and was fined \$400. The CMAC allowed his appeal as to conviction and ordered a new trial.⁵ In the decision, the CMAC noted that proof of prejudice to good order and discipline "can be inferred from the circumstances if the evidence clearly points to prejudice as a natural consequence of the proven act".⁶ The court emphasized though, that the standard of proof remains proof beyond a reasonable doubt. In addition, the CMAC decided that the military judge erred when he took judicial notice of several matters related to prejudice, stating "the issue was whether, in the circumstances of this particular case,

3 *Loughrey v. R.*, [2002] CMAC-452.

4 *Deg v. R.*, [1999] CMAC-427, *Legaarden v. R.*, [1999] CMAC-423, and *Vanier v. R.*, [1999] CMAC-422.

5 *Jones v. R.*, [2002] CMAC-460.

6 *Jones*, at paragraph 7.

the appellant's conduct *did* prejudice good order and discipline in that the remarks tended to bring a superior into contempt" (emphasis in original).⁷ The CMAC agreed with the appellant's submission that the effect of the interpretation of the section 129(1) offence employed by the military judge, that is, to convict the appellant on the basis that he may have or could have occasioned prejudice to discipline, would result in the section being unconstitutionally vague because it would then be impossible to frame legal debate in any meaningful manner. On reviewing the facts, the law and the circumstances surrounding the case, the Director of Military Prosecutions decided that it was no longer in the public or CF interest to proceed with a new trial.

⁷ *Jones*, at paragraph 12.



Chapter 6

Conclusion

As the superintendent of the administration of the military justice system, the JAG is responsible for ensuring that the system is ready and able to meet the needs of the Canadian Forces, as well as ensuring that the rights of those subject to the system are fully protected according to Canadian law. The reviews and surveys reported on in Chapter 2 are an important part of this supervisory role, and once again demonstrate that the system is meeting these needs, and indeed that confidence in the system continues to increase.

This confidence in the system has also been evident among the Canadian public. As in previous years, the Director General Public Affairs contracted with POLLARA¹ to conduct a telephone survey of people randomly selected from voters' lists across Canada. When asked about the fairness of the military justice system, 54% of respondents agreed that it is fair.² It is clear that the efforts to promote awareness of the military justice system continue to be successful. The committee structure continues to be an important part of this awareness initiative, providing the military justice system with the benefit of the perspective

1 POLLARA is a Canadian-owned public opinion and market research firm.

2 The percentage of respondents agreeing that the military justice system is fair dropped slightly from 57% in 2002, but remains higher than in earlier surveys.

of participants within the system, as well as from the civilian criminal justice system. An additional focus during 2002–2003 was to further develop the relationship between the Office of the JAG and Canadian law schools, with particular emphasis on the University of Western Ontario Faculty of Law. The office will also continue to subsidize post-graduate training to military lawyers.

Once again, the summary trial process was the workhorse of the military justice system. Of 1615 disciplinary proceedings commenced, 1568 were conducted as summary trials within Canada, Bosnia, Afghanistan, and on our ships at sea. The flexibility to deal with disciplinary issues wherever our forces are located is an important part of the *raison d'être* for the military justice system. The analysis of the statistics related to summary trials reveals a significant increase in the number over the previous reporting period, partly as a result of the increased number of new recruits in the system, as well as the continued willingness of commanding officers to resort to the disciplinary system when necessary. This increased confidence in the system is also reflected in the increased number of courts martial, up to 73 from 67 in the previous reporting period, and a continuation of an upward trend since 1998–1999. The Court Martial Appeal Court also saw an increase in numbers, with nine appeals argued before the court in 2002–2003, up from six the previous reporting period.

Not only has the system demonstrated the ability to deal with these increased numbers of summary trials and courts martial, but the number of days from the charges being laid to disposition of the charges at court martial has decreased. Although these timelines have seen improvement over the reporting period, this is an area that will continue to be the focus of ongoing efforts.

The Office of the JAG was closely involved in a number of legislative initiatives during the reporting period that had a direct impact on the structure of the military justice system. Although not always successful,

the goal has been, and remains, to make any necessary changes to the *National Defence Act* concurrently with changes to the *Criminal Code*, to ensure that the military justice system continues to reflect Canadian values.

A significant focus of work for the next reporting period will be assistance with the five year review of the Bill C-25 amendments to the *National Defence Act*. The Office of the JAG has established a team to develop JAG positions on all military justice issues related to the five year review.

As the Office of the JAG faces increasing demands for services, the importance of the appropriate allocation of resources to meet the demands of operational commanders is highlighted. The military justice system must continue to meet the needs of the Canadian Forces, as well as ensure that the system reflects the values and expectations of our members and the Canadian public.



Annex A

A Précis of the Canadian
Military Justice System





Annex A

A Précis of the Canadian Military Justice System

A.1 The Purpose of a Separate Military Justice System

In 1982, the *Canadian Charter of Rights and Freedoms* (*Charter*) expressly recognized the existence of a separate yet parallel system of military justice within the Canadian legal system. Subsection 11(f) of the *Charter* states that any person charged with an offence has the right to trial by jury “except in the case of an offence under military law tried before a military tribunal”.

The Supreme Court of Canada has directly addressed the existence of a separate, distinct military justice system twice.¹ On both occasions, the court has upheld the requirement for a separate military justice system in the Canadian Forces (CF) (see sidebar).

1 *MacKay v. The Queen*, [1980] 2 S.C.R. 370, and *R. v. Généreux*, [1992] 1 S.C.R. 259.

2 *Constitution Act*, 1867, s. 91(7). Under the Canadian Constitution, the Parliament of Canada has exclusive authority to make laws relating to the “militia, military and naval service and defence”. Consequently, Canadian constitutional law accords to the federal Parliament the right to make laws and regulations relating to military justice.

A.2 The Constitutional and Legislative Framework of the Canadian Military Justice System

Using its constitutional authority,² the Parliament of Canada enacted the *National Defence Act* (NDA), which, among its provisions, sets out the organization of the Department of National Defence (DND), the CF and the Canadian military justice system (including the establishment of courts martial and the court martial appeal court), and authorizes the Chief of the Defence Staff (CDS) to issue orders and instructions to give effect to the decisions and the directions of the Government of Canada and the Minister of National Defence.³ The NDA authorizes the Governor in Council and the Minister of National Defence to make regulations for the organization, training, discipline, efficiency, administration and good government of the CF and, generally, for carrying the purposes and provisions of the NDA into effect. The NDA authorizes the creation of the *Queen's Regulations and Orders* (QR&O), Canadian Forces Administrative Orders (CFAO), and the Defence Administrative Orders and Directives (DAOD).

Volume II of QR&O, which covers disciplinary matters, prescribes in greater detail

³ NDA section 18(2).

Why does the Canadian Forces have its own justice system?

In *R. v. Généreux*, [1992] 1 S.C.R. 259 at 293, the Supreme Court of Canada stated the rationale for keeping the military justice system distinct from the civilian criminal justice system:

The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. 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. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals, rather than ordinary courts, have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus a need for separate tribunals to enforce special disciplinary standards in the military.

the jurisdiction, organization and procedures of the Canadian military justice system. Orders and instructions dealing with disciplinary matters may be issued at any level of the chain of command.⁴ All members of the CF have a duty to be familiar with the orders and instructions issued by their chain of command.⁵ Failure to comply with such orders and instructions can lead to charges under the Code of Service Discipline (contained in the NDA), which are disposed of in the military justice system.

Notwithstanding Parliament's authority to create and administer a military system of justice, the federal government is not immunized from complying with other constitutional laws, including the protections afforded by the *Charter*. As Canadian citizens, CF members are entitled to enjoy all the rights and freedoms guaranteed by the *Charter*.

A.3 The Military Justice System

Code of Service Discipline

Comprising approximately 50 percent of the NDA,⁶ the Code of Service Discipline is the foundation of the Canadian military justice system. It sets out disciplinary jurisdiction and describes service offences, punishments, powers of arrest, and the organization and procedures for service tribunals, appeals and post-trial review.

Jurisdiction

The Code of Service Discipline applies to all CF members and, in certain circumstances, to civilians who may become subject to Canadian military law, for example, when accompanying a CF unit on service or active service.⁷

4 QR&O articles 4.12 and 4.21.

5 QR&O articles 4.02 and 5.01.

6 Pursuant to section 2 of the NDA, the Code of Service Discipline consists of Part III of the NDA.

7 NDA section 60(1) and QR&O article 102.09. The complete list of persons subject to the Code of Service Discipline appears in sections 60–65 of the NDA and QR&O Chapter 102.

Not all offences can be charged and tried in the military justice system.⁸ The CF has no jurisdiction to try any person charged with having committed, in Canada, the offences of murder, manslaughter, or any offence under sections 280, 282 and 283 of the *Criminal Code* of Canada.⁹

When a person subject to the Code of Service Discipline commits an offence under the *Criminal Code* or other federal law, the NDA extends jurisdiction to deal with the matter in the military justice system.¹⁰ Similarly, jurisdiction under the NDA may also be extended when an offence is committed contrary to foreign law.¹¹

Service Offence

A “service offence” is an offence under the NDA, the *Criminal Code* or any other act of Parliament committed by a person while subject to the Code of Service Discipline. The Code of Service Discipline also includes several service offences that are unique to the profession of arms,¹² such as: misconduct in the presence of the enemy, mutiny, disobedience of a lawful command, desertion, absence without leave, and conduct to the prejudice of good order and discipline.

Limitation Periods

Generally, a person who is subject to the Code of Service Discipline at the time of the alleged commission of an offence continues to be liable to be charged, dealt with and tried at any time under the Code of

8 NDA section 70.

9 Sections 280–283 of the *Criminal Code* relate to the abduction of children from a parent or guardian.

10 Under section 130 of the NDA, such offences may become service offences.

11 Under section 132 of the NDA, an offence committed by a person subject to the Code of Service Discipline under the law of a foreign country while outside Canada in that foreign country may also be dealt with as a service offence.

12 NDA sections 73–129.

Service Discipline.¹³ This rule has two exceptions however. The first exception arises when the act or omission that constitutes the offence would have been subject to a limitation period had it been dealt with other than under the Code of Service Discipline; in such a case, that limitation period applies.¹⁴ For example, if the act or omission constituted an offence under the *Criminal Code* or other federal or foreign law, then in this circumstance, any limitation period applicable to the offence in the civilian justice system applies. The second exception relates to summary trials. A summary trial must begin before one year has elapsed after the day when the offence is alleged to have been committed.¹⁵

Process of Laying Charges

Where a complaint is made or where there are other reasons to believe that a service offence may have been committed, an investigation shall be conducted to determine whether there are sufficient grounds to lay a charge.¹⁶ A complaint can usually be directed to a commanding officer or to the Military Police.

Investigations

Investigations can be conducted by one of three groups. The type of disciplinary investigation, and the entity responsible for it, is determined by the nature of the offence alleged and the gravity or sensitivity of the matter.

Canadian Forces National Investigation Service (CFNIS)

Investigation – The CFNIS operates to provide independent criminal investigation services in support of the military justice system. It will investigate if an alleged offence is of a serious or sensitive nature. Any one of the following circumstances can bring a matter within the ambit of the “serious and sensitive” standard:

13 NDA sections 60(2) and 69.

14 NDA section 69(a).

15 NDA section 69(b).

16 QR&O article 106.02.

- when an offence is classified as indictable under the *Criminal Code* of Canada or other federal legislation;
- when a matter involves a senior officer (rank of major or above, or a civilian equivalent) or commanding officer as either the subject of investigation or victim; or
- when an offence arises out of a breached relationship of trust.

Moreover, when the CFNIS conducts an investigation, its investigators have the authority to lay charges.

Military Police Investigation – Where an alleged offence does not meet the serious or sensitive standard, or where the CFNIS has waived their jurisdiction, the Military Police will normally assume investigative responsibilities. Matters investigated by the Military Police will be referred to the person's unit for review and, where appropriate, the laying of charges.

Unit Investigation – Alleged offences typically involving only a minor breach of discipline can be dealt with by way of unit investigation.

Investigation Process

Regardless of the form of disciplinary investigation undertaken, an investigator shall, as a minimum, collect all reasonably available evidence bearing on the guilt or innocence of the person who is the subject of the investigation. Where appropriate, an investigation can involve:

- interviewing witnesses;
- taking statements;
- gathering physical evidence; and
- extending an opportunity to the subject of the investigation to make a statement.

The investigator may seek legal advice at any point during the investigation; but there is no obligation to do so.

Charging Process

A “charge” is a formal accusation that a person subject to the Code of Service Discipline has committed a service offence. A charge is laid when it is reduced to writing in a Charge Report (Part I of a Record of Disciplinary Proceedings (RDP) form) and signed by a person authorized to lay charges.¹⁷

The following persons may lay charges under the Code of Service Discipline:

- a commanding officer;
- an officer or non-commissioned member authorized by a commanding officer to lay charges; and
- an officer or non-commissioned member of the Military Police assigned to investigative duties with the CFNIS.¹⁸

To lay a charge there must be an actual belief on the part of the person laying a charge that the accused has committed the alleged offence and that belief must be reasonable. A “reasonable belief” is a belief that would lead any ordinary prudent and cautious person to the conclusion that the accused probably committed the offence alleged.¹⁹

Legal Advice

Prior to laying a charge, the charge laying authority is required to obtain legal advice if:

- the charge cannot be tried summarily;
- the charge would give rise to a right to elect trial by court martial; or
- the offence is alleged to have been committed by an officer or non-commissioned member at or above the rank of warrant officer or petty officer first class.²⁰

17 QR&O article 107.015(2).

18 QR&O article 107.02.

19 See Note to QR&O article 107.02.

Legal advice at this stage in the process assists the charge laying authority in the exercise of charge laying discretion and as such is generally focused on whether or not the basic legal elements exist to allow the charge layer to form a reasonable belief that an offence has been committed. Advice will usually pertain to:

- the sufficiency of the evidence;
- whether or not the circumstances warrant a charge being laid; and
- the determination of an appropriate charge.

Where the CFNIS conducts an investigation, a prosecutor with the Canadian Military Prosecution Service (which is supervised by the Director of Military Prosecutions (DMP)) provides the necessary legal advice. In all other cases, the unit legal adviser provides legal advice.

Again, in all but the most minor of cases, legal advice must be sought from the unit legal adviser prior to making the decision of whether or not to proceed with a charge.²¹ The commanding officer shall only proceed with charges if, in addition to having a reasonable belief that the accused committed the alleged offence, he or she is satisfied that there is sufficient evidence to put the accused on trial.

The Decision to Proceed with a Charge

Once a charge has been laid, the charge laying authority must refer it to either:

- the accused person's commanding officer;
- the commanding officer of the base or unit in which the accused was present when the charge was laid; or

20 QR&O article 107.03. Generally speaking, it is the rule rather than the exception to seek legal advice before laying charges. Effectively, legal advice must always be obtained, unless a person of or below the rank of sergeant or petty officer second class is to be charged with one of five minor offences listed in QR&O 108.17.

21 QR&O article 107.11.

- another officer within the unit who has been authorized by the commanding officer to deal with charges under the Code of Service Discipline.²²

An officer, to whom a charge has been referred, must then decide whether to proceed with the charge or not. A commanding officer or superior commander who decides not to proceed with a charge laid by the CFNIS must communicate that decision with reasons to the CFNIS.²³ If, after reviewing the decision and reasons, the CFNIS considers that the charge should go forward, the CFNIS may refer the charge directly to a referral authority for disposal, who must then refer the charge to the DMP.²⁴ When circumstances warrant, investigators of the Military Police and the CFNIS may also lay charges in the civilian courts.²⁵

Where a commanding officer, superior commander, or officer with delegated powers decides to proceed with a charge, the charge shall be dealt with in accordance with the procedures prescribed by regulations contained in Volume II of QR&O. Ultimately, the CO can decide not to proceed with the charge, arrange for the accused to be tried by summary trial or refer the charge, which begins a process whereby the accused may consequently be tried by court martial.

The Two Tiers of the Military Justice System

The military justice system has a two-tiered tribunal structure that includes the summary trial system (where most disciplinary matters are dealt with) and the more formal court martial system. The term “service tribunal”²⁶ means either a summary trial or a court martial.²⁷ The regulations outline procedures for the trial of a matter by summary trial, as well as procedures for referral of charges for trial by court martial.

22 QR&O article 107.09(1)(a).

23 QR&O article 107.12(1).

24 QR&O article 107.12(3).

25 Where concurrent jurisdiction does exist, charges may be laid by military authorities under the Code of Service Discipline or in the civilian courts.

A.4 Summary Trials

The summary trial remains the most commonly used form of service tribunal in the military justice system. The purposes of a summary trial are as follows:

- to provide prompt, fair justice in respect of minor service offences; and
- to contribute to the maintenance of military discipline and efficiency in Canada and abroad, in peacetime and during armed conflicts.²⁸

Once jurisdiction exists to conduct a summary trial,²⁹ it may be held wherever the unit is located, whether it is in garrison, in an exercise area or deployed abroad. Generally, summary trials are conducted across Canada, at sea in Her Majesty's Canadian ships, and in various locations during operations abroad.

When a CF member is charged with an offence under the Code of Service Discipline, the summary trial process usually permits the case to be tried and disposed of in the unit, by members of the unit. Summary trials are presided over by commanding officers,³⁰ delegated officers³¹ or superior commanders.³² Before conducting a summary trial, however,

26 NDA section 2.

27 For a detailed, comprehensive overview of the military justice system, see the JAG publication *Military Justice at the Summary Trial Level* (downloadable from www.forces.gc.ca/jag).

28 QR&O article 108.02.

29 Summary trial jurisdiction over an accused is not automatic; it depends on several statutory and regulatory factors including: fitness of the accused to be tried, the status and rank of the accused and of the presiding officer, the nature of the charges, the length of time elapsed between the laying of the charges and the first day of trial, the interests of justice and discipline, the nature of the punishment that may be imposed on the accused should a guilty finding be made and, if applicable, the election of the accused to be tried summarily. For a detailed consideration of jurisdiction, see NDA sections 60, 69, 70, 163 and 164; and QR&O articles 108.05, 108.06, 108.07, 108.09, 108.10, 108.12, 108.125, 108.16, 108.17 and 119.02.

the presiding officer must (in most circumstances) be trained and certified in the administration of the Code of Service Discipline in accordance with the curriculum established and taught by the Directorate of Law/Training on behalf of the JAG.³³

The procedures at a summary trial are straightforward and the powers of punishment are limited in scope. This restriction on the available punishments at summary trial reflects both the minor nature of the offences that may be tried at that level, and the intention that presiding officers impose punishments that are primarily corrective in nature.

During a summary trial, the accused is provided with an assisting officer from the unit. The primary functions of an assisting officer are to assist the accused in the preparation of his or her case and to assist the accused during the trial to the extent desired by the accused.

In addition, before the accused makes an election under article 108.17 (*Election To Be Tried by Court Martial*), the assisting officer shall ensure that the accused is aware of the nature and gravity of any offence with which the accused has been charged and the differences between trial by court martial and trial by summary trial.

Although the summary trial is still the overwhelmingly predominant form of service tribunal, not all service offences can be handled summarily. QR&O lists the offences that a commanding officer may try

30 NDA section 163(1)(a). Commanding officers may try accused persons who are either an officer cadet or below the rank of warrant officer.

31 NDA section 163(4) and QR&O 108.10. Delegated officers appointed by the commanding officer must be of the rank of captain or above. They may only try an accused below the rank of warrant officer, and may try only a limited number of minor offences.

32 NDA section 164(1)(a). Superior commanders may try officers below the rank of lieutenant-colonel or non-commissioned members above the rank of sergeant.

33 QR&O article 101.09; effective 1 April 2000—exceptions only for “urgent operational requirements.”

summarily.³⁴ The more serious offences, including most *Criminal Code* offences charged pursuant to section 130 of the NDA, must be tried by court martial.

Review of Summary Trials

All offenders convicted at summary trial have the right to apply to the presiding officer's next superior officer in the disciplinary chain of command for a review of the findings, the punishment imposed,³⁵ or both.³⁶ The findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority.³⁷ Review authorities acting under QR&O article 108.45 must obtain legal advice before making any determination on requests for review.³⁸

Offenders convicted at summary trial may also request judicial review from the Federal Court or from the Superior Court in any province.³⁹

A.5 Right to be Tried by Court Martial

A significant aspect of the recent reforms was the expansion of the right of the accused to choose between summary trial and trial by court martial. Now, the accused has the right to elect trial by court martial in the vast majority of cases. In effect, the presiding officer must offer an election unless the accused is facing only a "minor disciplinary" charge.⁴⁰ The QR&O specify when an accused has the right to elect to be tried by court martial, and under what circumstances an accused is not

34 QR&O article 108.07. See QR&O article 108.125 for offence jurisdiction for summary trial by superior commander, and QR&O article 108.10 for offence jurisdiction for summary trial by delegated officer.

35 For a more detailed explanation of the powers of punishment in the summary trial system, see QR&O articles 108.24, 108.25 and 108.26.

36 QR&O article 108.45.

37 NDA section 249 and QR&O article 116.02.

38 QR&O article 108.45(8).

39 *Federal Court Act*, R.S.C. 1985, c. F-7, sections 18 and 18.1.

provided the option to choose. Generally, there are two instances where the option to choose is unavailable:

- where the charge laid is “minor” and in the judgement of the officer who will conduct the summary trial, any of the following penalties would not be appropriate upon a finding of guilt:
 - detention,
 - reduction in rank,
 - a fine in excess of 25 percent of monthly basic pay;
- where the charge is for a serious offence under the Code of Service Discipline (e.g. negligent performance of duty, or some offences capable of being categorized as indictable under the *Criminal Code*) or the accused person is of the rank of lieutenant-colonel or higher, a trial by court martial is the only available option.

Where the accused has the right to be tried by court martial, the accused must be informed of that right. The accused must also be given a reasonable period of time to decide whether to elect to be tried by court martial, and to consult legal counsel with respect to the election.⁴¹

If a matter is to proceed by way of summary trial, in most circumstances the summary trial cannot be presided over by a commanding officer or superior commander who was also responsible for the investigation or laying of the charge for that particular accused.

40 “Minor disciplinary” charges resulting in a denial of the option to elect include the following sections of the NDA: 85 (insubordinate behaviour), 86 (quarrels and disturbances), 90 (absence without leave), 97 (drunkenness), or 129 (conduct to the prejudice of good order and discipline). When charges are laid under section 129, the right of election may be denied only when the offence relates to military training; maintenance of personal equipment, quarters or work space; or dress and deportment.

41 QR&O articles 108.17 and 108.18. Legal officers in the Directorate of Defence Counsel Services are available to provide legal advice with respect to the making of the election. This service is provided at no expense to the accused, and is normally provided by telephone.

Referral to Court Martial

When the type of charge requires trial by court martial, an accused has elected to be tried by court martial, or the commanding officer has determined that due to the nature of the offence the matter is most appropriately dealt with by court martial, the charge is referred to a referral authority. The term “referral authority” applies only to those specific officers who have been legally empowered to refer a charge to the DMP for the purposes of determining whether a matter warrants trial by court martial.

When making a referral to the DMP, a referral authority essentially represents the interests of the CF, which will be reflected in any recommendations accompanying a referred charge. Under the regulations, the following officers are referral authorities:

- the Chief of Defence Staff; and
- any officer having the powers of an officer commanding a command.

Upon receipt of an application to proceed with a charge, the referral authority must:

- forward the application to the DMP, adding any recommendations regarding the disposition of the charge that are deemed appropriate (including any recommendation to proceed or not proceed with a charge); or
- direct a commanding officer or superior commander to try the accused by summary trial on the existing charges, but only in circumstances where the referring officer had referred the charge because he or she believed his or her powers of punishment were not adequate to try the accused by summary trial and the referral authority does not share this opinion.

Thus in most cases, when a charge has been referred to a referral authority, he or she must forward the charge to the DMP, with any recommendations that the officer considers appropriate.

Role of DMP in Court Martial Process

The DMP is responsible for:

- deciding whether a particular charge is suitable for trial by court martial; and
- conducting prosecutions at courts martial.

Upon receipt of a referral, the DMP initially undertakes a review of the charge. Two main issues are considered:

- the sufficiency of the evidence required to demonstrate a reasonable prospect of conviction in respect of the charges laid or yet to be laid; and
- where there is sufficient evidence, whether or not the public interest and the interests of the CF require the initiation of a prosecution.

Following a review of the charge, the DMP will determine whether or not a charge should be dealt with at court martial and will notify the referral authority, commanding officer, and the accused of this decision. Where it is decided not to proceed with the court martial, the DMP may refer the charge back to an officer having summary trial jurisdiction if:

- the offence is one which may be tried at summary trial; and
- the accused has not elected to be tried by court martial.

On the other hand, where the decision is made to pursue a charge, the DMP will prefer the charge by preparing and signing a charge sheet and refer the charge to the Court Martial Administrator, who will then convene a court martial. In addition, the DMP can modify charges or prefer any other charges supported by evidence.

A.6 Courts Martial

The court martial, a formal military court presided over by a military judge, is designed to deal with more serious offences, and is conducted in accordance with rules and procedures similar to those followed in

civilian criminal courts. Like summary trials, courts martial may be held anywhere in the world. Statutorily, courts martial have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all “matters necessary or proper for the due exercise of its jurisdiction,”⁴² including: the attendance, swearing and examination of witnesses; the production and inspection of documents; and the enforcement of its orders.

At a court martial, the prosecution is conducted by a legal officer from the Office of the DMP. The accused is entitled to be represented free of charge by a legal officer from the Directorate of Defence Counsel Services (DDCS)⁴³ or, at his or her own expense, by a civilian lawyer. CF members who meet the qualifying criteria may also take advantage of provincial Legal Aid programs.

Types of Court Martial

The NDA provides four types of court martial:

- General Court Martial;
- Disciplinary Court Martial;
- Standing Court Martial; and
- Special General Court Martial.

The General Court Martial and the Disciplinary Court Martial each comprise a military judge and a panel of CF members. The panel of CF members is roughly analogous to a jury in a civilian criminal court. In a General Court Martial, the panel is composed of five members and in a Disciplinary Court Martial, the panel is composed of three members.⁴⁴ When the accused is an officer, the court martial panel consists entirely of officers. When the accused is a non-commissioned member, the panel at a General Court Martial must include two

42 NDA section 179.

43 QR&O article 101.20.

44 NDA sections 167(1) and 170(1).

non-commissioned members at or above the rank of warrant officer or petty officer first class. The panel at the Disciplinary Court Martial of a non-commissioned accused must include one non-commissioned member at or above the rank of warrant officer or petty officer first class.⁴⁵ At both the General Court Martial and the Disciplinary Court Martial, the panel makes the finding on the charges (i.e. guilty or not guilty) and the military judge makes all legal rulings and imposes the sentence.

The Standing Court Martial and the Special General Court Martial differ in name and function, but not in composition; both are conducted by a military judge sitting alone,⁴⁶ who makes the finding on the charges and imposes a sentence if the accused is found guilty. The rank or status of the accused, the nature of the offence, and the powers of punishment available to the various types of court martial are all factors considered in determining which type of court martial is appropriate in a specific case.

Appeal of a Court Martial Decision

Generally speaking, decisions made at courts martial may be appealed to the Court Martial Appeal Court of Canada (CMAC), a civilian court composed of Federal Court and Superior Court judges.⁴⁷ The CMAC may sit and hear appeals at any place.

Under the NDA, both an accused tried by court martial and the Minister of National Defence may appeal to the CMAC.

CMAC decisions may be appealed to the Supreme Court of Canada. Such appeals may be made on any question of law on which a judge of the CMAC dissents, or on any question of law if leave to appeal is granted by the Supreme Court of Canada.⁴⁸

45 NDA sections 167(7) and 170(4).

46 NDA sections 174 and 177.

47 See sections 159.9, 234, 235, 238 to 243 and 248.2 to 248.9 of the NDA.

48 NDA section 245.

When a person has delivered a Notice of Appeal under section 230 or 245 of the NDA, he or she may apply to the Appeal Committee, established by the Governor in Council through regulation,⁴⁹ to be represented on the appeal, free of charge, by a lawyer appointed by the DDCS. When both members of the Appeal Committee determine that the applicant's appeal has professional merit, the committee shall approve the provision of legal counsel by the DDCS.⁵⁰

Before the establishment of the Appeal Committee, only accused persons who were respondents to appeals filed by the Crown were entitled to be represented by a legal officer at public expense.⁵¹ This regulatory provision now extends the same opportunity to persons initiating an appeal which is determined to have professional merit.

Ancillary Repercussions to a Member's Career

Apart from potential disciplinary action or penal sanctions under the Code of Service Discipline, administrative action may also be initiated by the chain of command.

When a CF member is faced with a charge under the Code of Service Discipline, a commanding officer must consider the consequences of leaving the accused in the workplace, or relieving him or her of the obligation to perform military duties. Whatever administrative course of action is contemplated, it must be appropriate, taking into account: the specific offence, the circumstances of the accused, the best interests of the unit, and the operational requirements of the CF as a whole. In essence, the rights of the individual involved must be weighed against the public interest.

49 QR&O article 101.21.

50 QR&O article 101.21(6).

51 QR&O article 101.20(2)(g).

When administrative measures are temporary in nature, a member's status will be re-evaluated once military justice proceedings are concluded. Depending upon the circumstances, however, long-term administrative measures may be imposed after a final disposition of the charges. Such measures can range from recorded warnings or counselling and probation, to the most serious measure, release from the CF.

A.7 Public Access to Charging Documents

The CF has a process similar to that used by civilian criminal courts to permit public access to the charging documents in the Unit Registry of Disciplinary Proceedings. Under the civilian court system, registries supply basic charging documents to requesters who give the registry staff sufficient information to identify the record sought.

Each CF unit is required to establish and maintain a Unit Registry of Disciplinary Proceedings.⁵² Anyone can request a copy of a specific RDP by sending the commanding officer of the originating unit a written request containing sufficient information to allow the RDP to be identified (e.g., a specific type of offence, or the name of an accused). Upon receipt of such a request, the commanding officer must send the requester a copy of the RDP held on the unit's Registry of Disciplinary Proceedings, unless release of the RDP is prohibited for one of the reasons set out in the regulation.⁵³

This streamlined process is designed to increase public access to the basic charging documents and key decisions in the military justice system. This material is also available through the *Access to Information Act* process, which must be used when the requester lacks sufficient identifying information or the commanding officer is prohibited from releasing the RDP for a reason set out in the regulation.

52 QR&O article 107.14.

53 QR&O article 107.16.



Annex B

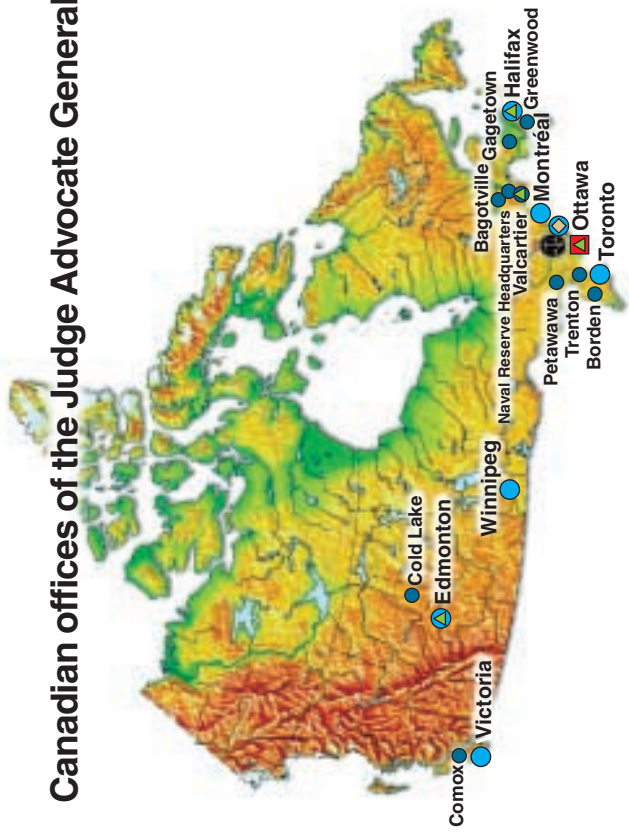
Organization Chart of the Office
of the Judge Advocate General

Maps and Addresses/
Phone Numbers of
Judge Advocate General Offices







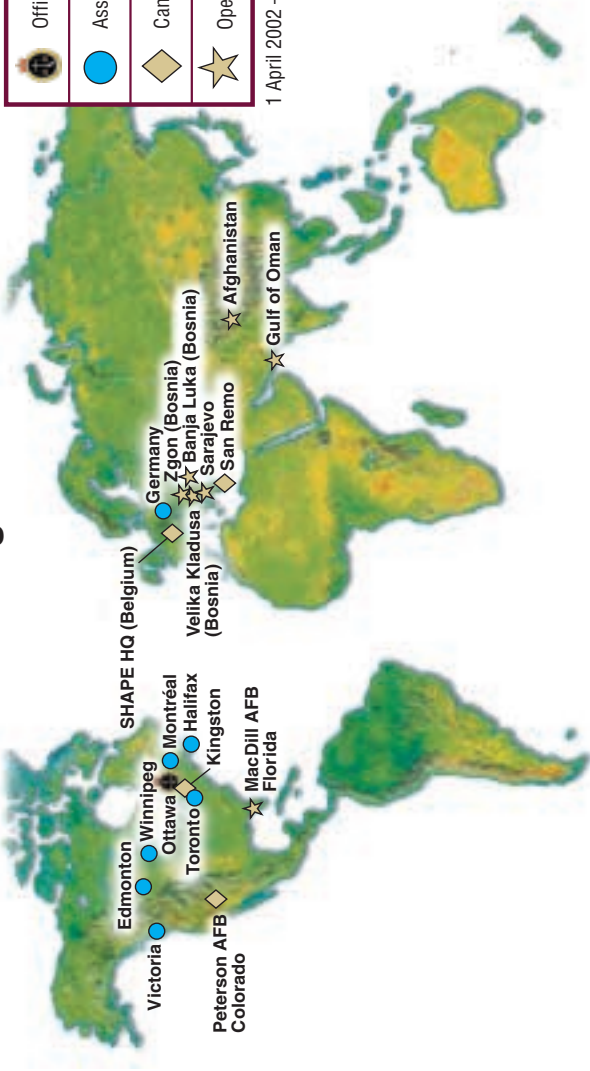
Canadian offices of the Judge Advocate General

	JAG Office
	Assistant Judge Advocate General
	Deputy Judge Advocate
	Regional Military Prosecutors
	Directorate of Defence Counsel Services
	Director Military Prosecutions



World offices of the Judge Advocate General

	Office of the JAG
	Assistant Judge Advocate General
	Canadian Legal Advisers
	Operations



1 April 2002 – 31 March 2003

Addresses/Phone Numbers of Judge Advocate General Offices

Mailing Address	Telephone/Fax Numbers
Office of the Judge Advocate General Constitution Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 992-3019 CSN: 842-3019 FAX: (613) 995-3155
Special Assistant Office of the Judge Advocate General MGen George R. Pearkes Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 996-8470 CSN: 846-8470 FAX: (613) 992-5678
Director of Military Prosecutions Constitution Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 996-5723 CSN: 846-5723 FAX: (613) 995-1840
Director of Defence Counsel Services Asticou Centre, Block 1900 National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (819) 994-9151 CSN: 844-9151 FAX: (819) 997-6322
Deputy Judge Advocate General/Chief of Staff Constitution Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 992-8414 CSN: 842-8414 FAX: (613) 995-3155
Deputy Judge Advocate General/Operations Constitution Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 996-4812 CSN: 846-4812 FAX: (613) 995-5737

Mailing Address	Telephone/Fax Numbers
Deputy Judge Advocate General/ Human Resources Constitution Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 995-2628 CSN: 845-2628 FAX: (613) 995-5737

Alberta

Mailing Address	Telephone/Fax Numbers
Assistant Judge Advocate General Western Region P.O. Box 10500 Stn Forces Edmonton AB T5J 4J5	TEL: (780) 973-4011 EXT 4239 CSN: 528-4239 FAX: (780) 973-1409
Regional Military Prosecutor Western Region P.O. Box 10500 Stn Forces Edmonton AB T5J 4J5	TEL: (780) 973-4011 EXT 4771/4779 CSN: 528-4771 FAX: (780) 973-1649
Deputy Judge Advocate 4 Wing Cold Lake P.O. Box 6550 Stn Forces Cold Lake AB T9M 2C6	TEL: (780) 840-8000 EXT 7027 CSN: 690-7025 FAX: (780) 840-7328

British Columbia

Mailing Address	Telephone/Fax Numbers
Assistant Judge Advocate General Pacific Region P.O. Box 17000 Stn Forces Victoria BC V9A 7N2	TEL: (250) 363-4260 CSN: 255-4260 FAX: (250) 363-5619
Deputy Judge Advocate 19 Wing Comox PO Box 1000, Stn Main Lazo BC V0R 2K0	TEL: (250) 339-8153 CSN: 252-8153 FAX: (250) 339-8015

Manitoba

Mailing Address

Assistant Judge Advocate General
Prairie Region
1 Cdn Air Div HQ
P.O. Box 17000 Stn Forces
Winnipeg MB R3J 3Y5

Telephone/Fax Numbers

TEL: (204) 833-2500 EXT 5900
CSN: 257-5900
FAX: (204) 833-2593

New Brunswick

Mailing Address

Deputy Judge Advocate
3 Area Support Group Gagetown
P.O. Box 17000 Stn Forces
Oromocto NB E2V 4J5

Telephone/Fax Numbers

TEL: (506) 422-2000 EXT 2310
CSN: 432-2310
FAX: (506) 422-1452

Nova Scotia

Mailing Address

Assistant Judge Advocate General
Atlantic Region
P.O. Box 99000 Stn Forces
Halifax NS B3K 5X5

Telephone/Fax Numbers

TEL: (902) 427-7300
CSN: 447-7300
FAX: (902) 427-7199

Regional Military Prosecutor
Atlantic Region
P.O. Box 99000 Stn Forces
Halifax NS B3K 5X5

TEL: (902) 427-7318
CSN: 447-7318
FAX: (902) 427-7317

Deputy Judge Advocate
14 Wing Greenwood
P.O. Box 5000 Stn Main
Greenwood NS B0P 1N0

TEL: (902) 765-1494 EXT 5623
CSN: 568-5623
FAX: (902) 765-1287

Ontario

Mailing Address

Assistant Judge Advocate General
Central Region
P.O. Box 5000
Toronto ON M3M 3J5

Telephone/Fax Numbers

TEL: (416) 633-6200 EXT 3955
CSN: 634-3955
FAX: (416) 635-2726

Ontario (continued)

Mailing Address	Telephone/Fax Numbers
Regional Military Prosecutor Central Region National Defence Headquarters Constitution Building 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 996-2745 CSN: 846-2745 FAX: (613) 995-1840
Assistant Judge Advocate General Ottawa Region MGen George R. Pearkes Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 996-6456 CSN: 845-6456 FAX: (613) 992-5678
Deputy Judge Advocate Canadian Forces Base Borden P.O. BOX 1000 Stn Main Borden ON L0M 1C0	TEL: (705) 424-1200 EXT 3508 CSN: 270-3508 FAX: (705) 423-3003
Legal Adviser Canadian Forces Joint Operations Group Canadian Forces Base Kingston P.O. BOX 17000 Stn Forces Kingston ON K7K 7B4	TEL: (613) 541-5010 EXT 4303 CSN: 270-4303 FAX: (613) 540-8186
Deputy Judge Advocate Canadian Forces Base Petawawa Building S111 P.O. BOX 9999 Stn Main Petawawa ON K8H 2X3	TEL: (613) 687-5511 EXT 5665 CSN: 677-5665 FAX: (613) 588-6373
Deputy Judge Advocate Canadian Forces Base Trenton P.O. Box 1000 Stn Forces Astra ON K0K 3W0	TEL: (613) 965-7041 CSN: 827-7041 FAX: (613) 965-7094
Office of Military Legal Education P.O. Box 17000 Stn Forces Kingston ON K7K 7B4	TEL: (613) 541-6000 EXT 6629 CSN: 270-6629 FAX: (613) 541-6907

Québec

Mailing Address	Telephone/Fax Numbers
Assistant Judge Advocate General Eastern Region Pierre Le Moyne d'Iberville Building P.O. Box 600, Stn K Montréal QC H1N 3R2	TEL: (514) 252-2777 EXT 4028 CSN: 621-4028 FAX: (514) 252-2248
Regional Military Prosecutor Eastern Region P.O. Box 1000 Stn Forces Courcelette QC G0A 4Z0	TEL: (418) 844-5000 EXT 5732 CSN: 666-5732 FAX: (418) 844-6606
Deputy Judge Advocate Area Support Unit Valcartier P.O. Box 1000 Stn Forces Courcelette QC GOA 4Z0	TEL: (418) 844-5000 EXT 5297 CSN: 666-5297 FAX: (418) 844-6606
Deputy Judge Advocate 5 CMBG Area Support Unit Valcartier P.O. Box 1000 Stn Forces Courcelette QC GOA 4Z0	TEL: (418) 844-5000 EXT 5602 CSN: 666-5602 FAX: (418) 844-6606
Deputy Judge Advocate 3 Wing Bagotville P.O. Box 5000, Stn bureau-chef Alouette QC G0V 1A0	TEL: (418) 677-4000 EXT 4338 CSN: 661-4338 FAX: (418) 677-4168
Deputy Judge Advocate Naval Reserve Headquarters 112 Dalhousie Quebec QC G1K 4C1	TEL: (418) 694-5560 EXT 5300 CSN: unavailable FAX: (418) 694-5591

Belgium

Mailing Address

Legal Adviser
Supreme Headquarters
Allied Power in Europe
Brussels, Belgium
PO Box 5048, Stn Forces
Belleville ON K8N 5W6

Telephone/Fax Numbers

TEL: +32-6544-4940
FAX: +32-6544-4997

Germany

Mailing Address

Assistant Judge Advocate General
Europe
SELFKANT Kaserne
P.O. Box 5053 STN Forces
Belleville ON K8N 5W6

Telephone/Fax Numbers

TEL: 011-49-2451-717165/717170
FAX: 011-49-2451-717174

Italy

Mailing Address

Deputy Director Military Law Department
International Institute of Humanitarian Law
Villa Ormond
Corso Cavallotti 113
18038 San Remo, Italy

Telephone/Fax Numbers

TEL: +39-0184-541848
FAX: +39-0184-541600

United States of America

Mailing Address

Legal Adviser
Deputy Commander-In-Chief North
American Aerospace Defence Command
250 S. Peterson Blvd. Room 3116
Peterson AFB CO 80914-3010
USA

Telephone/Fax Numbers

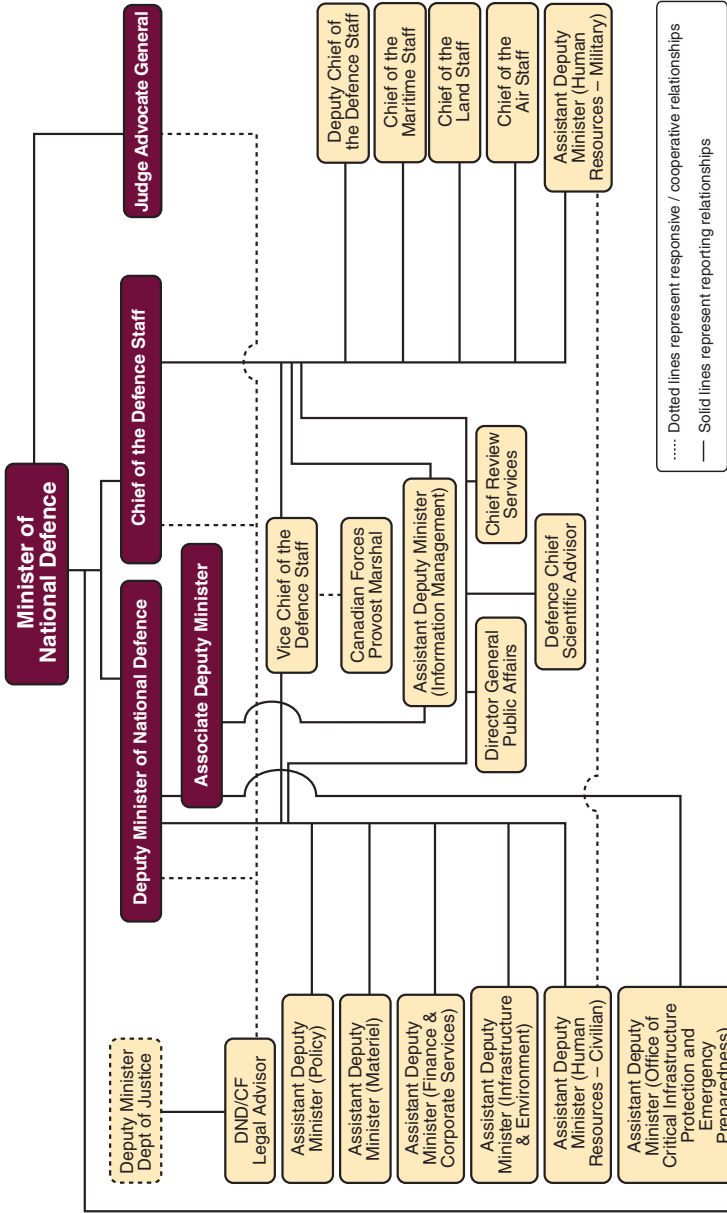
TEL: 719-554-9193
CSN: 312-692-9193
FAX: 719-554-2609

Annex C

Organization Chart
Displaying the Relationship
of the Judge Advocate General
to the Minister, the Chief of
the Defence Staff and the
Deputy Minister



Primary Responsibilities Diagram





Annex D

Summary Trial Year
in Review — Statistics:
1 April 2002 to 31 March 2003



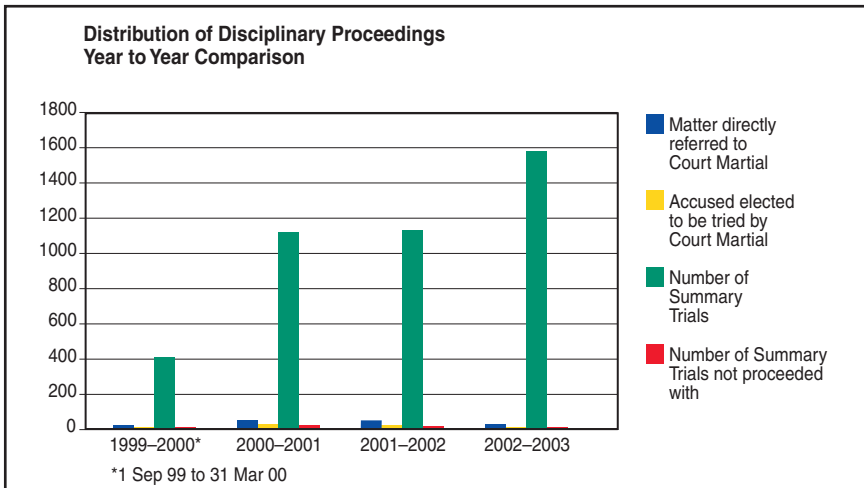
Annex D

Summary Trials Reporting

Period 1 April 2002–31 March 2003

Distribution of Disciplinary Proceedings

	2001–2002		2002–2003	
	#	%	#	%
Matter directly referred to court martial	52	4%	32	2%
Accused elected to be tried by court martial	11	1%	7	0.5%
Number of summary trials	1122	94%	1568	97%
Number of summary trials not proceeded with	9	1%	8	0.5%
Total	1194	100%	1615	100%



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

Election to Court Martial

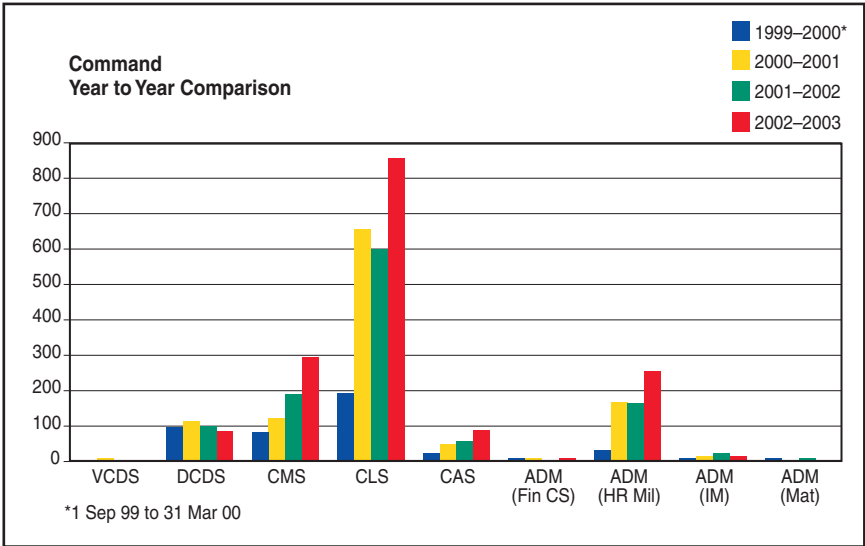
	2001–2002		2002–2003	
	#	%	#	%
Number of cases where member offered the right to be tried by court martial	339		432	
Percentage of persons electing court martial when offered		3%		1.62%

Language of Summary Trials

	2001–2002		2002–2003	
	#	%	#	%
Number in English	891	79%	1280	82%
Number in French	231	21%	288	18%
Total	1122	100%	1568	100%

Command

	2001–2002		2002–2003	
	#	%	#	%
Vice Chief of the Defence Staff	0	0%	0	0%
Deputy Chief of the Defence Staff	100	8.9%	80	5.1%
Chief of the Maritime Staff	188	16.8%	293	18.6%
Chief of the Land Staff	608	54.2%	846	54.0%
Chief of the Air Staff	48	4.3%	85	5.4%
Associate Deputy Minister (Finance and Corporate Services)	0	0%	1	0.1%
Associate Deputy Minister (Human Resources-Military)	162	14.4%	252	16.1%
Associate Deputy Minister (Information Management)	15	1.3%	11	0.7%
Associate Deputy Minister (Materiel)	1	0.1%	0	0%
Total	1122	100%	1568	100.0%



Rank of the Accused

	2001-2002		2002-2003	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1010	90%	1434	91%
Sergeant to Chief Warrant Officer	37	3%	56	4%
Officer	75	7%	78	5%
Total	1122	100%	1568	100%

* *Master Corporal is not a rank. It is an appointment pursuant to QR&O article 3.08.*

Disposition by Case

	2001-2002		2002-2003	
	#	%	#	%
Guilty	1070	95%	1497	95%
Not guilty	52	5%	71	5%
Number of cases	1122	100%	1568	100%

Findings by Charge

	2001–2002		2002–2003	
	#	%	#	%
Guilty	1269	87%	1777	89%
Guilty — special finding	0	0%	1	0.5%
Not guilty	135	9%	156	8%
Charge stayed	39	3%	47	2%
Charge not proceeded with	8	1%	1	0.5%
Total Charges	1451	100%	1982	100%

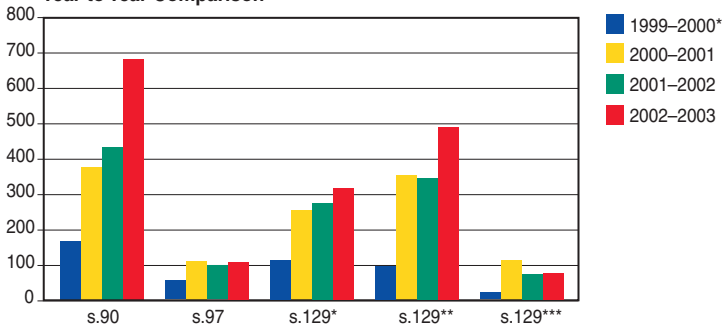
Summary of Charges

NDA Article	Description	2001–2002		2002–2003	
		#	%	#	%
83	Disobedience of lawful command	36	2.4%	53	2.6%
84	Striking or offering violence to a superior	4	0.2%	5	0.3%
85	Insubordinate behaviour	48	3.3%	64	3.2%
86	Quarrels and disturbances	31	2.1%	41	2.0%
87	Resisting or escaping from arrest or custody	0	0%	1	0.1%
90	Absence without leave	431	29.7%	684	34.5%
93	Cruel or disgraceful conduct	7	0.5%	3	0.2%
95	Abuse of subordinates	7	0.5%	4	0.2%
97	Drunkenness	104	7.2%	110	5.5%
98	Malingering or maiming	0	0%	6	0.3%
101	Escape from custody	5	0.3%	1	0.1%
101.1	Failure to comply with conditions	0	0%	1	0.1%
108	Signing inaccurate certificate	2	0.1%	0	0%
111	Improper driving of vehicles	2	0.1%	8	0.4%
112	Improper use of vehicles	13	0.9%	7	0.3%
114	Stealing	10	0.7%	14	0.7%
115	Receiving	0	0%	3	0.2%

NDA Article	Description	2001–2002		2002–2003	
		#	%	#	%
116	Destruction, damage, loss or improper disposal	13	0.9%	12	0.6%
117	Miscellaneous offences	7	0.5%	18	0.9%
124*	Negligent performance of a military duty	1	0.1%	1	0.1%
125*	Willfully made a false statement in a document	1	0.1%	0	0%
127	Negligent handling of dangerous substances	1	0.1%	2	0.1%
129	Conduct to the prejudice of good order & discipline — Offences of sexual nature	4	0.3%	5	0.3%
129	Conduct to the prejudice of good order & discipline — Drugs/Alcohol	75	5.2%	84	4.2%
129	Conduct to the prejudice of good order & discipline — election to be tried by CM given (excl. cases reported in 129 — Offences of sexual nature & 129 — Drugs/Alcohol)	277	19.1%	315	15.9%
129	Conduct to the prejudice of good order & discipline — election to be tried by CM not given (excl. cases reported in 129 — Offences of sexual nature & 129 — Drugs/Alcohol)	352	24.3%	491	24.7%
130	Service trial of civil offences	20	1.4%	49	2.5%
Number of charges		1451	100%	1982	100%

* Pursuant to QR&O article 108.07(2), these offenses cannot be tried by summary trial. Any findings of guilt under these offenses have been or will be quashed.

**Summary of Charges
Year to Year Comparison**



- s. 90 Absence without leave
- s. 97 Drunkenness
- s. 129 * Conduct to the prejudice of good order & discipline (election offered)
- s. 129 ** Conduct to the prejudice of good order & discipline (no election offered)
- s. 129 *** Conduct to the prejudice of good order & discipline (drugs/alcohol)

*1 Sep 99 to 31 Mar 00

Authority

	2001-2002		2002-2003	
	#	%	#	%
Delegated Officer	863	77%	1220	78%
Commanding Officer	224	20%	293	19%
Superior Commander	35	3%	55	3%
Total	1122	100%	1568	100%

Punishments

	2001–2002		2002–2003	
	#	%	#	%
Detention (suspended)	3	0.2%	10	0.5%
Detention	12	0.9%	31	1.6%
Reduction in rank	6	0.4%	1	0.1%
Severe reprimand	2	0.2%	2	0.1%
Reprimand	46	3.4%	48	2.5%
Fine	787	58.9%	1098	57.7%
Confinement to ship or barracks	297	22.2%	506	26.6%
Extra work and drill	84	6.3%	96	5.0%
Stoppage of leave	32	2.4%	51	2.7%
Caution	68	5.1%	61	3.2%
Total	1337	100%	1904	100%

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

Requests for Review

	2001–2002		2002–2003	
	#	%	#	%
Requests for review based on finding	5	33%	6	75%
Requests for review based on sentence	4	27%	1	12.5%
Requests for review based on finding & sentence	6	40%	1	12.5%
Total	15	100%	8	100%

Decision of Review Authority

	2001–2002		2002–2003	
	#	%	#	%
Upholds decision	9	60%	2	25%
Quashes / substitutes findings	5	33%	5	62%
Substitutes punishment	1	7%	0	0%
Mitigates / commutes / remits punishment	0	0%	1	13%
Total	15	100%	8	100%

Note: The statistics in this annex are current as of 15 April 2003.



Annex E

Court Martial

Year In Review — Statistics:

1 April 2002 to 31 March 2003



Annex E

Court Martial Reporting

Period 1 April 2002 – 31 March 2003

Number of Courts Martial

	2001–2002	2002–2003
	67	73

Courts Martial By Type

	2001–2002		2002–2003	
	#	%	#	%
Standing Court Martial	65	96%	73	100%
Disciplinary Court Martial	1	2%	0	0%
General Court Martial	1	2%	0	0%
Special General Court Martial	0	0%	0	0%
Total	67	100%	73	100%

Summary of Charges

Offences	Description	2001–2002 #	2002–2003 #
s.83 NDA	Disobeying a lawful command	10	7
s.84 NDA	Striking a superior officer	1	1
s.85 NDA	Used threatening language to a superior	5	4
s.86 NDA	Quarrels and disturbances	2	1
s.88 NDA	Desertion	1	0
s.90 NDA	Absent without leave	9	10

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

Offences	Description	2001–2002 #	2002–2003 #
s.93 NDA	Cruel or disgraceful conduct	10	6
s.96 NDA	Knowingly made a false accusation	2	0
s.97 NDA	Drunkenness	11	7
s.101 NDA	Escape from custody	0	1
s.111 NDA	Improper driving of vehicles	0	1
s.114 NDA	Stealing	19	16
s.114 NDA	Stealing when entrusted	20	20
s.115 NDA	Receiving	0	1
s.116(a) NDA	Wastefully expends any public property	1	0
s.117(e) NDA	Being in command of an aircraft, received goods that he is not authorized to take or receive on board	3	0
s.117(f) NDA	An act of a fraudulent nature	17	14
s.118.1 NDA	Failing to appear before a court martial	1	0
s.125(a) NDA	Willfully (or negligently) made a false entry	18	20
s.129 NDA	An act to the prejudice	18	16
s.129 NDA	Conduct to the prejudice	26	45
s.129 NDA	Neglect to the prejudice	1	1
s.130 NDA (4(1) CDSA)	Possession of substances	1	5
s.130 NDA (5(1) CDSA)	Trafficking of substances	5	6
s.130 NDA (s.87 CCC)	Pointing a firearm	3	2
s.130 NDA (91(1) CCC)	Unauthorized possession of a firearm	2	0
s.130 NDA (91(2) CCC)	Unauthorized possession of a prohibited weapon	1	0
s.130 NDA (105(1)(b) CCC)	Failed to report finding a prohibited weapon	1	0
s.130 NDA (121(1)(c) CCC)	Fraud upon the government	1	0
s.130 NDA (129 CCC)	Obstructing a peace officer	1	0

Offences	Description	2001–2002 #	2002–2003 #
s.130 NDA (139(2) CCC)	Obstructing justice	2	0
s.130 NDA (153(1) CCC)	Sexual exploitation	1	0
s.130 NDA (163.1(4) CCC)	Possession of child pornography	1	0
s.130 NDA (173(1) CCC)	Committed an indecent act	3	0
s.130 NDA (249 CCC)	Dangerous operation of a motor vehicle causing bodily harm	0	1
s.130 NDA (259(4) CCC)	Operating a motor vehicle while disqualified	2	0
s.130 NDA (264.1(1) CCC)	Uttering threats	2	0
s.130 NDA (266 CCC)	Assault	8	5
s.130 NDA (267 CCC)	Assault with a weapon	3	0
s.130 NDA (267(b) CCC)	Assault causing bodily harm	1	4
s.130 NDA (271 CCC)	Sexual assault	4	7
s.130 NDA (279 CCC)	Kidnapping, forcible confinement, hostage taking	0	1
s.130 NDA (335(1) CCC)	Taking a motor vehicle without consent	1	0
s.130 NDA (342 CCC)	Theft, forgery of a credit card	0	3
s.130 NDA (351(1) CCC)	Possession of a break-in instrument	2	0
s.130 NDA (354(1) CCC)	Possession of property obtained by crime	12	0

Offences	Description	2001–2002 #	2002–2003 #
s.130 NDA (367 CCC)	Forgery	1	4
s.130 NDA (368 CCC)	Uttering a forged document	3	5
s.130 NDA (380 CCC)	Fraud	1	3
s.130 NDA (430(1) CCC)	Mischief	1	0
s.130 NDA (78 FA)	Fishing without a license	2	0
s.130 NDA (78 FA)	Possession of undersized lobster	1	0
s. 130 NDA (78 FA)	Possession of female lobster with eggs	1	0
s. 130 NDA (78 FA)	Fishing during a closed time	2	0
s. 130 NDA (78 FA)	Possession of fish caught in contravention to the Act	1	0
Total Offences		245	217

Disposition By Case

	2001–2002		2002–2003	
	#	%	#	%
Found/Plead Guilty	59	88%	64	85%
Not Guilty	8	12%	7	9%
Stay of Proceedings	0	0%	1	2%
Withdrawal	0	0%	1	2%
Other (NDA section 202.12)	0	0%	1	2%
Total	67	100%	74*	100%

* In one case, the charge was withdrawn prior to proceeding to court martial.

Sentences

Punishment Type	2001–2002	2002–2003
Dismissal	0	1
Imprisonment	5	9
Detention	4	5
Reduction in Rank	5	8
Severe Reprimand	13	10
Reprimand	14	13
Fine	47	51
Confined to Barracks	0	1
Extra Work and Drill	1	0
Caution	1	0
Total	90	98

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

Language of Trial

	2001–2002		2002–2003	
	#	%	#	%
Trial in English	54	81%	52	71%
Trial in French	13	19%	21	29%
Total	67	100%	73	100%

Courts Martial By Command

	2001–2002		2002–2003	
	#	%	#	%
National Defence Headquarters	1	2%	2	2%
Deputy Chief of the Defence Staff	12	18%	7	10%
Chief of the Maritime Staff	16	24%	10	14%
Chief of the Land Staff	19	28%	40	55%
Chief of the Air Staff	11	16%	6	8%
CF Support and Training Group*	7	10%	8	11%
NORAD	1	2%	0	0%
Total	67	100%	73	100%

* CF Recruiting Education Training Systems has been re-organized and is now the CF Support and Training Group.

Courts Martial By Rank

	2001–2002	2002–2003
Private and Corporal (includes Master Corporal*)	39	54
Sergeant to Chief Warrant Officer	9	11
Officer	20	8
Other	0	0
Total	68**	73

* Master Corporal is not a rank. It is an appointment pursuant to QR&O article 3.08.

** One joint trial was held for 2 co-accused.



Annex F

Court Martial Appeal Court
Year In Review — Statistics:
1 April 2002 to 31 March 2003



Annex F

Court Martial Appeal Court Reporting
Period 1 April 2002–31 March 2003

Appeals

Court	2001–2002	2002–2003
CMAC	6	9
Supreme Court of Canada	0	0
Total	6	9

Appeals by Party

Status of Appellant	2001–2002	2002–2003
Appeals by Crown	2	0
Appeals by Offender	4	9
Total	6	9

Nature of Appeal

Grounds	2001–2002	2002–2003
Finding *	4	5
Sentence (Severity and/or Legality)	0	2
Finding and Sentence	2	2
Total	6	9

* *In one case, the Crown as respondent cross-appealed the sentence.*

Disposition

	2001–2002	2002–2003
Upheld Trial Decision	2	5
Overturned Trial Decision in whole or part	4	4
Total	6	9

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



Annex G

Certification Training
Year In Review — Statistics:
1 April 2002 to 31 March 2003



Annex G

Certification Training Reporting
 Period 1 April 2002–31 March 2003

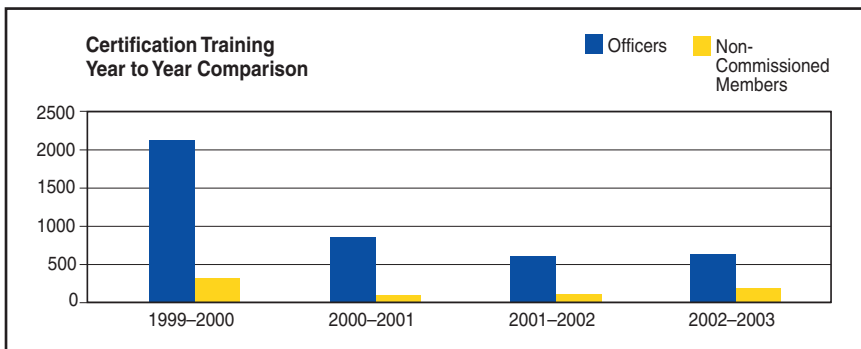
Total Number of Officers Certified

	2001–2002	2002–2003
	586	617

Number of Members Trained

	2001–2002		2002–2003	
	#	%	#	%
Officers	586	86%	626*	78%
Non-Commissioned Members	94	14%	178	22%
Total	680	100%	804	100%

* Includes 9 officers below the rank of captain/lieutenant (navy) who were trained, but not certified.



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

Annex H

Judge Advocate General
Directive



Annex H

Judge Advocate General
Directive



Directive: 028/03	Original Date: 21 March 2003	Update:
Subject: General Instructions With Respect to Reserve Force Court Allowance (RFCA)		
Cross reference: <i>Compensation and Benefit Instructions for the Canadian Forces</i> – 205.505 Subsections 165.17(2) & 249.2(2) of the NDA		

21 March 2003

Distribution List

GENERAL INSTRUCTIONS WITH RESPECT TO RESERVE FORCE COURT ALLOWANCE

1. This General Instruction is issued pursuant to the Judge Advocate General's authority under subsections 165.17(2) and 249.2(2) of the *National Defence Act*.

Purpose

2. The purpose of this directive is to set out the policies and procedures for the administration of the Reserve Force Court Allowance (RFCA).

Eligibility

3. This policy directive applies to Reserve Force legal officers occupying positions in the Director of Military Prosecutions (DMP) or the Director of Defence Counsel Services (DDCS) as designated by the Minister of National Defence in accordance with *Compensation and Benefit Instructions for the Canadian Forces* (CBI) 205.505 (attached as Annex A).
4. The RFCA is payable to Reserve Force legal officers on service for the sole purpose of participating in a court proceeding at the request of DMP or DDCS under section 165.15 or section 249.21 of the *National Defence Act*.
5. Where eligible, the RFCA is paid in addition to the normal daily pay to which the Reserve Force officer is entitled.
6. Reserve Force legal officers performing court duties as a part of on the job training program (OJT) are not eligible to receive the RFCA.

Definitions

7. For the purpose of CBI paragraph 205.505(2):
 - a. a “court proceeding” is defined as any matter that is on the record and normally conducted in a public forum;¹
 - b. a “court day” is a day, or any part thereof, in which counsel participates in a court proceeding; and
 - c. a “preparation day” is as described at CBI 205.505 subparagraph (2)(b).

1 For example, an appearance in front of the court for the purpose of an adjournment qualifies as a court proceeding, whereas a pre-trial conference does not.

Administration

8. Reserve Force legal officers qualifying for payment of the RFCA are entitled to payment in accordance with calculations as set out in CBI paragraph 205.505(2). Attached at Annexes B and C are examples of a work sheet for determining the RFCA entitlement and a completed general allowance claim (form CF-52).
9. Payment of the RFCA will be made through the submission of a general allowance claim with attached worksheet, as set out at Annexes D and E.
10. In preparing the general allowance claim, the entitlement to the RFCA will be calculated in accordance with CBI paragraph 205.505(2). The claim, after being signed by the claimant, will then be submitted to DMP or DDCS who will certify the number of court days, the number of preparation days and the total amount to be paid.
11. Once the claim has been approved by DMP or DDCS it is to be submitted to the JAG Primary Reserve List chief clerk for processing.



Jerry S.T. Pitzul, Q.C.
MGen
JAG
992-3019/996-8470

Distribution List

Action
DMP
DDCS

Information
All Legal Officers

(Note: Attachments not included)



Annex I

Annual Report of the
Director of Defence Counsel
Services for the period of
1 April 2002 to 31 March 2003





Annex I

Annual Report of the Director of Defence Counsel Services

Prepared by Lieutenant-Colonel Denis Couture

INTRODUCTION

1. This is the fourth and last report of the current Director of Defence Counsel Services (DDCS) pursuant to *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 101.20. It covers the period 1 April 2002 to 31 March 2003 and contains:
 - An overview of the DDCS organization;
 - A review of DDCS duties and responsibilities;
 - A review of the relationship between DDCS counsel and the chain of command;
 - Services provided during the reporting period; and
 - DDCS general activities.

DDCS ORGANIZATION

2. There have been no changes to the DDCS establishment which has remained as described in earlier reports. Two regular force officers have left the directorate, one on promotion to the rank of lieutenant-colonel and the other to continue his legal career with another federal department. These two officers have been replaced

and another officer will be posted to DDCS next summer to complete our establishment of four officers in the rank of major. While it was anticipated that three of four vacant reserve positions would be filled early in this fiscal year, only one position was filled. This did not, however, adversely affect the ability of this office to provide the prescribed services. It may, however, in light of the past four years experience, be necessary to re-visit the organization and structure of the DDCS reserve component.

DUTIES AND RESPONSIBILITIES

3. There were no changes in DDCS duties and responsibilities, and most of the following principal services were provided to persons who are subject to the Code of Service Discipline during this reporting period:

Legal Counsel Services:

- To accused persons:
 - at courts martial [QR&O 101.20(2)(f)];
 - where there are reasonable grounds to believe that the accused person is unfit to stand trial, at hearings to determine fitness to stand trial [QR&O 101.20(2)(b)]; and
 - in cases where a finding of unfit to stand trial has been made, at hearings as to the sufficiency of admissible evidence to put the accused person on trial [QR&O 101.20(3)(c)].
- To persons sentenced by court martial to detention or imprisonment, at hearings for:
 - release pending appeal [QR&O 101.20(3)(b)];
 - review of undertakings for release pending appeal [QR&O 101.20(3)(b) and 118.23];
 - cancellation of release pending appeal [QR&O 118.23]; and
 - to persons held in custody, at hearings by a military judge under ss. 159(1) of the NDA to determine retention in custody [QR&O 101.20(2)(e)].

- To the respondent (offender), at Court Martial Appeal Court or Supreme Court of Canada hearings where prosecution authorities appeal the legality of a finding or the severity of a sentence awarded by court martial [QR&O 101.20(2)(g)].
- To a person on an appeal or an application for leave to appeal to the Court Martial Appeal Court or the Supreme Court of Canada, with the approval of the Appeal Committee [QR&O 101.20(2)(h)].

Advisory Services:

- To persons arrested or detained in respect of a service offence pursuant to s. 10(b) of the *Canadian Charter of Rights and Freedoms* (the *Charter*), on a 24/7 basis [QR&O 101.20(2)(a)].
- To assisting officers and accused persons with respect to the making of an election to be tried by court martial pursuant to QR&O 108.17 and 108.18 [QR&O 101.20(2)(d)].
- To assisting officers or accused persons on matters of a general nature relating to summary trials [QR&O 101.20(2)(c)].
- To persons subject of an investigation under the Code of Service Discipline, a summary investigation or a board of inquiry [QR&O 101.20(2)(i)].

RELATIONSHIP DDCS/CHAIN OF COMMAND

4. As discussed in our previous reports, the status of DDCS lawyers as the “defence bar” of the CF and the importance of their ability to perform, and be perceived to perform, their duties free from influences by the chain of command cannot be overstated. DDCS counsel have continued to perform their duties and advance the position of their clients free from interference from the chain of command.

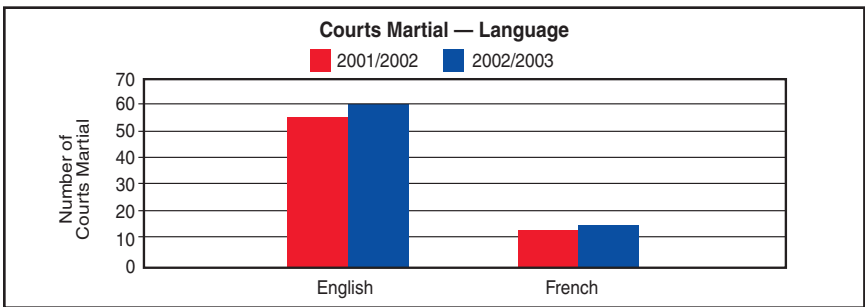
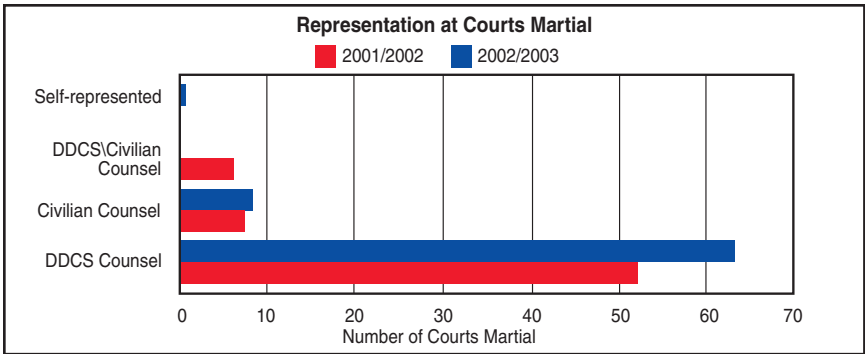
5. In the performance of their duties, DDCS counsel have had direct dealings with their clients, including assisting officers, irrespective of rank, status, unit or physical location. In particular, they dealt with their clients' chain of command, military and civilian prosecution and enforcement authorities, and all other persons involved in disciplinary proceedings respecting their clients. They also had dealings with their provincial bars and other professional associations.
6. With respect to the JAG's general supervision of the military justice system and his authority to issue, pursuant to s. 249(2) of the NDA, general instructions or guidelines to DDCS, the JAG has issued on 21 March 2003 a general instruction on the matter of the administration of the court allowance for reserve force legal officers employed in designated positions, that is with DDCS and DMP. This directive is attached at Annex H to the JAG's report.

SERVICES PROVIDED

Counsel Services

► **Courts martial**

7. When facing a court martial, an accused person has the right to be represented by a DDCS counsel at public expense, may retain legal counsel at his or her own expense or choose not to be represented.
8. During the reporting period, a total of 73 courts martial were completed. Representation at courts martial and language of trial have been as shown below.



9. Pursuant to s. 249.21(2) NDA, the Director has the authority to retain civilian counsel at public expense where, having received a request for representation by DDCCS counsel, no member of the DDCCS office can be made available to represent a particular individual by reason of a conflict of interest or other service reasons. In this reporting period the need to retain civilian counsel in that context did not arise.

➤ **Appeals**

10. Twelve requests for representation before the Court Martial Appeal Court were received. In all cases, the approval of the Appeal Committee under QR&O 101.20(2)(h) was required as the requests pertained to appeals initiated by the member. The Appeal Committee granted four of those requests and denied the other eight.

11. DDCS counsel were involved in three hearings before the Court Martial Appeal Court, including two cases that were initiated in the previous reporting period. A civilian counsel retained by DDCS acted in one appeal before the Court Martial Appeal Court.

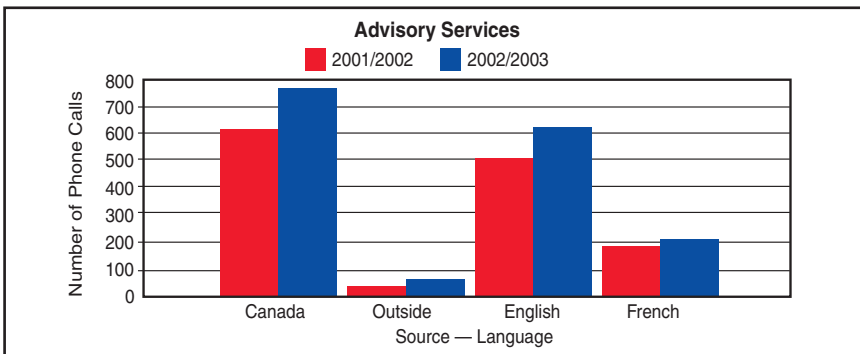
Advisory Services

12. The advisory services provided by DDCS counsel remain an important aspect of the overall operation of DDCS. Indeed, the situations giving rise to the need for legal advice are numerous and occur on a daily basis. Furthermore, this service contributes largely to the protection of CF members' fundamental rights under the *Charter* from the moment they get involved with the justice system.

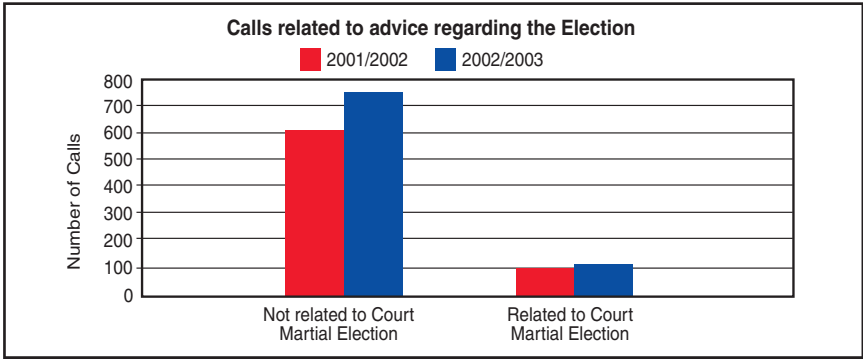
13. Advisory services are available on a 24/7 basis. In addition, the service is available in both official languages and accessible by all CF members whether they are posted in Canada or abroad. In order to facilitate the contact with DDCS counsel, two toll-free numbers have been widely disseminated:

- One, relating to the right to seek legal advice upon arrest or detention, to military police and other CF authorities likely to be involved in investigations of a disciplinary or criminal nature.
- The other, relating to election between court martial and summary trial and advice on other disciplinary matters, to all CF personnel.

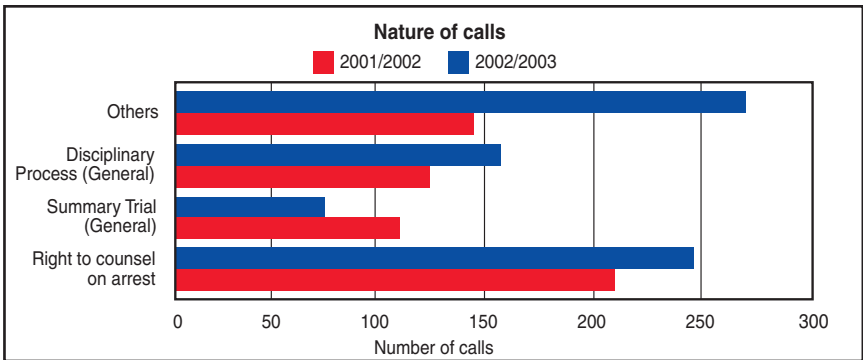
14. During the reporting period, DDCS counsel handled a total of 859 calls. Origin and language of calls are as follows:



15. The graph below shows the proportion of calls related to advice regarding the election of an accused between court martial or summary trial to calls that were not related to this subject.



16. This graph shows the nature of calls that *were not related* to the election of an accused between court martial or summary trial.



The *Others* portion of the above graph refers to subjects such as court martial process in general, redress of grievance, and release from the CF. While DDCS is not mandated to advise on administrative matters, the duty counsel phone numbers, which are widely distributed, are also used for seeking advice on those subjects. In such situations, DDCS counsel provide advice as to the mechanics of the process, but do not get involved in the merits of the matter.

GENERAL ACTIVITIES

17. DDCS has continued to be involved with other military justice stakeholders in the review and update of policies and regulations aimed at improving the administration of military justice. Among others, a complete review of the *Military Rules of Evidence* has now been completed and the court allowance for DDCS and DMP reservists, as alluded to at paragraph 6 above, is now ready for implementation.
18. The review of current regulations regarding the representation of CF members before civilian courts in foreign countries initiated by DDCS late in the last reporting period in conjunction with other directorates in JAG and the DND/CF Legal Advisor, has been completed. DDCS remains the office of primary interest and will oversee the required final drafting process.

CONCLUSION

19. Overall a good year, during which DDCS counsel continued to represent their clients with vigour and professionalism and have, as such, further enhanced the credibility of the directorate.



Annex J

Report of the Director
of Military Prosecutions
for the period of
1 April 2002 to 31 March 2003



Annex J



Report of the Director of Military Prosecutions

SECTION 1 — INTRODUCTION

This report is a synopsis of the fourth annual Director of Military Prosecutions (DMP) report, completed in fulfillment of the requirement prescribed by Governor in Council and contained in *Queen's Regulations and Orders for the Canadian Forces* (QR&O). The regulation provides:

*The Director of Military Prosecutions shall report annually to the Judge Advocate General on the execution of his or her duties and functions.*¹

The JAG has requested the DMP Annual Report be prepared for the time period 1 April 2002 to 31 March 2003 and be passed to him. Background information and the first three DMP Annual Reports are readily available and easily accessible on the JAG web site.²

This report will cover, generally, the following:

- The Director of Military Prosecutions/Canadian Military Prosecution Service Organization, Structure, Role and Personnel
- Training and Communications

1 QR&O article 110.11.

2 The URL of the JAG website is <http://www.forces.gc.ca/jag>.

- Military Justice and Courts Martial — applications, trials and appeals
- DMP Comments

SECTION 2 — CANADIAN MILITARY PROSECUTION SERVICE/DIRECTOR OF MILITARY PROSECUTIONS ORGANIZATION, STRUCTURE, ROLE AND PERSONNEL

The Canadian Military Prosecution Service (CMPS) is the collective identifier of the DMP and his team of military prosecutors and civilian staff. Organizationally, it has not changed from the last report. The regular force component of the CMPS is organized regionally within Canada with Regional Military Prosecutors (RMPs) located in Halifax (Atlantic), Valcartier (Eastern), Ottawa (Central) and Edmonton (Western) and a head office with the Director, Deputy Director and military prosecutors located at National Defence Headquarters in Ottawa. The reserve force component is organized regionally to support the RMPs and the military prosecutors working out of the head office.

The primary duties of the DMP and of the legal officers who assist the DMP include:

- acting as adviser to the Canadian Forces National Investigation Service (CFNIS);
- determining whether or not charges proceed to court martial;
- coordinating and conducting prosecutions at courts martial; and
- acting as appellate counsel for the Minister on appeals.

Although, these duties may appear strikingly similar to those of civilian federal and provincial prosecutors, the DMP faces a unique and multi-faceted challenge. The *National Defence Act* (NDA) requires diligent and expeditious pursuit of charges under the Code of Service Discipline. As lawyers, CMPS prosecutors must execute justice fairly, professionally and flawlessly in accordance with the law, policy and their respective provincial legal codes of ethics. The military ethos also requires that

military prosecutors support the *raison d'être* of the CF and that the process, and its outcome, must maintain and enhance morale, discipline, efficiency and CF capability. The chain of command (which includes the maritime, land, and air elements) requires that the CMPS be efficient, timely and inclusive in the pursuit of military justice and discipline. In addition, these activities must be transparent and withstand the test of close public scrutiny. While the traditional linkage between command and discipline must be maintained, the military prosecutor must be and must appear to be independent and impartial in the fulfillment of his/her prosecutorial duties. In sum, the role of the CMPS in the prosecution process is of great importance to the administration of discipline and justice within the CF.

SECTION 3 — TRAINING AND COMMUNICATIONS

As noted in the last DMP Report, skilled, experienced and knowledgeable lawyers are the key to a successful prosecution service. With this in mind, improving and increasing the knowledge base as well as the professional abilities and capabilities of the recently arrived military prosecutors through training with our colleagues in the civilian prosecution services has remained a major goal of the CMPS. This target has been achieved, to a measure, by the attendance of military prosecutors at continuing legal education courses and seminars offered by various Canadian prosecution services (federal and provincial), the different provincial bar associations, the Canadian Bar Association and the Federation of Law Societies of Canada. A list of courses taken by military prosecutors from 1 April 2002 to 31 March 2003 is found at Appendix 1.

In addition to these courses, DMP conducted a CMPS Prosecution Workshop during the week of 20 October 2002, attended by both regular and reserve force prosecutors. This workshop focused primarily on enhancing the courtroom skills of each prosecutor as litigators. Skilled advocacy takes years of training and practice. Unlike our civilian colleagues who may have a career litigating before various levels of courts,

our military prosecutors have more limited opportunities to do so because they must also serve as operational and military administrative law legal advisers during their careers with JAG.

It is noteworthy that over the reporting period CMPS reserve force prosecutors were involved in the prosecution of eleven courts martial. Generally, CMPS reserve force prosecutors are senior prosecutors in provincial or federal prosecution services with significant prosecutorial experience. Their assistance and counsel to DMP and the CMPS is invaluable. As well, DMP supports the larger JAG mandate. During this past reporting period a regular force prosecutor left CMPS before her tour expired to serve as the legal adviser to the Canadian Task Force in Bosnia-Herzegovina and, at the writing of this report, the Deputy DMP is serving, as the Deputy Legal Adviser to SFOR, in Sarajevo.

Military prosecutors are legal officers in the CF and, as such, they must retain their military skills so that CMPS can meet the deployment capability set out in its Mission Statement. Indeed, one court martial was conducted in Bosnia-Herzegovina this past reporting period. Military prosecutors participate in military training activities, such as qualification on the pistol and rifle at ranges, as well as in-house Law of Armed Conflict and Operational Law courses. Not only do military prosecutors receive training, they also provide training in military justice, disciplinary and criminal law matters, both formally and informally, to police authorities, the supporting staff and court reporters of the Office of the Chief Military Judge, and other CF legal officers. For example, the CMPS was an integral part of the preparation and presentation of a half-day military justice seminar with the referral authorities in November 2002. This seminar reinforced the linkage between military discipline and command while focusing on the chain of command's role in highlighting the public (including the CF's) interest in either proceeding or not proceeding on a matter to court martial before a decision is made by DMP.

While the training of military legal officers is important, so too is that of the civilian staff. CMPS civilian staff participated in a variety of training courses throughout the reporting period which has enhanced their efficiency and professionalism. It is recognized that the hardworking and highly motivated civilian component of CMPS is an integral part of the team and provides a most important service in the carrying out of the prosecutorial function.

Since September 1999, CMPS has maintained an Internet web site as part of its communications strategy and to facilitate openness, transparency, and inclusiveness in the military justice system.³ In 2002, this web site was modernized and updated to better assist the public in understanding the key roles and activities of military prosecutors. The CMPS web site provides DMP with a mechanism to make available to the public court martial and appeal results. As well, JAG General Guidelines and Instructions to the DMP, JAG Case Specific Instructions to DMP, and DMP Policy Directives are set out on the web site. The JAG has never issued any Case Specific Instructions.

The “Courts Martial & Appeals” page of the JAG web site is updated within days of the trial decision by the Office of the Chief Military Judge. It contains all the relevant information of the courts martial held in the previous three months. DMP updates the “Appeal Results” and the “Upcoming Appeals” sites of the publicly accessible web page.

Internal to CMPS, communication is vital to effective and efficient prosecution. Practice Communiqués continue to be issued. Once or twice monthly CMPS prosecutors connect via teleconference to discuss general and specific issues that relate to the job of prosecuting. There is an on-going line of communication between all CMPS prosecutors through telephone and electronic mail. As noted in last year’s DMP Report, Ottawa-based military prosecutors are actively working with

3 The URL of the website address is http://www.forces.gc.ca/jag/military_justice/cmeps/default_e.asp.

other military lawyers and informatics personnel within the JAG office to develop a computer program that will enhance the search capability for court martial precedents and other legal research for prosecutors. It is also envisioned that this system will be a time-keeping case management/tracking system which will lead to more expeditious handling of files and better quality control within CMPS. The target is to have this program in place for military prosecutors as quickly as possible.

SECTION 4 — MILITARY JUSTICE AND COURTS MARTIAL

The CF member is still a citizen; and as such he or she continues to be entitled both to the protection of the ordinary civil law and to be subject to its authority. The tasks which he or she may be called upon to perform as a soldier, sailor or member of the air force, however, and the circumstances under which such tasks may have to be performed, call for a high degree of discipline; and it has long been recognized by Parliament and the courts that the creation and maintenance of such discipline in turn requires a special code of law to define the member's duty and obligation, and to prescribe punishment for breaches. This special code of law, an integral part of the military justice system, must of necessity promote and maintain, amongst other things, good order, high morale, efficiency, discipline, and operational effectiveness and capability. This special code of law is enforced in several ways and one of these is by court martial.

Military justice practises have changed significantly over the past several years. Cases determined under the *Canadian Charter of Rights and Freedoms* have had a dramatic impact on the role of the prosecutor and upon the length and complexity of trials. The international aspect and growing complexity of police investigations have also resulted in greater demands on prosecutors to provide advice and counsel at various stages of the investigative process. In addition military prosecutors have been

and continue to be on call 24/7 to CFNIS investigators serving in operational theatres on serious and sensitive cases. Military prosecutors have become gatekeepers and are being increasingly engaged in all aspects of the military justice process.

Military judges have the authority to conduct hearings regarding the fitness of an accused to stand trial. A post-trial review of fitness⁴ by a Provincial Review Board was conducted with respect to a former soldier charged under the Code of Service Discipline. He remains unfit to stand trial. A military reserve force prosecutor represented the CF at the Provincial Review Board hearing in Saskatchewan. The consequent mandatory hearing to determine whether the prosecution could adduce sufficient admissible evidence to put the accused on trial, conducted every two years, was conducted in the soldier's case during the reporting period.⁵ The decision in this hearing was that there remains sufficient evidence against the soldier to continue with the charges. It is expected that a further hearing will take place in early/mid 2004 unless the charges are withdrawn.

During the reporting period, the CMPS received 85 applications for disposal of a charge from the different referral authorities. In 38 of the applications, charges were preferred by a prosecutor and completed at court martial. The decision not to prefer any charges was made in 26 cases. In all 26 cases, the decision not to prefer charges was made either on the basis of a lack of reasonable prospect of conviction based upon the evidence (85%) or the public interest (CF interest) factor for proceeding with a prosecution at court martial was not present (15%). Presently in the hands of the military prosecutors and being post-charge screened are 12 applications, while the 9 remaining cases are preferred and awaiting court martial.

4 Section 672.38 of the *Criminal Code* of Canada.

5 Section 202.12 NDA.

All courts martial held during this period were Standing Courts Martial. A Standing Court Martial is a court composed of a military judge only. There were no Disciplinary Courts Martial nor General Courts Martial convened during this period. After preferral, in five cases the charges were withdrawn before the court martial commenced. In three of these cases different charges were preferred and proceeded to trial.

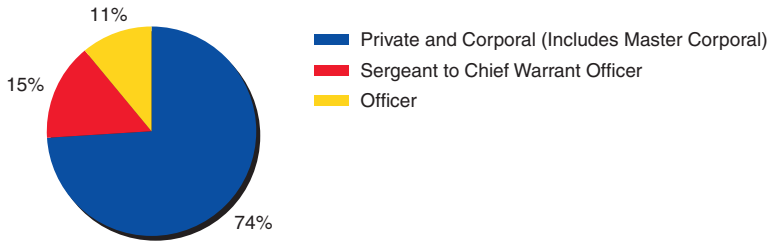
Of the 73 courts martial held during the reporting period, 64 resulted in a guilty finding by the court. While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 64 sentences pronounced by the courts martial involved 98 punishments. Of note, 9 punishments of imprisonment and 5 punishments of detention were imposed by the court. A suspended sentence, where the accused is not actually required to be incarcerated, was imposed in 4 of the 14 cases. In the 10 remaining custodial sentences, the military judge granted 2 releases pending appeal. The Court Martial Appeal Court also granted one release pending appeal. A fine was the most common punishment where 51 of the 98 punishments were fines. In addition to sentencing the offender, a military judge may order the offender to submit to DNA sampling or weapons prohibitions. DNA orders were issued in 5 cases during the reporting period. Furthermore, military judges issued weapons prohibitions in 2 cases.

Also of note, 64 of the 221 charges preferred were s.129 NDA charges alleging an act, conduct or neglect prejudicial to good order and discipline.

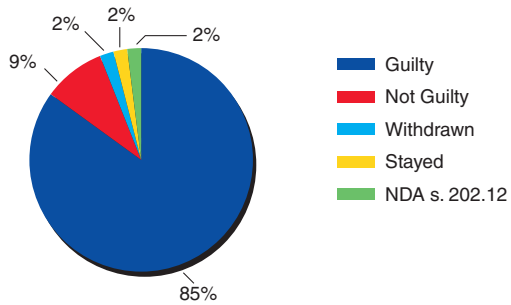
Appendix 2 to this report provides a summary of those courts martial completed during the period 1 April 2002–31 March 2003.

The following pie charts, prepared from the information contained in the appendices to this report, provide a statistical representation of the rank of the accused, the findings, the punishments, the number of courts martial by command, and the language of trial.

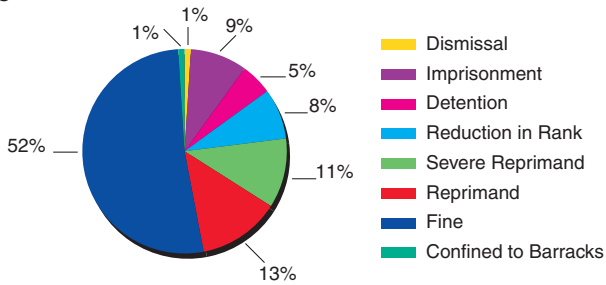
Rank of Accused



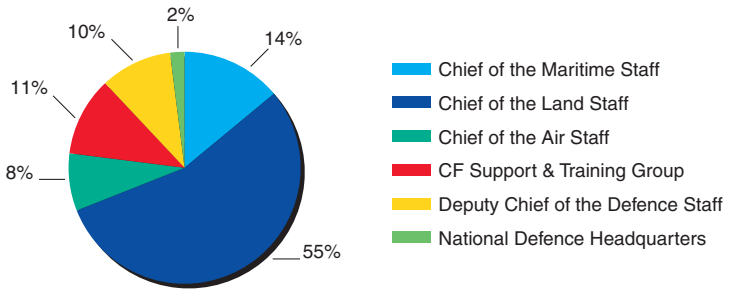
Findings by Case



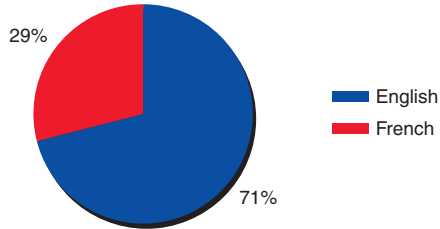
Punishments



Courts Martial by Command



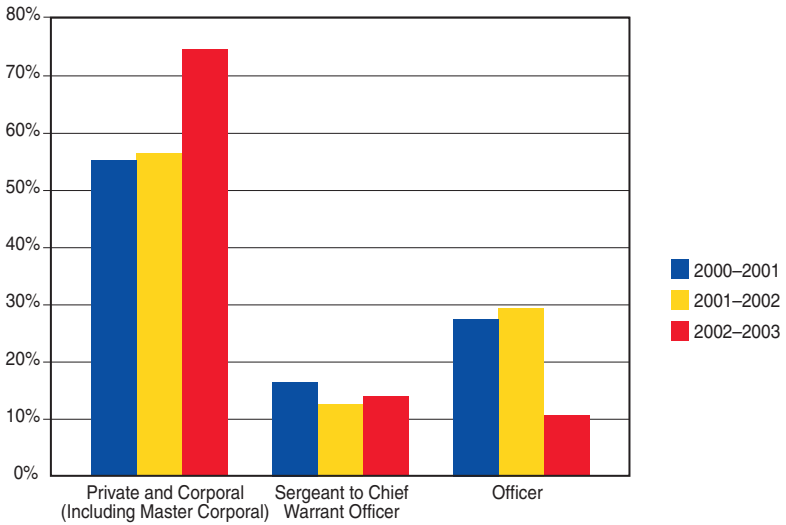
Language of Courts Martial



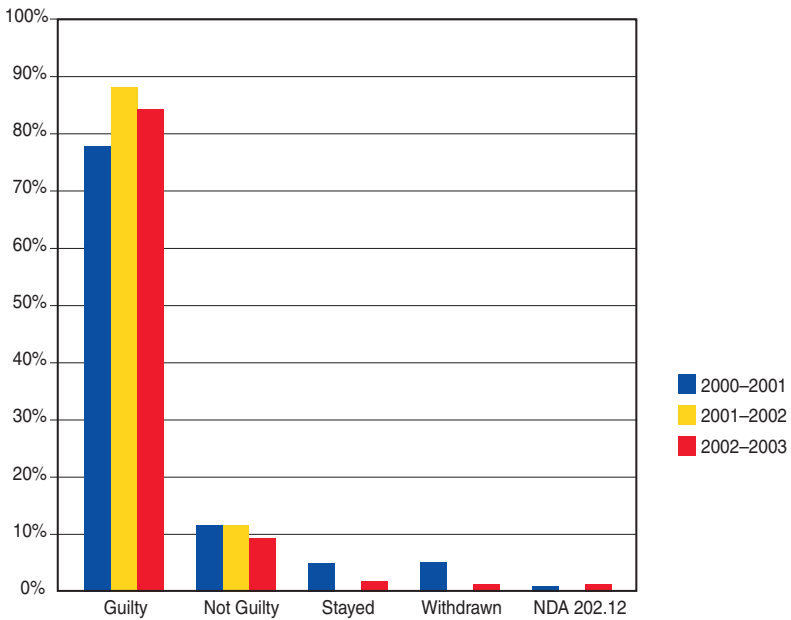
A Comparative View of Courts Martial

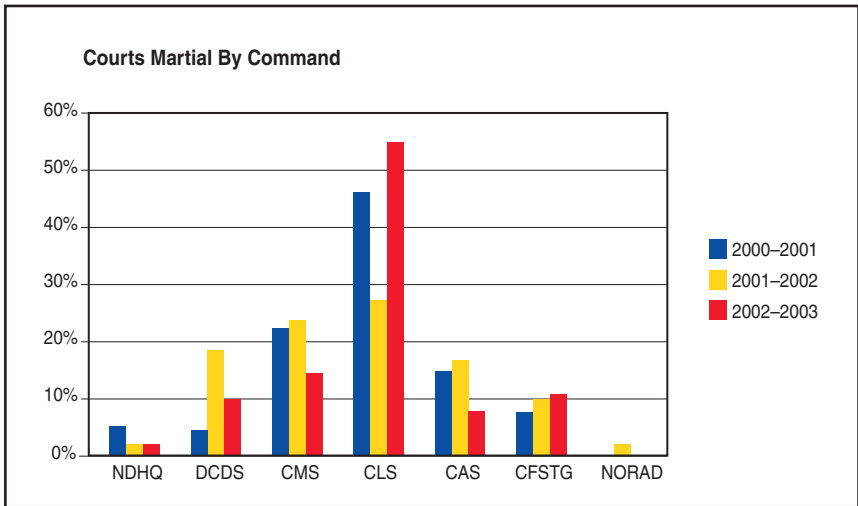
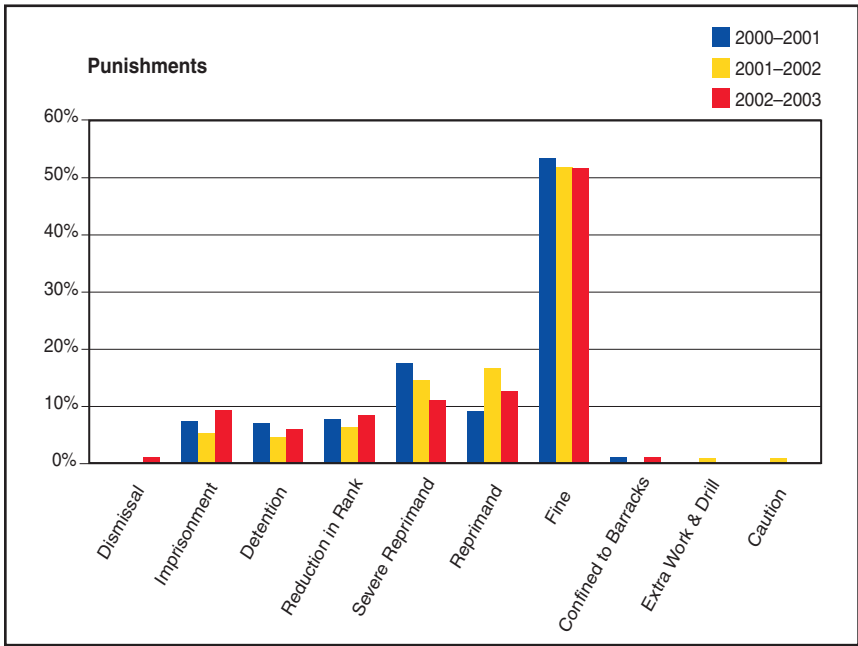
What follows is a comparison of court martial statistics from the reporting periods 2000/2001, 2001/2002 and 2002/2003. As the period over which this comparison is made is only three years, it is not possible to consider this to be a trend, to make any meaningful analysis of the statistics or to draw any firm conclusions at this time. Between 50 to 75% of courts martial have as an accused a private or corporal (including master corporal). Fines continue to be the punishment of choice followed by reprimands, severe reprimands and the custodial punishments. The majority of courts are conducted in the English language with the number of French courts remaining fairly constant at around 20 to 30%.

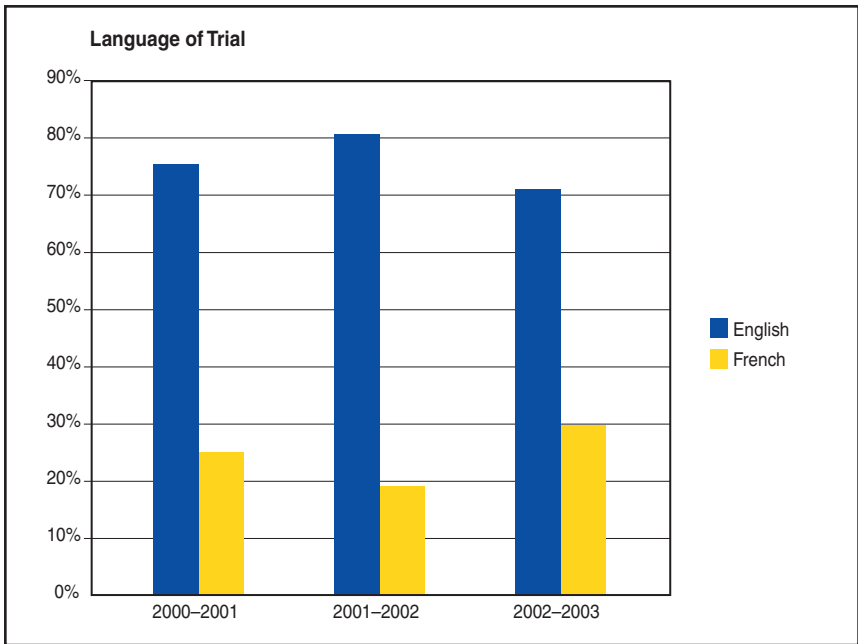
Rank of Accused



Finding by Case





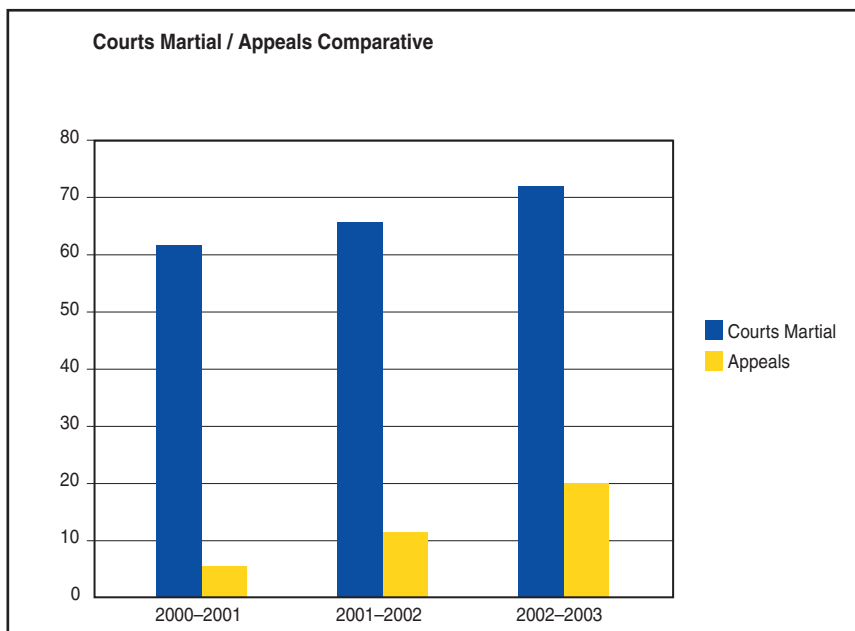


Appeals

Turning now to appeals, the Minister may appeal to the Court Martial Appeal Court (CMAC) certain decisions by courts martial relating to findings, sentence and termination of proceedings.⁶ Effective 1 September 1999, the Minister by order delegated the authority to bring such appeals to the DMP. As well, DMP is authorized to respond to any appeals brought by a member seeking to contest the decision of a court martial. Appellate counsel within CMPS report directly to DMP on all matters relating to appeals. DMP advises JAG and the Minister whenever the authority to appeal is exercised.

Appendix 3 to this Report shows those appeals completed/initiated during the period 1 April 2002–31 March 2003. In no case was the Crown the Appellant before the CMAC. In one case the Crown as Respondent cross-appealed the sentence. In another case, a service member made an unsuccessful application for leave to appeal to the Supreme Court of Canada. The following chart reflects a comparison

for the three-year period of the number of courts martial completed and the number of appeals completed (which includes those cases that were later abandoned or summarily dismissed for non-compliance with CMAC rules following notice of appeal being filed by the appellant).



There have been several important CMAC decisions during the reporting period — two are specifically identified here. A trilogy of 1999 cases⁷ began to take on the appearance of authority for the proposition of non-custodial sentences, as a rule, in cases of first time theft/fraud. In *R. v. Loughrey*⁸, the CMAC confirmed the court martial judge’s original sentence of four months imprisonment after the first time offender pleaded guilty to six charges of stealing while

6 Section 230.1 NDA.

7 See *R. v. Vanier*, February 17, 1999, CMAC-422; *Legaarden v. R.*, February 24, 1999, CMAC-423; and *Deg v. R.*, October 26, 1999, CMAC-427.

8 October 21, 2002, CMAC-452.

entrusted. This case reaffirmed that a custodial sentence may be appropriate for first time offenders and that a punishment of imprisonment is indeed within the range of possible sentences for offences of this nature. In the case of *Lachance v. R.*,⁹ the CMAC determined that a guilty plea that is free, voluntary, informed and unequivocal normally waives the right to challenge the decision on the basis of section 11(b) of the *Charter*. This case arose after the offender was unsuccessful in a plea in bar of trial and then subsequently entered pleas of guilty to several charges at trial. He appealed the guilty finding made by the trial judge at trial on the basis that the plea in bar of trial was incorrectly decided and would it have been correctly decided proceedings would have been terminated at that point and no guilty plea followed by a guilty finding would have been made. His appeal was dismissed.

SECTION 5 — DMP COMMENTS

This last year, while not without challenge, has seen considerable improvement in a number of areas of the CMPS operations. On the personnel side, during the reporting period several regular force prosecutors have been promoted in rank, and CMPS positions are more and more being filled with military prosecutors at the rank level for which they were originally established. Promotion in rank to field grade recognizes an increase, *inter alia*, in skill, experience, depth, knowledge and judgment — all of which are quintessential qualities in a prosecutor. There has been a continuous improvement of the core competencies of the military prosecutor. This is reflected in an increase in the quality of work being produced and a more timely delivery of our product — prosecutorial advice and services. One of the greatest challenges remains the continuity of staff and the retention of a knowledge base and skill-sets within CMPS given that prosecutors do leave the prosecution service for other duties within the Office of the JAG.

9 May 14 2002, CMAC-451.

Sometimes they return, often they do not. Additionally, our reserve force prosecutors, fully integrated within CMPS, have been most helpful — appearing at courts martial and hearings, providing advice and counsel to regular force prosecutors on issues at both the trial and appeal levels, helping to train regular force prosecutors and other CF members, and providing advice to investigative authorities. The CMPS continues to recruit to fill vacant reserve force prosecutor positions.

Most importantly, the CMPS has adopted processes and policies to ensure the statutory and regulatory framework of courts martial functions effectively. The extended court martial process, from investigation through trial to appeal, is lawyer intensive. Military prosecutors are integral to the process whether acting in an advisory or executory capacity. Judge James E. Baker of the United States Court of Appeals for the Armed Forces spoke to the issue of process, albeit in a somewhat different context than courts martial, and indicated “...good process results in better decisions...it ensures that the correct actors are in the room, with the best information as is available at the time. It avoids oversights...it also helps to ensure that decisions are made in accordance with the law. Good process also establishes accountability, which in turn improves result.”¹⁰ Process must strike the right balance between transparency, efficiency and inclusiveness. The pressures of the moment and the increased demand in all major service areas have a tendency to encourage short-term thinking and procedural short cuts — this has been resisted. The military prosecutor is the court martial system gatekeeper and has functioned admirably well in this role the past reporting period.

The timeliness of visible product delivery (the court martial) is without exception an issue when compared to summary trials in the context of the military’s Code of Service Discipline. The CMPS response to this

10 National Security Process and a Lawyer’s Duty: Remarks to the Senior Judge Advocate Symposium, April 23, 2002, 173 *Military Law Review* 124.

issue, however, continues to improve owing, in part, to a substantial reduction in the backlog of older cases and an increase in the experience level of, and training received by, prosecutors. It is also a direct result of a close working relationship between investigators and prosecutors, with each being acutely aware of and performing their respective responsibilities at the various stages of the process. Interaction with the police in particular before, during and after the trial also provides an opportunity to pass on constructive suggestions for improvement in their approach to everything from the collection of evidence to giving evidence at trial. It is a particularly useful exercise after trial to engage the police in a “lessons-learned” post-mortem of both good and bad points. In the longer term dividends are reaped as knowledgeable investigators take a shorter period to move a matter to trial, assist in disclosure and are generally much better witnesses at trial.

The creation of an electronic practice/case management system, to improve the prosecutorial effectiveness and efficiency, remains a work in progress. Over the reporting period, the CMPS has been actively involved with the Office of the JAG in reviewing various practice management requirements and software packages. In fact, as part of the JAG team, a military prosecutor visited the office of the US Navy JAG in Washington D.C. to review their current practice management system with particular attention paid to how such a system might benefit the Canadian military justice and courts martial process. The goal is to have a fully functioning practice/case management system in place, quickly, that is designed to enhance a prosecutor’s research capability and to provide a seamless process from the investigative authority through to trial (including prosecution briefs, evidence management and disclosure), all of which ought to permit the prosecutor to work “better, quicker and smarter”.

HOST ORGANIZATION	NAME OF COURSE	NUMBER OF ATTENDEES
The Advocates' Society	Communicating Your Theory of the Case	2
The Advocates' Society	Five Effective Trial Techniques	2
The Advocates' Society	Expert Witnesses	2
Alberta Justice	Alberta Crown Counsel Continuing Legal Education — Advocacy	4
Barreau du Québec	Conférence-Négociation de plaidoyer de culpabilité	1
Barreau du Québec	Le droit comme instrument d'équilibre	1
Barreau du Québec	Réforme du code de procédure civile	3
Barreau du Québec	International Conference – L'Heureux-Dubé	1
Barreau du Québec	Les récents développements en droit criminel	1
Barreau du Québec	Techniques de plaidoiries	1
Canadian Bar Association	Excellence in Advocacy	1
Federal Department of Justice	Federal Prosecution Service Annual Conference	1
Federal Department of Justice	Federal Prosecutor Workshop	1
Federal Department of Justice	Prosecutor Training conference	2
Federal Department of Justice	Federal Prosecutor's School Ottawa	2
Federal Department of Justice	Cybercrime training	1
Federation of Law Societies	National Criminal Law Program	6
International Institute of Humanitarian Law	International Military Course on Law of Armed conflict	1
Manitoba Department of Justice	1 st Annual Crown Defence Conference	1
Nova Scotia Director of Public Prosecutions	NS Public Prosecution Fall Workshop	3
Ontario Bar Association	Evidence law — Judging the Case	1
Ontario Crown Attorney Summer School	Appellate Advocacy	1
Ontario Crown Attorney Summer School	Search and Seizure	1
Ontario Crown Attorney Summer School	High Risk Offenders	1
Department of National Defence	Access to Information	2
Department of National Defence	Defensive Driving Course	1
Department of National Defence	9mm Pistol Refresher training	1
Department of National Defence	Powerpoint	1
Department of National Defence	Standard First-Aid	2
Office of the Judge Advocate General	JAG Workshop	17
Office of the Judge Advocate General	Legal Officer Intermediate Training — Administrative Law and Military Justice	3
Office of the Judge Advocate General	Law of Armed Conflict	2
Office of the Judge Advocate General	LOAC Self-Study	1
Canadian Military Prosecution Service	DMP Annual Workshop	17
Canadian Military Prosecution Service	Ethics self-study package	2

Appendix 2

Court Martial Statistics

1 April 2002 to 31 March 2003 (completed)

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
1	SCM	OS	s. 83 s. 97	Disobeyed a Lawful Command of a Superior Officer Drunkenness	Withdrawal Guilty	Reprimand & \$1250 fine	Halifax, Nova Scotia	Brest, France	CMS	English
2	SCM	OCdt	s. 93 s. 129 s. 93 s. 129 s. 93 s. 129	Behaved in a Disgraceful Manner Conduct to the Prejudice Behaved in a Disgraceful Manner Conduct to the Prejudice Behaved in a Disgraceful Manner Conduct to the Prejudice	Stayed Guilty Stayed Guilty Stayed Guilty	Severe Reprimand & \$1500 fine	Kingston, Ontario	Kingston, Ontario	CFS&TG	English
3	SCM	2Lt	s. 93 s. 129 s. 93 s. 129 s. 93 s. 129	Behaved in a Disgraceful Manner Conduct to the Prejudice Behaved in a Disgraceful Manner Conduct to the Prejudice Behaved in a Disgraceful Manner Conduct to the Prejudice	Not Guilty Not Guilty Guilty Stayed Not Guilty Stayed	Dismissal, & \$2000 fine	Kingston, Ontario	Kingston, Ontario	CFS&TG	English
4	SCM	Cpl	s. 130 (271 CCC) s. 130 (279(2) CCC) s. 129 s. 85 s. 85 s. 129 s. 97	Sexual Assault Hostage Taking An Act to the Prejudice Used Threatening Language to a Superior Used Threatening Language to a Superior Conduct to the Prejudice Drunkenness	Guilty Guilty Guilty Withdrawn Withdrawn Guilty Withdrawn	60 days imprisonment (suspended) & Reduction to the rank of Private of Private	St. Jean, Quebec	CLS	French	
5	SCM	2Lt	s. 130 (266 CCC) s. 86	Assault Quarrelled With a Person Subject to CSD	Withdrawn Guilty	\$200 fine	Hull, Quebec	Fredericton, New Brunswick	CFS&TG	English
6	SCM	LS	s. 130 (266 CCC) s. 130 (266 CCC) s. 129	Assault Assault Conduct to the Prejudice	Guilty Guilty Guilty	Reduction in rank & \$1500 fine	Esquimalt, British Columbia	Esquimalt, British Columbia	CMS	English
7	SCM	LS	s. 129 s. 129	Conduct to the Prejudice Conduct to the Prejudice	Guilty Not Guilty	Reprimand & \$600 fine	Esquimalt, British Columbia	Esquimalt, British Columbia	CMS	English
8	SCM	AB	s. 97	Drunkenness	Not Guilty	N/A	Esquimalt, British Columbia	Manama, Bahrain	CMS	English

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
9	SCM	Bdr	s. 114	Stealing While Entrusted	Not Guilty	Severe Reprimand & \$2000 fine	Shilo, Manitoba	North Cypress & Shilo, Manitoba	CLS	English
			s. 129	Conduct to the Prejudice	Guilty					
			s. 114	Stealing While Entrusted	Not Guilty					
			s. 129	Conduct to the Prejudice	Not Guilty					
			s. 114	Stealing While Entrusted	Not Guilty					
			s. 129	Conduct to the Prejudice	Guilty					
			s. 114	Stealing While Entrusted	Guilty					
			s. 129	Conduct to the Prejudice	Not Guilty					
			s. 114	Stealing While Entrusted	Not Guilty					
10	SCM	MBdr	s. 114	Stealing While Entrusted	Not Guilty	Severe Reprimand & \$2400 fine	Shilo, Manitoba	Shilo & Brandon, Manitoba	CLS	English
			s. 129	Conduct to the Prejudice	Guilty					
			s. 114	Stealing While Entrusted	Not Guilty					
			s. 129	Conduct to the Prejudice	Guilty					
			s. 114	Stealing While Entrusted	Guilty					
			s. 129	Conduct to the Prejudice	Not Guilty					
			s. 114	Stealing While Entrusted	Not Guilty					
			s. 129	Conduct to the Prejudice	Not Guilty					
			s. 114	Stealing While Entrusted	Not Guilty					
11	SCM	Cpl	s. 129	Conduct to the Prejudice	Stayed	N/A	Gagetown, New Brunswick	Quebec	CLS	French
			s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
13	SCM	Cpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
			s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
14	SCM	MCpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
			s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
15	SCM	Cpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
			s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
16	SCM	Cpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
			s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CLS	French
17	SCM	Cpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CAS	French
			s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Gagetown, New Brunswick	Quebec	CAS	French

J Appendix 2

Court Martial Statistics

1 April 2002 to 31 March 2003 (completed)

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
18	SCM	Pte	s. 130 (380/1)CCC) s. 114 s. 114	Fraud Stealing While Entrusted Stealing While Entrusted	Guilty Withdrawn Guilty	45 days imprisonment	Toronto, Ontario	Toronto, Ontario	ADM-IM	English
19	SCM	Cpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Valcartier, Quebec	Quebec	CLS	French
20	SCM	Cpl	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Valcartier, Quebec	Quebec	CLS	French
21	SCM	Capt	s. 83	Disobeyed a Lawful Command of a Superior Officer	Guilty	Reprimand & \$750 fine	Hull, Quebec	Kingston, Ontario	DCDS	English
22	SCM	MCpl	s. 130 (87 CCC) s. 130 (87 CCC)	Pointing a Firearm Pointing a Firearm	Stayed Guilty	Reduction in rank	Winnipeg, Manitoba	Bosnia- Herzegovina	CLS	English
23	SCM	MWO	s. 130 (271 CCC)	Sexual Assault	Not Guilty	N/A	Borden, Ontario	Borden, Ontario	CFS&TG	French
24	SCM	Pte	s. 115 s. 114 s. 114 s. 114 s. 114 s. 90 s. 114 s. 114 s. 101 s. 130 (368/1)CCC) s. 90	Retained in his possession property obtained by the commission of a service offence, knowing the property to be so obtained Stealing Stealing Stealing Stealing Stealing Absent Without Leave Stealing Stealing Being in Lawful Custody, escaped Uttering a Forged Document Absent Without Leave	Guilty Guilty Guilty Guilty Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty	30 days detention	Borden, Ontario	Borden, Ontario	CFS&TG	French
25	SCM	LS	s. 130 (286 CCC) s. 129	Assault Conduct to the Prejudice	Not Guilty Guilty	Reprimand & \$800 fine	Comox, BC	Cold Lake, Alberta	CAS	English
26	SCM	Sgt	s. 130 (267(b) CCC) s. 97	Assault Causing Bodily Harm Drunkenness	Guilty Not Guilty	21 days detention (suspended) & \$4000 fine	Cold Lake, Alberta	Cold Lake, Alberta	CAS	English
27	SCM	2Lt	s. 117(f) s. 130 (367 CCC) s. 130 (368 CCC)	An Act of a Fraudulent Nature Forgery Uttering a Forged Document	Guilty Not Guilty Not Guilty	Severe Reprimand & \$2500 fine	Hull, Quebec	Moose Jaw, Sask	CAS	English

J Appendix 2

Court Martial Statistics

1 April 2002 to 31 March 2003 (completed)

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
			s. 130 (367 CCC) s. 130 (368 CCC) s. 130 (367 CCC) s. 130 (368 CCC) s. 130 (367 CCC) s. 130 (368 CCC)	Forgery Uttering a Forged Document Forgery Uttering a Forged Document Forgery Uttering a Forged Document	Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty					
28	SCM	WO	s. 114 s. 129 s. 114 s. 129 s. 125(a) s. 125(a) s. 125(a) s. 125(a) s. 125(a)	Stealing While Entrusted Conduct to the Prejudice Stealing Conduct to the Prejudice Willfully Made a False Entry Willfully Made a False Entry Willfully Made a False Entry Willfully Made a False Entry Willfully Made a False Entry	Guilty Not Guilty Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty	2 months imprisonment & Reduction in rank	Gagetown, New Brunswick	Gagetown & Fredericton, New Brunswick	CLS	English
29	SCM	Cpl	s. 117(f)	An Act of a Fraudulent Nature	Guilty	\$375 fine	Gagetown, New Brunswick	Gagetown, New Brunswick	CLS	English
30	SCM	WO	s. 130 (266 CCC) s. 129 s. 97	Assault An Act to the Prejudice Drunkennes	Not Guilty Guilty Guilty	Reprimand & \$750 fine	St-Jean, Quebec	Richelain, Quebec	CLS	French
31	Inquiry by SCM	Ex-MCpl	s. 130 (235(1) CCC) s. 130 (269.1 CCC)	Second Degree Murder Torture	N/A N/A	Sufficient evidence for trial	Saskatoon Saskatchewan	Belet Uen, Somalia	DCDS	English
32	SCM	Cpl	s. 130 (5 CDSA) s. 130 (5 CDSA) s. 130 (5 CDSA) s. 130 (5 CDSA) s. 130 (5 CDSA) s. 130 (4 CDSA) s. 129 s. 129	Trafficking Trafficking Trafficking Trafficking Trafficking Possession Conduct to the Prejudice Conduct to the Prejudice	Guilty Guilty Withdrawn Guilty Withdrawn Guilty Withdrawn Withdrawn	30 days imprisonment	Gagetown, New Brunswick	Trenton, Ontario	CLS	English
33	SCM	LS	s. 130 (271 CCC) s. 97	Sexual Assault Drunkennes	Guilty Guilty	Severe Reprimand \$1200 fine	Halifax, Nova Scotia	Jebel Ali, UAE	CMS	English

Appendix 2

Court Martial Statistics

1 April 2002 to 31 March 2003 (completed)

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
34	SCM	MCpl	s. 129	Conduct to the Prejudice	Guilty	\$700 fine	Halifax, Nova Scotia	Alberta & Quebec	CMS	English
35	SCM	Sgt	s. 90	Absent Without Leave	Guilty	Reprimand & \$2500 fine	Shilo, Manitoba	Shilo, Manitoba	CLS	English
36	SCM	LCdr	s. 114 s. 129 s. 129	Stealing Conduct to the Prejudice Conduct to the Prejudice	Stayed Guilty Guilty	Reprimand & \$750 fine	Esquimalt, British Columbia	Victoria, British Columbia	CMS	English
37	SCM	Maj	s. 83 s. 83	Disobeyed a Lawful Command of a Superior Officer Disobeyed a Lawful Command of a Superior Officer	Not Guilty Guilty	Reprimand & \$500 fine	Edmonton, Alberta	Edmonton, Alberta	CLS	English
38	SCM	Sgt	s. 84 s. 130 (267(b) CCC) s. 129 s. 129 s. 97 s. 129	Struck a Superior Officer Assault Causing Bodily Harm An Act to the Prejudice An Act to the Prejudice Drunkness An Act to the Prejudice	Guilty Stayed Not Guilty Not Guilty Guilty Guilty	14 days detention \$1000 fine	Bosnia, Herzegovina, Valcartier, Quebec	Bosnia, Herzegovina	DCDS	French
39	SCM	Ex-Pte	s. 130 (4 CDSA) s. 130 (4 CDSA) s. 129 s. 117(f) s. 114 s. 114 s. 114 s. 90 s. 90 s. 90 s. 90 s. 90 s. 90	Possession Possession Conduct to the Prejudice An Act of a Fraudulent Nature Stealing Stealing Stealing Absent Without Leave Absent Without Leave Absent Without Leave Absent Without Leave Absent Without Leave Absent Without Leave	Guilty Guilty Not Guilty Guilty Guilty Guilty Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty Not Guilty	Severe Reprimand & \$1200 fine	Gagetown, New Brunswick	Gagetown, New Brunswick	CFS&TG	English
40	SCM	Cpl	s. 130 (267 CCC)	Assault Causing Bodily Harm	Guilty	8 months imprisonment	Gagetown, New Brunswick	Gagetown, New Brunswick	CLS	English
41	SCM	Maj	s. 129	Neglect to the Prejudice	Guilty	Reprimand & \$650 fine	St-Jean, Quebec	Farnham, Quebec	CLS	French

J Appendix 2

Court Martial Statistics

1 April 2002 to 31 March 2003 (completed)

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
42	SCM	Cpl	s. 114 s. 117(f) s. 114 s. 117(f)	Stealing An Act of a Fraudulent Nature Stealing An Act of a Fraudulent Nature	Not Guilty Guilty Not Guilty Guilty	Severe Reprimand & \$2850 fine	Edmonton, Alberta	Edmonton, Alberta	CLS	English
43	SCM	Cpl	s. 130 (4 CDOSA) s. 130 (4 CDOSA)	Possession Possession	Guilty Guilty	14 days imprisonment	Gagetown, New Brunswick	Fredericton, New Brunswick	CLS	English
44	SCM	MCpl	s. 114 s. 114 s. 114 s. 114	Stealing While Entrusted Stealing While Entrusted Stealing While Entrusted Stealing While Entrusted	Not Guilty Not Guilty Not Guilty Not Guilty	N/A	Borden, Ontario	St. John's Newfoundland	CFS&TG	English
45	SCM	LS	s. 130 (271 CCC)	Sexual Assault	Not Guilty	N/A	Esquimalt, British Columbia	Cold Lake, Alberta	CMS	English
46	SCM	Pte	s. 129	Conduct to the Prejudice	Not Guilty	N/A	Kingston, Ontario	Kingston, Ontario	DCDS	English
47	SCM	Cpl	s. 83 s. 129 s. 129	Disobeyed a Lawful Command of a Superior Officer An Act to the Prejudice An Act to the Prejudice	Stayed Guilty Not Guilty	3 days Confined to Barracks & \$200 fine	Valcartier, Quebec	Bosnia, Herzegovina	DCDS	French
48	SCM	P02	s. 117(f) s. 117(f) s. 117(f) s. 125(a) s. 125(a) s. 125(a)	An Act of a Fraudulent Nature An Act of a Fraudulent Nature An Act of a Fraudulent Nature Willfully Made a False Entry Willfully Made a False Entry Willfully Made a False Entry	Guilty Guilty Guilty Not Guilty Not Guilty Not Guilty	Severe Reprimand & \$3500 fine	Halifax, Nova Scotia	Halifax, Nova Scotia	CMS	English
49	SCM	Cpl	s. 85	Used Threatening Language to a Superior	Guilty	Reprimand & \$150 fine	Quebec, Quebec	St-Jean, Quebec	CLS	French
50	SCM	Cpl	s. 114 s. 114	Stealing While Entrusted Stealing While Entrusted	Not Guilty Guilty	Reduction in rank & \$400 fine	Matane, Quebec	Rimouski, Quebec	CLS	French
51	SCM	Pte	s. 125(e) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
52	SCM	Pte	s. 125(a) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine Nova Scotia	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
53	SCM	Pte	s. 125(a) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
54	SCM	Pte	s. 125(e) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
55	SCM	Pte	s. 125(e) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
56	SCM	Pte	s. 125(a) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
57	SCM	Pte	s. 125(a) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
58	SCM	Pte	s. 125(a) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
59	SCM	Pte	s. 125(a) s. 129	Willfully Made a False Entry An Act to the Prejudice	Not Guilty Guilty	\$200 fine	Springhill, Nova Scotia	Amherst, Nova Scotia	CLS	English
60	SCM	Cpl	s. 83 s. 85	Disobeyed a Lawful Command of a Superior Officer Behaved With Contempt toward a Superior Officer Conduct to the Prejudice	Guilty Guilty	Reprimand & \$100 fine	Greenwood, Nova Scotia	Greenwood, Nova Scotia	CAS	English
61	SCM	Gnr	s. 130 (342(1) CCC) s. 114 s. 130 (342(1) CCC) s. 117(f) s. 130 (342(1) CCC) s. 117(f)	Theft of Credit Card Stealing Use of a Credit Card An Act of a Fraudulent Nature Use of a Credit Card An Act of a Fraudulent Nature	Stayed Guilty Stayed Guilty Stayed	7 days detention	Gagetown, New Brunswick	Quebec New Brunswick	CFS&TG	English
62	SCM	Pte	s. 129 s. 130 (5 CDSA)	Conduct to the Prejudice Trafficking	Guilty Guilty	14 days imprisonment	North Bay, Ontario	North Bay, Ontario	CAS	French
63	SCM	Cpl	s. 130 (271 CCC)	Sexual Assault	Guilty	30 days imprisonment (suspended) & Reduction in rank	Borden, Ontario	Borden, Ontario	CLS	English

J Appendix 2

Court Martial Statistics

1 April 2002 to 31 March 2003 (completed)

#	Type	Rank	NDA Offences	Description	Disposition	Sentence	Location of CM	Location of Offence	Command	Language of Trial
64	SCM	Cpl	s. 125(a) s. 130 (380(1) CCC) s. 125(a) s. 125(a) s. 130 (380(1) CCC)	Willfully Made a False Statement Fraud Willfully Made a False Statement Willfully Made a False Statement Fraud	Not Guilty Guilty Not Guilty Not Guilty Guilty	14 days imprisonment & Reduction in rank	Valcartier, Quebec	Quebec, Quebec	CLS	French
65	SCM	Sgt	s. 130 (249(3) CCC) s. 111(1)(a)	Dangerous Operation of a Motor Vehicle Causing Bodily Harm Drove a Vehicle of the CF Recklessly	Not Guilty	N/A	Brantford, Ontario	Borden, Ontario	CLS	English
66	SCM	WO	s. 114 s. 114	Stealing Stealing	Guilty Guilty	Reduction in rank	Hull, Quebec	Ottawa, Ontario	CLS	English
67	SCM	MWO	s. 117(f) s. 117(f) s. 117(f) s. 117(f) s. 117(f)	An Act of a Fraudulent Nature An Act of a Fraudulent Nature An Act of a Fraudulent Nature An Act of a Fraudulent Nature An Act of a Fraudulent Nature	Not Guilty Not Guilty Guilty Guilty Not Guilty	Severe Reprimand & \$3600 fine	Hull, Quebec	Gagetown, New Brunswick	COS/J3	English
68	SCM	LS	s. 130 (267(b) CCC)	Assault Causing Bodily Harm	Not Guilty	N/A	Esquimalt, British Columbia	Victoria, British Columbia	CMS	English
69	SCM	Pte	s. 130 (271 CCC) s. 129	Sexual Assault (lesser included offence of assault) Conduct to the Prejudice	Guilty Guilty	Reprimand & \$1000 fine	Valcartier, Quebec	Valcartier, Quebec	CLS	French
70	SCM	Bdr	s. 129	Conduct to the Prejudice	Guilty	\$200 fine	Petawawa, Ontario	Petawawa, Ontario	CLS	English
71	SCM	P02	s. 83	Disobeyed a Lawful Command of a Superior Officer	Guilty	Reprimand & \$800 fine	Ottawa, Ontario	Ottawa, Ontario	DCDS	English
72	SCM	Pte	s. 90	Absent Without Leave	Guilty	15 days detention (suspended) & \$1500 fine	Edmonton, Alberta	Edmonton, Alberta	CLS	English
73	SCM	Pte	s. 130 (271 CCC) s. 129	Sexual Assault Conduct to the Prejudice	Stayed Guilty	Severe Reprimand & \$1000 fine	Trail, British Columbia	Fredericton, New Brunswick	CLS	English
*		Directed to CM on Appeal	s. 129 s. 129	An Act to the Prejudice An Act to the Prejudice	Withdrawn Withdrawn	Withdrawn		Port-au-Prince, Haiti		

J Appendix 3

Appeals Completed/Initiated 1 April 2002 to 31 March 2003

CMAC #	Appellant	Respondent	Type of Appeal	Status
Federal Court Trial Division	Private Forsyth	Her Majesty the Queen	Judicial Review	COMPLETED Application for judicial review heard on 13 May 02. Dismissed with costs on 5 June 02.
448	Former Master Seaman Dominic	Her Majesty the Queen	Legality of Sentence Severity of Sentence	COMPLETED Appeal heard on 30 May 02 and dismissed with partial costs awarded to appellant.
451	Corporal Lachance	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal heard on 25 Apr 02. Dismissed on 14 May 02.
452	Captain Loughrey	Her Majesty the Queen	Severity of Sentence	COMPLETED Appeal heard on 18 Oct 02. Dismissed on 21 Oct 02.
453	Master Corporal Bouchard	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal heard on 20 Jun 02 and dismissed.
454	Second Lieutenant Sheehy-Tremblay	Her Majesty the Queen	Legality of Finding Severity of Sentence	COMPLETED Appeal heard on 21 Feb 03. Dismissed as to both findings and sentence on 26 Mar 03.
455	Corporal Hunter	Her Majesty the Queen	Legality of Finding	COMPLETED. Appeal dismissed on 31 May 02 given the appellant's failure to file his factum within the time allocated in the CMAC Rules.
456	Corporal Rioux	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal dismissed on 5 Jun 02 given the appellant's failure to file his factum within the time allocated in the CMAC Rules.

J

Appendix 3

Appeals Completed/Initiated

1 April 2002 to 31 March 2003

CMAC #	Appellant	Respondent	Type of Appeal	Status
457	Captain Young	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal abandoned on 4 Jul 02.
458	Corporal Mauch	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal abandoned on 4 Jul 02.
459	Master Corporal Downey	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal heard on 26 Nov 02. Appellant acquitted on charge 1. Appeal dismissed regarding charge 2. A fine of \$100.00 was substituted.
SCC	Captain Langlois	Her Majesty the Queen	Application for leave to appeal the decision of the CMAC ordering a new trial.	COMPLETED Application for leave to appeal dismissed on 3 Oct 02.
460	Sergeant Jones	Her Majesty the Queen	Legality of Finding	COMPLETED Appeal heard on 17 Sep 02. On 19 Nov 02 the appeal was allowed and a new trial ordered.
461	Corporal Hall	Her Majesty the Queen	Legality of Finding Legality of Sentence	COMPLETED Appeal abandoned on 6 May 02.
462	Captain Hughes	Her Majesty the Queen	Legality of Finding Cross-Appeal by Crown on sentence	COMPLETED Appeal heard on 21 Mar 03. Both the main appeal as to findings and the cross-appeal as to sentence were dismissed.
463	Lieutenant Cotton	Her Majesty the Queen	Legality of Finding	COMPLETED On 23 Oct 02 the Court dismissed the appeal given the appellant's failure to file his factum within the time allocated in the CMAC Rules.

J

Appendix 3

Appeals Completed/Initiated

1 April 2002 to 31 March 2003

CMAC #	Appellant	Respondent	Type of Appeal	Status
464	Bombardier Robertson	Her Majesty the Queen	Legality of Sentence Severity of Sentence	COMPLETED On 24 Sep 02 the Court dismissed the appeal given the appellant's failure to file his factum within the time allocated in the CMAC Rules.
465	Ex-Second Lieutenant Short	Her Majesty the Queen	Legality of Finding	COMPLETED On 6 Dec 02 the Court dismissed the appeal given the appellant's failure to file his factum within the time allocated in the CMAC Rules.
466	Able Seaman Bernier	Her Majesty the Queen	Legality of Finding Severity of Sentence	COMPLETED Appeal heard on 14 Mar 03. The appeal as to findings was dismissed. The appeal as to the severity of sentence was allowed. A Severe Reprimand and a fine of \$5000.00 were substituted.
467	Private Baril	Her Majesty the Queen	Legality of Finding	ONGOING. Appeal to be heard on 4 Apr 03.
468	Ex-Private Castillo	Her Majesty the Queen	Severity of Sentence	ONGOING. Appeal to be heard on 28 Apr 03.
469	Corporal Forsyth	Her Majesty the Queen	Legality of Finding Severity of Sentence	ONGOING.
470	Private Jackson	Her Majesty the Queen	Legality of Finding Legality of Sentence	ONGOING.
471	Petty Officer 2 nd class Maxim	Her Majesty the Queen	Legality of Finding Severity of Sentence	COMPLETED Appeal quashed on 24 Feb 03 as the appellant's memorandum of facts and law did not disclose a ground of appeal.
472	Private Busch	Her Majesty the Queen	Legality of Finding Legality of Sentence	ONGOING.

Notes

Notes