



National
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A review from 1 April 2001 to 31 March 2002

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

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28 May 2002

The Honourable John McCallum
Minister of National Defence
National Defence Headquarters
101 Colonel By Drive
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Dear Minister,

It is my honour to present to you the third 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
Major-General

Canada 

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Judge Advocate General Communiqué



It is an honour and a privilege for me to deliver this, my third annual report, on the administration of military justice in the Canadian Forces.

The last year has seen the final implementation of the significant reforms to the military justice system introduced in 1999. I am pleased to report that with the completion of reform implementation the system is serving the needs and expectations of both those who function within the system and those whom the system serves. However, the completion of reform implementation does not mean the end of reform and innovation. Change carries on to ensure the military justice system continues to reflect broader Canadian values and legal standards while at the same time responding to the evolving needs of the Canadian Forces.

Nothing better demonstrates these evolving needs and challenges than the tragic events of 11 September 2001 and the Government's subsequent commitment to the campaign against terrorism. The impact of these events on the Office of the Judge Advocate General has been significant, particularly in the provision of legal services to operations, where complex issues relating to the law of armed conflict, rules of engagement and international law have been addressed. In addition to providing advice on these issues, five legal officers have been deployed in support of Operation APOLLO and the legislative initiatives impacting upon the Canadian Forces and the Department of National Defence contained in both Bill C-36 and Bill C-55 have required legal support.

This year's report provides an overview of the legislative initiatives undertaken by the Canadian Government in response to our changing security environment that relate to, or impact upon, the military justice system.

In addition to highlighting these legislative initiatives, this report:

- provides an overview of service tribunal activity within the military justice system;
- reports on the performance of the military justice committee structure and surveys undertaken in support of my review function;
- highlights military justice training and outreach activities; and
- reports on other initiatives aimed at enhancing the responsiveness and credibility of the military justice system, including the response to court martial delay and my request for a Chief of Review Services audit aimed at ensuring punishments awarded by service tribunals are being carried out in all cases.

The mission of the Office of the Judge Advocate General is to provide effective and efficient legal advice and services in respect of military law and to superintend the military justice system. This mission has been fully accomplished in the last twelve months in the face of unprecedented challenges and demands. Recruiting, training and developing fully functional legal officers has remained a priority and much progress has been made with the recruitment of 11 regular force and six reserve force legal officers during the reporting period, bringing to 74 the total number of officers (regular and reserve force) recruited since June 1998. We have also seen the development and delivery of enhanced legal officer training at the intermediate level and an ongoing improvement of the training resources used to expose new legal officers to military law. I was also very pleased in December 2001 to welcome Chief Warrant Officer Marius Dumont as the first Judge Advocate General Chief Warrant Officer, a position that recognizes the key role that non-commissioned members in senior leadership positions play in the military justice system.

All of the achievements of the Office of the Judge Advocate General during the last year are directly attributable to the quality and commitment of every member of the office, both military and civilian, and

I acknowledge and commend all members for their professional and dedicated service during this period of challenge and achievement.

While this report is, of necessity, retrospective in nature I want in closing to focus on the future. The renewal of my appointment as the Judge Advocate General for a further four year term was announced on 26 February of this year. This will allow me to continue to pursue reform and change in the military justice system and I look forward to the challenges facing us in the future. The most visible of these challenges will be the approaching five year review of the Bill C-25 amendments to the *National Defence Act*. The review will provide us with a further opportunity to pursue improvements to the system as we strive to respond to and implement the constructive and positive feedback received from the chain of command, Canadian Forces members and the civilian community, all of who contribute to the development and advancement of the military justice system.

A handwritten signature in cursive script, reading "Pitzul".

Jerry S.T. Pitzul
Major-General
Judge Advocate General

Chapter 1

The Office of the Judge Advocate General

1



1.1 Duties and Powers of the JAG in Canadian Law

Consistent with the long held traditions of British common law¹ and to ensure the transparent accountability of the Judge Advocate General (JAG) to the Minister of National Defence, the *National Defence Act* (NDA) clearly provides for the appointment of the JAG and sets out the duties, powers and functions of the position in Canadian law, as follows:

- The JAG is the legal adviser to the Governor General, the Minister of National Defence,² the Department of National Defence (DND) and the Canadian Forces (CF) in matters relating to military law.³

1 The earliest reference to the position of JAG is found in 1639 in the Articles of War under the authority of Charles I. The first JAG in Canada was appointed by Order in Council on 1 October 1911.

2 The Minister of National Defence, as an elected Member of Parliament and a member of the executive arm of government, is accountable to Parliament for the proper functioning of DND and the CF, including the administration of military justice. However, because of the statutory requirement to keep the executive function appropriately separated from the judicial arm of government, the NDA deliberately insulates the Minister and other members of the executive from the military judiciary.

3 Section 9.1 NDA.

- The JAG is charged explicitly and specifically with the superintendence of the administration of the military justice system in the CF.⁴
- Except for military judges, the JAG is one of only two members of the CF appointed by the Governor in Council.⁵

1.2 Reporting Relationships

The JAG is statutorily responsible to the Minister of National Defence and “accountable”⁶ for the legal advice given to the Chief of the Defence Staff, the military chain of command, and to the Deputy Minister. This clear accountability structure was designed to enhance the integrity of the Office of the JAG and ensure the independence 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 state that all legal officers whose duty is the provision of legal services shall be posted within the Office of the JAG and, in respect of the performance of their duties, a legal officer is not subject to the command of an officer who is not a legal officer.

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

1.3 Organization of the Office of the JAG

The Office of the JAG comprises 105 regular force legal officer positions and 62 reserve force legal officer positions. The regular force legal officers are employed throughout the CF, in Canada and abroad as follows:

4 Section 9.2 NDA.

5 Section 9(1) NDA; the other appointment is that of the Chief of the Defence Staff, which is made under section 18(1) NDA.

6 For an elaboration on the concepts of responsibility, authority and accountability within the context of the CF and DND see the DND publication *Organization and Accountability*, second edition, September 1999.

- National Defence Headquarters in Ottawa;
- eight Assistant Judge Advocate General (AJAG) offices, seven in Canada and one in Germany;
- ten Deputy Judge Advocate (DJA) offices across Canada;
- four Regional Military Prosecutor (RMP) offices across Canada;
- Supreme Headquarters Allied Powers (Europe) in Belgium;
- 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;⁷
- with CF contingents deployed overseas — during 2001–2002, 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

This past year has seen the addition of new resources to the Office of the JAG, including:

- the establishment of nine legal positions (six activated this year and the remaining three scheduled to come on line 1 April 2002);

⁷ To be established in the summer of 2002.

- the filling of three new RMP positions;
- the establishment of the JAG Chief Warrant Officer position;
- the establishment of the Office of Military Legal Education at RMC in August 2001 and the filling of two of its three positions (the third to be filled in the summer of 2002); and
- the replacement of the DJA Ottawa office with a full AJAG office in Ottawa, with the staffing of two of the three legal officer positions being completed in August 2001 (the third to be filled in the summer of 2002).

In addition, the reporting period saw the completion of a major innovative management initiative to transfer the JAG Primary Reserve List (JAG PRL) from the National Defence Headquarters PRL to the Office of the JAG establishment along with the associated administrative and command responsibilities.

The Office of the JAG will continue its strategy of making the most of its limited resources. The encouraging findings⁸ of surveys conducted internally and externally validate this course of action. However, as clearly demonstrated by the events of 11 September 2001, the office must retain the flexibility to reallocate legal resources to meet unanticipated but urgent demands such as the current campaign against terrorism.

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

The Canadian Military Prosecution Service

The Canadian Military Prosecution Service (CMPS) comprises the Director of Military Prosecutions (DMP), the Deputy Director of Military Prosecutions and the legal officers appointed to assist and

8 Specific survey results are discussed in Chapter 2.

9 The civil authority represented by the Minister (not the JAG) is the sole authority with the power to appoint and remove the DMP.

represent the DMP. The DMP holds office upon appointment by the Minister⁹ for a period not to exceed four years,¹⁰ and may be removed from office only by the Minister, for cause, on the recommendation of an Inquiry Committee.¹¹

The primary statutory duties of the DMP and of the legal officers who assist the DMP¹² are:

- the preferral of charges to be tried by court martial;
- the subsequent co-ordination and conduct of prosecutions at courts martial;¹³ and
- to act as appellate counsel for the Minister in respect of appeals before the Court Martial Appeal Court of Canada.¹⁴

In addition to the above duties, the DMP is the legal adviser to the Canadian Forces National Investigation Service in the conduct of investigations. The DMP has officers employed in four regions across Canada.

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. In this, the DMP's situation is analogous to that of a Director of Public

10 Section 165.1(2) NDA. On 16 January 2001, Captain (Navy) William Reed was appointed DMP.

11 Section 165.1(2) NDA. See also QR&O article 101.18. The Inquiry Committee was not required to sit during 2001–2002.

12 Section 165.15 NDA. The DMP may be assisted or represented by any officer who is a barrister or advocate with standing at the bar of a province.

13 Section 165.11 NDA.

14 Section 165.11 NDA. On 1 September 1999, the DMP was instructed to act as counsel for the Minister in respect of appeals.

Prosecutions in the civilian criminal justice system.¹⁵ The legislation also explicitly empowers the DMP to withdraw charges that have been preferred.¹⁶

The NDA defines the relationship between the JAG and the DMP as follows: the DMP is under the “general supervision of the Judge Advocate General,”¹⁷ who may issue general instructions or guidelines in writing in respect of prosecutions or in respect of a particular prosecution.¹⁸ Except in limited cases,¹⁹ the DMP must ensure that such instructions are made available to the public,²⁰ and the JAG must give the Minister a copy of every such instruction and guideline.²¹

During this reporting period, one general instruction (see Annex H) was issued to both the DMP and the Director of Defence Counsel Services (DDCS) in respect of witness expenses. The purpose of this general instruction was to state JAG’s policy with regard to the payment of expenses related to the attendance of witnesses at court martial.

Annex J of this report contains the Annual Report of the DMP, which includes:

15 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 cases of abuse of process.

16 Section 165.12(2) NDA. However, once trial by court martial has commenced, the DMP may not withdraw a charge without leave from the court.

17 Section 165.17(1) NDA.

18 Sections 165.17(2) and (3) NDA.

19 An exception is permitted only when the DMP decides that release to the public of an instruction or guideline, in whole or in part, would not be in the best interest of the administration of military justice.

20 Sections 165.17(4) and (5) NDA.

21 Section 165.17(6) NDA.

- the DMP/CMPS organization, structure, role and personnel;
- training and communications within the CMPS; and
- DMP discussion of the challenges facing the CMPS.

Office of the Director of Defence Counsel Services

The Office of the DDCS comprises the Director and the legal officers appointed to assist and represent the DDCS. Like the DMP, the DDCS²² is appointed by the Minister. The Annual Report of the DDCS is attached at Annex I.

The duties of the DDCS are defined pursuant to regulations.²³ Further details are included in the DDCS Annual Report.

Like the DMP, the DDCS is, by statute, insulated from other DND/CF authorities to protect the DDCS from potentially inappropriate influence. The DDCS performs his or her duties independently of the chain of command.²⁴

The DDCS “acts under the general supervision of the Judge Advocate General,” who “may issue general instructions or guidelines in writing in respect of defence counsel services.”²⁵ However, the JAG may not instruct the DDCS in respect of a particular defence or court martial. The DDCS must make any general instructions or guidelines available to the public.²⁶ As indicated above, during 2001–2002, the JAG issued only one general instruction to the DDCS, on witness expenses.

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

23 See QR&O article 101.20.

24 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 to their clients’ interests. Communications with their clients are protected at law by solicitor-client privilege.

25 Sections 249.2(1) and (2) NDA.

26 Section 249.2(3) NDA.

Office of the 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.

Office of the Deputy Judge Advocate General/Human Resources

The Office of the JAG was re-organized in 2001 to include a Deputy Judge Advocate General/Human Resources (DJAG/HR). The DJAG/HR is responsible for providing DND officials and CF members with legal advice on military personnel issues through Directorate of Law/Human Resources. 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. The newly established Office of Military Legal Education at RMC is also within the scope of responsibility of DJAG/HR.

Office of the Deputy Judge Advocate General/Chief of Staff

The Office of 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.

Office of the Judge Advocate General Chief Warrant Officer

Chief Warrant Officer Marius Dumont joined the Office of the JAG in December 2001, in the newly created position of JAG Chief Warrant Officer. This appointment was another important milestone in the advancement of military justice reform and will ensure that the Office of the JAG benefits from the disciplinary knowledge and experience of senior non-commissioned members. 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 most recent appointment is part of the ongoing initiative, as reported in the JAG Annual Report 2000–2001, to establish positions for chief warrant officers and chief petty officers first class in all of the regional AJAG offices and the DJA office in Borden.

1.5 The Office of the 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.²⁷ The Office of 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 the Office of the DND/CF LA includes civilian lawyers from the Department of Justice as well as military lawyers. The Office of the 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.

²⁷ Sections 9.1 and 9.2 NDA.

Chapter 2

Superintendence and Review of the Canadian Military Justice System



2.1 The Two Tiers of the Military Justice System

The military justice system has a two-tiered tribunal structure comprised of the summary trial system (where most disciplinary matters are dealt with) and the more formal court martial system. The term “service tribunal”¹ means either a summary trial or a court martial.²

2.2 Analysis of Summary Trial Statistics

The summary trial is the overwhelmingly predominant form of service tribunal in the military justice system. Where a member is charged with a service offence, a summary trial permits the case to be quickly tried and disposed of, as a general rule, at the unit level. Summary trials are presided over by superior commanders,³ commanding officers⁴ (CO)

1 Section 2 NDA.

2 For a comprehensive overview of the military justice system, see the Précis in Annex A.

3 Superior commanders may try officers below the rank of lieutenant-colonel or non-commissioned members above the rank of sergeant.

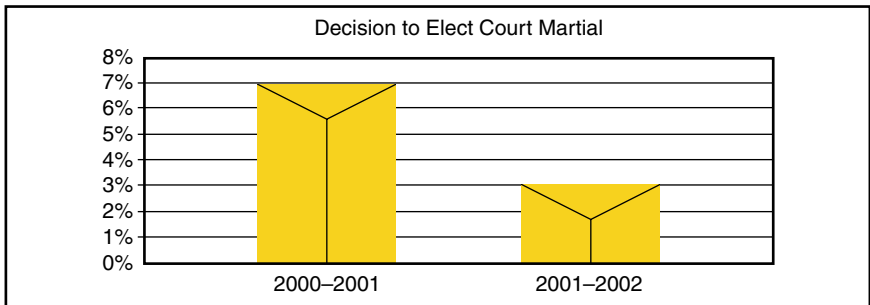
4 Commanding officers may try accused persons who are either an officer cadet or below the rank of warrant officer.

of bases, units or elements, or delegated officers.⁵ The procedures at a summary trial are straightforward and the powers of punishment are limited in scope, with the main goal of punishment being the rehabilitation of the offender. As a result, the maximum punishment that can be imposed by a CO presiding at a summary trial is detention for 30 days.⁶

The regional Assistant JAG and Deputy Judge Advocate offices are responsible for providing legal advice and summary trial guidance directly to unit commanders. Given that the vast majority of disciplinary action in the military is conducted at the unit level, the role of these offices is fundamental to the functioning of the military justice system.

Summary Trials in 2001–2002

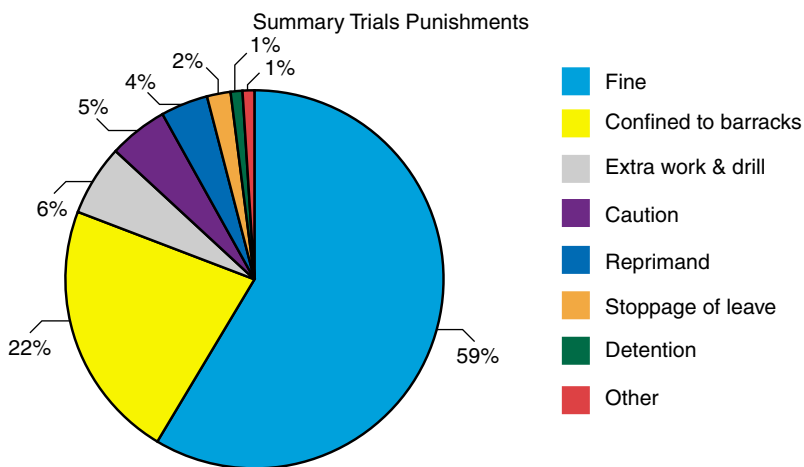
During this reporting period, 1194 disciplinary proceedings were initiated, of which 1122 (94%) were completed as summary trials. Of the 339 accused who were offered the election to choose court martial, only 11 (3%) chose court martial over summary trial. This number is a 50% reduction as compared to the previous year and is seen as a reflection of the high level of confidence that personnel place in the summary trial procedure and the ability of the chain of command to conduct trials fairly.



5 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.

6 NDA s. 163(3)(a).

Minor punishments and fines accounted for the vast majority of the sentences awarded in the summary trial process. Detention was only imposed in 1.1% of cases this year as compared to 2.3% last year. This is consistent with historical trends wherein detention accounts for only a very small percentage of awarded sentences. The sentence imposed most often on those convicted under the summary trial system was a fine. Sentences such as fines and minor punishments permit the individual to serve their sentence while still conducting their primary duties, thus allowing them to remain as effective members in their units. The use of such punishments is consistent with the overall goals of the summary trial system.



The number of summary trials in this reporting period was virtually unchanged from the previous year. Of note, the number of summary trials in Chief of the Maritime Staff units increased by approximately 50%, from 125 to 188. This statistic is likely a reflection of the significantly increased operational tempo in the Navy during the past year, particularly with the added deployment of 7 ships and approximately 1800 personnel on Operation APOLLO. The statistics indicate that the units reporting the highest number of summary trials within the Navy

are those that have been deployed on operations. Charges under section 90 of the NDA (absence without leave) accounted for approximately 45% of charges laid within these units.

Throughout the CF, absence without leave continues to be the most frequently charged offence at the summary trial level, accounting for 30% of all charges. Minor charges under section 129 of the NDA (conduct to the prejudice of good order and discipline) for which no election to court martial is offered, accounted for just over 24% of charges, while other charges under section 129 accounted for 19% of proceedings.

Overall, alcohol and drug related charges accounted for 12% of all summary trial charges heard during the reporting period. However, for units operationally deployed, alcohol and drug related charges made up 25% of all charges laid. It is unclear how many of the other charges laid (such as quarrels and disturbances) may have involved alcohol. It is clear from the statistics that alcohol is a factor in a significant number of cases.

During 2001–2002, the average time from the date of the laying of charges to final disposition by summary trial was 31 days. Deployed units and units training in the field conducted summary trials most quickly, with an average of seven days from date of charge to disposition. The reported timelines indicate that the summary trial system allows unit commanders to deliver prompt, fair justice in respect of minor service offences.

Statistics for summary trials conducted during the period 1 April 2001 to 31 March 2002 are included at Annex D.

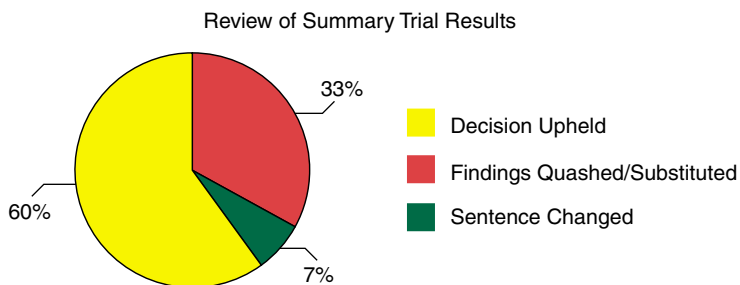
Right to Review of Summary Trials

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, or both.⁷

⁷ QR&O article 108.45.

The findings and punishments imposed at summary trial may also be reviewed on the independent initiative of a review authority.⁸ Review authorities acting under QR&O article 108.45 must obtain legal advice before making any determination on requests for review.⁹

During 2001–2002, CF members made 15 requests for review, of which five related to the finding, four related to the sentence, and six related to both the finding and the sentence. Review authorities reversed or modified the initial findings, the punishment imposed, or both, in six of the fifteen cases.



Offenders convicted at summary trial may also request judicial review from the Federal Court or from the Superior Court in any province.¹⁰ During 2001–2002, no requests for judicial review were brought before the Federal Court or a Superior Court.

2.3 Analysis of Court Martial Statistics

Unlike the summary trial procedure, the court martial procedure is highly formalized and each court martial is presided over by a military judge. This process is conducted outside of the chain of command. Courts martial are generally reserved for more serious cases. In a court martial, the accused member is entitled to be represented by legal counsel. The accused may be represented by defence counsel provided by the Director

8 Section 249 NDA and QR&O article 116.02.

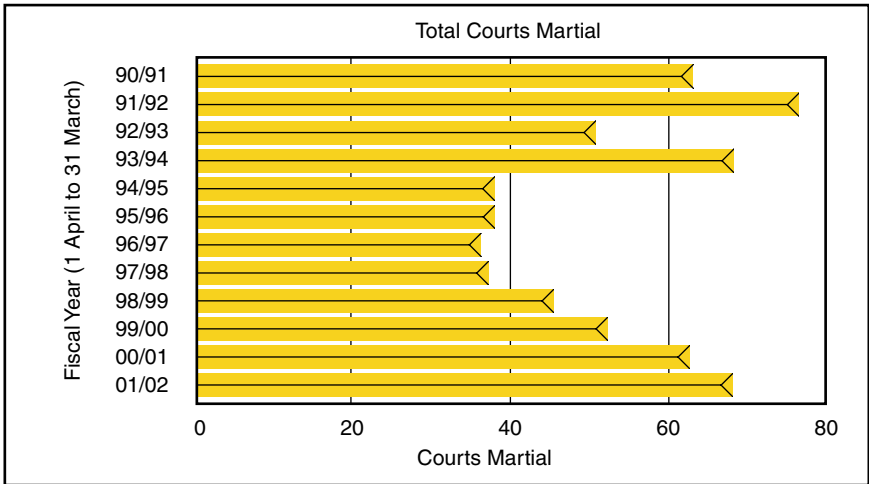
9 QR&O article 108.45(8).

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

of Defence Counsel Services at no expense to the accused, or the accused can choose to be represented by civilian counsel at his or her own expense.

Courts Martial in 2001–2002

During the 2001–2002 reporting period, 67 courts martial were held across the CF, representing a slight increase over the numbers in the previous reporting period. It is assessed that the increased number of courts martial continues a trend that began in 1997–1998 and reflects greater confidence in the court martial process. Information on courts martial is publicly available through the web sites of both the JAG and the Office of the Chief Military Judge.¹¹ Court martial statistics are included in this report at Annex E.



2.4 Review and Reporting Framework for the Administration of the Military Justice System

The Office of the JAG monitors and assesses the administration of the military justice system using methods such as statistical analysis, independent professional analysis, and standardized qualitative and

¹¹ The JAG web site is www.forces.ca/jag/. The web site of the Office of the Chief Military Judge is www.forces.ca/cmj/.

quantitative reports from the system's key participants. Analysis of the information collected provides the JAG with the capability needed to superintend the administration of military justice.

2.5 KPMG Survey on the Summary Trial System

As in 2000–2001, 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 last 30 months.

The survey questionnaire (140 questions in six parts)¹² targeted all current commanding officers and persons who would have been involved in the summary trial process since September 1999 in any of the following roles:

- accused persons;
- assisting officers;
- presiding officers (delegated officers, commanding officers or superior commanders);
- commanding officers;
- review authorities; and
- charging authorities.

¹² The survey comprised 29 questions directed to the accused, 28 to the assisting officer, 21 to the presiding officer, 22 to the commanding officer, 16 to the review authority and 24 to the charging authority.

The questionnaire was electronically accessible through D-Net (the DND/CF website), and the Defence Information Network (the DND/CF intranet); it was also downloadable from these sites in MS Word format. Paper copies were mailed to units that are frequent users of the summary trial system.

The survey drew a very good response from all three environmental commands, all regions of Canada and units deployed overseas. The response rate to each of the six parts of the questionnaire was significant, providing meaningful data that has been used to evaluate the administration of the summary trial system. Particularly noteworthy is the large number of responses from the charge-laying authorities, as this is the first year that their responses have been surveyed.

The responses break down as follows:

Data source	Response on paper	Response by e-mail	Number of responses	Share of responses
Accused	16	41	57	7%
Assisting Officer	36	148	184	23%
Presiding Officer	40	143	183	23%
Commanding Officer	21	153	174	22%
Review Authority	3	9	12	2%
Charging Authority	31	148	179	23%
Total	147	642	789	100%

Survey Results

This second survey builds upon the baseline data collected in 2000–2001, and measures adherence to 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 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.

As in the previous year, the survey found a high degree of compliance at the unit level with the regulatory requirements relating to summary trial administration. The Assistant JAG and Deputy Judge Advocate offices throughout the organization will continue to monitor this compliance.

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 against them, and
 - (3) a list of witnesses who will testify against them.
- 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 and testimony of mitigating considerations before sentence is passed.

The survey confirms substantial compliance in all areas. Of note, there was an increase in the number of accused who responded that they had received all of the evidence that would be used against them at the summary trial. This increase suggests that the education efforts undertaken in response to the results of the 2001 survey have been successful.

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 to these questions by the accused and the assisting officers are mixed. Although there remains overall satisfaction with the review process itself, the number of accused who were aware of their right to request a review of the summary trial decision has not increased in the past year. This data conflicts to a certain extent with the responses from the assisting officers, who responded that more of them had informed the accused of their right to a review. JAG efforts to increase awareness of this process will continue through military justice training and the on-going distribution of the CF booklet *The Code of Service Discipline and Me*.

Analysis of Survey Results

The survey indicates that there is an ongoing need for education of participants in the military justice process. In particular, the accused must be aware of the right to access the evidence that will be used in the summary trial, and that there is a right to request a review of the summary trial decision. The role of the assisting officer is vital to ensure that the accused is aware of these rights. The responses from assisting officers indicate that they rely heavily on the CF publication *The Election to be Tried by Summary Trial or Court Martial: Guide for Accused and Assisting*

Officers. This publication is in the process of being re-published following a significant update. Current military justice training is also continuously updated to ensure that the obligation to provide information during summary trial proceedings is clear to all.

Of particular note from the survey was the tremendous number of responses from assisting officers and charging authorities that recommend formal training similar to the certification training provided for presiding officers. The Office of the JAG is in the process of consulting with other CF training authorities to determine how best to provide additional training to CF members who will act as assisting officers and charge laying authorities.

Significant numbers of responses from charging authorities indicate that they are concerned about the accessibility of unit legal advisers. There were specific concerns with regard to communication with their unit legal advisers from deployed locations, as well as the length of time taken to provide opinions. Even though charging authorities are concerned about the length of time, the monitoring of the timelines for summary trials indicates that they are being conducted within the desired timeframe. The Office of the JAG will continue to monitor these concerns.

This survey on the administration of summary trials builds on the baseline information obtained in 2001. Although it is somewhat early to start analyzing trends with only two years' data, it is possible to identify areas of concern. The Office of the JAG will continue to monitor these areas to ensure all members are treated fairly and in accordance with regulations.

2.6 Interview Survey of Stakeholders

In January of 2001, the JAG authorized the conduct of a series of interviews with senior formation commanders and formation chief warrant officers/chief petty officers in furtherance of the JAG's statutory obligation to conduct regular reviews of the administration of military justice. The interviews provided meaningful feedback in a variety of

areas relating to the administration of military justice and proved to be a unique opportunity to explore broader policy issues in a detail not achievable in a written questionnaire format. On the completion of this survey it was recommended that:

The JAG cause a qualitative review of the military justice system to be undertaken annually. This qualitative review should target a different key group each year and its precise format should be adjusted to reflect the size and needs of the identified target group.

In response to this recommendation the JAG directed the conduct of a similar survey this year with the focus on unit commanding officers and unit senior non-commissioned members. The interviews, which commenced in early February 2002, were conducted by the Director of Law/Military Justice Policy and Research and the JAG Chief Warrant Officer. A total of 45 different units and 85 individuals from the regular and reserve components of the CF, all regions of Canada and Europe and all three operational environments participated in the survey.

This year's survey again indicates that the military justice system is meeting the needs of unit commanders and remains a relevant and necessary tool in ensuring unit commanding officers and senior non-commissioned members are able to enforce and maintain discipline at the unit level. The vast majority of participants also viewed the 1999 reforms to the system positively, noting that they had achieved the broader goals of enhancing both the fairness and transparency of the system. Despite these clearly positive views of the overall system, participants identified a variety of areas where further improvement is required.

Comments and concerns varied widely from interview to interview, but the specific issues raised fell into the following primary categories:

- timeliness;
- unique unit needs;
- communications; and
- training.

Again this year, timeliness concerns were linked to the issue of court martial delay, although there was also concern expressed by some participants with respect to the timeliness of investigations. As discussed in Chapter 3, a number of initiatives are being pursued in this regard, the situation is improving and all of the key players within the system will continue to monitor the issue.

In addition to seeking a representative grouping of units from all three environments, an effort was also made to include units that perform training and educational functions. As a result, a number of CF schools that have regularly used the military justice system were included in the survey. While in many cases the issues raised by this group reflected those raised by other participants, it was clear that in the training environment unique requirements do exist. In specific cases it was felt that the military justice system lacked the flexibility to fully respond to these unique circumstances. For example, there were concerns expressed by training institutions with significant numbers of officer cadets under training that current regulatory provisions prohibiting a delegated officer from exercising summary trial jurisdiction over officer cadets and significantly restricting access to minor punishments where an officer cadet is convicted of a service offence, impaired the ability of the military justice system to fully address the needs of these institutions. These concerns will be fully reviewed, and where appropriate change will be pursued.

Reserve units reported significant concerns with the manner in which breaches of discipline are handled while unit members are either on summer training or otherwise absent from the unit on full time service. It was reported that breaches of discipline are often simply left to be addressed by the member's unit rather than being dealt with prior to the member's return. This practice places a significant burden on limited unit resources and creates practical difficulties in dealing with infractions before service tribunals.

Communications in the court martial referral process was also an area that generated a significant amount of comment. It was generally felt that improved communications between the unit, the referral authority, the prosecutor and the Court Martial Administrator, where a matter has been referred for trial by court martial, would allow the unit to remain aware of the progress of the file, and ultimately enhance the ability of unit authorities to prepare for and support courts martial. The adoption of a number of strategies including receipt acknowledgements to all interested parties as disciplinary files move through the disciplinary chain will be pursued.

Participants, almost without exception, considered the training initiatives undertaken as part of the reforms to be of significant value. A significant percentage of the senior non-commissioned members who participated in the survey had completed Presiding Officer Certification Training and almost unanimously felt that a slightly modified course should be mandatory for senior non-commissioned members serving in leadership positions within units. The current curriculum is being reviewed to determine how the course can be adjusted to better meet the requirements of non-commissioned members.

Again this year, the establishment of chief warrant officer and chief petty officer first class positions within the AJAG offices generated a great deal of discussion. These positions are seen as significantly enhancing the effective delivery of legal services, particularly in support of discipline. The recent establishment of the JAG Chief Warrant Officer position was seen as another positive development in this regard.

2.7 Client Satisfaction Survey

In January–March 2002, the Office of the JAG conducted a client survey to determine the general level of satisfaction with the legal support provided by JAG. The survey was designed to:

- measure the general level of satisfaction in terms of quality and timeliness of legal services as well as other aspects of the professional relationship; and
- determine if the JAG re-organization had addressed some of the concerns expressed in the past with respect to the provision of legal services (particularly in the area of timeliness).

The survey was comprised of two components: a survey questionnaire and a qualitative survey where data was gathered by means of interviews.

Survey Questionnaire Methodology

A paper copy of the survey questionnaire was forwarded to service users (clients) who had been identified by their respective legal advisers as users of JAG services. These clients included detachment, unit and formation commanders as well as a number of directors and director generals at National Defence Headquarters. As a preliminary matter, clients were asked to indicate their opportunity to observe the performance of the JAG organization by identifying the number of occasions where they had utilized JAG legal services during the survey period (1 April 2001–31 October 2001).¹³ The remainder of the survey questionnaire canvassed the level of satisfaction with JAG legal services. Clients were asked to assign a numerical score of 1 through 5¹⁴ to questions

13 The opportunity to observe criteria were broken down into the following 4 categories:

1. 0–5 times (rare);
2. 5–10 times (occasional);
3. 10–20 times (regular); and
4. over 20 times (frequent).

14 The following descriptors were assigned to each numerical value:

1. Needs a lot of improvement;
2. Needs some improvement;
3. It is about right;
4. It is above average; and
5. Excellent.

relating to quality and timeliness of legal services, as well as interpersonal relations. The survey questionnaire concluded with a space where clients could provide general comments on their level of satisfaction with the legal services provided by the Office of the JAG.

The survey drew an excellent response with 79% of those who were forwarded a survey questionnaire responding. The response rate was significant, providing statistically meaningful data that can be used to evaluate the level of client satisfaction with JAG legal services.

Survey Results

Element 1: Quality of Legal Services. The survey found a significant degree of satisfaction with the quality of JAG legal services, regardless of the frequency of utilisation of these services. All JAG clients rated the quality of legal services from “about right” (3) to “excellent”(5). Frequent users of legal services ranked the quality of services slightly higher than rare users. A clear pattern of general satisfaction with the quality of legal services emerged.

Element 2: Timeliness of Legal Services. The survey confirmed a reasonable level of satisfaction with the timeliness of JAG legal services. Once again JAG clients rated the timeliness of legal services from “about right” (3) to “excellent” (5), although the mean results indicate a slightly lower satisfaction level with timeliness of legal services than with the level of satisfaction for the quality of service element. This mean result is also reflected in the numerous comments received pertaining to the availability and accessibility of legal officers. A significant number of clients raised a concern with respect to the increased difficulty they have in gaining access to a legal officer or to legal advice when their dedicated legal officer is operationally deployed. It appears that this difficulty causes a certain level of client discomfort and has a direct effect on the clients’ perception of their ability to obtain legal advice in a timely fashion. Although generally happy with the responsiveness of their legal officers, many entertain the view that overworked legal officers and/or understaffed legal offices are the main causes for those delays. This problem appears to be compounded by operational deployments.

Element 3: Interpersonal Relations. The third element canvassed by the survey questionnaire was interpersonal relations. This element focused on the client’s level of satisfaction with the tact, courtesy and respect demonstrated by the legal adviser as well the adaptability of the legal adviser as demonstrated by their ability to respond quickly and effectively to urgent matters.

It was in this area that JAG legal advisers were ranked the highest. Overall, the “above average” result is slightly higher than the results recorded for the two previous elements.

Interviews

As well as the questionnaire survey, the JAG authorized a “qualitative” survey. Additional information on the general level of satisfaction with the legal support provided by the Office of the JAG was obtained from interviews with senior military commanders in National Defence Headquarters. A total of seven interviews were conducted with the major consumers of JAG legal services.

Although comments and concerns varied widely from interview to interview, a number of common themes emerged:

- **Client Satisfaction.** All the respondents to this survey expressed complete satisfaction with the legal services provided by JAG and indicated that the Office of the JAG serves the needs of the chain of command in a competent and timely fashion. These comments were consistent with the results of the survey questionnaire as indicated above. Many respondents commented favourably on the Office of the JAG ability to respond to complex legal issues in a timely fashion.
- **Office of the JAG Re-organization.** Most respondents felt that the recent creation of two new positions (Deputy Judge Advocate General/Human Resources and Assistant Judge Advocate General Ottawa) in the JAG establishment addressed past concerns with respect to the provision of legal services (particularly in the area of timeliness).

- **Early Legal Involvement.** Most respondents stressed their strong desire that the Office of the JAG continue its proactive approach to providing legal advice. The respondents believed that early identification of potential legal issues and early legal intervention is imperative.
- **Timeliness of Military Justice System.** Although not directly related to the issue of client satisfaction, most respondents expressed concerns with respect to the issue of courts martial delay because they felt this was germane to the JAG's role as superintendent of the military justice system.

Conclusion

The survey questionnaire and survey interview provided a meaningful overview of the level of satisfaction with the legal services provided by the Office of the JAG. The results are valuable and of assistance to the JAG in discharging his statutory role with respect to the provision of advice on matters relating to military law and superintending the administration of military justice in the CF.

2.8 Committees on Military Justice

The JAG has the benefit of a military justice committee structure that contributes in a significant way to the JAG's superintendence and review functions. The committee structure is comprised of the Military Justice Stakeholders' Committee, the CF Code of Service Discipline Committee, the JAG Advisory Panel on Military Justice and the Military Justice Round Table.¹⁵

Although the events of 11 September 2001 had an impact on the scheduling of the committee meetings this year, all four committees met during the reporting period.

¹⁵ The composition of each of the committees is detailed in the 2000–2001 Annual Report of the JAG, available online at www.forces.ca/jag/.

The Military Justice Stakeholders' Committee

The Military Justice Stakeholders' Committee (MJSC) is concerned with long-term strategic issues related to military justice. The committee 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, as well as the Canadian Forces Provost Marshall. This membership is structured to ensure a wide variety of perspectives for discussion of broad policy and process issues.

The MJSC met on 30 April 2001. The chair of the Committee, Chief Justice Barry Strayer, updated the members on initiatives being undertaken to increase awareness, both within the Canadian Forces and with the broader Canadian public, of the role and functions of the Court Martial Appeal Court. The Committee was also provided with a detailed update on the status of victim's issues within the military justice system and endorsed the adoption of victim impact statements for use in the military justice system. This initiative is moving forward and regulations are being developed. The Committee considered delay in the court martial system and the initiatives being undertaken in response to this issue were discussed. A detailed briefing was also provided to the members on the unique factors that must be considered when sentencing offenders in the military justice system. Finally, the Committee was briefed on military justice statistics and the results of the surveys conducted during the 2000–2001 reporting period.

The CF Code of Service Discipline Committee

The CF Code of Service Discipline Committee is made up of senior officers, chief warrant officers and chief petty officers first class (the principal users of the military justice system), and the other key players in the military justice system, including the newly appointed JAG Chief Warrant Officer. It is co-chaired by the Chief of the Defence Staff and the JAG, in recognition of the very different but equally significant interests of these officers in the operations and functioning of the military justice system.

The CF Code of Service Discipline Committee is a forum where users of the military justice system can discuss matters of practical concern, and those who work in the system (and make the system work) can obtain input from senior leaders on broad policy issues.

This committee met twice during the reporting period. At the June 2001 meeting, the committee considered the impact of post-traumatic stress disorder as a defence before a military tribunal. The committee also discussed the consideration given to the “military factor”, when assessing the public interest in proceeding with charges in the military justice system. Finally, the committee took notice of the Court Martial Administrator’s initiative concerning the issuance of a court martial scheduling policy.

This committee met again 24 October 2001. In addition to an update on military justice statistics and on initiatives taken regarding court martial delay, the committee considered issues with regard to the Internet use policy review. Moreover, in order to enforce discipline through the military justice system, the necessary involvement of the chain of command in the notification process for regulations, orders or instructions published for the general guidance of the Canadian Forces was discussed.

The JAG Advisory Panel on Military Justice

The JAG Advisory Panel on Military Justice is unique in the committee structure in that, other than the JAG, it is composed entirely of civilian lawyers and judges. It has the dual function of giving the public meaningful access to the military justice system, while giving the military justice system the benefit of the ideas and experience of those working in the civilian criminal justice system.

The mandate of this panel is to review new military justice policy initiatives before they are implemented, and to recommend appropriate changes. The result is an external perspective on the direction the military justice system may be taking on a particular issue.

The JAG Advisory Panel comprises five members representing all regions of Canada. The current chair is a sitting Superior Court Judge with broad experience in the military justice system, and the members bring extensive expertise in the criminal justice system to the table. During the fall of 2001, Mr. Terrance Matchett was promoted to a position that prevented him from continuing to sit as a member of the Panel. The vacancy has recently been filled by Mr. James O'Reilly, Executive Legal Officer to the Chief Justice of the Supreme Court of Canada.

The panel meets at the JAG's request. It met twice during the fiscal year 2001–2002. In May 2001, it considered many issues, including:

- the JAG general instruction in respect of delay in the court martial process issued to the Director of Military Prosecutions and the Director of Defence Counsel Services;
- federal court applications presented during the hearing of two courts martial;
- appeals policy from the Director of Military Prosecutions; and
- the military factor in sentencing.

In March 2002, the issues considered included:

- the JAG policy directive on the appointment of military judges as a Board of Inquiry;
- the JAG general instruction concerning the payment of witness expenses at court martial issued to the Director of Military Prosecutions and the Director of Defence Counsel Services;

- the proposed amendments in Bill C-42 concerning the establishment of the Reserve Military Judges Panel as a mechanism for appointing part-time military judges;
- recommendations from the Office of the JAG concerning proposed changes to the Internet use policy; and
- draft regulatory amendments for the use of victim impact statements in the courts martial process.

Military Justice Round Table

The Military Justice Round Table is comprised of senior military legal officers from the offices of the JAG, the Director of Military Prosecutions, the Director of Defence Counsel Services, as well as DND/CF LA. It also has a flexible membership to allow it to deal with specific issues as required.

The Round Table has met regularly throughout 2001–2002 to consider issues such as the appropriate mechanism for the appointment of part-time military judges, and the review of the *Military Rules of Evidence*.

Chapter 3

Judge Advocate General Initiatives



3.1 Introduction

The previous chapter analyzed the data collected in the course of the JAG's superintendence of the administration of military justice. This chapter discusses some of the initiatives commenced during this or previous reporting periods, including the following:

- 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 2001–2002 reporting period.

3.2 Court Martial Delay

In the 2000–2001 Annual Report of the JAG, the issue of unacceptable delay in the court martial process was identified. During 2001–2002, the statistics gathered through the military justice review and reporting framework indicate that there has been some improvement in the timeliness of

the provision of pre-charge legal advice. However, it is evident that the post-charge stage still requires improvement. Although much of the delay identified in 2000–2001 may have been attributable to the implementation of the extensive reforms to the military justice system, this can no longer explain the continuing concern with delay in the court martial process.

As identified in the report from the Director of Military Prosecutions at Annex J, personnel resource issues within the office of the Director of Military Prosecutions are certainly contributing to delay. These issues include the need for training and experience for new prosecutors, as well as the departure of some of the more experienced prosecutors from the regular and reserve components of the prosecution service. Although these are ongoing challenges, progress is being made and the issue of delay will continue to be carefully monitored by all participants.

Corrective Initiatives Undertaken in 2001–2002

A number of initiatives were identified in the second Annual Report of the JAG to deal with the issue of court martial delay. The following information updates those initiatives.

Review of Regulations. One of the recommendations from last year's report involved a review of the current regulations that require legal advice be obtained at both the charge-laying and pre-trial disposal points.¹ The question to be determined was whether legal advice at only one of these two points is sufficient to ensure fairness and support the chain of command. The requirement to obtain legal advice at both these points has been reviewed and a proposal to broaden the circumstances in which CF National Investigation Service investigators may lay charges without first having to mandatorily obtain pre-charge legal advice will be presented to the Code of Service Discipline Committee at its next meeting in June 2002.

1 QR&O article 107.03 requires an officer or non-commissioned member having the authority to lay charges to obtain legal advice before laying a charge in most circumstances. QR&O article 107.11 requires the officer to whom a charge has been referred to obtain legal advice before disposing of that charge.

In addition, a review was conducted regarding whether or not the circumstances under which the accused must be offered the right to be tried by court martial are too narrow. Currently, the right to elect trial by court martial is triggered whenever a section 129 NDA (conduct to the prejudice of good order and discipline) offence is alleged, except in very narrow and strictly defined circumstances.² As this section is used to enforce local orders and regulations, it has been suggested that the circumstances should be widened to ensure that commanders are in a position to deal with minor disciplinary breaches swiftly and fairly. After much internal discussion a proposed amendment to QR&O article 108.17 has been developed and is currently under review within the Office of the JAG. Prior to implementing any change the Code of Service Discipline committee will also be consulted.

Allocation of Sufficient Resources. In addition to regulatory review the adequacy of personnel resources was clearly an issue. The appointment of three new military judges in 2001 has certainly been a positive development with regard to the scheduling and conduct of courts martial.

From a prosecutorial perspective, an additional prosecutor position was established in three of the Regional Military Prosecution offices. As discussed above, the full benefit of these additional prosecutorial resources has yet to be felt; however, it is anticipated that the experience and training gained by these individuals in the last seven to nine months will allow them to positively impact on the timeliness of courts martial in the next reporting period.

The establishment of a new Assistant JAG (AJAG) office in Ottawa has not yet had a significant impact on the ability of National Defence Headquarters to review and staff discipline files. The third lawyer for the AJAG Ottawa office will only arrive in the summer of 2002.

2 QR&O article 108.17 lists the offences for which an election need not be offered if the accused is not likely to receive a sentence of detention, reduction in rank, or a fine in excess of 25 percent of basic monthly pay. This list includes section 129 offences related to military training, maintenance of personal equipment, quarters or work space, or dress and deportment.

In addition, one of the other two lawyers in the office was deployed for six months of the reporting period in support of Canada's contribution to the campaign against terrorism.

Scheduling of Courts Martial. The Court Martial Administrator (CMA) has implemented a courts martial scheduling policy under which the CMA sets matters down for trial peremptorily where the prosecution and the defence cannot agree to a trial date within a reasonable (but specific) period of time. Following seven months of operating under the new scheduling policy, a preliminary analysis of the data indicates that it is causing courts martial to be convened and completed more quickly. All requests by the prosecution or the defence to reschedule are argued in open court and are on the record. In the event that there are any concerns about delay, there is a transcript available with the facts, the positions argued by the parties and the reasons for any adjournment.

Additional Initiatives. As a result of discussions at Armed Forces Council³ in February 2001 and the Code of Service Discipline Committee in June 2001, the Chief of the Defence Staff issued written direction to all his commanders highlighting the importance of dealing with disciplinary files expeditiously.

In addition to this direction, the importance of timely staffing of disciplinary files is emphasized in presiding officer training and in other legal training materials.

3 Chaired by the Chief of the Defence Staff (CDS), the Armed Forces Council (AFC) comprises the Vice Chief of the Defence Staff, the Deputy Chief of the Defence Staff, the Assistant Deputy Minister (Human Resources-Military), the three Environmental Chiefs of Staff, the Chief of Reserves and Cadets, and the Canadian Forces Chief Warrant Officer. The AFC advises the CDS and considers broad military matters related to the command, control and administration of the CF.

3.3 Statutory Amendments

Bill C-15A

Amendments to the NDA contained in Bill C-15A, *An Act to amend the Criminal Code and to amend other Acts*,⁴ will provide the statutory authority to permit service offences to be recorded and banked in the national data bank created under the *Identification of Criminals Act*. The coming into force of this amendment will in turn allow for the finalization and implementation of a comprehensive policy on when jurisdiction over serious offences is appropriately exercised within the military justice system and when such offences should be addressed by the civilian criminal justice system.

Bill C-36

On 15 October 2001, the Minister of Justice introduced *An Act to amend the Criminal Code, the Official Secrets Act, the Canada Evidence Act, the Proceeds of Crime (Money Laundering) Act and other Acts, and to enact measures respecting the registration of charities, in order to combat terrorism*. Bill C-36, among other anti-terrorism measures, created offences related to terrorism within the *Criminal Code*. In order to be in a position to deal with similar offences within the military justice system, the NDA was also amended to reflect these changes.

Bill C-36 also included amendments to the *Canada Evidence Act* to address the judicial balancing of interests when the disclosure of information in a proceeding could be injurious to international relations, national defence or national security. These amendments expressly recognize the separate responsibilities of the Minister of National Defence in relation to the military justice system. Bill C-36 received Royal Assent on 18 December 2001.

⁴ Bill C-15A, *An Act to amend the Criminal Code and to amend other Acts*, 1st Sess., 37th Parl., 2001 (passed by the House of Commons 18 October 2001, 2nd reading in the Senate 6 November 2001).

Bill C-42 Reserve Military Judges Panel

As a key component of military justice, the court martial system is presided over by military judges appointed pursuant to section 165.21 of the NDA.

The military judicial appointment process has evolved significantly over the last number of years resulting in the enhancement of the institutional independence of the military judiciary. While institutional independence objectives have clearly been attained, there is no mechanism for augmenting the military judiciary with appropriately qualified reserve component officers to meet sudden changes in the CF's operational tempo.

As reported in the 2000–2001 Annual Report of the JAG, the CF Code of Service Discipline Committee endorsed the concept of a mechanism to appoint part-time military judges. This impetus, in addition to the likelihood of an increased operational tempo as a result of the terrorist attacks on New York and Washington, led to the inclusion of this proposal in Bill C-42.⁵

On 22 November 2001, the Minister of Transport introduced the second part of the government's anti-terrorism legislation — Bill C-42, *The Public Safety Act*. This Bill includes a key amendment to the NDA that would see the creation of a Reserve Military Judges Panel. This panel would allow for appropriately qualified reserve force officers to augment the military judiciary, ensuring that the military justice system is in a position to fully respond to any increased demands on the system. Further details can be found in Chapter 4.

⁵ Bill C-42 was withdrawn on 24 April 2002 and the initiatives were re-introduced in Bill C-55 on 29 April 2002.

3.4 Changes in Regulations

Judicial Arrest Warrant

Section 249.23 of the NDA provides that where an accused person has been duly summoned or ordered to appear before a court martial and fails to appear, the court martial may issue a warrant in the form prescribed in regulations for the arrest of the person. Work to create the required form in regulations was undertaken in 2001. The proposed regulation was approved by the Governor in Council on 14 March 2002 and is now in force.

Military Rules of Evidence

Pursuant to section 181(1) of the NDA, the rules of evidence at trials by court martial shall be such as are established by regulations made by the Governor in Council. These regulations are established as the *Military Rules of Evidence*. These rules were subjected to a thorough review in 2001–2002.

The purpose of this project has been to update the *Military Rules of Evidence* to ensure their compliance with current Canadian law. This review of the rules is nearing completion, and it is expected that the process of obtaining regulatory approval will begin early in the next reporting period.

Victim Impact Statements

Currently, there are no specific provisions in the NDA or in QR&O for the use of victim impact statements at courts martial. This issue was considered by the Military Justice Stakeholders' committee in April 2001, at which time it was recommended that in an effort to ensure that the military justice process is consistent with broader Canadian criminal justice system, regulations providing for the use of victim impact statements at courts martial be developed. A proposal to implement this recommendation has been developed and was reviewed by the JAG Advisory Panel in March of 2002. The comments received

from the JAG Advisory Panel will be incorporated into the current proposal which will be reviewed at a Military Justice Round Table in the spring of 2002.

3.5 Judge Advocate General Policy Guidance

During the 2001–2002 reporting period, the JAG issued the following new policy directive (see Annex H):

- Directive # 017/02 — Payment of witness expenses at court martial.

3.6 Military Justice Education and Training

CF personnel are given education and training in military justice and the Code of Service Discipline. The nature of this education and training ranges from formal courses and programs to ad hoc professional development sessions and briefings.

Presiding Officer Certification Training (POCT)

The most formal training that reaches the largest audience is that of POCT. This training is based on the 1 April 2000 regulations⁶ that require superior commanders, commanding officers and delegated officers throughout the CF to be trained and certified by the JAG in the administration of the Code of Service Discipline. Accordingly, the Office of the JAG developed the curriculum, implemented the training and now manages the POCT program.

The objective of this certification program is to convey a common body of military justice knowledge to all officers who may preside at a summary trial (presiding officers). Although they cannot preside at summary trials, POCT is also given to the senior non-commissioned members with whom presiding officers work most closely during the conduct of summary trials involving other non-commissioned members.

⁶ QR&O articles 101.09 & 108.10(2)(a)(i).

POCT consists of 20 hours of self-directed study and a self-administered pre-course threshold knowledge test. Once candidates complete these pre-course requirements, they attend two days of classroom instruction delivered by CF legal officers. Successful completion of the end-course test results in the JAG certification, which is valid for a four-year period.

Because the first POCT courses were run in September 1999, the first of the certifications will expire in September 2003. The Office of the JAG is developing the framework for re-certification that will be required when these certifications begin to expire.

During the 2001–2002 reporting period, 586 regular and reserve force superior commanders, commanding officers and delegated officers were certified by the JAG as qualified to perform their duties in the administration of the Code of Service Discipline (see Annex G). Ninety-four senior non-commissioned members also completed the program. This training was given in 45 courses by a total of 59 legal officer instructors, at more than 18 locations inside and outside Canada. There are now 3564 certified presiding officers in the CF.

Other Military Justice Training in the Canadian Forces

CF personnel receive training on the military justice system as part of their regular professional development. The CF Recruiting Education and Training System added enhanced military justice training modules to its courses in 1999.⁷ Military justice training is given at an introductory level at the basic recruit course and during subsequent career training. Formal training is also given as part of leadership training at the Junior Leader and Senior Leader schools. Additional training in military justice is also provided to supervisors on “environmental” courses. For example, the Navy has a military justice component in the Coxswain’s course and the Air Force includes training in military justice as part of the Senior Air Supervisor’s course.

7 CANFORGEN 081/99 CDS 9 September 1999.

Training at the unit level is generally composed of professional development briefings. If delivered by unit staff, the resources that can be used include the CF publications such as *Military Justice at the Summary Trial Level*, *The Code of Service Discipline and Me*⁸ and the Unit Discipline Training CD ROM. Such unit-level military justice training often focuses on the purposes of military justice, CF members' rights and entitlements under the Code of Service Discipline and more specialized subjects such as laying charges and assisting officer responsibilities. Legal officers and the chief warrant officers and chief petty officers first class in the JAG field offices can and do provide such unit-level training.

Education

The JAG's Office of Military Legal Education was created at the Royal Military College in the summer of 2001. While the two legal officers in this office currently provide instruction in international and other fields of law at the College, they also act as the instructors for the Introduction to Military Law module of the Officer Professional Military Education Programme (OPME). This OPME course is a basic course and a compulsory component of the OPME. The course is intended to provide junior officers with a common grounding in military law. It has two main themes, the first being the CF military justice system as it relates to officers' responsibilities for the maintenance of good order and discipline. The second theme is about conflict viewed from a modern military perspective. Each theme is presented in separate modules with its own assignments and examination.

Training for Legal Officers

Basic and intermediate training on the Code of Service Discipline and military justice is given to legal officers because they do not study these subjects at either law school or during the provincial law societies' bar admission programs. As part of their basic training in military law, new

8 Found at www.forces.ca/jag/.

legal officers must complete military justice components that are part of their on-the-job training. They also are required to complete the Presiding Officer Certification Training that is delivered to the officers and senior non-commissioned members of the CF.

Legal officers receive further military justice training as part of the Military Justice and Military Administrative Law Course. The pilot course involved eight training days and was provided to 24 regular and reserve force legal officers in November 2001.

The JAG sponsors postgraduate training in criminal law. One legal officer is currently enrolled in such a Masters of Law program at the University of Ottawa.

Additional training in criminal law that is applicable to military justice is also provided to legal officers in the Directorate of Military Prosecutions and the Directorate of Defence Counsel Services. The purpose of this training for the legal officers who prosecute and defend at courts martial is to enhance their knowledge of criminal law and their criminal law advocacy skills at the trial and appellate levels. This training is obtained from law schools, provincial law societies, bar associations and other legal training organizations. In the fiscal year 2001–2002 approximately 200 days of this training was obtained.

Communications and External Links

The Office of the JAG continues to promote awareness of the military justice system through the JAG web site (www.forces.ca/jag/). This site provides access to CF military justice publications, summary trial statistics and courts martial and courts martial appeal information. The JAG web site also provides a link to the Chief Military Judge web site (www.forces.ca/cmj/).

The Office of the JAG has also been active in the last year in promoting awareness of the military justice system both within the Canadian Forces and the broader Canadian public. On 17 April 2001 the Office of the JAG, in cooperation with the Office of the DND/CF Legal

Advisor, conducted a Law Day conference in recognition of the 19th Anniversary of the *Canadian Charter of Rights and Freedoms*. This event was open to all CF members, DND employees and the general public. Law Day provided an opportunity to highlight the impact the *Charter* has had on DND and the CF in all areas, including human resource management, operations and the military justice system.

The office has also remained actively involved in the Canadian Bar Association (CBA), primarily through the National Military Law Section of the CBA. Ten legal officers attended the CBA Annual meeting in Saskatoon in August 2001 where the National Military Law Section sponsored a panel discussion entitled "Discipline through Justice". Panel members included representation from the military judiciary and the civilian defence bar. In October 2001, the National Military Law Section sponsored a second Continuing Legal Education conference in Ottawa. A total of 98 CBA members took part in presentations and discussions that focussed on the legal rights and duties of CF members.

In November 2001, the Office of the JAG conducted a two-day workshop involving the Director of Military Prosecutions, the CF National Investigation Service and the regional Assistants JAG. The aim of the workshop was to explore issues essential to the effective cooperation between these key participants in the military justice system while at the same time including an educational component. Detailed discussions of the roles of each of these players in the system and roundtable discussion on issues of interest or concern ensured the unqualified success of this workshop, which will become an annual event.

3.7 Other Military Justice Initiatives

Internet Use Policy Review

Following a high profile court martial involving improper use of a DND Internet system, the Minister of National Defence requested that the Office of the JAG conduct a review of the DND Internet use policy

to examine whether the disciplinary process is always the appropriate mechanism for dealing with breaches of the order by CF members.⁹

The review was conducted through a comparative analysis of the Internet use policies of a sampling of provincial governments and allied military forces, as well as a review of the criminal law relating to Internet use.

An analysis of the charges laid in relation to unauthorized Internet use reveals that the majority of the cases are of personnel viewing sexually explicit materials that are not of a criminal nature. While the majority of the charges were of a relatively minor nature, even a minor offence may have a serious impact on the ability of the unit to meet its mission tasks depending on the operational circumstances of the unit. Local commanders are in the best position to determine the impact of a breach on unit cohesion and mission accomplishment.

The review determined that the blanket prohibition on personal use in the current DAOD is unrealistic, unenforceable and imposes a far greater restriction than the standards set out within the *Criminal Code* and in the overarching Treasury Board Policy.

The JAG report recommends a more liberal use policy be adopted similar to that in use by some Canadian provinces and the militaries of other allied nations. If adopted, this would permit limited personal use. With more clearly defined categories of use, commanders will be in a better position to apply disciplinary and administrative sanctions in the appropriate cases.

The report has been forwarded to the Minister, who has referred the report to the Associate Deputy Minister (Information Management) for review and implementation.

9 Defence Administrative Order and Directive (DAOD) 6001-1 (Internet Use Order and Directive).

Chief of Review Services Audit with Regard to Sentencing

During the reporting period, the JAG received indications that sentences imposed upon service members are not being carried out in some cases, particularly in those cases where a fine has been imposed. While this information is purely anecdotal, it is a cause for concern.

A fundamental part of any justice system is the ability of the system to both fairly dispose of charges and enforce punishments awarded by properly constituted tribunals. If lawfully imposed punishments are not being carried out, the integrity, perceived fairness and, most importantly in the military context, the usefulness of the system as a tool for the maintenance and enforcement of discipline are all called into question.

Recognizing the importance of a fair and credible military justice system in meeting the unique requirements of military discipline, the JAG has requested that the Chief of Review Services carry out an audit reviewing the implementation of punishments imposed by all courts martial conducted between 1 September 1999 and 31 December 2001. CRS has commenced the requested audit and it is anticipated that a final report will be completed in the summer of 2002.

Five Year Review

Bill C-25, which received Royal Assent on 10 December 1998, included a requirement that the Minister cause an independent review of the provisions and operation of the Bill C-25 amendments to the NDA to be undertaken from time to time. The first such report is due before Parliament in December 2003.

In order to be prepared to provide input to this review, the Office of the JAG has been collating information on various issues that could be addressed during the review. These issues include:

- alternative sentencing options, such as fine options, community service and conditional sentences;¹⁰

¹⁰ From the Somalia Commission of Inquiry Report.

- the possibility of expanding summary trial jurisdiction to include officers above the rank of major;
- clarification of the issue of jurisdiction over civilians accompanying the Canadian Forces;
- review the need to entrench the principle of independence of criminal investigative process into the military justice legislative framework;¹¹ and
- clarify the distinction between reservists on full-time employment with regular force units that are subject to the Code of Service Discipline at all times, and reservists on full-time employment with reserve units that are only subject to the Code of Service Discipline if they fall under another category of jurisdiction.

The above list is far from exhaustive. Unquestionably, additional issues will be identified as we move forward in preparation for the review.

Information Data Banks

In order to assist the JAG with the superintendence of the administration of military justice, a data bank has been developed to track all information related to summary trials. This ability to evaluate information and produce various types of reports has proven to be invaluable in the superintendence of military justice. A similar data bank is now being developed for courts martial. The JAG will be able to produce reports based on timelines, offences, commands or regions. These resource tools are critical to the ability of the JAG to monitor the military justice system.

¹¹ From the “VCDS/CFPM Accountability Framework — Annual Review 2001” dated 3 July 2001.

Access to Information Review

The Office of the JAG made representations to the Access to Information Review Task Force in 2001. The focus of the representations was that elements of the military justice system should be treated in the same manner as the civilian criminal justice system with regard to the application of the *Access to Information Act*.

Pre-Trial Custody Review

Section 159(1) of the NDA provides that a person being held in custody shall be taken before a military judge for the purpose of a hearing to determine whether the person is to be retained in custody. During the reporting period, three custody review hearings were conducted. In all three of the hearings, videoconference technology was used to connect one or more of the court participants (e.g. the military judge, the person in custody, prosecution, defence or witnesses). In addition, in one of the hearings, the affected community was permitted to hook into the videoconference in the interest of making the hearing as open and accessible as possible. This capability reduces the time and expense involved in the military judge and other participants having to travel to the location where the person is being held in custody, without diminishing the ability of the court to hear relevant testimony and render decisions quickly and effectively where an individual's liberty interests are at stake.

Chapter

4

The Office of the Chief Military Judge



4.1 Military Judges

Section 165.21(1) of the NDA provides that 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. A process similar to that followed for other federal judicial appointments ensures that only competent, deserving officers are considered for military judicial appointments.

In this judicial evaluation and selection process, candidates are assessed by the Military Judges' Selection Committee (MJSC). Members of the MJSC are appointed by the Minister of National Defence to represent the Bench, the civilian bar and the military community.¹ To be considered for a military judicial appointment, qualified officers must place their names before the MJSC, which assesses them on criteria relating to their professional competence and experience, personal characteristics, social awareness and any potential impediments to appointment, such as an inability to meet the physical fitness requirements of the CF.

¹ The Committee is composed of a lawyer or judge nominated by the JAG, a civilian lawyer 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.

The MJSC assessment is then forwarded to the Minister of National Defence, who is responsible for recommending candidates to the Governor in Council.

4.2 Compensation of Military Judges

The statutory framework relating to military judges was substantially enhanced by the September 1999 NDA amendments and the establishment of the Military Judges' Compensation Committee (MJCC) in accordance with QR&O article 204.23.

In function and composition, the MJCC resembles the independent federal commission that reviews the compensation of Superior and Federal court judges. The committee is composed of three part-time members appointed by the Governor in Council: a chair and two members. The Minister of National Defence nominates one member and the military judges nominate the other; these two members then nominate the chair. The chair and members are each appointed for a term of four years, and may be appointed for a further term.

The MJCC is required to conduct an inquiry once every four years, and to make recommendations to the Minister on the adequacy of the compensation of military judges. In conducting an inquiry, the MJCC may consider any relevant objective criteria; however, they must consider the following issues:

- 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.

4.3 Court Martial Administration

Military judges are independent not only from the JAG and the CF chain of command, but also from DND authorities and the executive branch of government. Courts martial are convened by the Court Martial Administrator, who acts under the supervision of the Chief Military Judge.² When a charge is preferred by the Director of Military Prosecutions, the Court Martial Administrator convenes a court martial and appoints panel members as required.³ The chain of command does not make decisions concerning whether a charge will proceed to court martial, what type of court martial will be held, who will sit on the panel, or where the court martial will take place.

4.4 Court Martial Centralized Funding

A centralized court martial funding budget was created in September 2001. The effect of the new policy is to shift the burden for the costs of supporting a court martial from the unit to the Court Martial Administrator. This central funding was established to ensure units supporting courts martial were not placed in a position where they had to actively seek additional financial resources to fulfill this function.

4.5 Scheduling Courts Martial

In order to meet the requirements of timely justice, the Court Martial Administrator established a new policy for the scheduling of courts martial. Under the new procedure, once charges have been preferred, the Court Martial Administrator will allow the Director of Military Prosecutions and the Director of Defence Counsel Services counsel two weeks to attempt to agree on a mutually acceptable trial date. If, after two weeks, counsel have not reached an agreement, the Court Martial Administrator will set the trial date and convene the trial to begin within 60 days.

² Sections 165.18 and 165.19 NDA.

³ Section 165.19 NDA.

4.6 Reserve Military Judges Panel

Legislation establishing a Reserve Military Judges Panel was introduced in Parliament in 2001 as part of Bill C-42 (*The Public Security Act*).⁴ The legislation, if adopted, will establish a panel consisting of officers of the reserve force who have previously performed the duties of a military judge under the NDA or who have, before 1 September 1999, performed the duties of a president of a Standing Court Martial, a presiding judge of a Special General Court Martial or a judge advocate of a General Court Martial or Disciplinary Court Martial.

The Chief Military Judge will have the authority to select any officer named to the panel to perform any duties referred to in section 165.23 of the NDA. An officer named to the panel who is performing duties or undergoing training will be paid remuneration at the daily rate of 1/251 of the annual rate of pay of a military judge other than the Chief Military Judge.

The establishment of this panel of reserve judges will provide the Chief Military Judge with a mechanism to respond to temporary or short term increases in demand.

⁴ Bill C-42 was withdrawn on 24 April 2002 and the initiatives were re-introduced in Bill C-55 on 29 April 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 2001–31 March 2002

The Court Martial Appeal Court of Canada (CMAC) heard six appeals during the reporting period. The Supreme Court of Canada did not hear any appeals from the CMAC during this period.

In four of the six cases before the CMAC, the appellant was a CF member convicted at court martial. In two of the six cases, both the legality of the guilty finding and sentence were appealed; in the other four, only the legality of finding 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.

An offender initiating an appeal may apply to the Appeal Committee for representation by legal counsel at public expense.¹ This committee consists of a person appointed by the JAG and a person appointed by

¹ QR&O article 101.21.

the Chief of the Defence Staff. During the 2001–2002 reporting period, the Appeal Committee assessed twelve applications from appellants. In six 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 Office of the Director of Defence Counsel Services to represent the applicants.

5.2 The CMAC Decision in *R. v. Kipling*

One of the most significant cases heard in the CMAC during the reporting period was the Crown’s appeal against the stay of charges in the court martial of Sergeant (retired) Kipling. Sergeant (retired) Kipling was a Flight Engineer with 435 Squadron Detachment, Kuwait; part of the Canadian Forces deployed to the Middle East in 1998. In light of the threat that anthrax posed during that mission, CF personnel near Iraq were ordered to undergo vaccination. Sergeant (retired) Kipling refused to be vaccinated. As a result, he was charged by his commanding officer under section 126 of the NDA, which makes it an offence to refuse an order to undergo vaccination without a reasonable excuse.

A standing court martial was convened. At court martial, the defence raised a plea in bar of trial based upon an alleged violation of several of Sergeant (retired) Kipling’s *Charter* rights. The trial judge ruled that Sergeant (retired) Kipling’s section 7 *Charter* right to security of the person had been breached and directed a stay of proceedings. The prosecution appealed the finding of the trial judge to the CMAC.

In granting the appeal, the CMAC found that the trial judge erred in permitting Sergeant (retired) Kipling’s constitutional argument to be dealt with as a plea in bar of trial. The CMAC found that the trial court inappropriately exercised its discretion by hearing the fundamentals of the case argued in a plea in bar of trial rather than in a full trial.

The appeal court noted that in a full trial, issues such as “reasonable excuse,” the matter of the safety of the vaccine and the circumstances under which the order was given could have been addressed, and possible constitutional implications might have been more clearly seen. Given that the safety of the vaccine would have been the central issue to the trial, the CMAC found that the trial judge erred in not conducting a full trial on the issue.

At trial, the accused had argued that “reasonable excuse” was linked to the concept of “informed consent”. His position was that lack of informed consent constituted a reasonable excuse to refuse a vaccination. He further submitted that a lack of informed consent in the face of prosecution for refusing to accept a vaccination constituted a violation of his *Charter* rights under section 7.²

It is apparent from its decision that the CMAC does not consider “informed consent” to be linked to “reasonable excuse.” In response to Sergeant (retired) Kipling’s argument on the matter of “informed consent,” the Court determined that counsel had confused the disparate concepts of “informed consent” and “reasonable excuse”. The Court also found it “hard to understand how the concept of ‘informed consent’ relates to [Sergeant (retired) Kipling’s] arguments concerning the requirements of section 7 of the *Charter* or section 126 of the *National Defence Act*”.³

In dismissing Sergeant (retired) Kipling’s position, the CMAC noted that the effect of linking the concepts of informed consent and reasonable excuse would be to permit a person to refuse a vaccination “for some good reason, or for no reason at all”.⁴ This, the Court found, was unacceptable and, if allowed, would render the legislation unenforceable, thus making the concept of “reasonable excuse” meaningless.

2 Section 7 of the *Charter* reads as follows: “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”.

3 *R. v. Kipling*, [2002] CMAC-437, at paragraph 9.

4 *Kipling*, at paragraph 9.

The Crown's appeal against judgement in the court martial of Sergeant (retired) Kipling was upheld and the CMAC ordered a new trial. The Director of Military Prosecutions then conducted a full review of the case to determine whether or not a new trial should be pursued. After a complete review of the facts, the law and the circumstances surrounding the case, the Director of Military Prosecutions announced on 11 April 2002 that he had determined that it was no longer in the public or CF interest to proceed with a new trial. The validity of section 126 of the NDA is not affected by either the CMAC decision or the decision of the Director of Military Prosecutions. Accordingly, it remains an offence for persons subject to the Code of Service Discipline to refuse to submit to a vaccination without reasonable excuse.

Chapter

6



Conclusion

This report demonstrates the very dynamic nature of the military justice system and the importance of proactively identifying and addressing challenges to ensure the system not only continues to serve the needs of the Canadian Forces, but also reflects the values and expectations of Canadian Forces members and the Canadian public. The internal reviews and independent survey outlined in Chapter 2 demonstrate that the system is meeting the needs and expectations of those it serves while at the same time ensuring the interests and rights of those subject to it are fully protected in accordance with Canadian law.

Enhanced confidence in the military justice system has become evident in the last few years and this increased confidence is not restricted to Canadian Forces members. Again this year, the Director General Public Affairs contracted POLLARA¹ to conduct a telephone survey in which people, randomly selected from voters' lists across Canada, were asked about their perceptions of, among other things, the military justice system. The results indicate that the percentage of Canadians who agree that the military justice system is fair continues to increase.² These results

1 POLLARA is a Canadian-owned public-opinion and market-research firm located at 301-101 Yorkville Avenue, Toronto, Ontario, M5R 1C1; (416) 921-0090 (telephone) and (416) 921-3903 (fax).

2 In 2001, 57% of respondents agreed that the military justice system is fair. This is an increase from 51% in 2000, and 47% in 1999.

demonstrate the success of efforts to promote awareness of the military justice system both within and outside DND and the CF. One of the most visible, and important, awareness initiatives that has been undertaken is the military justice committee structure (Chapter 2). The committees have continued to demonstrate their value as both a means of providing stakeholders with a voice and injecting external views and ideas into the system.

Usage is also an indicator of confidence in the system; a system in which there is no confidence simply will not be used. Again this year we have seen another slight increase in the number of courts martial with the conduct of 67 trials, continuing an upward trend that began in 1997. The Court Martial Appeal Court also heard six appeals. The summary trial process remains the backbone of the military justice system as demonstrated by the fact that between 1 April 2001 and 31 March 2002, 1194 disciplinary proceedings were initiated, producing 1122 summary trials held in Canada, Bosnia, and Eritrea.

During the reporting period, we also witnessed significant legislative and regulatory developments in response to terrorist threats. Regulatory reform will continue in 2002–2003 as we pursue initiatives such as updated and revised rules of evidence and regulatory changes that will provide for the use of victim impact statements in the sentencing phase at courts martial.

Legal officers from the Office of the JAG taught 586 officers and 94 senior non-commissioned members as part of the certification training program on the administration of the Code of Service Discipline in the last year. The Office of the JAG will continue to ensure that all CF members receive the military justice training that is required to allow them to confidently perform their roles in the administration of military justice.

Information management and outreach will also remain a priority in the upcoming months as the Office of the JAG continues to refine data management tools to assist the JAG in superintending the administration of military justice. Moreover, the JAG web site is being updated in order to facilitate military legal training, as well as promote better understanding and awareness of military justice and the Office of the JAG generally.

The Office of the JAG will continue to take the initiative to deal with identified deficiencies in the system, the most pressing currently being the issue of court martial delay. As the newly appointed prosecutors in the Canadian Military Prosecution Service begin to take on a full caseload, and other responses are implemented it is expected that we will see continued improvement in this challenging area. It is anticipated that the campaign against terrorism will continue and the JAG will continue to dedicate legal resources in support of the Government of Canada's objectives. This will include ensuring the military justice system remains fully capable of meeting the needs of operational commanders.

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).

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

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.

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 Administration Orders (CFAO), and the Defence Administrative Orders and Directives (DAOD).

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

3 Section 18(2) NDA.

4 QR&O articles 4.12 and 4.21.

5 QR&O articles 4.02 and 5.01.

Why does the Canadian Forces have its own justice system?

In *R v. G n reux*, [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.

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

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

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

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

8 Section 70 NDA.

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

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 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

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

11 Under section 132 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 Sections 73–129 NDA.

13 Sections 60(2) and 69 NDA.

14 Section 69(a) NDA.

15 Section 69(b) NDA.

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:

- 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

¹⁶ QR&O article 106.02.

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

¹⁷ QR&O article 107.015(2).

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

18 QR&O article 107.02.

19 See Note to QR&O article 107.02.

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.

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

²² QR&O article 107.09 (1)(a).

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, 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.

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.

26 Section 2 NDA.

27 For a detailed, comprehensive overview of the military justice system, see the JAG publication *Military Justice at the Summary Trial Level* (August 1999: downloadable from www.forces.ca/jag).

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. Before conducting a summary trial, however, 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.³⁰

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 sections 60, 69, 70, 163 and 164 of the NDA; 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.

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

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 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 summarily.³¹ 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,³² or both.³³ The findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority.³⁴ Review authorities acting under QR&O article 108.45 must obtain legal advice before making any determination on requests for review.³⁵

31 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.

32 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.

33 QR&O article 108.45.

34 Section 249 NDA and QR&O article 116.02.

35 QR&O article 108.45(8).

Offenders convicted at summary trial may also request judicial review from the Federal Court or from the Superior Court in any province.³⁶

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.³⁷ 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 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 CSD (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 a rank of lieutenant-colonel or higher, a trial by court martial is the only available option.

³⁶ *Federal Court Act*, R.S.C. 1985, c. F-7, sections 18 and 18.1.

³⁷ “Minor disciplinary” charges resulting in the denial of the option to elect include: s 85 (Insubordinate Behaviour), s. 86 (Quarrels and Disturbances), s. 90 (Absence Without Leave), s. 97 (Drunkenness), or s. 129 (Conduct to the Prejudice of Good Order and Discipline). When charges are laid under s. 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.

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.

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 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,”³⁸ 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)³⁹ 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.

³⁸ Section 179 NDA.

³⁹ QR&O article 101.20.

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.⁴⁰ 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 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.⁴¹ 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,⁴² 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

⁴⁰ Sections 167(1) and 170(1) NDA.

⁴¹ Sections 167(7) and 170(4) NDA.

⁴² Sections 174 and 177 NDA.

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.⁴³ 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.⁴⁴

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,⁴⁵ 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.⁴⁶ The professional merit standard requires not only a reasonable chance of success on the particular legal issues raised, but also a reasonable likelihood that should the court allow the appeal, the decision will alter the court martial findings or sentence.

Before the establishment of the Appeal Committee, only accused persons who were respondents to appeals filed by the Crown were entitled

⁴³ See sections 159.9, 234, 235, 238 to 243 and 248.2 to 248.9 NDA.

⁴⁴ Section 245 NDA.

⁴⁵ QR&O article 101.21.

⁴⁶ QR&O article 101.21(6).

to be represented by a legal officer at public expense.⁴⁷ 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.

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.

⁴⁷ QR&O article 101.20(2)(g).

Each CF unit is required to establish and maintain a Unit Registry of Disciplinary Proceedings.⁴⁸ 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.⁴⁹

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.

48 QR&O article 107.14.

49 See QR&O article 107.16.

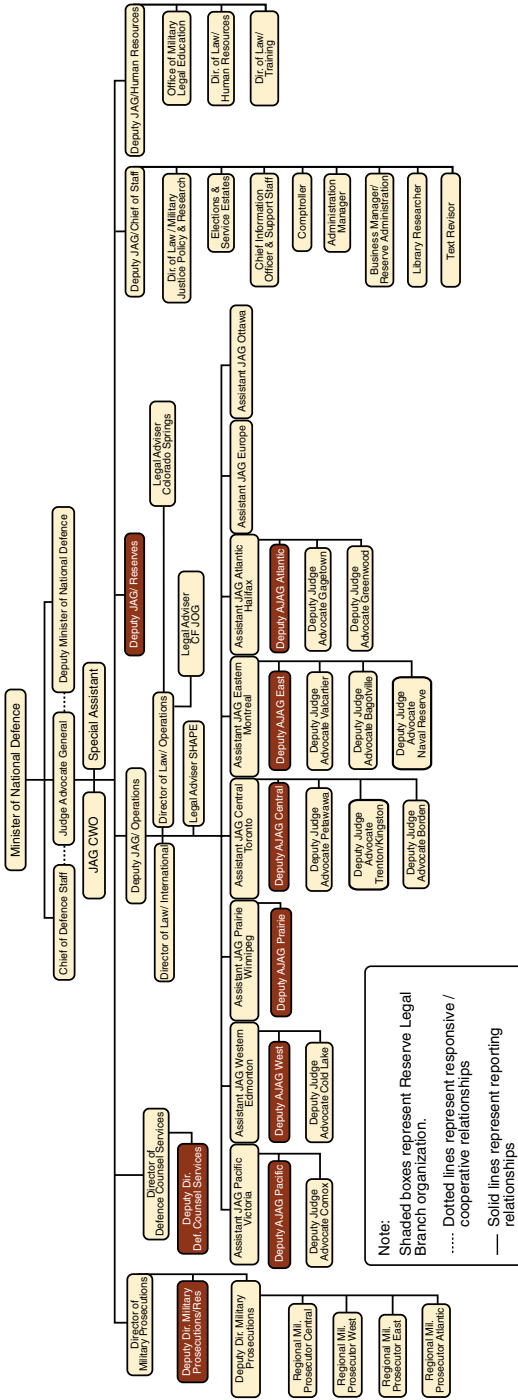
Annex B

Organization Chart
of the Office of the
Judge Advocate General

Maps and Addresses/Phone Numbers
of Judge Advocate General Offices

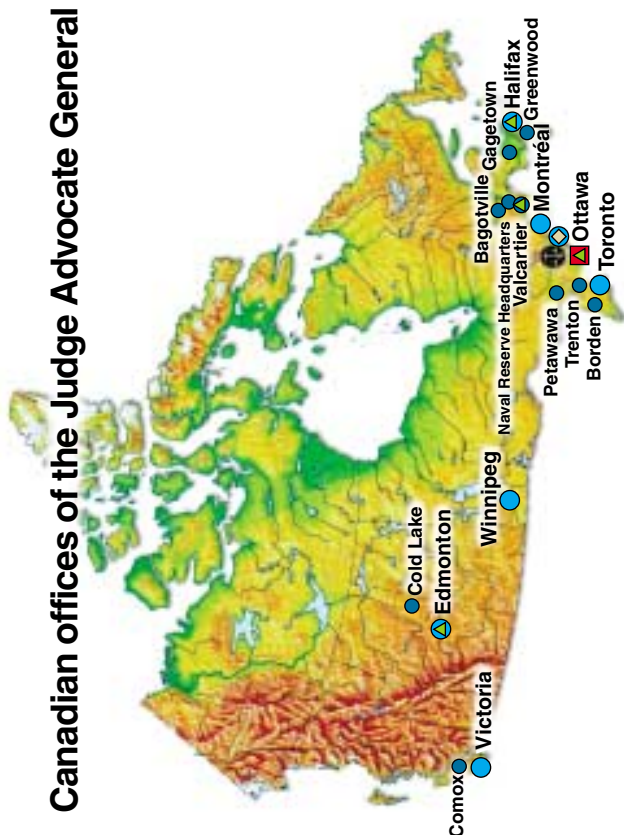


Regular and Reserve Force Offices



Note:
 Shaded boxes represent Reserve Legal Branch organization.
 Dotted lines represent responsive / cooperative relationships
 — Solid lines represent reporting relationships

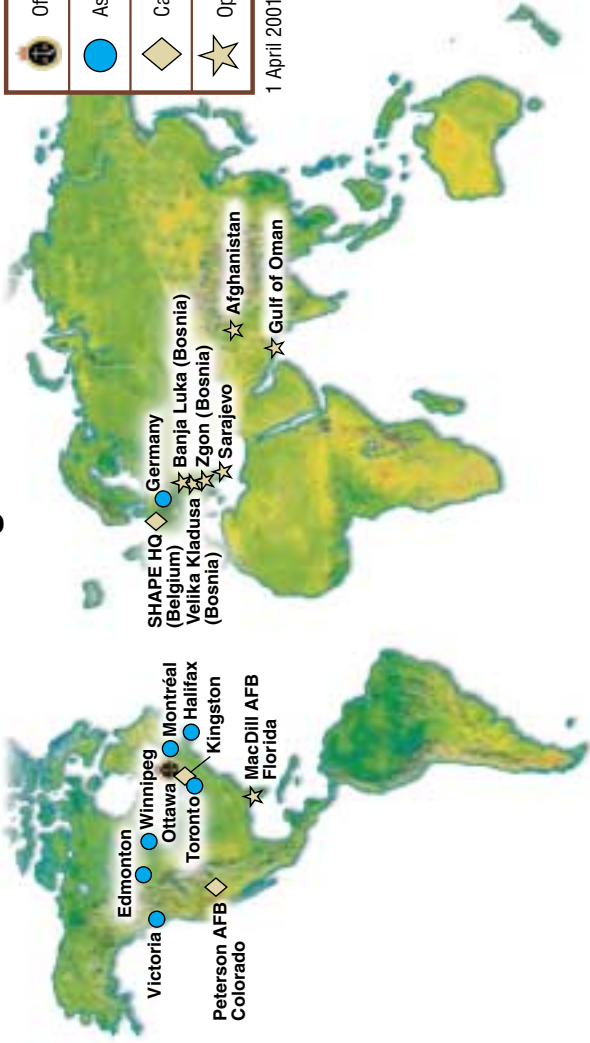
Canadian offices of the Judge Advocate General



	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 2001 – 31 March 2002

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

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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

Manitoba

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Assistant Judge Advocate General Prairie Region 1 Cdn Air Div HQ P.O. Box 17000 Stn Forces Winnipeg MB R3J 3Y5	TEL: (204) 833-2500 EXT 5900 CSN: 257-5900 FAX: (204) 833-2593

New Brunswick

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Nova Scotia

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FAX: (613) 995-1840

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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 Valcartier 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

Germany

Mailing Address

Assistant Judge Advocate General
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United States of America

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Legal Adviser
Deputy Commander-In-Chief North
American Aerospace Defence Command
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USA

Telephone/Fax Numbers

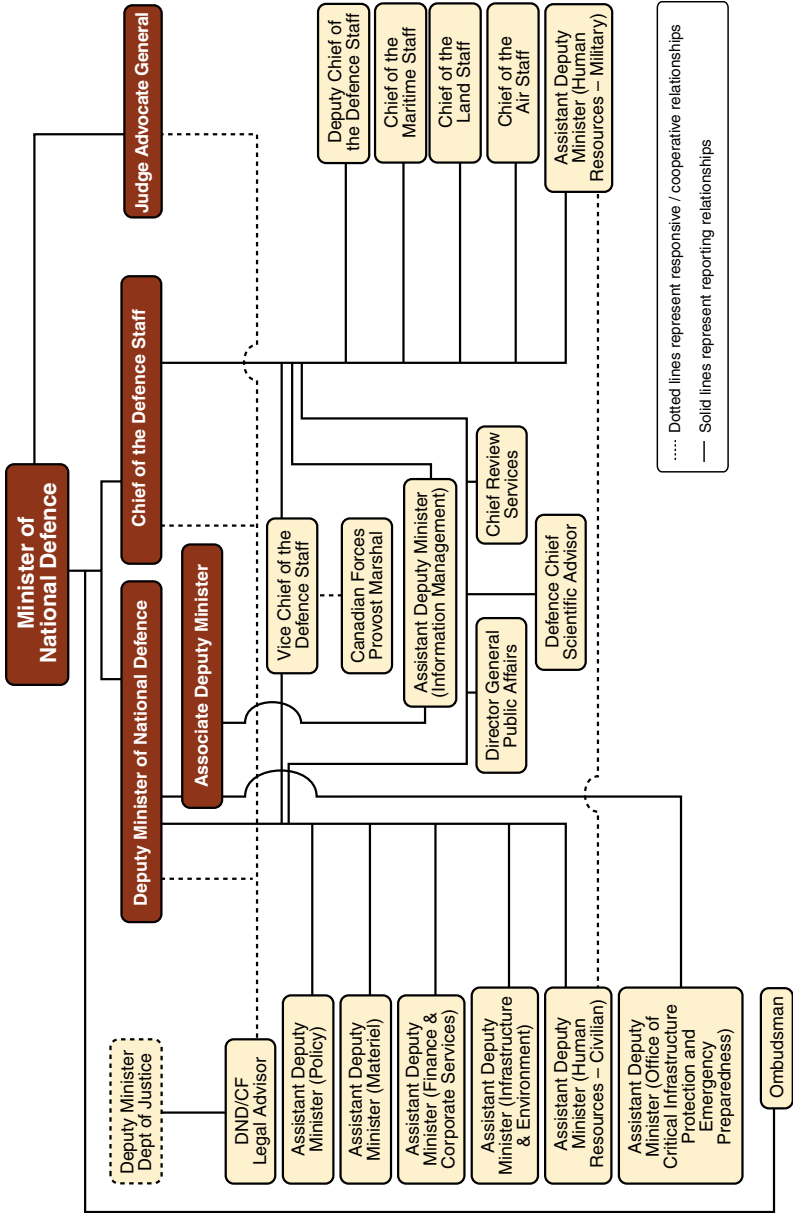
(not available at
time of publication)

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



..... Dotted lines represent responsive / cooperative relationships
 — Solid lines represent reporting relationships

Annex D

Summary Trial Year
in Review — Statistics:
1 April 2001 to 31 March 2002



Annex D

Summary Trials Reporting Period 1 April 2001–31 March 2002

Distribution of Disciplinary Proceedings	2000–2001		2001–2002	
	#	%	#	%
Matter directly referred to Court Martial	53	4%	52	4%
Accused elected to be tried by Court Martial	29	3%	11	1%
Number of Summary Trials	1112	91%	1122	94%
Number of Summary Trials not proceeded with	23	2%	9	1%
Total	1217	100%	1194	100%

Election to Court Martial	2000–2001		2001–2002	
	#	%	#	%
Number of cases where member offered the right to be tried by Court Martial	422		339	
Percentage of persons electing Court Martial when offered		7%		3%

Language of Summary Trials	2000–2001		2001–2002	
	#	%	#	%
Number in English	906	81%	891	79%
Number in French	206	19%	231	21%
Total	1112	100%	1122	100%

Command	2000–2001		2001–2002	
	#	%	#	%
Vice Chief of the Defence Staff (VCDS)	1	0.1%	0	0%
Deputy Chief of the Defence Staff (DCDS)	113	10.2%	100	8.9%
Chief of the Maritime Staff (CMS)	125	11.2%	188	16.8%
Chief of the Land Staff (CLS)	653	58.7%	608	54.2%
Chief of the Air Staff (CAS)	42	3.8%	48	4.3%
Assistant Deputy Minister (Finance and Corporate Services)	1	0.1%	0	0%
Assistant Deputy Minister (Human Resources-Military)	166	14.9%	162	14.4%
Assistant Deputy Minister (Information Management)	11	1.0%	15	1.3%
Assistant Deputy Minister (Materiel)	0	0%	1	0.1%
Total	1112	100%	1122	100%

Rank of the Accused	2000–2001		2001–2002	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	950	85%	1010	90%
Sergeant to Chief Warrant Officer	56	5%	37	3%
Officer	106	10%	75	7%
Total	1112	100%	1122	100%

NOTE: *Master Corporal is not a rank; it is an appointment pursuant to article 3.08 of QR&O.

Disposition by Case	2000–2001		2001–2002	
	#	%	#	%
Guilty	1046	94%	1070	95%
Not Guilty	66	6%	52	5%
Number of cases	1112	100%	1122	100%

Findings by Charge	2000–2001		2001–2002	
	#	%	#	%
Guilty	1241	84%	1269	87%
Not Guilty	158	11%	135	9%
Charge Stayed	59	4%	39	3%
Charge Not Proceeded With	19	1%	8	1%
Total	1477	100%	1451	100%

Summary of Charges

NDA Article	Description	2000–2001		2001–2002	
		#	%	#	%
83	Disobedience of Lawful Command	40	2.8%	36	2.4%
84	Striking or Offering Violence to a Superior	6	0.4%	4	0.2%
85	Insubordinate Behaviour	62	4.2%	48	3.3%
86	Quarrels and Disturbances	29	2.0%	31	2.1%
90	Absence Without Leave	382	25.9%	431	29.7%
93	Cruel or Disgraceful Conduct	1	0.1%	7	0.5%
95	Abuse of Subordinates	5	0.3%	7	0.5%
96	Making False Accusations or Statements or Suppressing Facts	3	0.2%	0	0%
97	Drunkness	110	7.4%	104	7.2%
101	Escape from Custody	1	0.1%	5	0.3%
107	Wrongful Acts in Relation to Aircraft Material	3	0.2%	0	0%
108	Signing Inaccurate Certificate	0	0%	2	0.1%
111	Improper Driving of Vehicles	5	0.3%	2	0.1%
112	Improper Use of Vehicles	13	0.9%	13	0.9%

Summary of Charges (Cont'd)

NDA Article	Description	2000–2001		2001–2002	
		#	%	#	%
114	Stealing	20	1.3%	10	0.7%
115	Receiving	2	0.1%	0	0%
116	Destruction, Damage, Loss or Improper Disposal	7	0.5%	13	0.9%
117	Miscellaneous Offences	13	0.9%	7	0.5%
124	Negligent Performance of a Military Duty	3	0.2%	1	0.1%
125	Willfully made a False Statement in a Document	1	0.1%	1	0.1%
127	Negligent Handling of Dangerous Substances	2	0.1%	1	0.1%
129	Conduct to the Prejudice of Good Order & Discipline — Offences of sexual nature	7	0.5%	4	0.3%
129	Conduct to the Prejudice of Good Order & Discipline — Drugs/Alcohol	114	7.7%	75	5.2%
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 & Drugs/Alcohol)	250	16.9%	277	19.1%
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 & Drugs/Alcohol)	358	24.2%	352	24.3%
130	Service Trial of Civil Offences	40	2.7%	20	1.4%
Number of charges		1477	100%	1451	100%

Authority	2000–2001		2001–2002	
	#	%	#	%
Delegated Officer	729	66%	863	77%
Commanding Officer	349	31%	224	20%
Superior Commander	34	3%	35	3%
Total	1112	100%	1122	100%

Punishments (more than one type of punishment may be awarded in a sentence)	2000–2001		2001–2002	
	#	%	#	%
Detention (Suspended)	5	0.4%	3	0.2%
Detention	25	1.9%	12	0.9%
Reduction in Rank	9	0.7%	6	0.4%
Severe Reprimand	3	0.2%	2	0.2%
Reprimand	68	5.3%	46	3.4%
Fine	720	55.5%	787	58.9%
Confinement to Ship or Barracks	270	20.8%	297	22.2%
Extra Work and Drill	99	7.6%	84	6.3%
Stoppage of Leave	20	1.5%	32	2.4%
Caution	79	6.1%	68	5.1%
Total	1298	100%	1337	100%

Requests for Review	2000–2001		2001–2002	
	#	%	#	%
Requests for review based on finding	5	33%	5	33%
Requests for review based on sentence	7	47%	4	27%
Requests for review based on finding & sentence	3	20%	6	40%
Total	15	100%	15	100%

Decision of Review Authority	2000–2001		2001–2002	
	#	%	#	%
Upholds Decision	7	47%	9	60%
Quashes/Substitutes Findings	3	20%	5	33%
Substitutes Punishment	3	20%	1	7%
Mitigates/Commutes/Remits Punishment	2	13%	0	0%
Total	15	100%	15	100%

Annex E

Court Martial

Year In Review — Statistics:

1 April 2001 to 31 March 2002



Annex E

Courts Martial Reporting Period 1 April 2001–31 March 2002

Number of Courts Martial	2000–2001	2001–2002
	63	67

Courts Martial By Type

Types of Courts Martial	2000–2001		2001–2002	
	#	%	#	%
Standing Courts Martial	62	98%	65	96%
Disciplinary Courts Martial	1	2%	1	2%
General Courts Martial	0	0%	1	2%
Special General Courts Martial	0	0%	0	0%
Total	63	100%	67	100%

Summary of Charges

Offences	Description	2000– 2001 #	2001– 2002 #
s. 83 NDA	Disobeying a Lawful Command	5	10
s. 84 NDA	Striking a Superior Officer	2	1
s. 85 NDA	Used Threatening Language to a Superior	3	5
s. 86 NDA	Quarrels and disturbances	0	2
s. 88 NDA	Desertion	0	1
s. 90 NDA	Absent Without Leave	3	9
s. 93 NDA	Cruel or disgraceful conduct	0	10
s. 95 NDA	Abuse of Subordinates	4	0
s. 96 NDA	Knowingly Made a False Accusation	2	2
s. 97 NDA	Drunkenness	1	11
s. 109 NDA	Low Flying	2	0
s. 112(a) NDA	Unauthorized Use of a CF Vehicle	6	0
s. 114 NDA	Stealing	8	19

Summary of Charges (Cont'd)

Offences	Description	2000–2001 #	2001–2002 #
s. 114 NDA	Stealing When Entrusted	7	20
s. 115 NDA	Possession of Property Obtained by Commission of a Service Offence	1	0
s. 116(a) NDA	Wastefully expends any public property	0	1
s. 117(b) NDA	Improperly Accepting Compensation in Relation to a Military Duty	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	0	3
s. 117(f) NDA	An Act of a Fraudulent Nature	12	17
s. 118.1 NDA	Failing to Appear before a Court Martial	1	1
s. 124 NDA	Negligent Performance of Military Duty	6	0
s. 125(a) NDA	Willfully Made a False Entry	11	18
s. 126 NDA	Disobeyed Order to Submit to Vaccination	1	0
s. 129 NDA	An Act to the Prejudice	25	18
s. 129 NDA	Conduct to the Prejudice	26	26
s. 129 NDA	Neglect to the Prejudice	5	1
s. 130 NDA (4(1) CDSA)	Possession of substances	1	1
s. 130 NDA (5(1) CDSA)	Trafficking of substances	5	5
s. 130 NDA (80 CCC)	Careless Storage of a Firearm	1	0
s. 130 NDA (86 CCC)	Careless Storage of Ammunition	3	0
s. 130 NDA (86(1) CCC)	Careless Handling of a Firearm	2	0
s. 130 NDA (87 CCC)	Pointing a Firearm	1	3
s. 130 NDA (91(1) CCC)	Unauthorized possession of firearm	0	2
s. 130 NDA (91(2) CCC)	Unauthorized possession of a prohibited weapon	0	1
s. 130 NDA (105 (1)(b) CCC)	Failed to report finding a prohibited weapon	0	1
s. 130 NDA (121(1)(e)CCC)	Fraud Upon the Government	1	1
s. 130 NDA (129 CCC)	Obstructing a peace officer	0	1

Summary of Charges (Cont'd)

Offences	Description	2000– 2001 #	2001– 2002 #
s. 130 NDA (139(2) CCC)	Obstructing Justice	1	2
s. 130 NDA (140 CCC)	Public Mischief	1	0
s. 130 NDA (153(1) CCC)	Sexual Exploitation	3	1
s. 130 NDA (163.1(4) CCC)	Possession of Child Pornography	1	1
s. 130 NDA (173 (1) CCC)	Committed an Indecent Act	0	3
s. 130 NDA (220 (b) CCC)	Criminal Negligence Causing Death	2	0
s. 130 NDA (253 CCC)	Operating a Motor Vehicle While Impaired	1	0
s. 130 NDA (259(4) CCC)	Operating a Motor Vehicle while disqualified	0	2
s. 130 NDA (264.1 (1) CCC)	Uttering Threats	3	2
s. 130 NDA (264(3) CCC)	Criminal Harassment	1	0
s. 130 NDA (266 CCC)	Assault	4	8
s. 130 NDA (267 CCC)	Assault with a weapon	0	3
s. 130 NDA (267(b) CCC)	Assault Causing Bodily Harm	2	1
s. 130 NDA (271 CCC)	Sexual Assault	1	4
s. 130 NDA (335(1) CCC)	Taking a Motor Vehicle without consent	0	1
s. 130 NDA (341 CCC)	Fraudulent Concealment	1	0
s. 130 NDA (351(1) CCC)	Possession of a Break-in instrument	0	2
s. 130 NDA (354(1) CCC)	Possession of property obtained by crime	0	12
s. 130 NDA (367 CCC)	Forgery	1	1

Summary of Charges (Cont'd)

Offences		Description	2000–2001 #	2001–2002 #
s. 130 NDA (368 CCC)		Uttering a Forged Document	1	3
s. 130 NDA (380 CCC)		Fraud	0	1
s.130 NDA (430(1) CCC)		Mischief	0	1
s. 130 NDA (s. 78 FA)		Fishing without a license	8	2
s. 130 NDA (s. 78 FA)		Possession of Undersized Lobster	4	1
s. 130 NDA (s. 78 FA)		Possession of Female Lobster with Eggs	4	1
s. 130 NDA (s. 78 FA)		Fishing During a Closed Time	8	2
s. 130 NDA (s. 33 FA)		Possession of Fish Caught in Contravention to the Act	4	1
s. 130 NDA (s. 80(d) FAA)		Willfully Signed a False Certificate	5	0
Total Offences			202	245

Disposition By Case

Disposition	2000–2001		2001–2002	
	#	%	#	%
Found/Plead Guilty	51	78%	59	88%
Not Guilty	8	12%	8	12%
Stay of Proceedings	3	5%	0	0%
Withdrawal	3**	5%	0	0%
Total	65	100%	67	100%

NOTE: **In 2 of these cases, the charges were withdrawn prior to proceeding to court martial.

Sentences

(NOTE: More than one type of punishment can be included in a sentence.)

Punishment Type	2000–2001 #	2001–2002 #
Reprimand	7	14
Severe Reprimand	13	13
Fine	43	47
Detention	5	4
Imprisonment	6	5
Reduction in Rank	6	5
Confined to Barracks	1	0
Extra Work and Drill	0	1
Caution	0	1
Total	81	90

Language of Trial

Language	2000–2001		2001–2002	
	#	%	#	%
Trial in English	47	75%	54	81%
Trial in French	16	25%	13	19%
Bilingual Court	0	0%	0	0%
Total	63	100%	67	100%

Courts Martial By Geographic Location

Location	2000–2001		2001–2002	
	#	%	#	%
Canada	62	98%	67	100%
Croatia	1	2%	0	0%
Total	63	100%	67	100%

Courts Martial By Command

Command	2000–2001		2001–2002	
	#	%	#	%
National Defence Headquarters	3	5%	1	2%
Deputy Chief of Defence Staff	3	5%	12	18%
Chief of the Maritime Staff	14	22%	16	24%
Chief of the Land Staff	29	46%	19	28%
Chief of the Air Staff	9	14%	11	16%
CF Recruiting Education Training Systems	5	8%	7	10%
NORAD	0	0%	1	2%
Total	63	100%	67	100%

Courts Martial By Rank

RANK	2000–2001	2001–2002
	#	#
Private and Corporal (includes Master-Corporal*)	36	39
Sergeant to Chief Warrant Officer	11	9
Officer	18	20
Other	0	0
Total	65**	68***

NOTES: *Master Corporal is not a rank; it is an appointment pursuant to article 3.08 of QR&O

**In 2 of these cases, the charges were withdrawn prior to proceeding to court martial.

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

Annex F

Court Martial Appeal Court
Year In Review — Statistics:
1 April 2001 to 31 March 2002



Annex F

Court Martial Appeal Court Reporting Period 1 April 2001–31 March 2002

Appeals

Court	2000–2001 #	2001–2002 #
CMAC	6	6
Supreme Court of Canada	0	0
Total	6	6

Appeals by Party

Status of Appellant	2000–2001 #	2001–2002 #
Appeals by Crown	4	2
Appeals by Offender	2	4
Total	6	6

Nature of Appeal

Grounds	2000–2001 #	2001–2002 #
Finding	3	4
Sentence (Severity or Legality)	0	0
Finding and Sentence	3	2
Total	6	6

Disposition

Disposition	2000–2001 #	2001–2002 #
Upheld Trial Decision	4*	3
Overtaken Trial Decision in whole or part	2	3
Total	6	6

NOTE: *In 2 of these cases, the appellant applications for appeal were dismissed for non-compliance with the CMAC rules.

Annex G

Certification Training
Year In Review — Statistics:
1 April 2001 to 31 March 2002



Annex G

Certification Training Reporting Period 1 April 2001–31 March 2002

Total Number of Officers Certified	2000–2001	2001–2002
	878	586

Number of Members Trained By Rank Grouping

Grouping	2000–2001		2001–2002	
	#	%	#	%
Officers	878	92%	586	86%
Non-Commissioned Members	72	8%	94	14%
Total	950	100%	680	100%

Annex H

Judge Advocate General
Directive



Annex H



Judge Advocate General
Policy Directive

Directive # : 017/02	Original Date: 10 January 02	Update :
Subject: General instruction — Payment of witness expenses at court martial		
Cross Reference: s. 251.2 NDA; QR&O Article 111.10; CFAO 210-1; <i>Federal Court Rules</i> , Tariff A		

10 Jan 02

Distribution List

APPLICATION

1. This general instruction is issued to both the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS) pursuant to my authority under section 165.17 (2) and 249.2 (2) of the *National Defence Act*.

PURPOSE

2. The purpose of this directive is to state the JAG policy with regard to the payment of expenses related to the attendance of witnesses at court martial.

GENERAL INSTRUCTION

3. An officer or non-commissioned member or an officer or employee of the Department summoned or attending to testify before a court martial is entitled to transportation and travelling expenses in accordance with Chapter 209 of the *Compensation and Benefits Instructions for the Canadian Forces* or as prescribed in the Treasury Board of Canada Travel Directive, as applicable.
4. Pursuant to section 251.2 of the *National Defence Act*, a person, other than an officer or non-commissioned member or an officer or employee of the Department, summoned or attending to give evidence before a court martial is entitled, in the discretion of the court, to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.
5. Tariff A of the *Federal Court Rules* provides that a witness or expert is entitled to be paid, by the party who arranged for or subpoenaed his or her attendance, the prescribed per diem plus reasonable travel expenses.
6. Unless directed otherwise by the court, reasonable travel expenses payable to any witness summoned or attending to give evidence before a court martial, who is not an officer or non-commissioned member or an officer or employee of the Department, are the travel expenses prescribed in Chapter 209 of the *Compensation and Benefits Instructions for the Canadian Forces*.
7. Where the accused is self represented or has retained civilian defence counsel at his or her own expense the expenses payable to defence witnesses under paragraphs 3, 4, 5 and 6 of this directive will only be paid by the Crown where the accused or his counsel certifies in writing to the Director of Defence Counsel Services, that attendance of the witness is necessary and appropriate in order to make full answer and defence.

EXPERT WITNESSES

8. Except where an accused is self represented or has retained civilian defence counsel at his or her own expense, the Crown will pay reasonable professional fees to an expert witness to prepare and present evidence at a court martial pursuant to the terms of a service contract between the said expert and the DMP or the DDCS.
9. An officer or non-commissioned member of the Canadian Forces or an officer or employee of the Department summoned or attending to give expert evidence before a court martial is not entitled to receive the professional fees prescribed in paragraph above.
10. DMP and DDCS are responsible for administering payment to their respective witnesses pursuant to this policy.



Jerry S.T. Pitzul
Bgen
JAG
996-8470/992-3019

Distribution List

Action
DMP
DDCS
Info
All Legal Officers

Annex I

Annual Report of the Director of Defence
Counsel Services for the period of
1 April 2001 to 31 March 2002

Annex I

Annual Report of the Director of Defence Counsel Services

Prepared by Lieutenant-Colonel Denis Couture

INTRODUCTION

1. This is the third report presented by the 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 2001 to 31 March 2002 and contains:
 - An overview of 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. While there were no changes in regular force personnel, three of four vacant reserve positions (out of a total of seven) are being filled and the new officers should commence their service with DDCS early in FY 2002/03.

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 first two 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

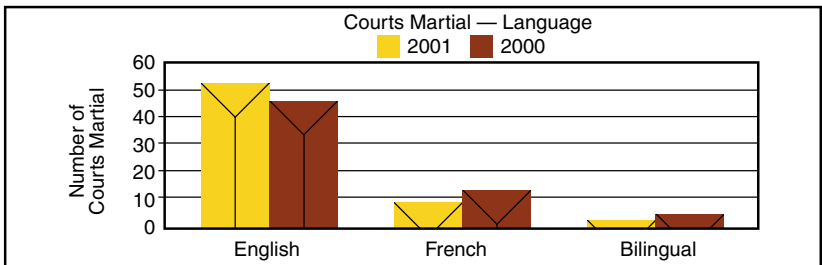
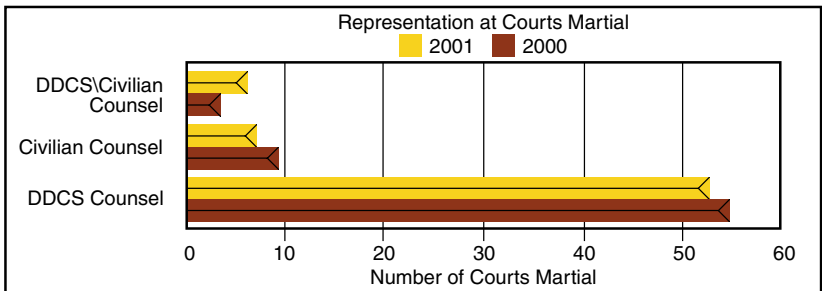
has issued on 10 January 2002 a general instruction on the matter of the payment of witness expenses at court martial. That instruction which is also addressed to the Director of Military Prosecutions is attached at Annex H to the JAG's report.

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 67 courts martial were completed. Representation at courts martial and language of trial have been as shown below.



9. Pursuant to the authority granted to him under s. 249.21 (2) NDA, the Director deemed it appropriate to hire, at public expense, civilian counsel in a number of cases where, having received a request for representation by DDCS counsel, no member of DDCS office could represent the particular individual by reason of a conflict of interest. *DDCS/Civilian counsel* on the above chart refers to those cases. Civilian counsel were hired in two other cases, but as charges were ultimately withdrawn before trial, these cases do not appear in the above graph.

► 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 the requests in six of the twelve cases. There was also one request related to representation regarding an application for leave to appeal before the Supreme Court of Canada, which was granted by the Appeal Committee. The application for leave was prepared and submitted by DDCS counsel; the matter is currently before the Court.
11. DDCS counsel were involved in five hearings before the Court Martial Appeal Court. Four of the appeals heard had been initiated in the previous reporting period.

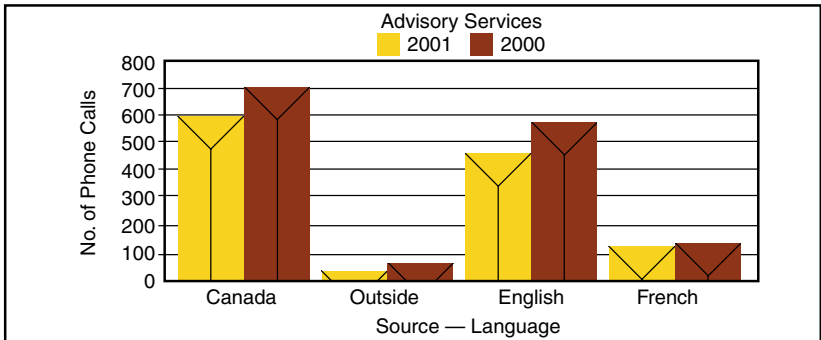
Advisory Services

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.

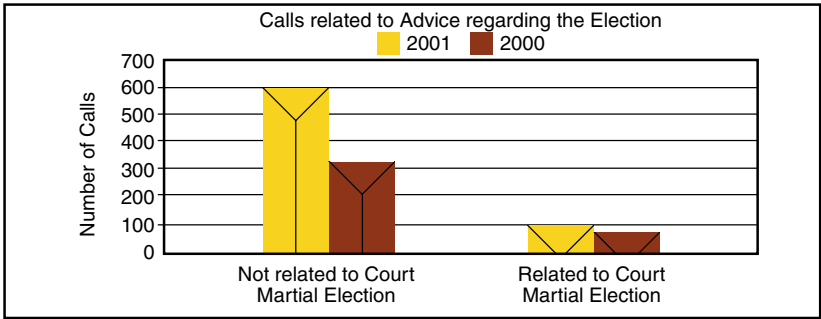
13. Advisory services are available on a 24/7 basis. In addition, the service is available in both official languages and accessible by all CF members whether they are posted in Canada or abroad. In order to facilitate the contact with DDCS counsel, two toll-free numbers have been widely disseminated:

- ▶ 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.

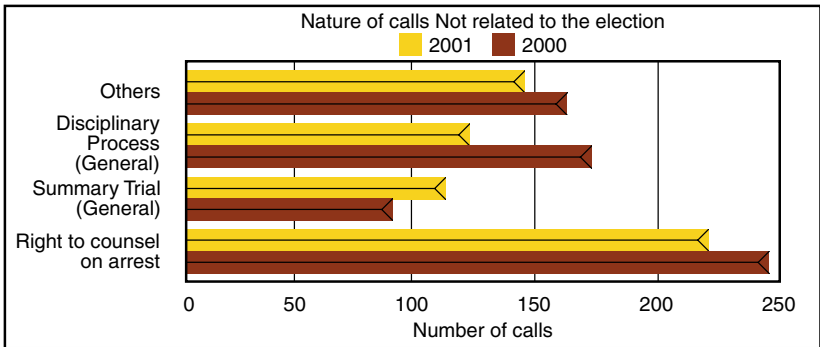
14. During the reporting period, DDCS counsel handled a total of 703 calls. Origin and language of calls are as follows:



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 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 does not get involved in the merits of the matter.

GENERAL ACTIVITIES

17. In addition to representation of members at courts martial and before the Court Martial Appeal Court, DDCS counsel were involved in three *show cause hearings* under s. 159 of the NDA to determine whether the person was to be retained in custody.
18. DDCS has been 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, court scheduling has been the focus of attention so that the individual's right to a trial within a reasonable time is not denied or infringed.
19. In conjunction with other directorates in JAG and the DND/CF Legal Advisor, DDCS has undertaken a comprehensive review of current regulations regarding the representation of CF members before civilian courts in foreign countries. This review will be conducted in the next several months and be referred to competent authorities with recommendations on the deemed appropriate course of action.
20. Finally, DDCS took part in the staffing of an application for assistance under Canadian Forces Administrative Order 111-2 — Employment of Civilian Defence Counsel in Foreign Criminal Court — in relation to a CF member charged with a criminal offence in Australia. The request was granted and DDCS subsequently administered the agreed terms relating to the provision of legal services. This matter is now concluded subject to the Crown's right of appeal.

CONCLUSION

21. In this reporting period, we have seen a slight increase in the number of courts martial and delay in the administration of courts martial has continued to be a preoccupation. However, it is fair to say that we are at the point where, with the benefit of experience, most problems have been identified and we are now engaged in the fine tuning of the system.

Annex J

Annual Report of the Director of Military
Prosecutions for the period of
1 April 2001 to 31 March 2002



Annex J



Annual Report of the Director of Military Prosecutions

SECTION 1 — INTRODUCTION

This report, the third annual for the Director of Military Prosecutions (DMP), is 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 Judge Advocate General (JAG) Annual Report covers the period 1 April 2001 to 31 March 2002. The JAG has requested the DMP Annual Report be prepared for the same time period and be passed to him.²

The present report differs somewhat from the format adopted and followed in the previous two reports. Much of the background information imparted in the previous two DMP Annual Reports is either not set out in this report, because it has not changed over the three years and is readily available and easily accessible on the JAG website³ as

1 QR&O article 110.11.

2 JAG letter 17 January 2002.

3 The JAG website is www.forces.ca/jag/.

an Appendix to either of the JAG's first two Annual Reports to the Minister of National Defence, or it is markedly abbreviated and mentioned only to highlight a particular matter.

The remainder of this report will cover, generally, the following:

- The Director of Military Prosecutions (DMP)/Canadian Military Prosecution Service (CMPS) Organization, Structure, Role and Personnel
- Training and Communications
- Military Justice and Courts Martial — applications, trials and appeals
- DMP Comments

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

With the coming into force of amendments to the National Defence Act (NDA) on 1 September 1999,⁴ the Parliament of Canada created a statutorily based independent prosecution service for the Canadian Forces by establishing the position of Director of Military Prosecutions.⁵ The Director is responsible for the preferring of all charges to be tried by court martial and for the conduct of all prosecutions at courts martial.⁶ In addition, the NDA provides that the Director may be assisted in the exercise of the statutorily conferred powers to the extent the Director determines.⁷

4 NDA S.C. 1998, Chapter 35.

5 The mandate of the Director is expressed in sections 165.1–165.17 NDA.

6 Section 165.11 NDA.

7 Section 165.15 NDA.

CMPS is the collective identifier of the DMP, the Deputy DMP and those regular and reserve force legal officers appointed to assist and represent the DMP. Generally, the role of the CMPS within the Canadian military justice system can be categorised as falling within the areas of general criminal/disciplinary consultations, the provision of case specific advice, the conduct of prosecutions and the conduct of appeals.

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. Reserve force military prosecutors have recently been recruited in the Atlantic, Eastern and Western Regions.

The role of prosecution services, both military and civilian, and of individual prosecutors has changed significantly over the past decade. Criminal and disciplinary litigation is by nature reactive, demand driven and counsel intensive. Mentoring and training are both critical to the service, as these investments will result in savings in both the short and long term. The career prospects of advancement in rank and responsibility, job satisfaction and challenge within the prosecution service should ensure the retention of experienced and able military prosecutors, and their return to the prosecution service after serving in operations, human resources, etc. Ideally a prosecution service is a mix of senior experienced prosecutors, seasoned line prosecutors and counsel recently called to the bar. This is the goal to which CMPS aspires.

The role of the prosecutor in the prosecution process is of great importance to the administration of discipline and justice within the Canadian Forces. The prosecutor is more than an advocate; he or she must exercise judgment and discretion, and has ethical and legal

obligations which differ from the defence. Moderation and dignity must characterize the prosecutor's conduct; however, this does not mean that prosecutions cannot be conducted in a vigorous and thorough fashion. The process is necessarily open and fair.

While over the years the courts have addressed the role of the prosecutor,⁸ the military community expects that the prosecutor will perform his or her prosecutorial duties firmly and fairly in accordance with the law, codes of professional ethics and the public and Canadian Forces interest.

SECTION 3 — TRAINING AND COMMUNICATIONS

Skilled, experienced and knowledgeable lawyers are the key to a successful prosecution service. The CMPS is still in its relative infancy, having only been stood up in 1998. Although CMPS has expanded to six regional prosecutors outside Ottawa (increased from three), the average number of years of criminal litigation experience of those eleven front-line prosecutors (i.e. excluding DMP and DDMP) is 3.6 years with an average of 7.1 years call to the Bar. This is consistent with the relatively new corps of recently recruited legal officers and military lawyers at the major/captain rank level employed within the office of the JAG. While this situation presents challenges in the short term, the longer term looks both positive and promising for CMPS and the Office of the JAG.

With this in mind, improving and increasing the professional abilities and capabilities of 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 and

8 See *R. v. Boucher*, [1955] S.C.R. 263, *R. v. Savion and Mizrahi* (1980), 52 C.C.C. (2d) 276; see also former Supreme Court Justice Cory's comments in Manitoba's Sophonow Inquiry (Sep 2001).

the Canadian Bar Association. A list of courses taken by military prosecutors from 1 April 2001 to 31 March 2002 is found at Appendix 1.

In addition to these courses, DMP conducted a CMPS Prosecution Workshop during the week of 14 October 2001, attended by both regular and reserve force prosecutors. One agenda item bears particular note: Ethics. During the reporting period all CMPS prosecutors were provided a self-study package of various publications related to criminal litigation and prosecutorial ethics. Every regular force CMPS prosecutor has completed this self-study package.

As part of extra-jurisdictional training, one military prosecutor was assigned to the counsel office for the City of Quebec for a period of six weeks in August and September, to not only gain valuable prosecutorial experience but to assist local authorities in prosecuting municipal and provincial infractions. Another regional military prosecutor was a panel member at the annual Canadian Bar Association military law section conference in Saskatoon in August 2001.

Military prosecutors are legal officers in the Canadian Forces and, as such, they must retain their military skills so that CMPS can meet the deployment capability set out in its Mission Statement. Military prosecutors participate in military training activities, such as qualification on the pistol and rifle at ranges, as well as attending instruction, in-house, on Law of Armed Conflict courses. Not only do military prosecutors receive training, they also provide training in military justice/disciplinary/criminal law matters, both formally and informally, to police authorities and other CF legal officers.

The first edition of the *Elements of the Offence Aide-Memoire* has been completed in bilingual format during the reporting period within CMPS. This aide-memoire, a work instrument, will assist prosecutors and other persons involved in the military justice system in identifying the essential elements of offences contained in the Code of Service Discipline. It also provides, in most instances, a summary of the law and cases decided under a particular offence section of the NDA.

This bilingual first edition of the aide-memoire covers the most commonly occurring disciplinary offences.

In addition to the Aide-Memoire, DMP began distributing CMPS Communiqués during the reporting period. This initiative was designed to assist the prosecutors in their daily practice and to establish uniformity across the country. Some of the topics discussed in the communiqués include court martial scheduling, post-charge review assessments, provision of disclosure to the defence, and case-tracking. Fifteen communiqués were developed and delivered to the prosecutors during the reporting period.

In September 1999, CMPS opened its portion of the JAG web site as part of its communications strategy and to facilitate openness and transparency in the military justice system.⁹ The CMPS web site provides DMP with a mechanism to make available to the public the court martial and appeal results. As well, JAG instructions to DMP, and DMP Policy Directives are set out on the web site. JAG issued one General Instruction to DMP this year, 10 January 2002, on the subject of “Payment of Witnesses at Court Martial.” It is found at Annex H to the JAG’s report. The JAG has never issued any case specific instructions.

DMP also updates the “Court Martial Results”, the “Appeals Results” and the “Upcoming Appeals” sites of the publically accessible JAG web page. The “Court Martial Results” site is updated within days of the trial decision. It contains all the relevant information of the courts martial held in the previous three months. The “Appeals Results” site identifies the parties, Appellant or Respondent, the date and location of the court, the reason for the appeal and the results of the appeal. The “Upcoming Appeals” site informs the public of the identities of the parties, the reason for the appeal and the date and place of hearing of the appeal.

⁹ The web site address is www.forces.ca/jag/.

The CMPS has prepared and is distributing, electronically and by hard copy, a short pamphlet that describes the role and function of military prosecutors and the military prosecution process. The pamphlet's purpose is to assist Canadian Forces members to better understand this aspect of military justice, as well as attract civilian lawyers who might wish to practice in this interesting and unique area of the law.

Internal to CMPS, communication is vital to effective and efficient prosecution. Each week CMPS prosecutors connect via teleconference to discuss general and specific issues that relate to the job of prosecuting. The ability for Ottawa based prosecutors and those in the field offices to discuss matters on a regular basis is invaluable for professional development and consistency within the CMPS. To this end, there is an on-going line of communication between all CMPS prosecutors through telephone and electronic mail. Ottawa-based military prosecutors are actively working with 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 link all military prosecutors by computer within the next short while.

CMPS is at the leading edge of telecommunication and video conferencing technology. Given the inherent difficulties associated with a small service prosecuting both domestically and internationally, with witnesses literally posted throughout Canada or deployed in foreign locations or at sea, it has been necessary to utilize video conferencing apparatus to examine witnesses during courts martial proper and at preliminary applications before a military trial judge. As the technology improves over time, CMPS will likely use this form of communication more frequently to provide efficient and effective prosecution services in an expeditious fashion.

In addition to being a member of the Military Justice Stakeholders' Committee, the CF Code of Service Discipline Committee, and the Military Police Advisory Committee, the DMP is also a member of and participates in the meetings of the Federal/Provincial/Territorial Heads of Prosecution Committee, whose membership includes the heads of all civilian prosecution services in Canada. This committee has become a vibrant and constructive forum for the discussion of prosecution and prosecution-related topics and for the exchange of information on substantive and managerial issues. In addition, the CMPS is an institutional member of the International Association of Prosecutors, an organization dedicated to improving the standards of prosecution services around the world.

SECTION 4 — MILITARY JUSTICE AND COURTS MARTIAL

The Canadian Forces 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 members' 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 growing complexity of police investigations has also resulted in greater demands on prosecutors to provide advice and counsel at various stages of the investigative process. Military prosecutors are being increasingly involved in all aspects of the military justice process.

The disciplinary process entails more than summary trials and courts martial. With the recent amendments to the NDA, military judges must review custody orders made by the chain of command.¹⁰ DMP represented the CF in three separate custody review hearings during the reporting period. On each occasion, military defence counsel represented the service member. In each case the service member had been arrested, held in custody, then refused release by a Custody Review Officer; however, after the hearing by a military judge the service member was released from custody with conditions.¹¹ As a matter of law, it is necessary that these hearings be expedited and this in turn has compelled CMPS to use leading-edge video-link technology to receive testimony of witnesses.

In addition, military judges have the authority to conduct hearings regarding the fitness of an accused to stand trial. A post-trial review of fitness¹² 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 prosecutor represented the CF at the Provincial Review Board hearing in Saskatchewan. The mandatory inquiry of fitness to stand trial, conducted every two years, is anticipated to take place early in the next reporting period of 2002-2003.¹³

10 Section 159 NDA.

11 In all three custody review hearings, the accused was not charged nor suspected of having committed a designated offence pursuant to section 153 of the NDA. In these cases, therefore, the onus was on the CF to justify retention of the accused in custody pursuant to sections 159.1 and 159.2 of the NDA.

12 Section 672.38 of the *Criminal Code*.

13 Section 202.12 NDA.

During the reporting period, the CMPS received 105 applications for disposal of a charge from the different referral authorities. Forty-three applications resulted in charges being preferred by a prosecutor. The decision not to prefer any charges was made in thirty-four cases. In all thirty-four 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 or the public interest (disciplinary interest) factor for proceeding with a prosecution at court martial was not present. The remaining twenty-eight applications are presently in the hands of the military prosecutors and are being post-charge screened.

Sixty-five of the sixty-seven courts martial held during this period were Standing Courts Martial. A Standing Court Martial is a court composed of a military judge only. One Disciplinary Court Martial and one General Court Martial were convened during this period. Another Disciplinary Court Martial would have been convened but the charges in this particular matter were withdrawn before the court was convened. A Disciplinary Court Martial is composed of a panel of three members and a military judge. A General Court Martial is composed of a military judge and a panel of five members. A number of factors are considered when determining the type of court martial to try the accused. In addition to statutory and regulatory provisions relating to jurisdiction and powers of punishment, other factors, which affect a determination in this matter, include the nature and character of the offences and any recommendations made by the referral authority. Although sixty-seven courts were convened, sixty-eight members of the Canadian Forces were tried by court martial. One joint trial was held, that is to say a court martial was convened to try two co-accuseds on one occasion. After preferral, in seven cases the charges were withdrawn before the court martial commenced. In three of these cases different charges were preferred and proceeded to trial.

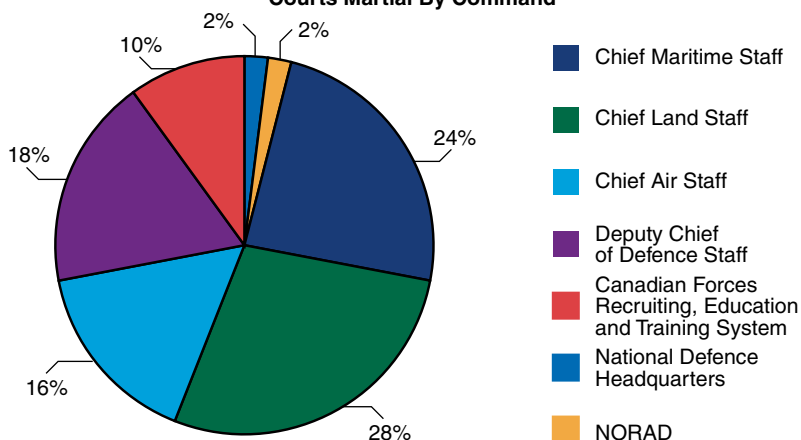
Fifty-nine of the sixty-seven courts martial held during the reporting period resulted in a guilty finding by the court. While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The fifty-nine sentences pronounced by the courts martial involved ninety punishments. Of note, five punishments of imprisonment and four punishments of detention were imposed by the court. A suspended sentence, where the accused is not actually required to be incarcerated, was imposed in four of the nine cases. A fine was the most common punishment and forty-seven of the ninety punishments were fines.

Also of note, forty-five of the 246 charges preferred were s.129 NDA charges alleging an act, conduct or neglect prejudicial to good order and discipline.

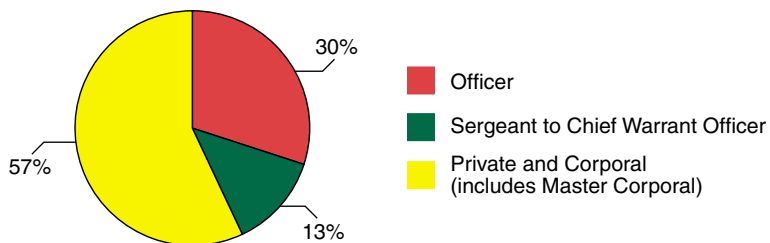
Appendix 2 to this report, is a summary of those courts martial commenced and completed during the period 1 April 2001–31 March 2002.

The following pie charts, prepared from the information contained in Appendix 2 to this report, will provide a statistical representation of the rank of the accused, the findings, the punishments, the number of courts martial by Commands and the language of trial.

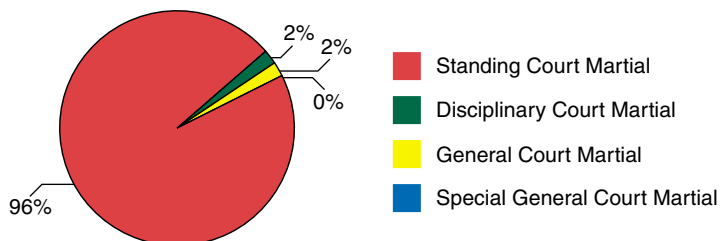
Courts Martial By Command



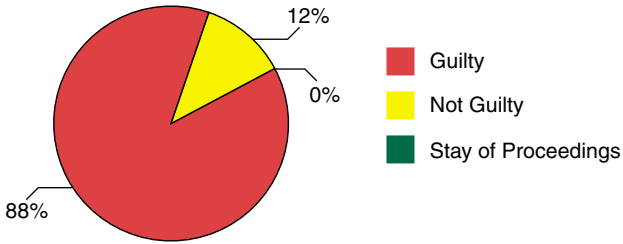
Rank of Accused



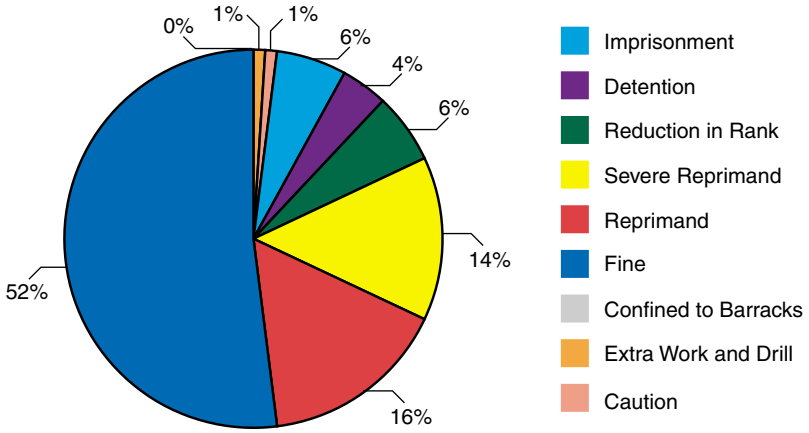
Type of Court Martial



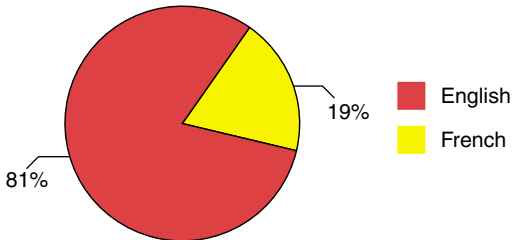
Findings by Case



Punishments

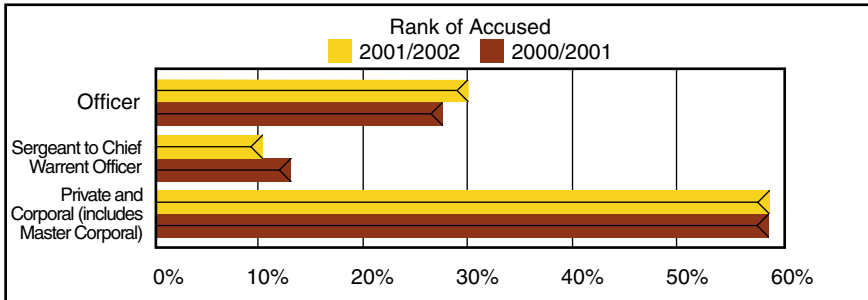
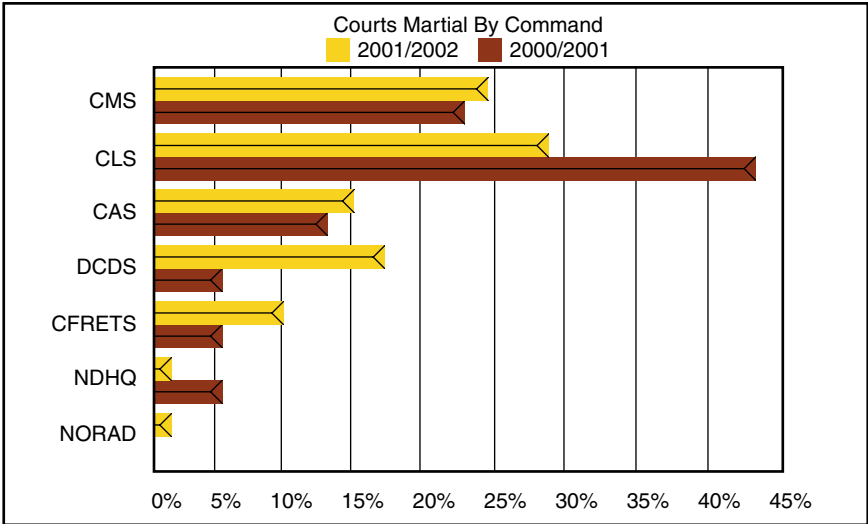


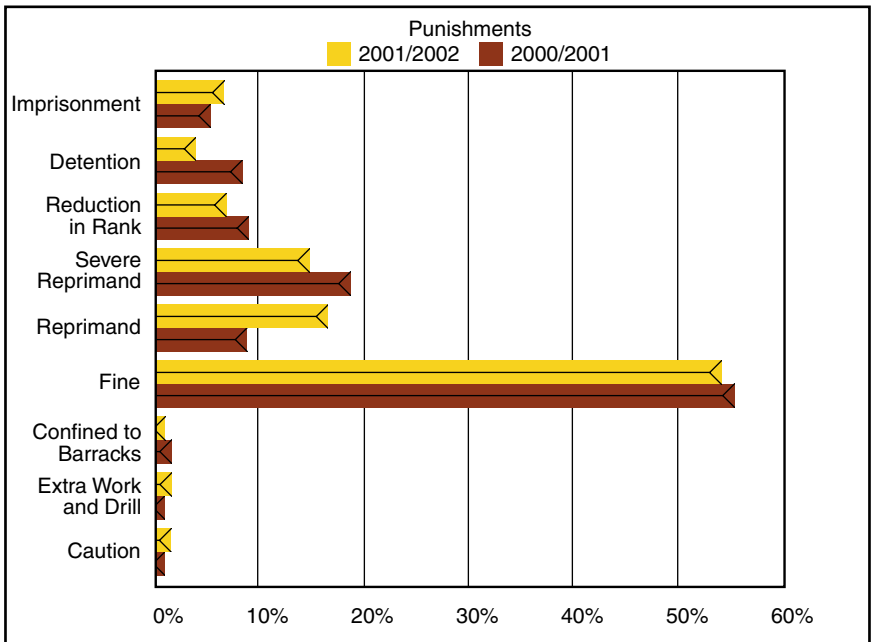
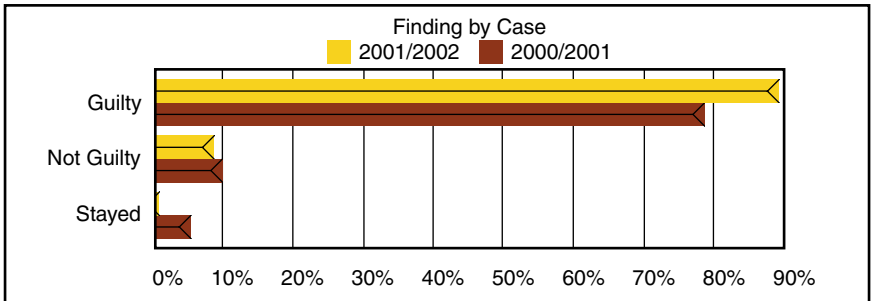
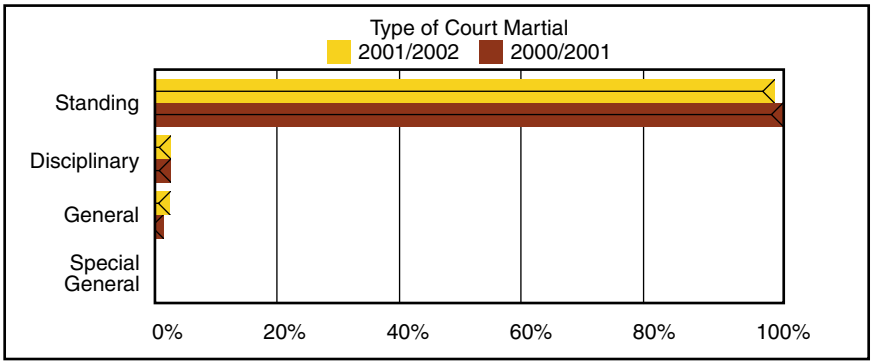
Language of Trial

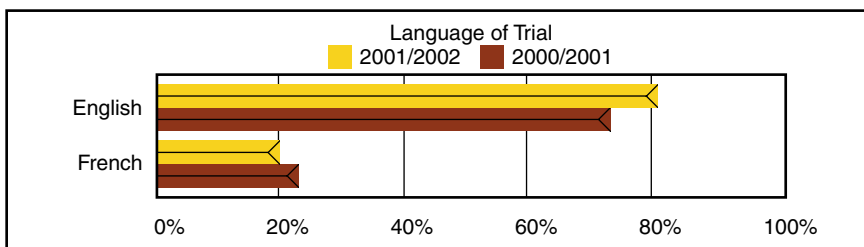


A Comparative View from 2000/2001

What follows is a comparison of court martial statistics from the reporting period 2000/2001, contained in the last annual report, to the current reporting period set out above. As the period over which this comparison is made is in effect two 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. This is simply the start of a trend line and is provided for information purposes only at this time.







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.¹⁴ 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 the Minister whenever the authority to appeal is exercised.

Attached at Appendix 3 to this Report is a chart showing those appeals completed/initiated during the period 1 April 2001–31 March 2002. Of these appeals, in only four cases was the MND the Appellate before the CMAC. In the one case involving an application for leave to appeal to the Supreme Court of Canada the Crown is the Respondent.

SECTION 5 — DMP COMMENTS

While this past reporting period has not been without its challenges, it has been a productive and rewarding time for CMPS. One of DMP's goals and a JAG strategic military justice initiative, the provision of additional regular force resources to allow DMP to deal with the demands placed on the prosecution service to provide advice, conduct pre and post charge screenings and prosecute cases at courts martial, was

¹⁴ Section 230.1 NDA.

achieved in July 2001 with the addition of three prosecutors to the service, one in each of the single-prosecutor field offices (Edmonton, Valcartier and Halifax). While this has provided a small measure of immediate relief in the field offices, the three additional prosecutors had limited prosecutorial experience and, consequently, this was not a “just in time” solution for CMPS generally and the timeliness issue in particular. CMPS, however, has begun to experience the benefits of these additional resources. At the same time CMPS endured a turnover of more experienced prosecutors who left to support deployed NATO peace support operations (SFOR) or assume different positions within the office of the JAG. Some positions remained vacant for limited periods. A skilled prosecutor saves time and money by exercising judgment that is only gained through experience. A shortage of skilled and experienced prosecutors contributes to, amongst other matters, the timeliness issue. While this is a short-term issue presently being experienced, the longer term, as indicated earlier in the report, looks promising.

Considerable progress has been, and continues to be, made incorporating into the CMPS operations our reserve force prosecutors, several of whom belong to either the federal or a provincial prosecution service. This is a vital resource of which we must make more use within the constraints of the allocated budget. Reserve force prosecutors have made themselves available to assist in the provision of legal advice pre-trial, have pleaded at courts martial, have undergone both legal and military training, and have participated in the annual JAG and CMPS workshop. A cadre of seasoned, knowledgeable reserve force prosecutors can become mentors in the law for newly minted regular force prosecutors. Regrettably, after having just staffed the vacant positions on the reserve force establishment, a further three reserve force prosecutors left CMPS this past year, one on promotion with an appointment to a different position within JAG and two because of civilian employment. CMPS is again recruiting. Three lawyers have been selected and are in the process of being enrolled. The priority is to obtain for them the necessary military training after which they can be fully integrated into the military prosecution team.

Two somewhat inter-related areas that must be enhanced and better used within CMPS are knowledge management and information technology. CMPS, as a recently created prosecution service, cannot rely on corporate memory nor can it afford to reinvent the wheel every posting season. To assist in this regard we must maximize the use of technology. This issue is being addressed with both the JAG Informatics section and business planning section with a view to creating or obtaining enhanced software applications to case manage and time track, and which will also allow for electronic access to a data base (to be created) containing prosecution opinions, facts, research etc. This “front office” technology will help improve what we do as prosecutors and how we do it, including improving the timeliness of product delivery. As well, such a program ought to permit the sharing of information, knowledge, best practices and create a vehicle for discussion among the regional offices, the CMPS “home” office and the reserve force prosecutors located across Canada.

The timeliness of product delivery remains the largest single issue for the CMPS at present. During this past reporting period, as the result of a concerted effort by prosecutors, considerable progress has been made in timely delivery of legal/prosecutorial services on the fronts of general advice and pre-charge advice thereby reducing the delay issue at the front end of the process and enhancing the working relationship and credibility with the investigative side of the military justice system. Notwithstanding a respectable timeliness performance in receiving, advancing for preferral and completing cases within the last reporting period, the overall time line between referral and preferral has increased. To this point the delay issue has been adjudicated, in the most part, to be reasonable and within the legal limitations of the *Charter* s. 7 and s. 11 (b) and the NDA s. 162 by the court martial trial and appellate courts. Nevertheless, timeliness at the preferral stage is the primary focus and challenge for CMPS this next reporting period.

Annex J *Appendix 1* *Professional Development of Military Prosecutors*

Host Organization	Name of Course	Number of Attendees
Ontario Crown Attorney Summer School	Trial Advocacy	1
	Search and Seizure	1
	French Trial Advocacy	2
Federal Department of Justice	School for Prosecutors	2
Canadian Bar Association	Criminal Law Conference	2
Ontario Center for Advocacy Training	Appellate Advocacy Course	1
Office of the Judge Advocate General	JAG Workshop	10
Directorate of Military Prosecutions	DMP Annual Workshop	11
Canadian Bar Association	La Charte canadienne des droits et libertés, 20 ans plus tard Canadian Charter of Rights and Freedoms	2
		1
Alberta Justice	Alberta Crown Prosecutor's CLE Part II — Crimes Against the Person	1
Federal Department of Justice	XXI Annual Conference of Federal Prosecution Service	1
Office of the Judge Advocate General	NIS/AJAG Roundtable	5
Nova Scotia Legal Education	Criminal Law Course NS Public Prosecutor	1
Barreau du Québec	Techniques de plaidoiries	2
Office of the Judge Advocate General	Intermediate Legal Officer Course	6
Federal Department of Justice	Bill C-36 Orientation Course	1
Barreau du Québec	Les développements récents en droit criminel	1
Federal Department of Justice	FPS Annual Conference	1
Canadian Forces	Media Training	1
Canadian Forces	Firearms Training	2

Appendix 2

Court Martial Statistics

1 April 2001 to 31 March 2002 (completed)

#	Type	Rank	Offences NDA Section	Description	Disposition	Sentence	Geographic Location of CM	Geographic Location of Offence	Command	Language of Trial
1	SCM	Cpl	85 129	Behaved with Contempt Toward a Superior Officer Conduct to the Prejudice	Stayed Guilty	4 days extra work and drill	Petawawa, Ontario	Petawawa, Ontario	CLS	English
2	SCM	MS	130 (78 FA) 130 (78 FA) 129 130 (78 FA) 130 (78 FA) 130 (78 FA)	Fishing Without a Licence During a Closed Time An Act to the Prejudice Fishing Without a Licence Possession of Undersized Lobster Possession of Female Lobster with Eggs An Act to the Prejudice Fishing During a Closed Time Possession of Fish Caught in Contravention to the Act Obstructing Justice	Not Guilty Guilty Not Guilty Not Guilty Guilty Guilty Guilty Not Guilty Not Guilty	\$4,500 fine	Halifax, Nova Scotia	CMS	English	
3	SCM	Gnr	130 (430(1) (d), CCC) 129 90	Mischief Conduct to the Prejudice Absent Without Leave	Not Guilty Not Guilty Not Guilty Guilty	\$100 fine	Petawawa, Ontario	Petawawa, Ontario	CLS	English
4	GCM	Col	130 (139(2)CCC) 130 (129 CCC) 129 97	Obstructing Justice Obstructing a Peace Officer Conduct to the Prejudice Drunkenness	Not Guilty Not Guilty Guilty Not Guilty	\$5000 fine & Reprimand	Moose Jaw, Saskatchewan	Moose Jaw, Saskatchewan	DCDS	English
5	SCM	LS	130 (271 CCC) 97	Sexual Assault Drunkenness	Guilty Guilty	90 days detention & Reduction in rank	Halifax, Nova Scotia	Maine, USA	CMS	English
6	SCM	Capt	97 129	Drunkenness Act to the Prejudice	Guilty Not Guilty	\$500 fine	Halifax, Nova Scotia	Halifax, Nova Scotia	CMS	English
7	SCM	MS	114 129 129 130 (4(1)CDSA) 130 (5(1)CDSA)	Stealing when entrusted Conduct to the prejudice Conduct to the prejudice Possession Trafficking	Withdrawn Guilty Not guilty Stayed Guilty	8 months imprisonment	Halifax, Nova Scotia	Halifax, Nova Scotia	CMS	English

Appendix 2

Court Martial Statistics

1 April 2001 to 31 March 2002 (completed)

#	Type	Rank	Offences		Description	Disposition	Sentence	Geographic		Command	Language of Trial
			NDA	Section				Location of CM	Location of Offence		
8	SCM	MCpl	130	(266 CCC)	Assault Used provoking gestures toward a person subject to CSD	Not guilty Guilty	\$750 fine	Comox, British Columbia	Comox, British Columbia	CAS	English
9	DCM	LS	83 83 129 85		Disobeyed a lawful command Disobeyed a lawful command Conduct to the prejudice Behaved with contempt toward a superior	Withdrawn Guilty Guilty Guilty	30 days detention	Halifax, Nova Scotia	HMCS Halifax	CMS	English
			83 83 129 83		Disobeyed a lawful command Disobeyed a lawful command Conduct to the prejudice Disobeyed a lawful command	Guilty Withdrawn Guilty Withdrawn					
			90 83 83		Absent without leave Disobeyed a lawful command Absent without leave	Guilty Withdrawn Guilty					
10	SCM	Lcol	90		Absent without leave	Guilty & Reprimand	\$3000 fine	Hull, Quebec	Ottawa, Ontario	DCDS	French
11	SCM	Ex-Pte	130 (266 CCC)		Assault Used violence against a superior	Not guilty	N/A	Edmonton, Alberta	Split, Croatia	DCDS	English
			84 97		Drunkness	Not guilty Not guilty					
12	SCM	Ex-Opl	114 125(e)		Stealing Willfully made a false entry	Guilty Guilty Guilty	\$1000 fine	Hull, Quebec	St-John's, Newfoundland	CMS	English
13	SCM	MCpl	130 (5(1)) GDSA)		Trafficking Stealing	Guilty Guilty	\$750 fine & 60 days imprisonment (suspended)	Kingston, Ontario	Kingston, Ontario	NORAD	English
			130 (5(1)) GDSA)		Trafficking	Guilty					
14	SCM	Occt	130(91(2)) CCC)		Possession of a prohibited weapon	Guilty	\$200 fine	Kingston, Ontario	Kingston, Ontario	CFRETS	English
15	SCM	Cpl	83		Disobeyed a lawful command	Stayed Guilty	\$1000 fine & Reprimand	Greenwood, Nova Scotia	Greenwood, Nova Scotia	CAS	English
			129		Conduct to the prejudice						

Appendix 2

Court Martial Statistics

1 April 2001 to 31 March 2002 (completed)

#	Offences		Description	Disposition	Sentence	Geographic		Command	Language of Trial	
	Type	Rank				Location of CM	Location of Offence			
16	SCM	Lcol	130 (266 CCC) 129	Assault Conduct to the prejudice	Not guilty Guilty	\$150 fine	Hull, Quebec	Ottawa, Ontario	DCDS	English
17	SCM	MCpl	117(f) 125(e)	An act of a fraudulent nature Willfully made a false entry	Guilty Not guilty	\$700 fine	Hull, Quebec	Gagetown, New Brunswick	CAS	English
18	SCM	MCpl	129 93	An act to the prejudice Dishonorable conduct	Guilty Not guilty	Warning	Valcartier, Quebec	Oromocto, New Brunswick	CLS	French
19	SCM	Cmdr	129	Conduct to the prejudice	Guilty	\$200 fine	Esquimaht, British Columbia	San Diego, California	CMS	English
20	SCM	Lt	129 125(e)	An act to the prejudice Willfully made a false entry	Not guilty Guilty	\$100 fine	Toronto, Ontario	Niagra on the Lake	CLS	English
21	SCM	Cpl	85	Used insulting language toward a superior	Guilty	\$200 fine	Saint-Jean, Quebec	Velika Kladusa Bosnia	DCDS	French
22	SCM	Cpl	130 (367 CCC) 130 (368 CCC) 130 (380 CCC)	Forgery Uttering a forged document Fraud	Not guilty Not guilty Guilty	\$500 fine & Reprimand	Valcartier, Quebec	Quebec City, Quebec	CLS	French
23	SCM	MS	96 129 96 129	Knowingly made a false accusation Conduct to the prejudice Knowingly made a false accusation Conduct to the prejudice	Not guilty Not guilty Not guilty Not guilty	N/A	Halifax Nova Scotia	Halifax Nova Scotia	CAS	English
24	SCM	Capt	114 117(f) 114 117(f) 114 117(f) 114 117(f) 114 117(f) 114 117(f) 114 117(f) 114 117(f) 114 117(f) 114 117(f)	Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature Stealing while entrusted An act of a fraudulent nature	Not guilty Not guilty Guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty Not guilty	4 months imprisonment	Hull, Quebec	Ottawa, Ontario	DCDS	English

#	Type	Rank	Offences		Description	Disposition	Sentence	Geographic		Command	Language of Trial
			NDA	Section				Location of CM	Location of Offence		
24	SCM	Capt	114		Stealing while entrusted	Not guilty	4 months imprisonment	Hull, Quebec	Ottawa, Ontario	DCDS	English
			117(f)		An act of a fraudulent nature	Not guilty					
			114		Stealing while entrusted	Guilty					
			116		Expended wastefully public property	Not guilty					
			129		An act to the prejudice	Not guilty					
25	SCM	MCpl	114		Stealing while entrusted	Guilty	\$4000 fine & Severe reprimand	North Bay, Ontario	North Bay, Ontario	CAS	English
			114		Stealing while entrusted	Guilty					
			125(e)		Willfully made a false entry	Not guilty					
			125(e)		Willfully made a false entry	Not guilty					
			125(e)		Willfully made a false entry	Not guilty					
			125(e)		Willfully made a false entry	Not guilty					
			114		Stealing while entrusted	Guilty					
			114		Stealing while entrusted	Guilty					
			125(e)		Willfully made a false entry	Not guilty					
			125(e)		Willfully made a false entry	Not guilty					
			130 (368(1)(a))		Uttering a forged document	Not guilty					
			CCC		An act of a fraudulent nature	Not guilty					
			117(f)		Uttering a forged document	Not guilty					
			130 (368(1)(a))		Uttering a forged document	Not guilty					
			CCC		An act of a fraudulent nature	Not guilty					
117(f)		An act of a fraudulent nature	Not guilty								
117(f)		An act of a fraudulent nature	Not guilty								
125(e)		Willfully made a false entry	Not guilty								
125(e)		Willfully made a false entry	Not guilty								
26	SCM	Pte	85		Behaved with contempt towards a superior officer	Not guilty	N/A	Edmonton, Alberta	Edmonton, Alberta	CLS	English
			129		Conduct to the prejudice	Not guilty					
27	SCM	Capt	130 (153(1)(a))		Sexual Exploitation	Guilty	\$4500 fine & Reduction in rank	St-Jean, Quebec	St-Jean, Quebec	CFRETS	French
			CCC		An Act to the Prejudice	Guilty					
			129		An Act to the Prejudice	Not Guilty					
			129		An Act to the Prejudice	Guilty					
			129		An Act to the Prejudice	Guilty					
			129		An Act to the Prejudice	Not Guilty					
			129		An Act to the Prejudice	Not Guilty					

Annex J Appendix 2

Court Martial Statistics

1 April 2001 to 31 March 2002 (completed)

#	Type	Rank	Offences		Description	Disposition	Sentence	Geographic		Command	Language of Trial
			NDA Section	CCC				Location of CM	Location of Offence		
28	SCM	LS	130 (259(4) CCC)		Operation of a Motor Vehicle While Disqualified	Not Guilty	N/A	Halifax, Nova Scotia	Dartmouth, Nova Scotia	CMS	English
29	SCM	Pte	129	130 (259(4) CCC)	Operation of a Motor Vehicle While Disqualified	Not Guilty		Halifax, Nova Scotia	Halifax, Nova Scotia	CAS	English
30	SCM	Cpl	93	129	An Act to the Prejudice Neglect to the Prejudice	Guilty	\$100 fine	Bagotville, Quebec	Halifax, Nova Scotia	CAS	French
31	SCM	WO	130 (351(1) CCC)	130 (121(1)(c) CCC)	Dishonorable Conduct	Guilty	\$2000 fine & Reprimand	St-Jean, Quebec	Alouette, Quebec	CAS	French
32	SCM	Sgt	125 (a)	114	Willfully Made a False Entry in a Document	Withdrawn	\$8000 fine & Severe reprimand	St-Jean, Quebec	Montreal, Quebec	CLS	French
33	SCM	Capt	117 (f)	114	Conduct to the Prejudice	Guilty	\$5000 fine & Reprimand	St. John's, Newfoundland	St. John's, Newfoundland	CLS	English
34	SCM	Cpl	130 (163.1(4) CCC)	93	An Act of a Fraudulent Nature	Stayed	\$7000 fine & Severe reprimand	Winnipeg, Manitoba	Winnipeg, Manitoba	CLS	English
35	SCM	Pte	114	114	Stealing When Entrusted	Guilty		Esquimalt, British Columbia	Victoria, British Columbia	CMS	English
36	SCM	Cpl	129	114	An Act of a Fraudulent Nature	Guilty	Both received \$4800 fine & Severe reprimand	Winnipeg, Manitoba	Bosnia, Herzegovina	DCDS	English
					Stealing	Guilty	\$200 fine	Edmonton, Alberta	Bosnia, Herzegovina	DCDS	English
					Conduct to the Prejudice	Guilty					

Annex J Appendix 2

Court Martial Statistics

1 April 2001 to 31 March 2002 (completed)

#	Type	Rank	Offences		Description	Disposition	Sentence	Geographic		Command	Language of Trial
			NDA	Section				Location of CM	Location of Offence		
37	SCM	Sgt	125(a)		Willfully Made a False Entry	Not Guilty	N/A	Hull, Quebec	Kiev, Ukraine	DCDS	English
			125(a)		Willfully Made a False Entry	Not Guilty					
			125(a)		Willfully Made a False Entry	Not Guilty					
			125(a)		Willfully Made a False Entry	Not Guilty					
			125(a)		Willfully Made a False Entry	Not Guilty					
38	SCM	LCol	129		An Act to the Prejudice	Guilty	\$500 fine	Comox, British Columbia	Comox, British Columbia	CAS	English
39	SCM	P02	114		Stealing when Entrusted	Guilty	\$5000 fine	Sydney, Nova Scotia	Sydney, Nova Scotia	CMS	English
			117(f)		Stealing	Guilty	& Severe reprimand				
					An Act of a Fraudulent Nature	Guilty					
40	SCM	MCpl	83		Disobeyed a Lawful Command	Guilty	\$1000 fine	Sydney, Nova Scotia	Sydney, Nova Scotia	CLS	English
			90		Absent Without Leave	Guilty					
41	SCM	OS	130 (266 CCC)		Assault	Not Guilty	N/A	Esquimalt, British Columbia	Esquimalt, British Columbia	CMS	English
			86		Fought with a Person Subject to the Code of Service Discipline	Not Guilty					
42	SCM	Cpl	130 (335(1) CCC)		Taking a Motor Vehicle Without Consent	Withdrawn	\$750 fine	Hull, Quebec	Bosnia, Herzegovina	CLS	English
			90		Absent Without Leave	Guilty					
			97		Drunkenness	Guilty					
			83		Disobeyed a Lawful Command	Stayed					
43	SCM	OCdt	130 (267(b) CCC)		Assault Causing Bodily Harm	Guilty	\$1800 fine	Kingston, Ontario	Kingston, Ontario	CFRETS	English
44	SCM	A/SLt	90		Absent Without Leave	Guilty	30 days imprisonment (suspended)	Esquimalt, British Columbia	Esquimalt, British Columbia	CFRETS	English
45	SCM	Sgt	129		Conduct to the Prejudice	Guilty	\$400 fine	Esquimalt, British Columbia	Esquimalt, British Columbia	CMS	English
46	SCM	Sgt	129		Conduct to the Prejudice	Guilty	\$1800 fine & Reprimand	Winnipeg, Manitoba	Bosnia, Herzegovina	DCDS	English
			97		Drunkenness	Guilty					
47	SCM	Sgt	130 (264.1(1) (a) CCC)		Uttering Threats	Guilty	Reduction in Rank	Peawanawa, Ontario	Kosovo, FRY	CLS	English
			130 (267(a) CCC)		Assault with a Weapon	Guilty					

Annex J

Appendix 2

Court Martial Statistics

1 April 2001 to 31 March 2002 (completed)

#	Type	Rank	Offences NDA Section	Description	Disposition	Sentence	Geographic Location of CM	Geographic Location of Offence	Command	Language of Trial
47	SCM	Sgt	130 (87(1) CCC) 130 (267(a) CCC) 130 (87(1) CCC) 130 (267(a) CCC) 130 (87(1) CCC) 130 (91(1) CCC) 129	Pointing a Firearm Assault with a Weapon Pointing a Firearm Assault with a Weapon Pointing a Firearm Unauthorized Possession of a Firearm Conduct to the Prejudice	Not Guilty Guilty Not Guilty Guilty Not Guilty Not Guilty Guilty	Reduction in Rank	Petawawa, Ontario	Kosovo, FRY	CLS	English
48	SCM	PO2	90 85	Absent Without Leave Behaved With Contempt Toward a Superior	Not Guilty Guilty Not Guilty	\$500 fine & Reprimand	Halifax, Nova Scotia	Halifax, Nova Scotia	CMS	English
49	SCM	Pte	93 130 (266 CCC) 130 (266 CCC) 129 88	Dishonorable Conduct Assault Assault An Act to the Prejudice Desertion	Guilty Guilty Guilty Withdrawn Withdrawn	\$1500 fine & Severe reprimand	Valcartier, Quebec	Gagetown, New Brunswick	CFRETS	French
50	SCM	Cpl	130 (271 CGC) 97	Sexual Assault Drunkness	Guilty Guilty	\$2000 fine & Reprimand	Gagetown, New Brunswick	North Carolina, USA	CLS	English
51	SCM	Capt	130 (271 CGC) 130 (271 CGC)	Sexual Assault Sexual Assault	Guilty Guilty	\$6000 fine & Severe reprimand	Toronto, Ontario	Georgia, USA	ADM-HR Mil	English
52	SCM	Pte	130 (173(1)(a) CCC) 93 130 (173(1)(a) CCC) 93 130 (173(1)(a) CCC) 93	Committed an Indecent Act Dishonorable Conduct Committed an Indecent Act Dishonorable Conduct Committed an Indecent Act Dishonorable Conduct	Guilty Stayed Guilty Stayed Guilty Stayed	\$700 fine & Reprimand	St-Jean, Quebec	St-Jean, Quebec	CLS	French
53	SCM	Cpl	97	Drunkness	Guilty	30 days detention (suspended)	Trenton, Ontario	Bosnia, Herzegovina	DCDS	English

#	Offences		Description	Disposition	Sentence	Geographic Location of CM	Geographic Location of Offence	Command	Language of Trial
	Type	Rank							
54	SCM	Sgt 114 129	Stealing Conduct to the Prejudice	Not Guilty Not Guilty	N/A	St. John's, Newfoundland	St. John's, Newfoundland	CMS	English
55	SCM	Cpl 129	Drunkenness Conduct to the Prejudice	Guilty Guilty	\$2000 fine & Reprimand	Winnipeg, Manitoba	Zagreb, Croatia	DCDS	English
56	SCM	SLT 129	Behaved in a Disgraceful Manner Conduct to the Prejudice	Not Guilty Not Guilty	N/A	Kingston, Ontario	Kingston, Ontario	CLS	English
57	SCM	Capt 117(e) 117(e) 117(e)	Being in Control of an aircraft, receives unauthorized goods Being in Control of an aircraft, receives unauthorized goods Being in Control of an aircraft, receives unauthorized goods	Guilty Guilty Guilty	\$1000 fine & Reprimand	Trois-Rivieres, Quebec	Trois-Rivieres, Quebec	CAS	French
58	SCM	Capt 130 (266 CCC) 97	Assault	Guilty	\$2500 fine & Severe reprimand	London, Ontario	Kentucky, USA	CLS	English
59	SCM	LS 97	Drunkenness	Guilty	\$2000 fine	Victoria, British Columbia	Victoria, British Columbia	CMS	English
60	SCM	Maj 130 (266 CCC) 118.1	Drunkenness Assault Failed to appear before a service tribunal	Not Guilty Guilty Not Guilty	Severe reprimand & \$3000 fine	Gagetown, New Brunswick	Gagetown, New Brunswick	CMS	English
61	SCM	Capt 130 (264.1(1)(a) CCC) 129 93	Uttering Threats Conduct to the prejudice Behaved in a disgraceful manner	Not Guilty Not Guilty Guilty	Severe reprimand & Reduction in rank	Hamilton, Ontario	Hamilton, Ontario	CFRETS	English
62	SCM	Occt 129	Conduct to the Prejudice	Guilty	\$100 fine	Kingston, Ontario	Kingston, Ontario	CFRETS	French
63	SCM	Cpl 129	Conduct to the prejudice	Guilty	14 days detention (suspended)	Winnipeg, Manitoba	Winnipeg, Manitoba	CAS	English

Annex J Appendix 2 Court Martial Statistics 1 April 2001 to 31 March 2002 (completed)

#	Offences		Description	Disposition	Sentence	Geographic		Command	Language of Trial
	Type	Rank				Location of CM	Location of Offence		
64	SCM	Cpl	130 (7 CDSA)	Production of a substance	Guilty	10 months imprisonment & Reprimand	Valcartier, Quebec	CLS	French
			130 (5(1) CDSA)	Trafficking	Withdrawn				
			130 (5(1) CDSA)	Trafficking	Withdrawn				
			130 (91(2) CCC)	Unauthorized possession of a prohibited weapon	Withdrawn				
			130 (105(1)(b) CCC)	Failure to report finding a prohibited weapon	Guilty				
			129	An act to the prejudice	Guilty				
65	SCM	MCpl	114	Stealing	Guilty	Reprimand	Bagotville, Quebec	CAS	French
			130 (354(1) CCC)	Possession of property obtained by crime	Guilty	Severe reprimand & \$3000 fine	Edmonton, Alberta	CLS	English
66	SCM	Tpr	114	Stealing	Not Guilty		Edmonton, Alberta	CLS	English
			130 (354(1) CCC)	Possession of property obtained by crime	Guilty				
			114	Stealing	Not Guilty				
			130 (354(1) CCC)	Possession of property obtained by crime	Guilty				
			114	Stealing	Not Guilty				
			130 (354(1) CCC)	Possession of Property obtained by crime	Guilty				
			114	Stealing	Not Guilty				
			130 (354(1) CCC)	Possession of Property obtained by crime	Guilty				
			114	Stealing	Not Guilty				
			130 (354(1) CCC)	Possession of Property obtained by crime	Guilty				
			114	Stealing	Not Guilty				
			130 (354(1) CCC)	Possession of Property obtained by crime	Guilty				
			114	Stealing	Not Guilty				
			130 (354(1) CCC)	Possession of Property obtained by crime	Guilty				
114	Stealing	Not Guilty							
130 (354(1) CCC)	Possession of Property obtained by crime	Guilty							

Annex *Appendix 2*
Court Martial Statistics
From: 01 Apr 01 to: 31 Mar 02 (completed)

#	Offences		Description	Disposition	Sentence	Geographic	Geographic	Command	Language of Trial		
	Type	Rank				NDA Section	Location of CM			Location of Offence	
66	SCM	Tpr	130 (854(1) CCC)	Possession of Property obtained by crime	Guilty	Severe reprimand & \$3000 fine	Edmonton, Alberta	Edmonton, Alberta	CLS	English	
			129	Conduct to the prejudice	Not Guilty						
			130 (854(1) CCC)	Possession of Property obtained by crime	Guilty						
			130 (854(1) CCC)	Possession of Property obtained by crime	Not Guilty						
67	SCM	Bdr	114	Stealing	Not Guilty						
			114	Stealing	Guilty	Severe reprimand & \$750 fine	Edmonton, Alberta	Winnipeg, Manitoba	Edmonton, Alberta	CLS	English

Annex J *Appendix 3*
Appeals Completed/Initiated
1 April 2001 to 31 March 2002

CMAC #	Appellant	Respondent	Type of Appeal	Status
437	Her Majesty the Queen	Sergeant (retired) Kipling	Legality of Finding	COMPLETED The appeal was heard on 25 Oct 01. On 11 Jan 02 CMAC allowed the appeal and a new trial was ordered. On 11 Apr 02 decided not to re-try Sergeant (retired) Kipling.
438	Master-Corporal Larocque	Her Majesty the Queen	Legality of Finding	COMPLETED The appeal was heard on 20 Aug 01 On 16 Oct 01 the appeal was rejected.
439	Her Majesty the Queen	Corporal Vincent	Legality of Finding	COMPLETED On 2 May 01 the appellant abandoned the appeal.
441	Her Majesty the Queen	Corporal Albert	Legality of Finding	COMPLETED On 2 May 01 the appellant abandoned the appeal.
442	Lieutenant-Colonel Battista	Her Majesty the Queen	Legality of Finding	COMPLETED The appeal was heard on 1 Oct 01. On 1 Oct 01 CMAC set aside the verdicts of guilty and verdicts not guilty were entered.
443	Her Majesty the Queen	Captain Langlois	Legality of Finding	COMPLETED On 31 Oct 01 CMAC heard the appeal. On 14 Nov 01 CMAC allowed the appeal and ordered a new trial.
SCC	Captain Langlois	Her Majesty the Queen	Appealing the decision from CMAC for a new trial	Ongoing.

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Appendix 3

Appeals Completed/Initiated

1 April 2001 to 31 March 2002

CMAC #	Appellant	Respondent	Type of Appeal	Status
444	Captain Savaria	Her Majesty the Queen	Legality of Finding	COMPLETED In Oct 01 CMAC dismissed the appeal because the appellant failed to follow the CMAC rule for filing of facts.
445	Private Rushnell	Her Majesty the Queen	Legality of Finding	COMPLETED On 14 Mar 02 CMAC dismissed the appeal because the appellant failed to follow the CMAC rule for filing facts.
446	Colonel Ouellet	Her Majesty the Queen	Legality of Finding	COMPLETED On 21 Nov 01 the appellant abandoned the appeal.
447	Captain Simard	Her Majesty the Queen	Legality of Finding Legality of Sentence Severity of Sentence	COMPLETED This appeal was heard on 28 Mar 02 and CMAC denied the appeal.
448	Former Master Seaman Dominie	Her Majesty the Queen	Legality of Sentence Severity of Sentence	Ongoing. Hearing date is 30 May 02.
449	Master Corporal Ternes	Her Majesty the Queen	Legality of Finding Severity of Sentence	COMPLETED In Oct 01 CMAC dismissed the appeal because the appellant failed to follow the CMAC rules for filing facts.
450	Able Seaman Renard	Her Majesty the Queen	Legality of Finding Legality of Sentence Severity of Sentence	COMPLETED This appeal was heard on 11 Feb 02 and CMAC denied the appeal on the legality of finding. The appellant abandoned the appeal on legality and severity of sentence.
451	Corporal Lachance	Her Majesty the Queen	Legality of Finding	Ongoing. Hearing date 25 Apr 02.

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Appendix 3

Appeals Completed/Initiated

1 April 2001 to 31 March 2002

C/MAC #	Appellant	Respondent	Type of Appeal	Status
452	Captain Loughrey	Her Majesty the Queen	Severity of Sentence	Ongoing.
453	Master-Corporal Bouchard	Her Majesty the Queen	Legality of Finding	Ongoing. Hearing date 20 June 02.
454	Sub-Lieutenant Sheehy-Tremblay	Her Majesty the Queen	Severity of Sentence	Ongoing.
455	Corporal Hunter	Her Majesty the Queen	Legality of Finding	Ongoing.
456	Corporal Rioux	Her Majesty the Queen	Legality of Finding	Ongoing.
457	Captain Young	Her Majesty the Queen	Legality of Finding	Ongoing.
458	Corporal Mauch	Her Majesty the Queen	Legality of Finding	Ongoing.
459	Master Corporal Downey	Her Majesty the Queen	Legality of Finding	Ongoing.
460	Sergeant Jones	Her Majesty the Queen	Legality of Finding	Ongoing.
461	Corporal Hall	Her Majesty the Queen	Legality of Finding Legality of Sentence	Ongoing.
462	Captain Hughes	Her Majesty the Queen	Legality of Finding	Ongoing.
463	Captain Cotton	Her Majesty the Queen	Legality of Finding	Ongoing.

Notes