



National
Defence

Défense
nationale

A review from 1 April 2005 to 31 March 2006

ANNUAL REPORT

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



Office of the Judge Advocate General

Cabinet du juge-avocat général



Canada

Errata

This report contains an error in the number of courts martial that were conducted during the 2005-2006 Reporting Period. The number of courts martial that were conducted is 40 and not 39 as reported. As well, the number of courts martial that were withdrawn once commenced is 1 and not 0 as reported. As a result, the following corrections should be made in the report:

- Chap 2 ,p. 12, Number of courts martial – 40
 - p. 15, Number of courts martial – 40
- Anx D, p. 84, Distribution of Service Tribunals, Number of courts martial – 40
 - Distribution of Service Tribunals, Total – 1545
 - Distribution of Disciplinary Proceedings/Yr to Yr Comparison – 40
- Anx E, p. 92, Number of Courts Martial – 40
 - Courts Martial by Type, Standing Courts Martial – 40
 - Courts Martial by Type, Total – 40
 - p. 94, Summary of Charges, Breach of trust by public officer – 4
 - p. 95, Summary of Charges, Total Offences – 158
 - Disposition by Case, Withdrawal – 1
 - Disposition by Case, Total – 40
 - Sentences, Severe Reprimand – 6
 - Sentences, Fine – 27
 - Sentences, Total – 56
 - p. 96, Language of Trial, English – 29/73%
 - Language of Trial, French – 27%
 - Language of Trial, Total – 40
 - Courts Martial by Command, National Defence Headquarters – 20%
 - Courts Martial by Command, Chief of the Maritime Staff – 7/18%
 - Courts Martial by Command, Chief of the Land Staff – 42%
 - Courts Martial by Command, Total – 40
 - Courts Martial by Rank, Sergeant to Chief Warrant Officer – 4
 - Courts Martial by Rank, Total – 40

Judge Advocate General



Juge-avocat général

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The Honourable Gordon O'Connor
Minister of National Defence
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Dear Minister,

It is my honour to present to you the seventh 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*. This Report covers the period 1 April 2005 to 31 March 2006. This will be my final Annual Report as Judge Advocate General.

Yours truly,

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

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

Canada



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

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



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Judge Advocate General Communiqué



It is a great honour and privilege to present my seventh and final Annual Report as Judge Advocate General to the Minister of National Defence on the administration of military justice in the Canadian Forces.

The term military justice in this report is meant to include all activities in respect of the administration of the Code of Service Discipline, which is Part III of the *National Defence Act*.

In this communiqué, I will first comment on some of the activities of the past year in the field of military justice. I will then take the opportunity to reflect upon the military justice system from the perspective of one about to leave office after two terms as Judge Advocate General.

As in previous reports, we have surveyed the past but always with an eye to the future. We anticipate legal reforms as a result of the response to the Lamer Report. We have also positioned ourselves to be able to face all future challenges. The strength of the Office of the JAG lies in the strength of its people. I am proud to say that we have a team assembled that will allow us to continue to carry out our mission of providing effective and efficient legal advice and services in respect of the administration of military justice.

The Past Year

The past year has been one of intense activity with regard to the policy development aspects of the military justice system. It has culminated in the introduction in Parliament of two important pieces of legislation, and the coming to fruition of two important regulatory initiatives.

Legislation to respond to the Lamer Report

The first of these is Bill C-7, the Government of Canada's legislative response to the recommendations made in the Lamer Report, which was discussed in last year's Annual Report. It was introduced in Parliament on 27 April 2006. Along with improvements to the

military police complaints process and to the grievance system provided for members of the Canadian Forces, it is intended to ensure that the military justice system remains one in which Canadians can have trust and confidence. This bill is the culmination of a great deal of effort on the part of many people.

Significant amendments to the *National Defence Act* were made in 1998 by Bill C-25, enacted as S.C. 1998, c.35. Section 96 of that Act required that an independent review of the provisions and operations of that Act be conducted within five years of it receiving Royal Assent. Pursuant to this requirement, the Minister of National Defence appointed the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, to conduct the review. The report submitted by former Chief Justice Lamer was tabled in Parliament in November 2003. In his report, former Chief Justice Lamer made 88 recommendations: 57 pertaining to the military justice system, 14 regarding the Canadian Forces Provost Marshal and the Military Police Complaints Commission process, and 17 concerning the Canadian Forces grievance process.

In the foreword to his report, former Chief Justice Lamer indicated that, as a result of the changes made by Bill C-25, "Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence." Indeed, in his conclusion, he indicated that observers in other countries see it as a system from which their countries might wish to learn. That being said, he also observed that there does remain room for improvement in the military justice system, and it is in that spirit that the study of the recommendations respecting the military justice system was conducted by the Department of National Defence. Extensive policy analysis and consultation both within and outside the Department of National Defence has been undertaken in determining the appropriate legislative response to the recommendations contained in the Lamer Report. The policy analysis has also considered certain other improvements that would naturally flow from Lamer Report recommendations and whose enactment would enhance the operation of the military justice system.

The Lamer Report recommendations have not been accepted uncritically. Rather, they have been extensively analyzed on a principled basis to assess the degree to which they conform to the

underlying first principles that animate the military justice system. Where the recommendations accord with these principles, which is the case for the majority of the recommendations, they have been accepted; in other cases, they have been accepted with adaptations; in a few instances, they have not been accepted. 52 of the 57 recommendations in the Lamer Report pertaining to the military justice system have been accepted, or accepted with adaptations.

The proposed amendments concerning the military justice system would strengthen the Canadian Forces as a vital national institution by enhancing the maintenance of discipline, cohesion and morale. By making improvements in process and in substantive law, they will more closely align the military justice system with current Canadian values and legal standards and ensure its compliance with the *Canadian Charter of Rights and Freedoms*, while preserving its capacity to meet essential military requirements.

I will highlight five of the military justice amendments proposed in the Bill in particular:

- First, strengthening the provisions of the *National Defence Act* relating to the independence of military judges, specifically by providing for security of tenure of military judges until retirement, as well as enhancing the jurisdiction of military judges to deal with pre-trial issues;
- Second, increasing the timeliness and flexibility of the system by providing for appointment of part-time military judges to a Reserve Force Military Judges Panel;
- Third, modernizing and enhancing the sentencing provisions of the Code of Service Discipline by providing a more flexible range of dispositions including absolute discharges, intermittent sentences and restitution orders. Greater voice will also be given to victims by providing for the use of victim impact statements at courts martial;
- Fourth, requiring the unanimous decision of a panel at a General or Disciplinary Court Martial in order to convict or acquit an accused. Currently, to find an accused person guilty at a General Court Martial (composed of a military judge plus a panel of five members) or Disciplinary Court Martial (composed of a military judge plus a panel of three members), only a majority vote of the panel is required. The Lamer Report suggests that the greatest problem with the majority vote is the diminished role of fact-finding

during deliberations. A reduction in deliberation could be seen to reduce the perceived accuracy of the verdict in the eyes of the public and the accused. Although majority votes may result in more expedient trials, the Lamer Report suggests that the expediency issue is more than balanced by the need for safety of the verdict and fairness to the accused. One of the most compelling arguments in favour of unanimity is the reduction of the possibility of wrongful convictions. A unanimous vote requires the panel of fact-finders to come to a complete consensus and therefore fosters greater analysis and deliberation. This amendment would enhance fairness and certainty of result,

- Finally, fifth, unlike analogous statements in the civilian court context in the *Criminal Code*, the *National Defence Act* currently does not contain a succinct summary of sentencing principles to be applied by service tribunals. The statutory articulation of the fundamental purposes, principles and objectives of sentencing in the military justice system proposed in the amendments in would crystallize those concepts, give statutory affirmation to the *raison d'être* for a separate military justice system, and provide clear guidance to participants in the military justice system, including military judges and the appellate judges of the Court Martial Appeal Court of Canada and the Supreme Court of Canada, as to the principles which should be applied in sentencing in the military justice system. These will provide that the fundamental purposes of sentencing in the military justice system are to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale, and to contribute to the maintenance of a just, peaceful and safe society.

Sex Offender Information Registration Act (SOIRA)

The second major piece of legislation affecting the military justice system is Bill S-3, *An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act*, which was introduced in the Senate on 25 April 2006. The amendments to the *National Defence Act* contained in the Bill will permit a court martial to order an offender who has been convicted of a designated sexual offence at court martial to register in the national sex offender database. The database, which was established under the SOIRA when it came into

force in December 2004, is maintained by the Royal Canadian Mounted Police and is intended to assist police in investigating crimes of a sexual nature by providing them with access to current information regarding convicted sex offenders. The amendments would ensure that the provisions of the *National Defence Act* in this regard reflect those of the *Criminal Code*, and will close a gap that was created when the original SOIRA was proceeded with without provisions capturing persons convicted of sexual offences in the military justice system. The proposed amendments maintain Canadian legal norms in the *National Defence Act* and the military justice system by making the results of a conviction have the same effect as in the civilian criminal justice system with regard to the national sex offender database. Unique aspects of the military operational environment are also recognized in the Bill, in order to allow the Canadian Forces to continue to conduct military operations to protect Canada's interests at home and abroad while allowing those who have been ordered to comply with the SOIRA the ability to do so.

Military Rules of Evidence (MRE)

The MRE are regulations established pursuant to the *National Defence Act* that set out rules with respect to the evidence that may be adduced at courts martial, and the manner in which that evidence may be adduced. They are meant to be portable and complete, applying in the same manner no matter where in the world the court martial may be held. They are a key component to having an effective court martial system.

A long-standing project came to fruition during this reporting period when the draft MRE were referred to the Department of Justice Regulatory Section for final review and formal drafting. They will ultimately be issued as regulations, published in the *Canada Gazette*, and laid before Parliament. This project has been a major undertaking, as no other set of rules comprehensively codifying the rules of evidence applicable at trial has been created in Canadian law. The new MRE will reflect the common law of evidence as well as the provisions of the *Canada Evidence Act* and the requirements of the *Canadian Charter of Rights and Freedoms*. They will utilize modern drafting language and reflect the unique aspects of the military legal and operational environment.

Electronic Notification and Publication of Queen's Regulations and Orders for the Canadian Forces (QR&O)

A major step forward in bringing the operation of the military justice system fully into the modern age was accomplished when a new provision of the QR&O was brought into effect on 1 January 2006. This replaced the previous expensive and labour-intensive regime of publication and notification of QR&O by distribution of paper versions with an efficient one providing for the electronic notification and publication of QR&O on a defence website. The consequences of the adoption of this elegantly simple system for access to justice and the maintenance of discipline within the Canadian Forces will be profound. It will facilitate the notification and publication of regulations applying to members of the Canadian Forces in an efficient and cost-effective manner, while ensuring that accurate updates to the regulations are provided in a consistent and timely fashion across the Canadian Forces. Members of the Office of the Judge Advocate General played a significant role in both the policy development and technical design underpinning this considerable advance in the military justice system.

Reflections

The past eight years have seen a remarkable revitalization of the military justice system. Since I became Judge Advocate General in April 1998, over 187 legal stewardship initiatives have been completed within the Office of the JAG, 103 of which dealt specifically with military justice issues. There has also been a significant effort made at outreach to, and education of, the broader Canadian legal community, particularly through participation of legal officers in the activities of the Canadian Bar Association. The professional development of the appellate judges of the Court Martial Appeal Court of Canada was assisted by the participation of Legal Officers in an education seminar to increase their familiarity with the military justice system. Importantly, the knowledge, engagement and commitment of the Canadian Forces senior chain of command with military justice issues was furthered by their participation in two of the JAG military justice committees, the Military Justice Stakeholders Committee and the Code of Service Discipline Committee.

During this time, there have been 435 courts martial and over 9000 summary trials conducted in the Canadian Forces. Some 5914 commanding officers, delegated officers and superior commanders have been trained as presiding officers for summary trials. Over 500 junior officers and senior non-commissioned members have also benefited from attending the Presiding Officer Training Course. In addition, almost 900 officers have been re-certified as qualified to perform the duties of presiding officers by successful completion of the Presiding Officer Re-certification Training course.

As I look back on my eight years as Judge Advocate General, I am struck by two conclusions in particular. The first is a deep conviction as to the necessity of the military justice system for the operational effectiveness of the Canadian Forces, the achievement of justice for individual members of the Canadian Forces, and the protection of Canada's interests, as well as a certainty as to what the requisites of that system are.

The necessity for a separate system of military tribunals has deep historical roots and was affirmed by the Supreme Court of Canada in 1992 in the case of *R. v. Généreux*. In assessing what will continue to be required going forward, I consider that it is important to have regard to the essential attributes of a military court. In order to meet the requirements of both military justice and discipline, I am convinced that a service tribunal must:

- possess an understanding of the necessity for, and role of, discipline in an armed force;
- possess an understanding of the specific requirements of discipline;
- act in a manner that is both fair and perceived to be fair;
- be compliant with the *Canadian Charter of Rights and Freedoms*;
- be able to dispense justice promptly;
- be portable (across Canada and abroad); and,
- be flexible, meaning capable of holding trials in operational theatres at all levels within the spectrum of conflict.

The consequence of these considerations must be a reaffirmation of the necessity for the actors in that system to be military, and to bring to bear the military perspectives gained through military experience as officers in the Canadian Forces. The interests of discipline are advanced by the concept of the convening of a court martial. Discipline is a constant in service life and there must be a visible response to an alleged breach. With the convening of a court martial, and its assembly most often in the location where the alleged breach occurred, both military and civilian communities (whether domestic or international) have the opportunity to observe that justice will be done.

It is vital that the momentum for continuous improvement in the military justice system be sustained. It must not be allowed to be diminished by what can be, at times, indifference or complacency in some quarters; nor should we be disheartened by uninformed and, in some cases, even malevolent criticism in public fora. Any system worth its salt will withstand the rigour of informed public debate, and I am confident that this is the case with the Canadian military justice system as it has been developed over the past decade.

Reform of the military justice system is not a one-time event, but rather a continuing process of improvement. This does have a cost, both in terms of the devotion of human and capital resources. It is a cost well worth paying. It is also important that we not lose sight of this even in times of budgetary strictures and the incessant demand for allocation of resources to other worthy competing priorities within the Department of National Defence.

Amendments to the *National Defence Act* will continue to be required in the future to ensure that the military justice system keeps pace with evolutions in the civilian criminal law. Rigorous, honest and informed review of the system is a prerequisite for future progress, just as honest and critical self-assessment is a hallmark of legal professionalism. The incorporation of a statutorily-mandated five year review process into the provisions of the *National Defence Act* is a signal advance in that regard.

We are fortunate in Canada to have a system of military justice that is a model other countries are seeking to follow. It reflects Canadian values, respects the rule of law, and enhances the operational effectiveness of the Canadian Forces. Continuing commitment

to it will ensure that Canada's military justice system remains one in which Canadians can have trust and confidence and will further strengthen the Canadian Forces as a vital national institution.

The second insight relates to the cardinal importance of people in the accomplishment of our mission. It is easy to lose sight of this amidst the incessant clamour of daily demands and urgent tasks. It is important to remind oneself as a leader of this fundamental truth: nothing gets done without good people to do it, and it is important to have due regard to their welfare even in times of the greatest stress. Few organizations in Canada are blessed with people who can compare with the talent, dedication and professionalism of the Legal Officers of the Office of the Judge Advocate General. I am confident in their ability to continue to serve their client, the Canadian Forces, with excellence, and I am hopeful that they will continue to be provided the necessary resources with which to do so.

Conclusion

Departing for me will be bittersweet. On the one hand, I am proud of the system that has been built and of my role in helping to construct it. On the other, I will be leaving the practice of military law and the extraordinary people who make it their life's vocation. I will have only the memories of the privilege of leading them, the memories of how much fun that was, of how much personal and professional fulfillment that can bring, of how much trepidation it can bring, of how fearless and confident it can ask you to become, but most of all how proud one can be of the truly extraordinary, courageous, brilliant, talented and successful group of men and women contributing to the betterment of our country that work in the Office of the Judge Advocate General. Those memories will last me my lifetime. I am grateful for having been accorded the privilege to serve as Judge Advocate General.



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

CHAPTER 1



The Office of the Judge Advocate General

1.1 Foundation of the Judge Advocate General's Duties and Powers in Canadian Law

A fundamental aspect of Canadian democracy is that the armed forces must, at all times, remain under the control and direction of the civil authorities. The Minister of National Defence (Minister) acts as the necessary linchpin between the Canadian Forces (CF) and the Government of Canada. In addition to being a duly elected member of Parliament and a member of the executive, the Minister is responsible under the *National Defence Act*¹ to preside over the Department of National Defence (DND) and, through the Chief of the Defence Staff (CDS), gives direction to the CF. With respect to the military justice system, however, constitutional requirements prohibit the Minister from any role that would combine judicial and executive duties. Accordingly, specific provisions are made in the NDA to ensure that the military judiciary is properly insulated from the Minister while enabling the Minister to receive the legal support and advice required to remain informed about the administration of military justice. These provisions enable the Minister to fulfill his role as the elected official responsible and accountable to Parliament for the DND and the CF.

1 R.S.C. 1985, c. N-5 [NDA], s. 4.

Transparent accountability to the Minister on matters relating to the military justice system is achieved under the NDA through the role of the Judge Advocate General (JAG). The NDA provides for the appointment of the JAG by the Governor in Council as well as the duties, powers and functions to be performed by the incumbent.² In addition to being the legal advisor to the Governor General, the Minister, the DND and the CF in matters relating to military law, the JAG is also charged with superintending the administration of military justice in the CF.³

1.2 Statutory Responsibility

The JAG is statutorily responsible to the Minister and accountable⁴ for the legal advice given to the CDS, the military chain of command and the Deputy Minister. This accountability structure was designed to ensure the independence of the Office of the JAG from the chain of command in respect of the provision of legal advice in all areas, including military justice.

The independence of the JAG is reinforced in the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) articles 4.081(1) and (4), which provide that all legal officers whose duty is the provision of legal services shall be posted to a position established within the Office of the JAG and, in respect of the performance of those duties, a legal officer is not subject to the command of an officer who is not a legal officer.

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

1.3 Resources of the Office of the JAG

The Office of the JAG comprises 119 regular force legal officer positions and 62 reserve force legal officer positions. During the reporting period, both regular and reserve force legal officers were posted in Canada and abroad as follows:

2 *Ibid.* at subsection 9(1).

3 *Ibid.* at section 9.1 and subsection 9.2(1).

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

- National Defence Headquarters (NDHQ) in Ottawa;
- The Office of the Department of National Defence/ Canadian Forces Legal Advisor (DND/ CF LA);
- seven Assistant Judge Advocate General (AJAG) offices, including six in Canada and one in Germany;
- 12 Deputy Judge Advocate (DJA) offices across Canada;
- four Regional Military Prosecutor offices across Canada;
- Supreme Headquarters Allied Powers (Europe) in Belgium;
- The Office of the Chairman of the NATO Military Committee in Brussels;
- CF Joint Operations Group Headquarters and the Royal Military College of Canada (RMC) in Kingston;
- Deputy Commander North American Aerospace Defence Command Headquarters in Colorado, USA; and,
- with CF contingents deployed outside Canada - in Bosnia-Herzegovina, Afghanistan, the Gulf of Oman, Pakistan, Democratic Republic of the Congo, and in the Gulf States of the USA to assist following Hurricane Katrina.

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

CF Transformation

During the reporting year, the CF began a comprehensive process of transformation in order to create a more relevant, responsive and effective military force. The Office of the JAG has provided support to CF transformation in two ways. First, by providing legal advice in support of the transformation process itself through involvement on the Armed Forces Council and the Defence Management Committee, and by providing legal officers of all ranks to serve on committees and working groups in support of CF transformation. Second, by reorganizing internally to meet the developing needs of the new CF entities. Beginning in July 2005, legal officers have been assigned to support the newly created Canada Command, Canadian Expeditionary Force Command and Canadian Special Operations Force Command. The Deputy JAG/ Operations Division was tasked with the provision of legal support to those commands.

Strategic Use of Resources by the Office of the JAG

In the late 1990s, as the CF was undergoing change following major amendments to the NDA, recruitment became a priority for the Office of the JAG. Upon achieving the desired complement of regular and reserve force legal officers, the focus has shifted to the provision of training and professional development opportunities in order to deepen the pool of expertise among junior legal officers. During the 2005-2006 reporting period, training and professional development has continued to be a priority within the Office of the JAG for legal officers at all levels. The Office of the JAG has promoted opportunities for legal officers to attend national and international training events in such areas as criminal justice, administrative law, international humanitarian law, law of armed conflict and operational law. While the provision of training opportunities has had an impact on the availability of legal officers to provide legal support, the inclusion of training in the planning process has allowed service delivery levels to continue to be met despite fluctuations in staffing levels.

Also during the reporting year, demands arising from Canada's international obligations dictated the temporary reallocation of a number of JAG resources. Better long term planning for deployments, however, has meant that personnel requirements continue to be met despite absences. During this reporting period, 22 legal officers have been deployed to positions in Bosnia-Herzegovina, Afghanistan, Pakistan, the Democratic Republic of the Congo, the Gulf of Oman and on relief operations following Hurricane Katrina.

1.4 Organizations Within the Office of the JAG Involved in Military Justice

Military justice is one of the three “pillars” of Canadian military law (the other two pillars being operational law and military administrative law). Legal officers working in the field of military justice undertake a variety of work, including:

- developing legal policy;
- reviewing and proposing the amendment of laws and regulations related to military justice;
- researching the operation of the military justice system;

- prosecuting and defending individuals at courts martial;
- acting as appellate counsel before the Court Martial Appeal Court of Canada;
- providing advice on issues of military justice; and,
- providing the necessary military justice training resources.

The Canadian Military Prosecution Service

The Director of Military Prosecutions (DMP) holds office upon appointment by the Minister.⁵ To preserve the independence of the office, the Minister is the sole authority with the power to remove the DMP, and then, only on the recommendation of an inquiry committee.⁶

Under the provisions of the NDA, the DMP is responsible for preferring all charges and for the conduct of all prosecutions at courts martial. On 1 September 1999, The DMP's responsibilities were expanded to include representing the Minister on appeals when instructed to do so.⁷ In addition to these statutory responsibilities, the DMP is also the legal advisor to the Canadian Forces National Investigation Service, which is an organization mandated to investigate serious and/or sensitive service and criminal offences.

In exercising prosecutorial discretion relating to the preferal of charges and the conduct of prosecutions, the independence of the DMP is protected by both the institutional structures in the NDA and at common law.⁸ In this way, the DMP's situation is analogous to that of a director of public prosecutions in the civilian criminal justice system.

The NDA provides that the DMP acts under the general supervision of the JAG, and that the JAG may issue general instructions or

5 *Supra* note 1 at section 165.1. The DMP holds office for a term not exceeding four years. Captain (Navy) Holly MacDougall was appointed DMP on 17 January 2005.

6 *Ibid.* at subsection 165.1(2). See also QR&O article 101.18.

7 *Ibid.* at section 165.11. This section provides for the DMP to act as counsel for the Minister in respect of appeals, when instructed to do so.

8 *R. v. Balderstone* (1983), 8 C.C.C. (3d) 532 (Man. C.A.). Leave to appeal to the Supreme Court of Canada refused see [1983] 2 S.C.R. v. Canadian courts have placed significant legal restrictions on the review of the exercise of prosecutorial discretion. Courts will undertake such reviews only in the clearest case of abuse of process. See e.g. *Krieger v. Law Society of Alberta*, [2002] 3 S.C.R. 372.

guidelines to DMP in respect of prosecutions in general or in relation to a particular prosecution.⁹ During the reporting year no such instructions or guidelines have been issued.

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

Defence Counsel Services (DCS)

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

The DDCS is statutorily insulated from other CF and DND authorities to protect him from potentially inappropriate influence. Legal officers who are assigned to work with DCS represent their clients in accordance with DDCS and JAG policies as well as the code of conduct of their respective law societies. These safeguards are designed to preserve and enhance the legal and ethical obligations that DCS owe to their clients. Furthermore, communications with their clients are protected at law by solicitor-client privilege.

The DDCS acts under the general supervision of the JAG who may issue general instructions or guidelines in writing in respect of defence counsel services.¹² The JAG cannot, however, instruct DDCS in respect of a particular defence counsel or court martial. During the reporting year no such instructions or guidelines were issued.

Annex I of this report contains the Annual Report of the DDCS.

9 *Supra* note 1 at section 165.17. The JAG must give a copy of every such instruction to the Minister. The DMP must ensure that such instructions are made available to the public, except in limited cases where the DMP decides that release to the public of an instruction or guideline would not be in the best interests of the administration of military justice.

10 *Ibid.* at section 249.18. On 1 September 2003, Lieutenant-Colonel Jean-Marie Dugas was appointed DDCS.

11 QR&O article 101.20.

12 *Supra* note 1 at section 249.2. The DDCS must make any general instructions or guidelines available to the public.

Deputy Judge Advocate General/ Military Justice and Administrative Law (DJAG/MJ&AL)

The DJAG/MJ&AL organization comprises the Directorate of Law/Military Justice Policy and Research (DLaw/MJP&R), the Directorate of Law/Human Resources (DLaw/HR) and the Directorate of Law/Administrative Law (DLaw/Admin Law). It is responsible for providing DND and CF authorities with legal advice and support in relation to military justice, administrative law and personnel matters. Through DLaw/MJP&R, DJAG/MJ&AL develops and advises on military justice policy and provides advice to the Canadian Forces Provost Marshal in relation to professional standards and military police policies. This directorate is also responsible to assist the JAG in carrying out his superintendence and review functions in relation to the military justice system and to support the production of the JAG's Annual Report. Work on the following major military justice initiatives consumed a large portion of the directorate's resources during the reporting year:

- legislative responses to the first independent review of the amendments made to the NDA in 1999 through Bill C-25 adopted on 11 June 1998;¹³
- amendments to the NDA in relation to the *Sex Offender Information Registration Act*;¹⁴
- comprehensive review of the *Military Rules of Evidence*; and,
- amendments to the NDA in relation to the DNA data bank legislation.

While DLaw/HR and DLaw/Admin Law are not directly involved in providing legal support in relation to military justice, it is through DLaw/HR that DJAG/ MJ&AL provides legal support for the development and implementation of complementary administrative policies that relate to the conduct and misconduct of personnel. During the reporting year, DLaw/HR has been heavily involved in amending the CF Drug Policy and with the restructuring of the Board of Inquiry process. Through DLaw/Admin Law, DJAG/MJ&AL provides legal support on purely administrative law issues and primarily to the CF Grievance authority.

13 R.S.C. 1998, c. C-35.

14 R.S.C. 2004, c. C-10.

Deputy Judge Advocate General/Operations (DJAG/Ops)

The DJAG/Ops organization comprises the Directorate of Law/Operations (DLaw/Ops), the Directorate of Law/International (DLaw/I) and the Directorate of Law/Intelligence and Information Operations (DLaw/I&IO) and is responsible for providing legal support in relation to each of these disciplines. As well, through DLaw/Ops, DJAG/Ops oversees all legal officers on deployed operations and through them provides deployed military police and deployed CF formations and units with legal advice on certain military justice issues. During the reporting year, DLaw/Ops has been restructured to address and complement the organizational changes related to CF Transformation.

Through DLaw/I, legal support is provided to the CF in relation to it exercising disciplinary jurisdiction over CF members and certain civilians while participating in operational activities outside Canada. This support includes providing advice on Status of Forces Agreements, Memoranda of Understanding and Diplomatic Notes relevant to the exercise of criminal and disciplinary jurisdiction over CF members and civilians in such settings.

Deputy Judge Advocate General/Regional Services (DJAG/Reg Svcs)

The DJAG/Reg Svcs organization is responsible to provide general legal support, including advice on military justice matters, to the chain of command at the National Defence Headquarters, which includes the national level Operational Commanders, the Environmental Chiefs of Staff and the Group Principals. The DJAG/Reg Svcs also oversees all regional AJAG and DJA offices. It is the legal advisors in these regional offices who provide advisory services to regular and reserve force units in relation to military justice issues including the conduct of investigations, the laying of charges, the disposal of charges and the referral of cases to courts martial.

Deputy Judge Advocate General/Chief of Staff (DJAG/COS)

DJAG/COS is responsible for the provision of military legal training for CF members through the Office of Military Legal Education in Kingston. Through the Directorate of Law/Training, DJAG/COS is also responsible for developing and delivering military justice

training, and in particular, certification and re-certification training for presiding officers. DJAG/COS also oversees all non-legal military staff and all civilian staff in the Office of the JAG.

Judge Advocate General Chief Warrant Officer (CWO)

The JAG CWO serves as an information contact between the JAG, the chain of command and non-commissioned members in respect of the administration of military discipline.¹⁵ This position ensures that the Office of the JAG has direct access to the knowledge and experience of senior non-commissioned members of the CF in relation to discipline. The JAG CWO performs a key role within the network of chief warrant officers and chief petty officers first class who are located in the regional AJAG offices as well as the DJA offices in Borden, Gaagetown, and Petawawa.

1.5 Department of National Defence/Canadian Forces Legal Advisor (DND/CF LA)

While the JAG is responsible to superintend the administration of military justice in the CF and to provide the Governor General, the Minister, the DND and the CF with legal advice in all matters related to military law, the 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 mandate. The staff of the DND/CF LA includes civilian lawyers from the Department of Justice Canada as well as military lawyers provided by the Office of the JAG. The Office of the DND/CF LA and the Office of the JAG cooperate to deliver seamless legal services to DND and the CF. The drafting and coordination of legislation and regulations relating to military justice is a collaborative effort between the Offices of the DND/CF LA and the JAG.

15 CWO Marius Dumont has been the JAG CWO since the inception of the position in 2001.

CHAPTER 2



Superintendence and Review of the Canadian Military Justice System

2.1 Introduction

A clear necessity for an effective and well-disciplined military force is the existence of a system of justice that provides the tools necessary to address breaches of discipline as quickly and effectively as possible. Military commanders require a mechanism for enforcing and maintaining discipline within their units to ensure that those under their command respond as required when so ordered.

Within the CF, the military justice system is two-tiered. Accordingly, commanders have the option of addressing breaches of discipline by court martial or by summary trial, which is a less formal and more rapid mechanism for reasserting discipline at the unit level.

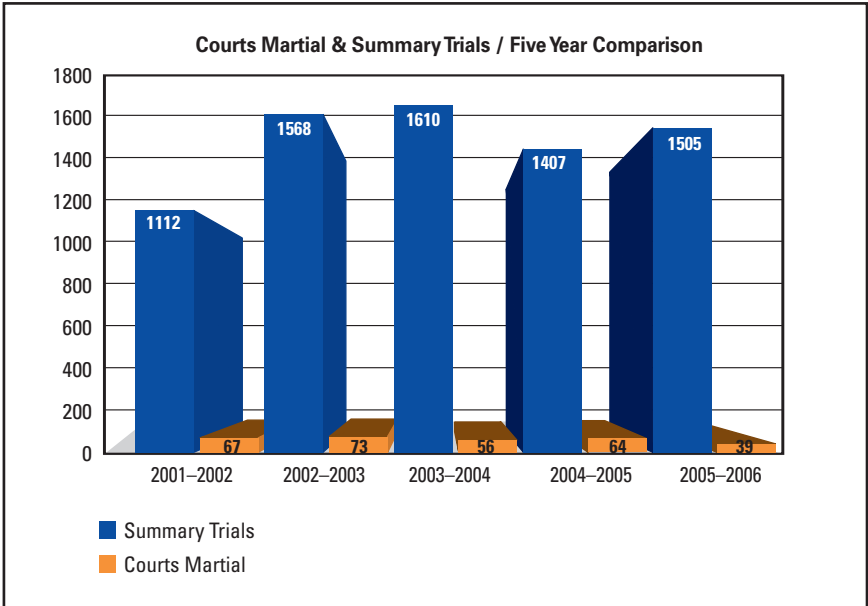
Under the *National Defence Act*¹, the JAG is responsible to superintend the administration of this two-tiered system of military justice. As such, the JAG is required to conduct regular reviews and report annually on the administration of military justice in the CF to ensure that the system continues to function appropriately. The following sections provide an analysis of the annual military justice review conducted in March 2006.²

1 R.S.C. 1985, c. N-5 [NDA].

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

2.2 Analysis of Summary Trial Statistics

Summary trials represent the first and by far the most utilized tier of the military justice system, as indicated below. When a member is charged with a service offence, a summary trial permits the case to be dealt with quickly and, as a general rule, at the unit or formation level.³



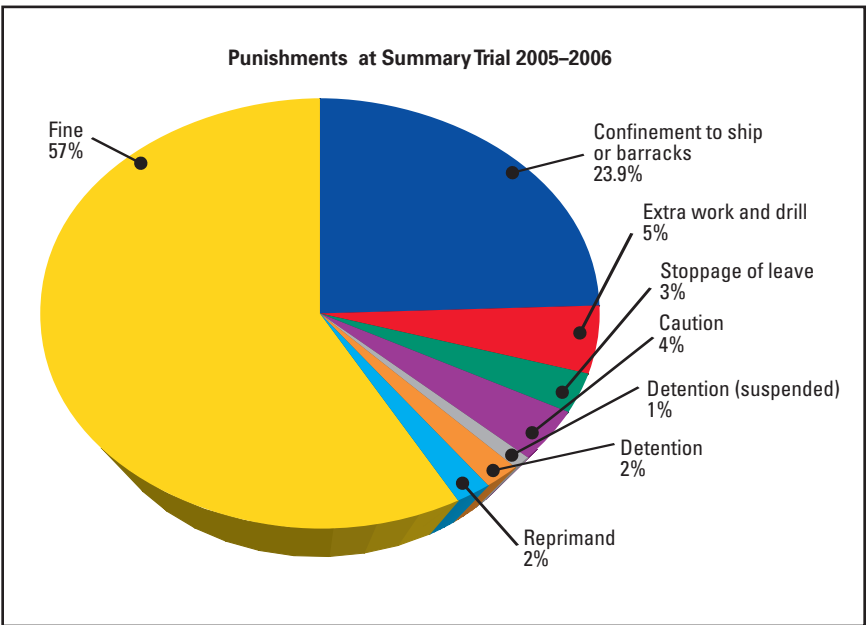
Summary Trials in 2005-2006

During the reporting period, 1505 summary trials were conducted. This figure discloses a slight increase in the number of summary trials from last year (7%), while it is down slightly from the four-year average of 1523 (1.2%). Despite these slight variations, the number of summary trials conducted over the past four years has remained relatively stable. The figures indicate a continuing level of confidence in the summary trial system, which may be attributable in part to the continuing emphasis being placed on the ongoing training of CF personnel at all levels regarding their rights and obligations under the Code of Service Discipline. Greater knowledge of the system may be generating a higher level of confidence among presiding

3 Summary trials are presided over by delegated officers, commanding officers or superior commanders.

officers to exercise their role as well as a greater confidence among accused members in the summary trial system.

As in previous years, minor punishments⁴ and fines account for the vast majority of the punishments issued at summary trials during the reporting period. The use of such punishments is certainly consistent with the fundamental goals of the summary trial system in that they permit the offender to remain an effective member of their unit while atoning for their breach of discipline. The breakdown of punishments given at summary trials in 2005-2006 is virtually identical to the breakdown from 2004-2005 based on percentages of the total number of charges.



During this reporting period, the average time that elapsed from the date that a charge was laid until its final disposition by summary trial was 11 days, which remains on par with past years.⁵ Part of the rationale for the summary trial is that it provides unit commanders with an effective tool for dealing with minor service offences in a

4 Minor punishments are: confinement to ship or barracks, extra work and drill, stoppage of leave and caution (*Queen's Regulations and Orders for the Canadian Forces [QR&O] article 104.13*).

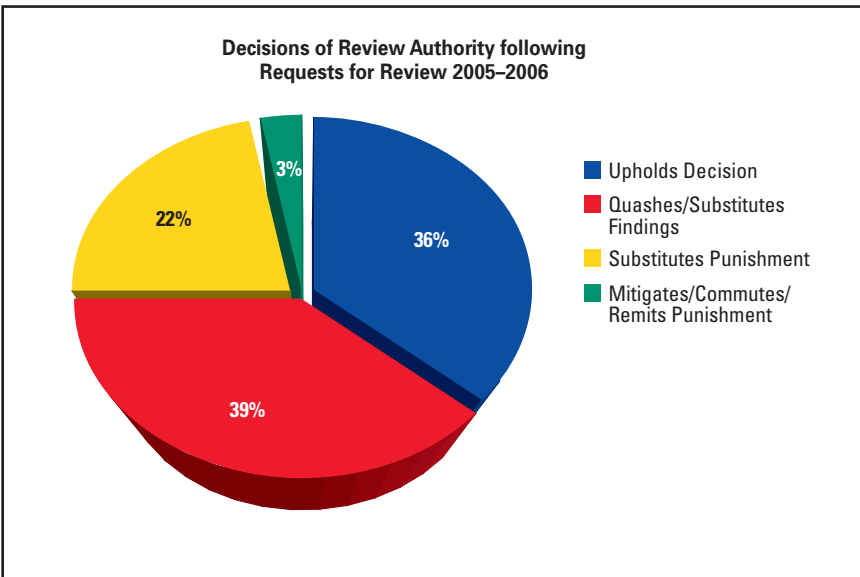
5 11 days in 2003-2004 reporting year, and 10 days in 2004-2005 reporting year.

prompt manner, and the figures for this reporting year indicate that the system continues to be meeting this objective.

Detailed statistics for summary trials conducted during the reporting period from 1 April 2005 to 31 March 2006 are included at Annex D.

Applications for Review of Summary Trials in 2005-2006

All offenders convicted at summary trial have the right to apply to the presiding officer's next superior in the disciplinary chain of command for a review of the finding, the punishment imposed, or both.⁶ Review authorities acting under QR&O article 108.45 are required under that provision to obtain legal advice before making any determinations on requests for review.⁷ The findings and punishments imposed at summary trial may also be reviewed on the independent initiative of a review authority.⁸ Persons convicted at summary trial can also request a judicial review from the Federal Court or from any provincial superior court in Canada; however during this reporting period no such applications were brought.



6 QR&O article 108.45.

7 *Ibid.* at article 108.45(8).

8 *Supra* note 1 at section 249 and QR&O article 116.02.

During the 2005-2006 reporting period, 36 convicted persons submitted a request for review. Of those applications, four related to the finding, 13 related to the sentence, and 19 related to both the finding and the sentence. Review authorities reversed or modified the finding, punishment or both in 23 of the 36 cases reviewed. The above pie graph depicts the final disposition of requests for review made during the reporting period.

2.3 Analysis of Courts Martial Statistics

While the summary trial system is designed to provide unit commanders the ability to deal with minor service offences in a prompt but fair manner, courts martial, which are the second and more formal of the two tiers of the military justice system, are normally reserved for the trial of more serious offences. Courts martial are more closely analogous to civilian criminal trials than summary trials, but maintain a distinctly military character. Each court martial is presided over by a military judge and prosecuted by legal officers from Canadian Military Prosecution Services, which is independent of the chain of command. In addition, the accused is entitled to representation by either defence counsel from the Director of Defence Counsel Services, at public expense, or by civilian legal counsel, at the accused's own expense.

Courts Martial in 2005-2006

During the 2005-2006 reporting year, 39 courts martial were conducted across the CF. This figure represents a 40% decrease from the number conducted last year. As enunciated in the Annual Report of the Director of Military Prosecutions (DMP), contained in Annex J, this decrease may be attributed to three possible factors. One factor is that over the past year there have been several trials that have required longer than the usual amounts of court time (six or less days) to complete. To illustrate this point, in 2004-2005, 94% of courts martial required six or fewer days in court, whereas in 2005-2006 only 85% of courts martial were completed in six or fewer court days. Of those cases requiring more than six days of court time, the average number of days required also increased from 9.7 in 2004-2005 to 12.3 days in the 2005-2006 reporting year.

Another factor cited is that one of the three military judges was unavailable to preside at any courts martial during the last quarter of the reporting period due to illness.

The final possible factor identified by the DMP for the decrease in courts martial during this reporting year is that in five cases a constitutional application was brought by the accused challenging the independence of military judges.⁹ As a result of these challenges, the Chief Military Judge revoked her assignment of the military judges designated to preside at a number of other courts martial, leaving a backlog to be dealt with once the constitutional issue was resolved.

Information relating to courts martial is publicly available on both the JAG and the Office of the Chief Military Judge websites.¹⁰ Detailed statistics for courts martial conducted during the reporting period are included at Annex E.

2.4 Military Justice Surveys

Surveys are an essential element of the military justice review and reporting framework discussed in subsection 2.1 above. They assist in providing a comprehensive overview of the state of the military justice system by complementing the information derived from other sources, such as the periodic reports of key actors within the system and specialized reports such as compliance audits. Although they are useful, surveys tend to be costly. Consequently, the Office of the JAG uses surveys conservatively and when possible employs them for more than one purpose, such as the Client Satisfaction Survey.

Interview Survey of Stakeholders

The Interview Survey of Stakeholders involves individual interviews with various participants in the military justice system, and normally include commanding officers, charge laying authorities and referral authorities. Interviews are usually conducted by an officer from the Directorate of Law/Military Justice Policy and Research or the JAG Chief Warrant Officer. The value of this

9 See the Annual Report of the DMP at Annex J at 7.

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

particular survey is the opportunity to identify important issues during an interview that would not be apparent from statistical information. This survey requires that JAG staff travel to meet commanding officers and spend a significant number of days out of the office. While the interview survey was not used during this reporting period, it is an important tool and will continue to be used in the future.

Client Satisfaction Survey

The Client Satisfaction Survey is conducted by means of questionnaires that are e-mailed to principal clients of the Office of the JAG. While this survey does not focus primarily on military justice issues it does collect responses from a target audience that includes persons who frequently utilize the military justice system. The JAG Client Satisfaction Survey was commenced on 20 March 2006, but was not completed during the reporting period.

KPMG/Bearing Point Survey on the Summary Trial Process

This professionally conducted survey constitutes the major military justice survey activity during 2005-2006. With the assistance of the Chief of Review Services, the Office of the JAG engaged the private sector consulting firm of KPMG and its affiliate BearingPoint, to conduct a CF-wide survey on the administration of summary trials.¹¹

This 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 growing body of statistical information against which the performance of the military justice system can be measured;
- contribute to the ongoing review of the NDA reforms; and,
- determine the effect of enhanced military justice training over the past six years.

The survey questionnaire targeted all commanding officers and other persons who were involved in the summary trial process during the reporting year such as accused persons, assisting officers, presiding officers, review authorities or charging authorities. To encourage the widest possible participation, CF-wide advertising preceded the launch of the survey. The survey was hosted on the

11 <http://www.bearingpointottawa.com/jag-websurvey06>.

BearingPoint website, and on 10 February 2006 it was made available to CF members via both the DND/CF Internet website and the Intranet.

In total, 775 responses to this year's survey were received. While this number represents a decrease of 114 responses from the 2004-2005 reporting year, the average number of responses for the past six years is 818. Accordingly, while below the average, the participation in this year's survey is within an acceptable range in relation to the six-year average. Despite minor fluctuations, the distribution of participants among each of the categories of respondents seems to have reached a consistent and stable level¹² with charging authorities continuing to provide the greatest number of respondents and review authorities continuing to provide the fewest.

The responses are detailed as follows:

Data Source	Response on paper	Response by e-mail	Number of responses	Share of responses
Accused	10	97	107	13.8%
Assisting Officer	7	149	156	20.1%
Presiding Officer	9	144	153	19.7%
Commanding Officer	5	167	172	22.2%
Review Authority	0	6	6	0.8%
Charging Authority	8	173	181	23.4%
Total	39	736	775	100%

Survey Results

The format of the 2006 survey on the summary trial process was based on versions of the survey questionnaire utilized in previous years. Changes to the survey format have been limited to incremental modifications over the six years that the survey has been conducted in order to compile responses that focus on the same or similar areas of inquiry and to create a historical record of service members' views on these issues.

¹² The number of accused who participated in the survey averaged only 8% of the total respondents in the first two years - 2001 and 2002 - but accused respondents have averaged 14% of the total respondents in the four surveys since 2002.

The survey measures adherence to the three tenets of fairness in the summary trial system as detailed below:

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

- a. Commanding officers are certified by the Office of the JAG to perform their duties in the administration of the Code of Service Discipline after having successfully completed the Presiding Officer Certification Training.
- b. Each unit maintains a Unit Registry of Disciplinary Proceedings, which is a registry that contains documents such as: Records of Disciplinary Proceedings, reports of investigation and decisions following the review of a summary trial.¹³
- c. Records of Disciplinary Proceedings are completed correctly, including the final disposition of all charges, and submitted for review to the local Assistant Judge Advocate General or Deputy Judge Advocate and, ultimately to the JAG.
- d. Legal advisors and review authorities give timely feedback.
- e. Requests from the public for access to the Unit Registry of Disciplinary Proceedings are handled appropriately.¹⁴

This year's survey indicates that units continue to report a high degree of compliance with the regulatory requirements relating to the administration of summary trials. Survey results also imply that commanding officers are, on the whole, complying with the regulations that require that they be qualified as Presiding Officers and that they maintain Unit Registries of Disciplinary Proceedings.

¹³ QR&O article 107.14.

¹⁴ *Ibid.* at article 107.16.

As in previous surveys, the level of satisfaction with the provision of legal advice by unit legal officers remains between 79% and 89%.

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.¹⁵
- c. Accused persons receive:¹⁶
 - (1) all information identified in the regulations;
 - (2) access to the evidence that will be used to support the charge; and
 - (3) a list of witnesses who will testify to support the charge.
- d. Accused persons are given the opportunity to exercise their right to put their case to the presiding officer before a finding is made.¹⁷
- e. Accused persons are given the opportunity to exercise their right to present evidence of mitigating considerations before sentence is passed.¹⁸

This year's results again demonstrated substantial compliance in all areas that act as indicators of the fair treatment of accused persons in the summary trial system. For example, of the respondents who were accused persons:

- a. 93.5% chose to be tried in their first official language.
- b. 77.8% of those who were offered an election to be tried by court martial felt they had received sufficient time to consult a lawyer. However, 91.7% of assisting officers who responded felt that the accused member had received sufficient time to consult a lawyer. It is

¹⁵ *Ibid.* at articles 107.17 and 107.18.

¹⁶ *Ibid.* at article 108.15.

¹⁷ *Ibid.* at article 108.20.

¹⁸ *Ibid.*

important to note that the survey does not disclose the reasons that the respondents felt they had received insufficient time to seek legal advice.

- c. 83.20% felt they were given access to all the evidence and 80.4% felt they had been informed of all witnesses who would testify against them. This is contrasted against the 98.1% of assisting officers who felt that the accused had received all the information that was relied on at his or her summary trial.
- d. 70.1% indicated that either they or their assisting officer were permitted to question witnesses at their summary trial. In contrast, 92.9% of assisting officers responded that they were permitted to question each witness.
- e. 74.8% of those found guilty at the summary trial responded that they had been given the opportunity to present evidence and make arguments to be considered in mitigation of the sentence. 87.2% of assisting officers indicated that they had assisted the accused in preparing arguments or evidence to be presented in mitigation of the sentence.

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.

Over the past four reporting periods, concerns have been raised relating to the low level of awareness among accused respondents of their right to seek a review of the findings and the sentence passed by the presiding officer. Attempts to increase awareness through military justice training and the distribution of CF publications such as the *Code of Service Discipline and Me* and the *Guide for Accused and Assisting Officers* have had limited success.¹⁹ This year's results indicate that a marginally lower number of former accused persons who responded were aware

¹⁹ These publications can be found in PDF at:
http://www.forces.gc.ca/jag/training/publications/CSD_ME_e.pdf and
[http://www.forces.gc.ca/jag/training/publications/GuideAccusedAssistingOfficers\(Bilingual\).pdf](http://www.forces.gc.ca/jag/training/publications/GuideAccusedAssistingOfficers(Bilingual).pdf).

of this right as compared to last year²⁰, although the figures are still 11.4% higher than in any year prior to 2005.²¹ Also important to note are the responses from assisting officers concerning awareness of the right to seek review as it is their responsibility to so inform accused persons. Compared to 77% of assisting officers who stated in 2000 that they had informed their accused of the right to request review, this year's survey indicates that 92% of assisting officers have fulfilled their obligation in this regard.

The right to seek a review of a summary trial is an important element of the process and, as such, it will continue to be a significant concern for the Office of the JAG to determine how best to continue to increase the awareness of accused members, commanding officers and presiding officers of this right.

Analysis of Survey Results

This year's survey builds on the information obtained from the preceding five annual surveys. Given the nature of these surveys, the information gathered serves only as a rough indicator of issues and potential problem areas. Further information must be gathered to confirm any trends.

The main issues that have been followed over the past number of years include the importance of the role of education and training of all persons involved in the military justice system, the importance of the role of the assisting officer, concerns over the need for the provision of prompt legal advice, the need for full disclosure of evidence prior to summary trials, and the need for accused persons to know and understand their right to seek review after a summary trial. The Office of the JAG will continue to monitor the administration of military justice to ensure all members are treated fairly and in accordance with the law.

20 57.9% of respondents in 2006 were aware of the right to request a review of the findings and decision at summary trial as compared to 62.4% who were aware of this right in 2005.

21 See the 2006 Survey on the Summary Trial Process at note 11.

2.5 Five Year Review of the Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts²²

In the aftermath of the CF deployment to Somalia, and the various inquiries and reports that were generated as a result, significant amendments to the NDA were made in 1998 by Bill C-25. The changes to the military justice system effected by Bill C-25 were profound. In order to assess the efficacy of these changes, section 96 of Bill C-25 required that an independent review of the provisions and operations of the Bill be conducted within five years of that Act receiving Royal Assent. Pursuant to this requirement, the Minister appointed the Right Honorable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, to conduct the review as the Independent Review Authority. Former Chief Justice Lamer submitted his report on the provisions and operation of Bill C-25 (the "Lamer Report") to the Minister on 3 September 2003, and the Minister tabled the report in Parliament on 5 November 2003.²³

The Government of Canada's legislative response to the recommendations made in the Lamer Report was introduced in Parliament on 27 April 2006 by the Minister as Bill C-7, *An Act to Amend the National Defence Act*.²⁴ Highlights of the military justice amendments proposed in the Bill include:

- Strengthening the provisions of the NDA relating to the independence of military judges, specifically by providing for security of tenure of military judges until retirement, as well as enhancing the jurisdiction of military judges to deal with pre-trial issues;
- Increasing the timeliness and flexibility of the system by providing for appointment of part-time military judges to a Reserve Force Military Judges Panel;
- Modernizing and enhancing the sentencing provisions of the Code of Service Discipline by providing a more flexible range of dispositions including absolute discharges, intermittent sentences and restitution orders. A greater

22 R.S.C. 1998, c. C-35 [*Bill C-25*].

23 The Lamer Report may be accessed online at:
www.forces.gc.ca/site/reports/review/en/report_e.pdf.

24 1st Sess., 39th Parl., 2006.

voice will also be given to victims by providing for the use of victim impact statements at courts martial;

- Requiring the unanimous decision of a panel at a General or Disciplinary Court Martial in order to convict or acquit an accused; and,
- Lastly, articulating the fundamental purposes, principles and objectives of sentencing in the military justice system in order to crystallize those concepts, statutorily affirm the *raison d'être* of a separate military justice system, and provide clear guidance to participants in the military justice system, including military judges and the appellate judges of the Court Martial Appeal Court of Canada and the Supreme Court of Canada, as to the principles which should be applied in sentencing in the military justice system. Unlike analogous statements in the civilian court context in the *Criminal Code*,²⁵ the NDA currently does not contain a succinct summary of sentencing principles to be applied by service tribunals.

2.6 Committees on Military Justice

The Military Justice Stakeholders' Committee

The Military Justice Stakeholders' Committee provides a forum for high-level discussion of strategic issues relating to the military justice system. The Chief Justice of the Court Martial Appeal Court of Canada chairs the Committee. The other members are the Minister, the JAG, the CDS, the Vice Chief of the Defence Staff, the Director of Defence Counsel Services, the DMP, the Canadian Forces Provost Marshal and the Chief Military Judge.

The Committee met on 2 May 2005. On that occasion, the members received an overview of the current legislative amendments affecting the NDA, including those introduced by the following bills:

- Bill C-10, *An Act to amend the Criminal Code (Mental Disorder) and to Make Consequential Amendments to other Acts*,²⁶ and,
- Bill C-13, *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act*.²⁷

25 R.S.C. 1985, c. C-46.

26 R.S.C. 2005, c. C-22.

27 R.S.C. 2005, c. C-25.

The members of the Committee were also briefed on a number of large military justice projects being undertaken at that time including the First Five Year Review of the amendments made to the NDA by Bill C-25 in 1998, the possible amendment of the NDA to allow the application of the *Sex Offender Information Registration Act*²⁸ within the military justice system, the revision of the *Military Rules of Evidence* (MRE) and the electronic notification and publication of the QR&O.

The possibility of establishing a committee to examine the revision of the Court Martial Appeal Court of Canada rules was also discussed during this year's meeting. The committee members agreed to discuss this issue further at the next meeting. A specific date for the next meeting of the Committee was not determined at the close of the last meeting; however, members agreed that it would be decided by informal consultation.

The CF Code of Service Discipline Committee

The CF Code of Service Discipline Committee is a forum where users of the military justice system can discuss matters of practical concern. It also provides an opportunity for the JAG to obtain input from senior leaders on broad policy issues. The Committee is co-chaired by the CDS and the JAG and its members include the senior leadership of the CF (officers as well as chief warrant officers and chief petty officers first class) and other key players in the military justice system, such as the DMP and the Canadian Forces Provost Marshal.

The Code of Service Discipline Committee met on 30 June 2005, and was offered an overview of the current legislative amendments affecting the NDA including:

- Bill C-10, *An Act to amend the Criminal Code (mental disorder) and to make consequential amendments to other Acts*,²⁹
- Bill C-13, *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act*,³⁰ and,

28 R.S.C. 2004, c. C-10.

29 *Supra* note 26.

30 *Supra* note 27.

- Bill S-39, *An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act*.³¹

Further briefings and discussions dealt with the following subjects:

- the revision of the MRE;
- the 2004-2005 JAG Annual Report to the Minister; and,
- the First Five Year Review of the amendments made to the NDA by Bill C-25 in 1998 along with the progress made to implement those recommendations.

The Committee agreed that the issue of assisting officer training was one of great importance and endorsed a proposal to enhance the existing in-service training.

The JAG Advisory Panel on Military Justice

The mandate of the JAG Advisory Panel is to review new military justice initiatives and provide an external perspective before they are implemented. The structure of the panel ensures that the military justice system has the benefit of the ideas and experience of the civilian criminal justice community. Therefore, the panel consists of noted experts Mr. Justice Walter Goodfellow,³² Maître Daniel Bellemare, Q.C.,³³ Maître Élise Groulx,³⁴ Dr. Ian Holloway,³⁵ and Mr. Eugene Meehan, Q.C.,³⁶ each of whom brings a different perspective on criminal law.

The Advisory Panel last met at the Office of the JAG on 27 October 2005. The meeting focused on a review of specific evidentiary issues relevant to the revision of the MRE. The panel members had the opportunity to express their views on all the issues, which were invaluable in finalizing the draft document.

31 1st Sess., 38th Parl., 2004-2005.

32 Superior Court judge.

33 Assistant Deputy Attorney General for criminal law in the Department of Justice Canada.

34 President of the International Criminal Bar and President of the International Criminal Defence Attorneys Association.

35 Dean and Professor of Law at the University of Western Ontario Faculty of Law.

36 Partner in the Ottawa office of Lang Michener and former President of the Canadian Bar Association.

CHAPTER 3



Judge Advocate General Initiatives

3.1 Introduction

Pursuant to the *National Defence Act*,¹ the JAG is responsible for the superintendence of the administration of military justice within the CF.² The JAG has the further statutory responsibility to conduct regular reviews of the military justice system and to report to the Minister on an annual basis on the administration of military justice. To fulfill these statutory duties, the JAG monitors the progress of the various initiatives undertaken to enhance the military justice system.

This chapter synthesizes the status of military justice initiatives in the following areas:

- statutory and regulatory changes;
- policy guidance promulgated by the JAG during the reporting period;
- military justice education and training; and,
- other initiatives undertaken during the 2005-2006 reporting period.

1 R.S.C. 1985, c. N-5 [NDA].

2 *Ibid.* at sections 9.2 and 9.3.

3.2 Statutory Amendments

***Bill C-10, An Act to amend the Criminal Code (Mental Disorder) and to make consequential amendments to other acts including the National Defence Act*³**

Bill C-10 was first introduced in the House of Commons on 8 October 2004, and received Royal Assent on 19 May 2005. The principal purpose of this Bill was to amend the provisions in the *Criminal Code*⁴ and other Acts, including the NDA, that relate to accused persons found unfit to stand trial or not criminally responsible on account of mental disorder. These amendments effected a number of changes including expansion of the powers of the provincial and territorial review boards that decide on the detention, supervision and release of mentally disordered accused persons. With respect to any accused who is permanently unfit to stand trial, the amendments allow courts to conduct inquiries and order a judicial stay of proceedings when the accused poses no threat to public safety. The amendments related to the issuance of stays of proceedings brought the statutory provisions in line with the principles set out by the Supreme Court of Canada in its 2004 decision in *R. v. Demers*.⁵ The majority of the provisions in Bill C-10 came into force on 19 May 2005, and the remaining provisions came into force on 2 January 2006.

***Bill C-13, An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act*⁶**

Bill C-13 was first introduced in the House of Commons on 15 October 2004, and received Royal Assent on 19 May 2005. The principal purpose of this Bill was to amend the *Criminal Code* and the NDA in respect of the taking of bodily substances for forensic DNA analysis and the inclusion of DNA profiles in the national DNA data bank. In particular, it added offences for which a DNA sample could be taken, provided for the review of defective DNA data bank orders, compelled offenders to appear at a specified time

3 R.S.C. 2005, c. C-22 [*Bill C-10*].

4 R.S.C. 1985, c. C-46.

5 [2004] 2 S.C.R. 489.

6 R.S.C. 2005, c. C-25 [*Bill C-13*].

and place to provide a DNA sample, and allowed for a DNA data bank order to be made after the sentence has been imposed. While some of the provisions in this Bill came into effect on 19 May 2005, the majority have not yet been proclaimed into force.

Bill C-72, An Act to amend certain Acts in relation to DNA Identification⁷

On 02 November 2005, Bill C-72 was introduced in the House of Commons for the purpose of making a number of technical amendments and corrections to those amendments made in Bill C-13 that had not yet been proclaimed into force. Bill C-72 had been referred to the Standing Committee on Justice, Human Rights Public Safety and Emergency Preparedness when Parliament dissolved on 29 November 2005. As a result, Bill C-72 died on the Order Paper and did not proceed further in the legislative process.

Bill S-39, An Act to amend the National Defence Act, the Criminal Code the Sex Offender Information Registration Act and the Criminal Records Act⁸

On 15 December 2004, the *Sex Offender Information Registration Act*⁹ came into force and involved changes to the *Criminal Code* which empowered courts to order offenders convicted of designated sexual offences to report and register in the newly established National Sex Offender Registry. Similar amendments were not made to the NDA at that time. On 07 June 2005, Bill S-39, which proposed amendments to the NDA to mirror the provisions contained in the *Criminal Code* in relation to the SOIRA, was introduced in the Senate. The proposed amendments would give courts martial the authority to order offenders convicted of a designated sexual offence at court martial to register in accordance with the SOIRA. Bill S-39 also proposed certain amendments to the *Criminal Code* and the SOIRA to enhance the administration and enforcement of the current registration scheme. Bill S-39 was being examined by the Senate Standing Committee on Legal and Constitutional Affairs when Parliament dissolved on 29 November 2005, and as a result, Bill S-39 died on the Order Paper and did not proceed further

7 1st Sess., 38th Parl., 2004-2005 [*Bill C-72*].

8 1st Sess., 38th Parl., 2004-2005 [*Bill S-39*].

9 R.S.C. 2004, c. C-10 [*SOIRA*].

in the legislative process. It is important to note that this Bill has subsequently been re-introduced in the Senate with small modifications on 25 April 2006, as Bill S-3.¹⁰

Bill C-7, An Act to Amend the National Defence Act¹¹

As discussed in chapter 2, Bill C-7, which contains the legislative response to the recommendations made in the Lamer Report,¹² was tabled in Parliament on 27 April 2006. The amendments proposed in Bill C-7 respond to recommendations contained in the Lamer Report in relation to four key areas: the independence of military judges; the appointment of part-time military judges; the modernization of sentencing provisions in the NDA; and, the principles and objectives of sentencing.

3.3 Changes in Regulations

Electronic Publication and Notification of the Queen's Regulations and Orders for the Canadian Forces (QR&O)

On 6 December 2005, the Governor in Council created article 1.22 of the QR&O thereby making the Portable Document Format (PDF) version of the QR&O, which is published on a defence website, the only official version of the regulation. On 14 December 2005, the QR&O were published online in their official form and article 1.22 of the QR&O came into force on 1 January 2006. Moreover, effective the same date, updates to the QR&O ceased to be disseminated in paper format. The principal effect of this regulatory change was to make changes to the method of amending and disseminating amendments to the QR&O in order to ensure that members are adequately informed of their duties and obligations.

Military Rules of Evidence (MRE)

The project to update the MRE (which govern the admissibility of evidence at courts martial) continued throughout this reporting period. A comprehensive working draft was completed in the third quarter of the reporting period, which was referred to the

10 1st Sess., 39th Parl., 2006.

11 1st Sess., 39th Parl., 2006 [*Bill C-7*].

12 The Lamer Report may be accessed online at:
www.forces.gc.ca/site/reports/review/en/report_e.pdf.

Department of Justice Regulation Drafting Section in December 2005 for preparation of the final draft. Upon completion of the drafting process, the MRE will be submitted to the Governor in Council for approval and issuance as regulations.

3.4 Judge Advocate General Policy Guidance

When necessary, the JAG issues internal policy guidance on issues relevant and applicable to the personnel in the Office of the JAG. During the 2005-2006 reporting period, the JAG issued the following new policy directive (see Annex H for full text of the new directive):

Directive 034/05 - Harassment Prevention and Resolution

In addition to general policy guidance applicable to all personnel, the JAG may issue general instructions or guidelines in writing concerning prosecutions or defence counsel services, pursuant to subsections 165.17(2) and 249.2(2) of the NDA, respectively. During the 2005-2006 reporting period, no such instructions or guidelines were issued to either the Director of Military Prosecutions or the Director of Defence Counsel Services.

3.5 Military Justice Education and Training

Introduction

The Office of the JAG is responsible for providing training on matters of military justice to the CF community at all levels. To ensure that all CF members are fully trained to the extent required by their position, training is targeted toward the distinct needs of three groups. The first group comprises all CF members. The training is provided on an ongoing basis in relation to their rights and obligations under the Code of Service Discipline (CSD). The second group includes personnel who are responsible to administer the summary trial process such as commanding officers, presiding officers and assisting officers. The training for this group includes certification and re-certification training for presiding officers. Finally, the third group of CF members who require targeted military justice training is legal officers. Training for legal officers is provided both within the Office of the JAG and by professional organizations outside of the CF.

General CF Training and Education

In order to ensure that CF members understand their rights and obligations under the military justice system, and their obligations within it, instruction on the CSD is provided at numerous points over the course of a military member's career. To accomplish this, legal officers have provided training products for delivery to new CF members at the CF Leadership and Recruit School and Royal Military College as well as to senior members during leadership and supervisory courses.

The Office of the JAG also produces the following publications and training aids related to military justice:

- *Military Justice at the Summary Trial Level*, which is the main source of information on the summary trial process;¹³
- *Guide for Accused and Assisting Officers*, which provides a source of information to help accused members decide whether to elect to be tried by court martial or summary trial;¹⁴
- *The Code of Service Discipline and Me*, which provides members with information regarding the CSD, its application and its impact on members;¹⁵ and,
- *Investigating and Charging*, which is intended to assist persons who investigate and/or lay charges under the CSD.¹⁶

All of these training aids and publications are distributed at CF bases as well as during military justice instructional periods and are available online from the JAG websites on the Intranet and the Internet.

Officer Professional Military Education (OPME) Military Law.

The Office of the JAG has, in cooperation with the Canadian Defence Academy, continued to produce the military justice component of the OPME program. The course is delivered to officers of the CF in two formats, either as a distance education course coordinated through Royal Military College, or as an on-site course conducted

13 http://www.forces.gc.ca/jag/training/publications/POCTManual_e.asp.

14 [http://www.forces.gc.ca/jag/training/publications/GuideAccusedAssistingOfficers\(Bilingual\).pdf](http://www.forces.gc.ca/jag/training/publications/GuideAccusedAssistingOfficers(Bilingual).pdf).

15 http://www.forces.gc.ca/jag/training/publications/CSD_ME_e.pdf.

16 http://www.forces.gc.ca/jag/training/publications/charging_and_investigating_e.pdf.

at different intervals and locales throughout the year. In 2005-2006, legal officers delivered 18 on-site OPME Military Justice courses which constitutes an increase of 225% over the 2004-2005 reporting year.

Training for the Administration of the Summary Trial System

Presiding Officer Certification Training (POCT)

The JAG is required to certify that all superior commanders, commanding officers and delegated officers are trained in the administration of the CSD at the summary trial level.¹⁷ The POCT was specifically designed to meet this requirement, and as such, it provides candidates with the tools necessary to discharge their duties in the administration of the CSD. During this reporting period, over 850 CF members have completed this training and received their certification.¹⁸

While POCT is primarily intended for the training of prospective presiding officers, this course is also beneficial to senior non-commissioned members (NCMs) who perform key roles in the maintenance of discipline within their units. As noted in Annex G, 24% of POCT participants this year were NCMs.

In 2005-2006, legal officers conducted 49 two-day POCT courses at 25 locations across and outside of Canada. Of these courses, 45 were conducted in English and four in French. For the benefit of reserve force personnel, eight courses were conducted on weekends. It should be noted that deployed legal officers also conducted two POCT courses overseas for CF personnel currently engaged in international operations.

Presiding Officer Re-Certification Test (PORT)

POCT certifications are valid for four years from the date of successful completion of the training. At the end of this period, re-certification may be achieved by either attending another POCT course or by completing the PORT.

The PORT is a randomly generated 90-minute online test that was launched in October 2003. Re-certification is achieved by

17 QR&O article 101.09.

18 See Annex G for complete POCT statistics.

successfully completing this test. Should a candidate receive a failing grade after attempting the online PORT, the officer is given the opportunity to rewrite the test after a suitable time delay. In the event of a second failure, the officer is then required to attend another two-day POCT course in order to be re-certified. During the reporting year, 354 personnel were re-certified by means of the PORT.

Some officers choose to be re-certified as presiding officers by re-attending the two-day POCT course. This option is favored by those officers who may not have performed presiding officer duties often or at all during the preceding four-year period.

Legal Officer Training and Education

Entry Level Training

Lawyers rarely have the opportunity to study military law at law school or during their respective bar admission courses. Therefore, in order to ensure that they are properly prepared to discharge their duties, all new legal officers must undergo a rigorous training program that includes self-study courses, in-class training, and on-the-job training. This training program was carefully designed to provide instruction in each of the three pillars of military law (military justice, military administrative law and operational law). With regard to military justice in particular, all legal officers at this stage are required to successfully complete the POCT, a basic level one week military justice course and to act as junior counsel in the prosecution or defence of an accused at court martial. Approximately six months to one year after the completion of the above basic level training components, new legal officers must take another week-long intermediate level military justice course.

Continuing Legal Education

In addition to the entry level training, the Office of the JAG actively promotes continuing legal education and, through the Directorate of Law/Training, provides the necessary funding for legal officers to attend courses, conferences, seminars and symposia relevant to the three pillars of military law. During the reporting period, legal officers participated in supplemental training and education programs relevant to military justice including courses on criminal law and advocacy training. Specifically, in July 2005, 13 legal

officers attended the 2005 Federation of Law Societies National Criminal Law Program in Winnipeg.

In addition, in October, the National Military Law Section of the Canadian Bar Association (CBA) conducted its annual section meeting in Ottawa. The meeting was well attended by both military and civilian lawyers who share a general interest in military law. Each year, following the CBA National Military Law Section meeting, the Office of the JAG conducts a two-and-a-half day continuing legal education workshop. While the themes of the workshops change from year to year, military justice issues are always allocated time on the workshop timetable. The military justice portion of this year's workshop focused on current legislative initiatives.

3.6 Communications & External Links

The JAG website has continued to serve as a convenient and publicly accessible source for key military justice documents as well as recent statistics concerning both summary trials and courts martial. Legislations and regulations applicable to military justice are accessible online and available for downloading. Among the key links that the public may wish to access is the website of the Chief Military Judge (<http://www.forces.gc.ca/cmj/>), which contains court martial schedules and other information. The main JAG link (<http://www.forces.gc.ca/jag/>) has information on military justice both at the summary trial and court martial levels, including an explanation of the JAG's responsibility to superintend the administration of the military justice system, the Annual Reports of the Director of Defence Counsel Services and Director of Military Prosecutions, an Assisting Officer training brochure and several military justice training publications. The Court Martial Appeal Court of Canada has its own website (<http://www.cmac-cacm.ca>).

3.7 Other Military Justice Initiatives

Comprehensive Information Management Program (CIMP)

Information regarding the law is the stock in trade of lawyers and, therefore, the ability to access that information in a timely manner is a professional requirement. In order to ensure that legal officers have access to the immense body of corporate knowledge that

exists within the office of the JAG regardless of their location in the world or the subject they are researching, it must be centrally managed and accessible. To respond to these requirements, the CIMP was developed to use technology to store, index and provide access to this information. Under this program, information will be managed in a disciplined and coordinated manner in order to optimize the value, quality and timeliness of JAG legal advice and services.

In the reporting year, the JAG CIMP achieved a number of benchmarks, moving it closer to completion: the CIMP launched and operated the first DND Intranet website coded in PHP, an open-source hypertext programming language, and the first drafts of the military justice index and of the operational law index were completed. The proposed completion date for the project is between the last quarter of 2009 and the first quarter of 2010.

Canadian Forces Military Law Centre (Military Law Centre)

Over the course of the past year, the Office of the JAG has explored the possibility of creating a Military Law Centre in Kingston, Ontario. The rationale for the Military Law Centre is to allow the Office of the JAG to centralize resources currently located in Ottawa and at the Royal Military College in Kingston, in order to meet all of the military law training needs of the CF in a coordinated manner and to reduce duplication of effort. Under the current plan the Centre will conduct professional development courses for legal officers as well as comprehensive training for CF and international military personnel in areas such as the law of armed conflict, international humanitarian law and operational law. Furthermore, the Centre would facilitate the continued development of leading edge training tools employing both conventional methods and new technologies.

CHAPTER 4



The Office of the Chief Military Judge

4.1 Introduction

The administration of courts martial in the CF is one of the key responsibilities fulfilled by the Office of the Chief Military Judge (CMJ). The Office of the CMJ was established in 1997 and is an independent unit of the CF. In general, the Office of the CMJ functions to ensure that courts martial take place in an effective manner without undue delay. The specific roles of the Office include providing military judges to preside over courts martial and to perform other judicial functions as provided under the *National Defence Act*¹, administering the convening of courts martial and the provision of court reporting services, and appointing military judges to sit as boards of inquiry under the NDA.

The Office of the CMJ comprises the military judges including the CMJ,² the Court Martial Administrator (CMA) and the court reporters.

4.2 Chief Military Judge

The Governor in Council is authorized by the NDA to designate one judge from among the appointed military judges to be the CMJ. The CMJ is the commanding officer of the Office of the CMJ and additionally holds the powers of an Officer Commanding a Command.

1 R.S.C. 1985, c. N-5 [NDA].

2 *Ibid.* at section 165.24.

4.3 Military Judges

In the military justice system, military judges preside over courts martial and perform other judicial functions as provided under the NDA.

Under the NDA, the Governor in Council may appoint as a military judge, an officer of the CF who is a barrister or advocate of at least ten years standing at the bar of any province in Canada.³ A selection process similar to that followed for other federal judicial appointments is utilized to assess applicants for appointment as a military judge. In making a recommendation to the Governor in Council, the Minister relies on the report of the Military Judges Selection Committee, which comprises five members representing the judiciary, the civilian bar and the military community.

Military judges are appointed for a five-year term, which is renewable upon the request of the military judge. Renewals are effected by the Governor in Council in accordance with the requirements established in the *Queens Regulations and Orders for the Canadian Forces* (QR&O) and are based on the recommendations of a Renewal Committee. The Renewal Committee comprises three individuals appointed by the Governor in Council from among the nominations made by the Chief Justice of the Court Martial Appeal Court of Canada, the Minister of Justice and the Minister.⁴

In the 2005 - 2006 reporting year, two military judges sought and were granted a renewal of their respective term of appointment. During the Fall of 2005, a Renewal Committee was constituted by the Governor in Council comprising the Honourable Mr. Justice Edmond P. Blanchard, the Honourable Mr. Justice Walter R.E. Goodfellow and Mr. Eugene Meehan, Q.C.. On 15 December 2005, the Governor in Council renewed the appointments of Colonel K. Carter, and Lieutenant-Colonel M. Dutil effective 10 January 2006 for a further five-year term.

The Military Judges Compensation Committee (MJCC) is established by regulation to assess the adequacy of the remuneration

3 For appointment; security of tenure and removal; re-appointment; and retirement age, see NDA section 165.21. For remuneration, see NDA section 165.22.

4 For more detail see QR&O article 101.15.

of military judges.⁵ The MJCC is composed of three part-time members appointed by the Governor in Council. The current MJCC members are the Honourable Peter Cory, Q.C., the Honourable Claire L'Heureux-Dubé, Q.C., and Dr. Ian Clark who were each appointed to their positions for a term of four years effective 1 September 2003.

On the basis of its last inquiry, the MJCC delivered a report to the Minister in May 2004.⁶ As a result of the recommendations contained in that report, the military judges received a 3.15% pay increase effective 1 September 2005. The MJCC is due to commence its next inquiry on 1 September 2007.

4.4 Court Martial Administrator (CMA)

The CMA is appointed pursuant to section 165.18 of the NDA. The CMA acts under the general supervision of the CMJ and is primarily responsible for convening courts martial when a charge is preferred by the Director of Military Prosecutions and to appoint panel members as required for General and Disciplinary Courts Martial.

5 QR&O articles 204.23 - 204.27.

6 The MJCC report may be accessed online at:
www.forces.gc.ca/site/reports/mjcc04/index_e.asp.

CHAPTER 5



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

5.1 Introduction

Under the *National Defence Act*¹, decisions made by courts martial can be subject to two levels of review by appellate courts. The first level of appeal available is to the Court Martial Appeal Court of Canada (CMAC). The CMAC is authorized under the NDA to consider appeals brought by either the Minister or an individual who is subject to the Code of Service Discipline in relation to those matters specified in sections 230 and 230.1 of the NDA. The second level of appeal available is to the Supreme Court of Canada (SCC). A decision of the CMAC can be appealed to the SCC by either the Minister or an individual subject to the Code of Service Discipline in the circumstances set out in section 245 of the NDA.

5.2 Powers of the CMAC and the SCC

The CMAC was established in the NDA in 1959 pursuant to the authority granted to the Parliament of Canada under section 101 of the *Constitution Act, 1867*, to create additional courts “for the better administration of the laws of Canada”². Amendments made to the NDA in 1991 altered the jurisdiction of the CMAC and made it more closely analogous to other civilian courts of criminal appellate jurisdiction. Since that time, the CMAC has held powers of

1 R.S.C. 1985, c. N-5 [NDA].

2 *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

disposition similar to those of any civilian appellate court: it can dismiss appeals, set aside convictions, order new trials, substitute findings or substitute findings of guilty for findings of guilty of another offence.³

In respect of the hearing and determination of an appeal from a decision of the CMAC, the NDA grants the SCC the same powers, duties and functions as those held by the CMAC with such adaptations and modifications as the circumstances may require.⁴

5.3 Judges

The CMAC is composed of not less than four judges of the Federal Court and such additional judges of a superior court of criminal jurisdiction as may be appointed by the Governor in Council.⁵ There are currently 62 members of the CMAC. The current Chief Justice is Mr. Justice Edmond P. Blanchard of the Federal Court, who was designated on September 17, 2004.

Appeals to the CMAC are heard by a panel of three judges. The NDA requires the Chief Justice of the CMAC to preside at each sitting of the court as a member of the panel, or to appoint an alternate. The other two positions on the panel are filled from among the remaining available members as designated by the Chief Justice. The decision of the majority of the panel constitutes the decision of the Court.

5.4 Appeal Committee⁶

Before 1999, individuals wishing to pursue an appeal to either the CMAC or the SCC had no opportunity to receive legal representation at public expense. This changed in 1999 with the establishment of the Appeal Committee, which is responsible for determining whether an appellant will be provided representation at public expense by the Director of Defence Counsel Services (DDCS).

3 *Supra* note 1 at sections 238-240.1.

4 *Ibid.* at section 245.

5 *Ibid.* at section 234.

6 For regulations relating to the Appeal Committee, see *Queen's Regulations and Orders for the Canadian Forces [QR&O]* article 101.21.

The Appeal Committee is a permanent committee consisting of two members: Colonel D.D. McAlea, who is appointed by the JAG, and Colonel D.A. (Retired) Fairbanks, who is appointed by the CDS. It is the function of the Committee to review each application and the accompanying submissions in relation to an appeal and decide whether the appeal has professional merit. If the two Committee members agree that an appeal has professional merit, the Committee will then approve the provision of legal counsel by the DDCS.

During the 2005-2006 reporting period, the Appeal Committee considered two applications. In both cases, the Committee approved the provision of legal representation at public expense.⁷ The Lamer Report⁸ made several recommendations to improve the functioning of the Appeal Committee, which have been accepted and which will be implemented in regulations.

5.5 CMAC Website

In 2001, the CMAC developed a website to provide a source of information for the public in relation to its activities. Information on the history and role of the CMAC as well as links to the court calendar, CMAC decisions, press releases, bulletins and notices to the profession can all be accessed on the website.⁹

In August 2005, the CMAC augmented its website with the introduction of a new searchable database. This database contains a docket query search function, which allows members of the public to search the contents of each CMAC file and to view all the documents that have been filed with the Court in relation to a specific case. The accessible documents include notices of motion, affidavits and a summary of the decision reached in each case. This new tool functions to both assist members of the legal community and make the appeal process at the CMAC more transparent.

7 These two appeals were not heard during the reporting period. In one case, the CMAC decided that the appeal had no professional merit and, in effect overturned the decision of the Appeal Committee.

8 The Lamer Report may be accessed online at: www.forces.gc.ca/site/reports/review/en/report_e.pdf.

9 The CMAC Website may be accessed at: http://www.cmac-cacm.ca/index_e.html.

5.6 CMAC and SCC Decisions

During the reporting period, four appeals were argued before the CMAC. In each case, the appellant was a CF member convicted at court martial. In three of these cases both the legality of the finding and the severity of the sentence were appealed. The fourth was a motion to admit new evidence. CMAC judgments for the reporting year are summarized in brief below and are also discussed at Annex F and in the report of the Director of Military Prosecutions (DMP) at Annex J. No appeals relating to the military justice system were heard by the SCC in this reporting period.

Corporal M. A. Rose v. The Queen¹⁰

On 27 February 2004, Corporal M.A. Rose was tried and found guilty at Standing Court Martial of common assault and breaking, entering and committing an assault. The court martial sentenced Corporal Rose to 14 days detention. Corporal Rose appealed the legality of this finding as well as the severity of the sentence.

On appeal, the appellant argued that the military judge had improperly subjected the evidence of the appellant to a higher standard of scrutiny than he had applied to the evidence of the complainant even though the complainant's evidence called for special scrutiny on several grounds. Moreover, the appellant submitted that the military judge misapprehended evidence that supported the appellant's defence. In particular, the appellant argued that the military judge rejected evidence of the appellant that supported his defence and which was corroborated by the complainant, and that the military judge did not consider whether to give any weight to inconsistent statements made by the complainant.

The CMAC considered all the evidence in the case and agreed that the military judge misapprehended key evidence. The CMAC also found that the factual errors and the error of approach adopted by the trial judge related to the critical issues of the appellant's credibility and reasonable doubt. As a result, the CMAC was not persuaded that the verdict would have been the same had the errors not been made. Consequently, the Court allowed the appeal and ordered a new trial. The DMP has decided not to proceed further with the charges in this case.

10 [2005] CMAC-479.

***Corporal M.J. Kemp v. The Queen*¹¹**

On 8 April 04, Corporal M.J. Kemp was tried and found guilty at Standing Court Martial of disobedience of a lawful command and of conduct to the prejudice of good order and discipline. The court martial sentenced Corporal Kemp to a severe reprimand and a \$1000 fine.

Before the CMAC, Corporal Kemp sought the admission of new evidence that fell into two categories: the first was evidence that was being tendered for the purpose of demonstrating that the military judge erred in making findings with respect to the dates of certain events. The second category constituted medical evidence that was tendered in support of mitigating the sentence imposed by the military judge. The CMAC was not persuaded that the evidence sought to be introduced related to a decisive issue in the trial or that it would, when taken with other evidence adduced at the trial, be expected to have affected the result. Therefore, the Court dismissed the application to adduce evidence pertaining to dates. With respect to the issue of the medical evidence sought to be adduced for the purpose of mitigating the sentence imposed, that matter was reserved and counsel may address that evidence. Should the Court later rule that the evidence may not be admitted, the arguments based on that evidence will be disregarded.

***Lieutenant N.E. Nystrom v. The Queen*¹²**

On 13 August 2004, Lieutenant N.E. Nystrom was found guilty at Standing Court Martial of sexual assault. The court martial sentenced Lieutenant Nystrom to 45 days imprisonment. Lieutenant Nystrom appealed the finding on two grounds. The first ground related to the legality of the military judge's rejection of the appellant's preliminary objection to the constitution of the court martial. The basis of the objection was that section 165.14 of the NDA, which grants the DMP the authority to decide on the type of court martial that will hear a case, is unconstitutional. As part of this objection, the appellant also submitted that the Chief Military Judge, who presided over the court martial, should not adjudicate the objection on the basis that since she had once held the position

11 [2005] CMAC-481.

12 [2005] CMAC-483.

of DMP there was a reasonable apprehension that she would be unable to make an impartial ruling on the matter. The second ground of appeal related to the legality of the finding on the basis that the military judge had misapprehended the evidence.

The CMAC allowed the appeal on the legality of the finding and found that the military judge had misapprehended material parts of the evidence that were fundamental to her reasoning and which played an essential role in the resulting conviction. Furthermore, the CMAC determined that the misapprehension of evidence in combination with certain errors made in assessing the contradictions in the complainant's testimony, rendered the verdict unreasonable.¹³ The Court set aside the decision of the Standing Court Martial and entered a finding of not guilty.

Having allowed the appeal based on the legality of the finding, the CMAC was not required to make a finding on the first ground regarding the constitutionality of section 165.14 of the NDA. Nevertheless, the Court did express concerns regarding the discretion conferred on the DMP and how that discretion has been exercised. In particular, since it is the prosecution and not the accused who can choose the mode of trial, the Court noted that a CF member charged with an offence in the military justice system would not have the same opportunity to select the mode of trial that may exist when charged for the same offence in the civilian criminal justice system. According to the Court, the choice of mode of trial is tied to the ability of an accused to make a full answer and defence to the charge and control the conduct of his/her defence. Finally, the Court expressed concern with how the discretion under section 165.14 of the NDA was being exercised in that from 1 September 1999 to the date of the decision, only four courts martial had been preferred to be heard by other than a Standing Court Martial.

Second Lieutenant D. Baptista v. The Queen¹⁴

On 4 November 2004, Second Lieutenant D. Baptista was tried and found guilty at Standing Court Martial of forgery, uttering a forged document and two counts of absence without leave. Following

¹³ *Ibid.* at paragraphs 62-63.

¹⁴ [2006] CMAC-485.

the finding of guilt, the court martial sentenced Second Lieutenant Baptista to 30 days imprisonment and dismissal from the CF. Second Lieutenant Baptista filed an appeal with the CMAC with respect to the legality of the finding and applied for leave to appeal the severity of the sentence.

On 27 January 2006, the CMAC dismissed the appeal in relation to the legality of the finding but granted leave to appeal the severity of the sentence. The Court found that the military judge had erred in law by imposing the sentence of imprisonment on the basis that imprisonment should only be imposed as a last resort. Consequently, the Court set aside the sentence and substituted a severe reprimand and a fine of five thousand dollars.

CHAPTER 6



Conclusion

In light of the dual role prescribed for the JAG in the NDA as legal advisor to the Governor General, the Minister, the Department of National Defence and the CF on all matters relating to military law, and as superintendent of the administration of military justice in the CF, the Office of the JAG is functionally responsible for ensuring respect for the rule of law in the CF. In no area of military law is this more important than in relation to the military justice system. Through the military justice system, the military chain of command is provided the tools for maintaining discipline while at the same time striking the necessary balance between the need for a disciplined force and the right of individual members to be treated fairly and appropriately. This report provides a snapshot of the military justice system during the 2005-2006 reporting period along with a synopsis of the activities and initiatives relating to military justice that were undertaken by the Office of the JAG, the views and opinions of CF members in respect of the military justice system, and statistical data to reflect the level of activity experienced within the military justice system itself. It reflects the hard work and dedication that have been devoted over the last year to maintaining the military justice system as an effective and relevant tool, and the confidence in that system that continues to reside in CF members.

The superintendence of the administration of military justice requires that regular and ongoing reviews of the military justice system be conducted. The aims of these reviews are twofold: first, to ensure that military justice is administered in the CF in an appropriate and fair manner that fulfills the disciplinary requirement of the CF; and, second, to ensure that the military justice system remains in step with the evolution of Canadian law and continues to reflect societal values. The conduct of regular reviews is particularly important in the context of the military justice system given the significant role performed by individuals who are not legally trained and whose expertise lies in other areas. The results of this year's annual survey, when read in conjunction with the summary trial and court martial statistics for the reporting period, indicate that the military justice system is continuing to function well. As indicated in Annex I, the DDCS has expressed several concerns relating to the provision of defence counsel services and the operation of the court martial system. It is expected that these will be the subject of discussion amongst the relevant actors in the military justice system during the next reporting period. Despite these concerns, it is apparent that the summary trial system is meeting the needs of the CF as the principal means of dealing with breaches of discipline at the unit level. In addition, and perhaps more importantly, the members affected by the summary trial system perceive the system to be fair and just. Despite an anomalous decrease in the number of courts martial conducted and an increase in the backlog of cases pending, the reasons for which are discussed in chapter 2 and Annex J, the number of applications for disposal of charges during this reporting year remained consistent with previous years. In addition, the average number of days from the commencement to termination of proceedings remained stable.¹ This, in conjunction with the other evidence outlined in chapter 2, indicates that the court martial system is continuing to satisfy the requirements of the CF.

The 2005-2006 reporting period has been a particularly busy one for the development and evolution of the military justice system. In addition to the significant amount of legislative change that was advanced during the past year, notable regulatory amendments

1 Annual Report of the Director of Military Prosecutions found at Annex J.

were also undertaken. The most significant legislative initiative, in terms of the extent of change proposed for the military justice system, was Bill C-7,² which represents the legislative response to the first independent review of the military justice system mandated by Bill C-25 and conducted by former Chief Justice Lamer.³ A great deal of work has gone into reviewing former Chief Justice Lamer's recommendations⁴ and developing the legislative package that has been introduced in Parliament. Over the past year we have also witnessed the coming into force of amendments to the NDA that relate to accused persons found unfit to stand trial or not criminally responsible on account of mental disorder as well as the introduction of additional amendments that relate to both the DNA Data Bank Legislation⁵ and the *Sex Offender Information Registration Act*.⁶ Significant amendments to the *Queen's Regulations and Order for the Canadian Forces (QR&O)*⁷ were made by the Governor in Council concerning the electronic notification and publication of the QR&O. The policy review of the *Military Rules of Evidence* has been completed. These initiatives have helped to ensure that military justice remains current with advancements in the law and relevant to the operational effectiveness of the CF.

2 *An Act to Amend the National Defence Act*, 1st Sess., 39th Parl., 2006.

3 *An Act to amend the National Defence Act and to make consequential amendments to other Acts*, R.S.C. 1998, c. C-35.

4 The Lamer Report may be accessed online at:
www.forces.gc.ca/site/reports/review/en/report_e.pdf.

5 Bill C-13, *An Act to amend the Criminal Code, the DNA Identification Act and the National Defence Act*, R.S.C. 2005, c. C-25.

6 Bill S-39, *An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act*, 1st Sess., 38th Parl., 2004-2005.

7 QR&O 1.22 was created.



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*¹ 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.² 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,³ the Parliament of Canada enacted

1 Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

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

3 *Constitution Act, 1867* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c.11, subsection 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.

the *National Defence Act* (NDA),⁴ 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 of Canada), and authorizes the Chief of the Defence Staff (CDS) to issue orders and instructions to give effect to the decisions and the directions of the Government of Canada and the Minister of National Defence.⁵ 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 for the Canadian Forces* (QR&O), Canadian Forces Administrative Orders (CFAO), and the Defence Administrative Orders and Directives (DAOD).

Volume II of QR&O, which covers disciplinary matters, prescribes in greater detail 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.⁶ All members of the CF have a duty to be familiar with the orders

Why does the Canadian Forces have its own justice system?

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

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

4 R.C.S. 1985, c. N-5, [NDA] s. 4.

5 *Supra* note 4 at subsection 18(2).

6 QR&O articles 4.12 and 4.21.

and instructions issued by their chain of command.⁷ Failure to comply with such orders and instructions can lead to charges under the Code of Service Discipline (contained in the NDA), which are disposed of in the military justice system.

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

A.3 The Military Justice System

Code of Service Discipline

Comprising approximately 50 percent of the NDA,⁸ 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.⁹

Not all offences can be charged and tried in the military justice system.¹⁰ 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 to 283 of the *Criminal Code*.¹¹

7 QR&O articles 4.02 and 5.01.

8 *Supra* note 4 at section 2. The Code of Service Discipline consists of Part III of the NDA.

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

10 *Ibid.* at section 70.

11 Sections 280–283 of the *Criminal Code*, L.R.C. 1985, ch. C-46, relate to the abduction of children from a parent or guardian.

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.¹² Similarly, jurisdiction under the NDA may also be extended when an offence is committed contrary to foreign law.¹³

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,¹⁴ 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.¹⁵ 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.¹⁶ 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.¹⁷

12 *Supra* note 4 at section 130. Such offences may become service offences.

13 *Ibid.* at section 132. 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.

14 *Ibid.* at sections 73–129.

15 *Ibid.* at subsection 60(2) and section 69.

16 *Ibid.* at subsection 69(a).

17 *Ibid.* at subsection 69(b).

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.¹⁸ 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* or other federal legislation;
- when a matter involves a senior officer (rank of major or above, or a civilian equivalent) or commanding officer as either the subject of investigation or victim; or
- when an offence arises out of a breached relationship of trust.

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

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

¹⁸ QR&O article 106.02.

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.¹⁹

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.²⁰

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.

¹⁹ QR&O article 107.015(2).

²⁰ QR&O article 107.02.

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.²¹

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.²²

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.²³ The commanding officer

21 See note to QR&O article 107.02.

22 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 article 108.17.

23 QR&O article 107.11.

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.²⁴

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.²⁵ If, after reviewing the decision and reasons, the CFNIS considers that the charge should go forward, the CFNIS may refer the charge directly to a referral authority for disposal, who must then refer the charge to the DMP.²⁶ When circumstances warrant, investigators of the Military Police and the CFNIS may also lay charges in the civilian courts.²⁷

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.

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

25 QR&O article 107.12(1).

26 QR&O article 107.12(3).

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

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”²⁸ means either a summary trial or a court martial.²⁹ 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.

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 and 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.³⁰

Once jurisdiction exists to conduct a summary trial,³¹ 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

28 *Supra* note 4 at section 2.

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

30 QR&O article 108.02.

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

case to be tried and disposed of in the unit, by members of the unit. Summary trials are presided over by commanding officers,³² delegated officers³³ or superior commanders.³⁴ 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.³⁵

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

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

In addition, before the accused makes an election under section 108.17 of the QR&O (*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

32 *Supra* note 4 at paragraph 163(1)(a). Commanding officers may try accused persons who are either an officer cadet or below the rank of warrant officer.

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

34 *Ibid.* at paragraph 164(1)(a). Superior commanders may try officers below the rank of lieutenant-colonel or non-commissioned members above the rank of sergeant.

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

may try summarily.³⁶ 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,³⁷ or both.³⁸ The findings and punishment imposed at summary trial may also be reviewed on the independent initiative of a review authority.³⁹ Review authorities acting under QR&O article 108.45 must obtain legal advice before making any determination on requests for review.⁴⁰

Offenders convicted at summary trial may also request judicial review from the Federal Court or from superior courts in any province or territory.⁴¹

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.⁴² The QR&O specify when an accused

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

37 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.

38 QR&O article 108.45.

39 *Supra* note 4 at section 249 and QR&O article 116.02.

40 QR&O article 108.45(8).

41 *Federal Courts Act*, R.S.C. 1985, c. F-7, s. 18 and 18.1.

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

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; or,
 - a fine in excess of 25 percent of monthly basic pay.
- where the charge is for a serious offence under the Code of Service Discipline (e.g. negligent performance of duty, or some offences capable of being categorized as indictable under the *Criminal Code*) or the accused person is of the rank of lieutenant-colonel or higher, a trial by court martial is the only available option.

Where the accused has the right to be tried by court martial, the accused must be informed of that right. The accused must also be given a reasonable period of time to decide whether to elect to be tried by court martial, and to consult legal counsel with respect to the election.⁴³

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

⁴³ QR&O articles 108.17 and 108.18. Legal officers of Defence Counsel Services are available to provide legal advice with respect to the making of the election. This service is provided at no expense to the accused, and is normally provided by telephone.

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 CDS; and,
- any officer having the powers of an officer commanding a command.

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

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

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

Role of DMP in Court Martial Process

The DMP is responsible for:

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

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

- the sufficiency of the evidence required to demonstrate a reasonable prospect of conviction in respect of the charges laid or yet to be laid; and,

- where there is sufficient evidence, whether or not the public interest and the interests of the CF require the initiation of a prosecution.

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

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

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

A.6 Courts Martial

The court martial, a formal military court presided over by a military judge, is designed to deal with more serious offences, and is conducted in accordance with rules and procedures similar to those followed in civilian criminal courts. Like summary trials, courts martial may be held anywhere in the world. Statutorily, courts martial have the same rights, powers and privileges as a superior court of criminal jurisdiction with respect to all "matters necessary or proper for the due exercise of its jurisdiction";⁴⁴ 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)⁴⁵ 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.

⁴⁴ *Supra* note 4 at section 179.

⁴⁵ QR&O article 101.20.

Types of Court Martial

The NDA provides for 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.⁴⁶ 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.⁴⁷ 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,⁴⁸ who makes the finding on the charges and imposes a sentence if the accused is found guilty. The rank or status of the accused, the nature of the offence, and the powers of punishment available to the various types of court martial are all factors considered in determining which type of court martial is appropriate in a specific case.

Appeal of a Court Martial Decision

Generally speaking, decisions made at courts martial may be appealed to the Court Martial Appeal Court of Canada (CMAC),

46 *Ibid.* at subsections 167(1) and 170(1).

47 *Ibid.* at subsections 167(7) and 170(4).

48 *Ibid.* at sections 174 and 177.

a civilian court composed of Federal Court and Superior Court judges.⁴⁹ 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.⁵⁰

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,⁵¹ 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.⁵²

Before the establishment of the Appeal Committee, only accused persons who were respondents to appeals filed by the Crown were entitled to be represented by a legal officer at public expense.⁵³ 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,

49 *Ibid.* at sections 159.9, 234, 235, 238 to 243 and 248.2 to 248.9.

50 *Ibid.* at section 245.

51 QR&O article 101.21.

52 QR&O article 101.21(6).

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

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.

Each CF unit is required to establish and maintain a Unit Registry of Disciplinary Proceedings.⁵⁴ Anyone can request a copy of a specific Record of Disciplinary Proceedings (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 Registry of Disciplinary Proceedings, unless release of the RDP is prohibited for one of the reasons set out in the regulation.⁵⁵

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*⁵⁶ 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.

54 QR&O article 107.14.

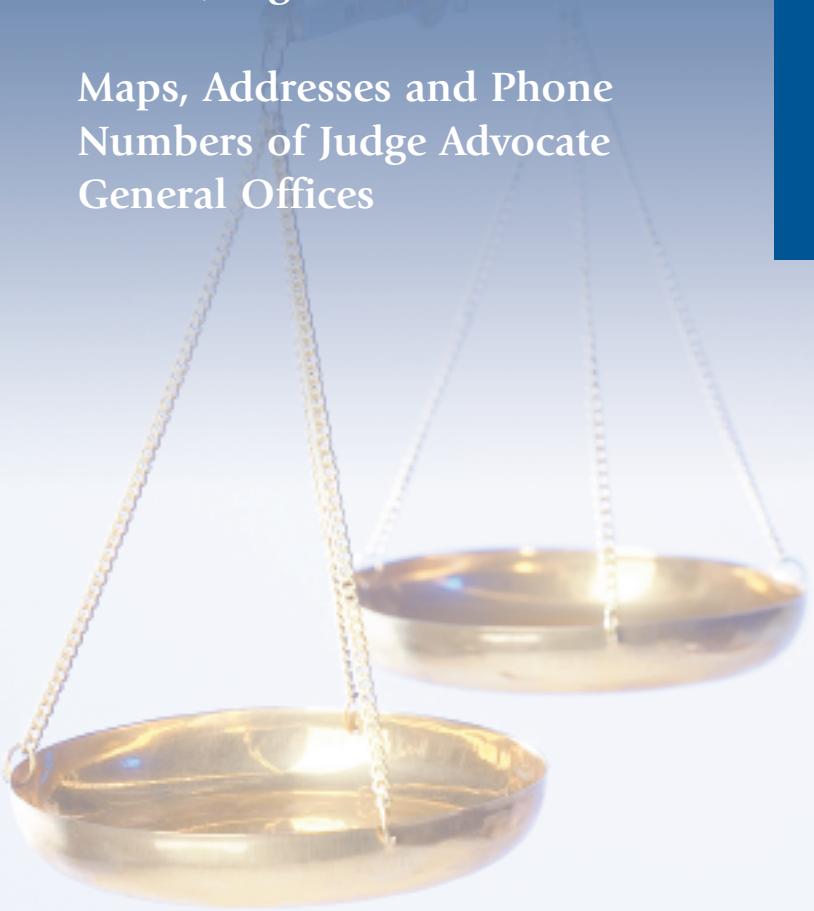
55 QR&O article 107.16.

56 R.C.S. 1985, c. A-1.









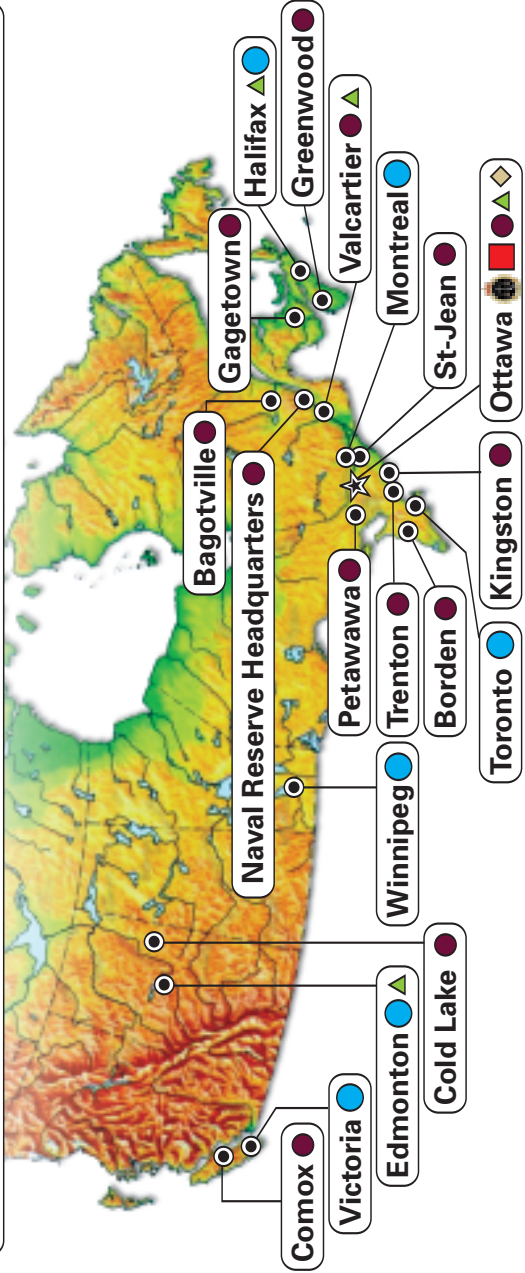
Organization Chart of the Office of the Judge Advocate General

Maps, Addresses and Phone
Numbers of Judge Advocate
General Offices

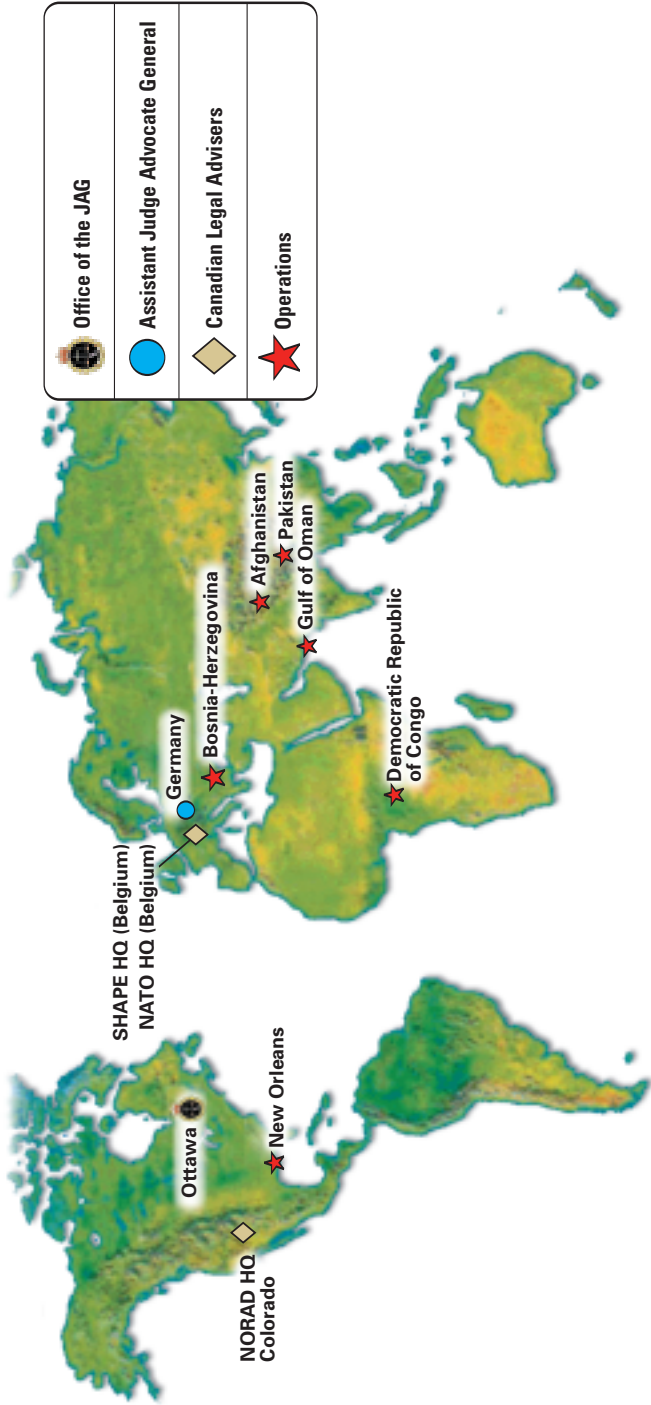


Canadian Offices of the Judge Advocate General

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



Offices of the Judge Advocate General outside Canada



Addresses/Phone Numbers of Judge Advocate General Offices

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

Mailing Address		Telephone/Fax Numbers	
Deputy Judge Advocate General/ Military Justice and Administrative Law Constitution Building National Defence Headquarters 101 Colonel By Drive Ottawa ON K1A 0K2		TEL: (613) 995-2628 CSN: 845-2628 FAX: (613) 995-5737	
Deputy Judge Advocate General/ Regional Services 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	
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: 690-7027 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: 333-4260 FAX: (250) 363-5619	
Deputy Judge Advocate 19 Wing Comox PO Box 1000, Stn Main Lazo BC V0R 2K0		TEL: (250) 339-8153 CSN: 252-8153 FAX: (250) 339-8015	

Manitoba

Mailing Address

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

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

New Brunswick

Mailing Address

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

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

Nova Scotia

Mailing Address

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

Telephone/Fax Numbers

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

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

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

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

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

Ontario

Mailing Address

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

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TEL: (416) 633-6200 EXT 3955
CSN: 634-3955
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Ontario (continued)

Mailing Address	Telephone/Fax Numbers
Regional Military Prosecutor Central Region National Defence Headquarters Constitution Building 101 Colonel By Drive Ottawa ON K1A 0K2	TEL: (613) 996-2745 CSN: 846-2745 FAX: (613) 995-1840
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 Headquarters Canadian Forces Base Kingston P.O. BOX 17000 Stn Forces Kingston ON K7K 7B4	TEL: (613) 541-5010 EXT 4360 CSN: 271-4360 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 7195 CSN: 677-7195 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 6988 CSN: 271-6988 FAX: (613) 541-6907
Deputy Judge Advocate Canadian Forces Base Kingston P.O. Box 17000 Stn Forces Kingston ON K7K 7B4	TEL: (613) 541-5010 EXT 4299 CSN: 271-4299 FAX: (613) 541-4480

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
Valcartier Garrison
P.O. Box 1000 Stn Forces
Courcelette QC GOA 4Z0

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EXT 5847/7202
CSN: 666-5847/7202
FAX: (418) 844-6606

Deputy Judge Advocate
Area Support Unit Valcartier
P.O. Box 1000 Stn Forces
Courcelette QC GOA 4Z0

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Deputy Judge Advocate 5 CMBG
Area Support Unit Valcartier
P.O. Box 1000 Stn Forces
Courcelette QC GOA 4Z0

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FAX: (418) 844-6606

Deputy Judge Advocate
3 Wing Bagotville
P.O. Box 5000, Stn Bureau-chef
Alouette QC GOV 1A0

TEL: (418) 677-4338
CSN: 661-4338
FAX: (418) 677-4451

Deputy Judge Advocate
Naval Reserve Headquarters
112 Dalhousie
Quebec QC G1K 4C1

TEL: (418) 694-5560 EXT 5300
CSN: unavailable
FAX: (418) 694-5591

Deputy Judge Advocate
Area Support Unit St-Jean
P.O. Box 100 Stn Bureau-chef
Richelain QC JOJ 1R0

TEL: (450) 358-7099 EXT 6129
CSN: 661-6129
FAX: (450) 358-7445

Belgium

Mailing Address

Supreme Headquarters
Allied Powers Europe
Casteau, Belgium
PO Box 5048, Stn Forces
Belleville ON K8N 5W6

Telephone/Fax Numbers

FAX: +32-65-444997

Legal Counsel
International Military Staff
NATO Headquarters
Blvd Leopold III, Room T-2047
1110 Brussels, Belgium

TEL: +322-770-5263
FAX: +322-770-5769

Germany

Mailing Address

Assistant Judge Advocate General (Europe)
CFSU(E) Selfkant Kaserne
CFPO 5053, Stn Forces
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Telephone/Fax Numbers

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

United States of America

Mailing Address

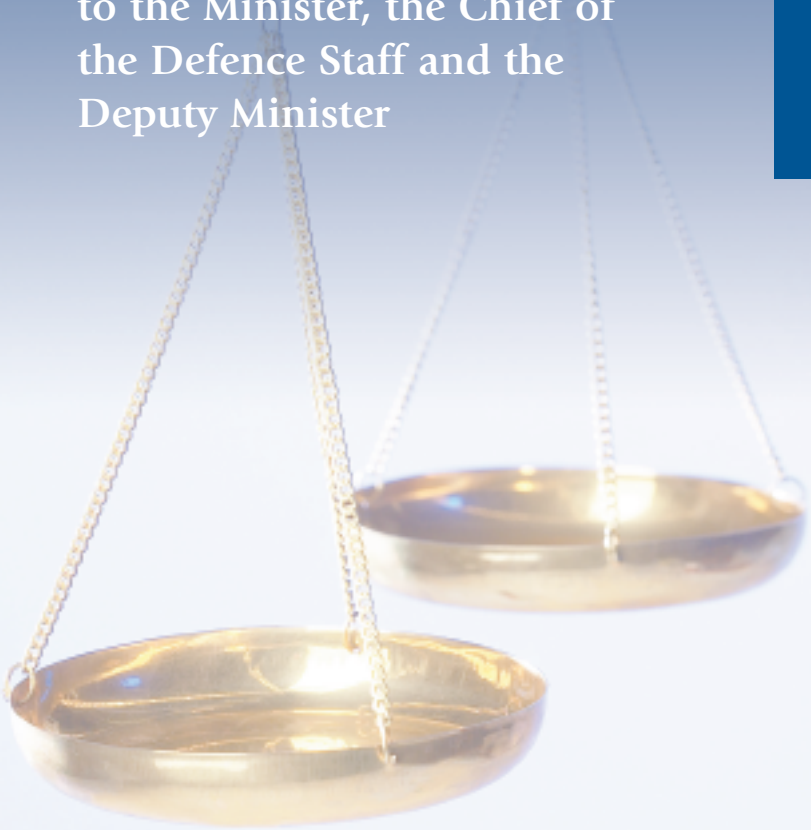
Canadian Legal Adviser
Headquarters North American
Aerospace Command (NORAD)
Office of the Staff Judge Advocate
250 Vandenberg St., Suite 116
Peterson AFB, Colorado Springs
Colorado, USA
80914-3260

Telephone/Fax Numbers

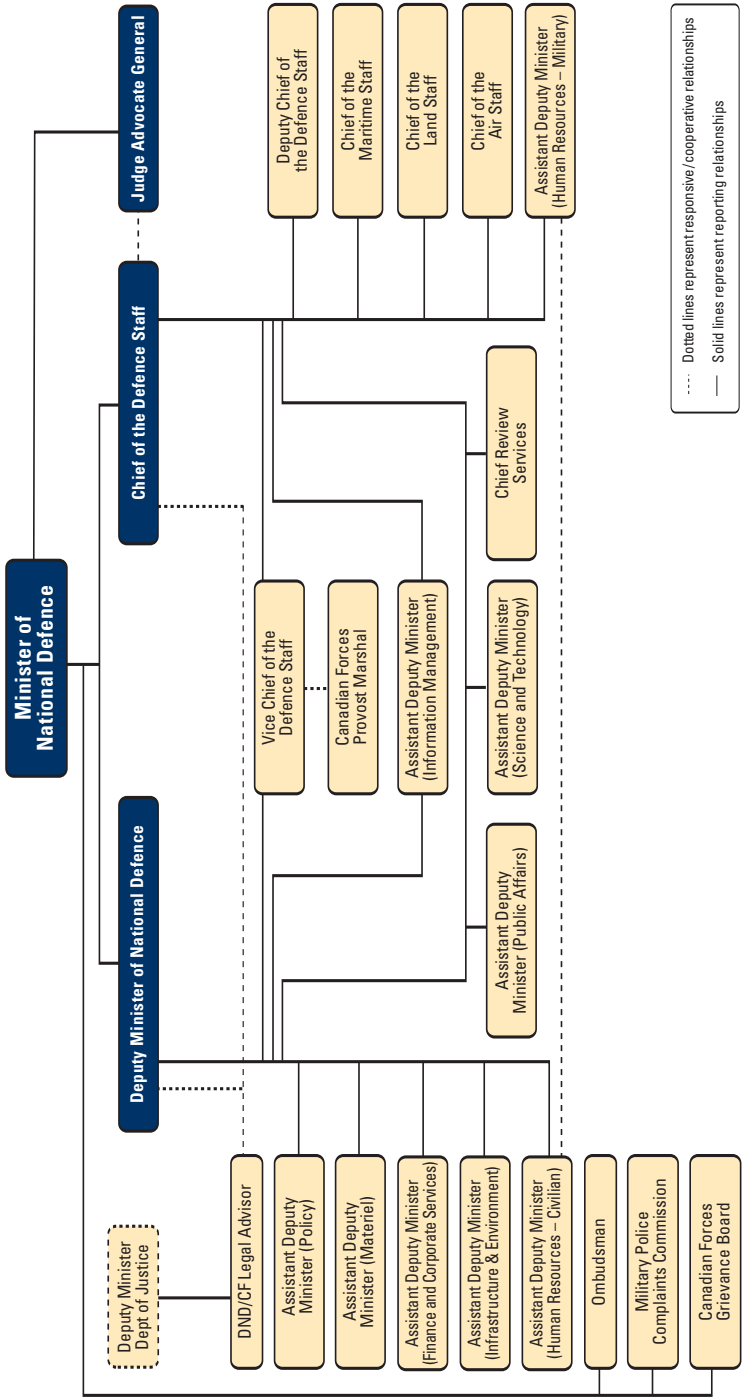
TEL: 719-554-7635
CSN: 312-692-7635
FAX: 719-554-8398



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



Summary Trials Year in Review - Statistics: 1 April 2005 to 31 March 2006



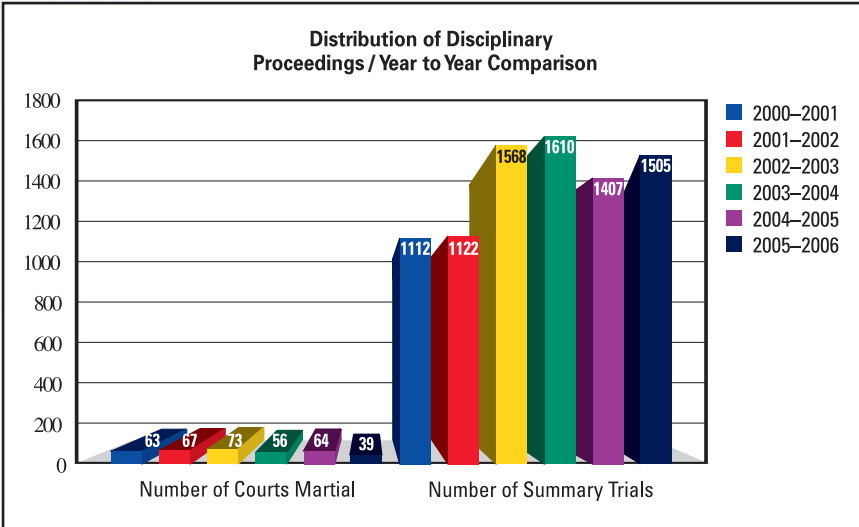
ANNEX D



Summary Trials Reporting Period 1 April 05 - 31 March 06

Distribution of Service Tribunals

	2004–2005		2005–2006	
	#	%	#	%
Number of courts martial	64	4%	39	3%
Number of summary trials	1407	96%	1505	97%
Total	1471	100%	1544	100%



Note: (1) The statistics in this annex are current as of 01 May 2006.

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

Election to Court Martial

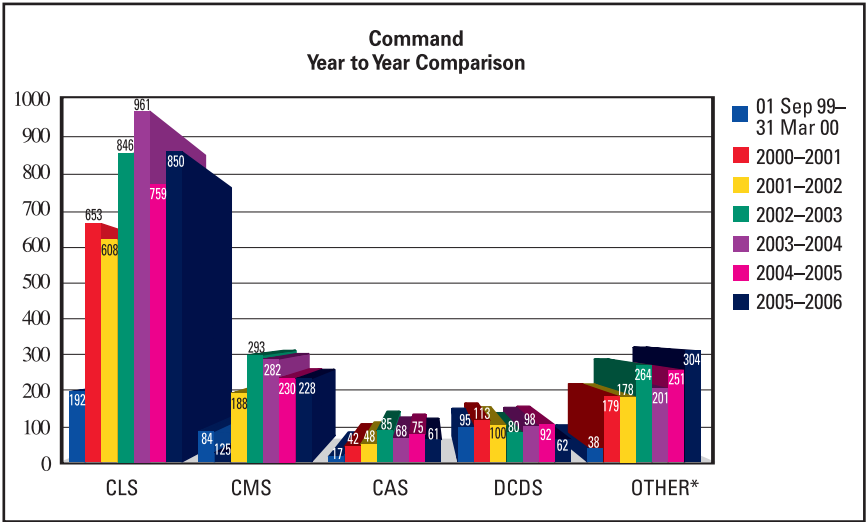
	2005–2006	
	#	%
Number of cases where the member was offered the right to be tried by court martial	494	100%
Number of persons electing court martial when offered	28	5.67%

Language of Summary Trials

	2004–2005		2005–2006	
	#	%	#	%
Number in English	1085	77%	1191	79%
Number in French	322	23%	314	21%
Total	1407	100%	1505	100%

Command

	2004–2005		2005–2006	
	#	%	#	%
Vice Chief of the Defence Staff (VCDS)	0	0%	0	0.00%
Deputy Chief of the Defence Staff (DCDS)	92	6.54%	62	4.12%
Chief of the Maritime Staff (CMS)	230	16.35%	228	15.15%
Chief of the Land Staff (CLS)	759	53.94%	850	56.48%
Chief of the Air Staff (CAS)	75	5.33%	61	4.05%
Associate Deputy Minister (Finance and Corporate Services) (ADM (Fin CS))	0	0%	0	0.00%
Associate Deputy Minister (Human Resources – Military) (ADM (HR-Mil))	237	16.85%	286	19.00%
Associate Deputy Minister (Information Management) (ADM (IM))	11	0.78%	16	1.07%
Associate Deputy Minister (Material) (ADM (Mat))	3	0.21%	2	0.13%
Total	1407	100%	1505	100%



*Other includes — VCDS, ADM (Fin CS), ADM (HR Mil), ADM (IM) & ADM (Mat)

Rank of Accused

	2004–2005		2005–2006	
	#	%	#	%
Private and Corporal (includes Master-Corporal*)	1235	88%	1275	85%
Sergeant to Chief Warrant Officer	55	4%	67	4%
Officer	117	8%	163	11%
Number of cases	1407	100%	1505	100%

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

Disposition by Case

	2004–2005		2005–2006	
	#	%	#	%
Guilty	1328	94%	1448	96%
Not Guilty	79	6%	57	4%
Number of cases	1407	100%	1505	100%

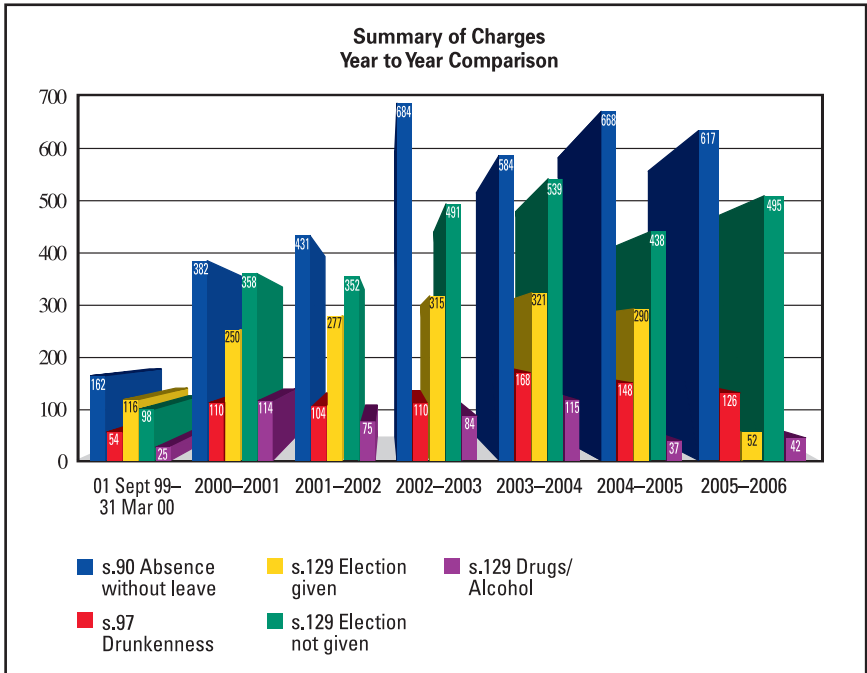
Findings by Charge

	2004–2005		2005–2006	
	#	%	#	%
Guilty	1653	87.18%	1723	89.09%
Guilty — special finding	7	0.37%	6	0.31%
Guilty of included offence	2	0.11%	3	0.16%
Not guilty	182	9.60%	134	6.93%
Charge stayed	48	2.53%	60	3.10%
Charge not proceeded with	4	0.21%	8	0.41%
Total	1896	100%	1934	100%

Summary of Charges

Article	Description	2004–2005		2005–2006	
		#	%	#	%
83	Disobedience of lawful command	52	2.74%	51	2.64%
84	Striking or offering violence to a superior	4	0.21%	3	0.16%
85	Insubordinate behaviour	71	3.74%	79	4.08%
86	Quarrels and disturbances	38	2.00%	25	1.29%
87	Resisting or escaping from arrest or custody	1	0.05%	1	0.05%
90	Absence without leave	668	35.23%	617	31.90%
91	False statement in respect of leave	0	0.00%	1	0.05%
93	Cruel or disgraceful conduct	1	0.05%	0	0.00%
95	Abuse of subordinates	11	0.58%	5	0.26%
97	Drunkenness	148	7.8%	126	6.51%
98	Malingering or maiming	1	0.05%	1	0.05%
101	Escape from custody	0	0.00%	2	0.10%
101.1	Failure to comply with conditions	4	0.21%	2	0.10%
102	Hindering arrest or confinement or withholding assistance when called on	0	0.00%	1	0.05%
111	Improper driving of vehicles	6	0.33%	8	0.41%
112	Improper use of vehicles	10	0.53%	18	0.93%
114	Stealing	18	0.95%	16	0.83%
115	Receiving	3	0.16%	0	0.00%
116	Destruction, damage, loss or improper disposal	18	0.95%	11	0.57%
117	Miscellaneous offences	18	0.95%	29	1.50%
118	Failure to appear or attend	1	0.05%	1	0.05%

Article	Description	2004–2005		2005–2006	
		#	%	#	%
128	Conspiracy	1	0.05%	0	0.00%
129	Conduct to the prejudice of good order & discipline — Offences of sexual nature	2	0.11%	6	0.31%
129	Conduct to the prejudice of good order & discipline — Drugs/Alcohol	37	1.95%	42	2.17%
129	Conduct to the prejudice of good order & discipline — election to be tried by CM given (excl. cases reported in 129-Offences of sexual nature & 129-Drugs/Alcohol)	290	15.30%	352	18.20%
129	Conduct to the prejudice of good order & discipline — election to be tried by CM not given (excl. cases reported in 129-Offences of sexual nature & 129-Drugs/Alcohol)	433	22.84%	495	25.59%
130	Service trial of civil offences	60	3.16%	42	2.17%
Number of charges		1896	100%	1934	100%



Authority

	2004–2005		2005–2006	
	#	%	#	%
Delegated Officer	997	71%	1056	70%
Commanding Officer	339	24%	397	26%
Superior Commander	71	5%	52	4%
Total	1407	100%	1505	100%

Punishments

	2004–2005		2005–2006	
	#	%	#	%
Detention (suspended)	13	0.75%	14	0.73%
Detention	26	1.51%	36	1.88%
Reduction in rank	4	0.23%	3	0.16%
Severe reprimand	4	0.23%	1	0.05%
Reprimand	53	3.07%	44	2.30%
Fine	998	57.79%	1081	56.48%
Confinement to ship or barracks	411	23.80%	514	26.85%
Extra work and drill	110	6.37%	95	4.96%
Stoppage of leave	41	2.37%	46	2.40%
Caution	67	3.88%	80	4.18%
Total	1727	100%	1914	100%

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

Requests for Review

	2004–2005		2005–2006	
	#	%	#	%
Requests for review based on finding	6	17%	4	11%
Requests for review based on sentence	13	36%	13	36%
Requests for review based on finding & sentence	17	47%	19	53%
Total	36	100%	36	100%

Decision of Review Authority

	2004–2005		2005–2006	
	#	%	#	%
Upholds decision	10	28%	13	36%
Quashes/substitutes findings	14	39%	14	39%
Substitutes punishment	5	14%	8	22%
Mitigates/commutes/remits punishment	7	19%	1	3%
Total	36	100%	36	100%



Court Martial Year In Review - Statistics: 1 April 2005 to 31 March 2006



ANNEX E



Court Martial Reporting Period 1 April 2005 - 31 March 2006

Number of Courts Martial

	2004–2005	2005–2006
	64	39

Courts Martial by Type

	2004–2005		2006–2006	
	#	%	#	%
Standing Court Martial	64	100%	39	100%
Disciplinary Court Martial	0	0%	0	0%
General Court Martial	0	0%	0	0%
Special General Court Martial	0	0%	0	0%
Total	64	100%	39	100%

Summary of Charges

NDA Section	Description	2004–2005	2005–2006
		#	#
83	Disobeying a lawful command	10	5
84	Striking or offering violence to a superior officer	4	2
85	Insubordinate behaviour	9	4
86	Quarrels and disturbances	3	1
86(a)	Fought with a person subject to the CSD	1	1

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

Note: In this Annex, the abbreviations CDSA refers to the Controlled Drugs and Substances Act, R.S.C. 1996, c. 19, and CCC refers to the Criminal Code, R.S.C. 1985, c. C-46.

NDA Section	Description	2004–2005 #	2005–2006 #
90	Absence without leave	10	9
93	Cruel or disgraceful conduct	1	4
95	Abuse of subordinates	2	2
97	Drunkenness	6	7
98(a)	Malingering	2	0
101.1	Failure to comply with conditions	0	16
102(a)	Resisting a NCM performing an arrest	1	0
114	Stealing	7	2
114	Stealing when entrusted	4	3
115	Receiving	1	0
116	Destruction, damage, loss or improper disposal	1	0
117(f)	An act of a fraudulent nature	4	4
122	False answers or false information	2	0
125(a)	Wilfully (or negligently) made a false entry	4	2
125(c)	Suppressed or altered a military document with intent to deceive	2	0
129	An act to the prejudice of good order and discipline	13	11
129	Conduct to the prejudice of good order and discipline	18	18
129	Neglect to the prejudice of good order and discipline	3	0
130 (4(1) CDSA)	Possession of substances	1	2
130 (5(1) CDSA)	Trafficking of substances	12	12
130 (82(1) CCC)	Possession without lawful excuse of an explosive	1	5
130 (86(1) CCC)	Careless use of a firearm	2	0
130 (87 CCC)	Pointing a firearm	2	0
130 (88 CCC)	Possession of a weapon for a dangerous purpose	1	0
130 (91(2) CCC)	Unauthorized possession of a prohibited weapon	1	0

NDA Section	Description	2004–2005 #	2005–2006 #
130 (122 CCC)	Breach of trust by public officer	2	3
130 (129 CCC)	Resisting a peace officer	1	3
130 (139(2) CCC)	Obstruction of justice	1	0
130 (140(1) CCC)	Public mischief	0	2
130 (163.1(4.1) CCC)	Accessing child pornography	0	3
130 (163.1(4) CCC)	Possession of child pornography	0	2
130 (173(1) CCC)	Committed an indecent act	0	1
130 (253(b) CCC)	Operating while impaired	1	0
130 (264(1) CCC)	Criminal harassment	0	1
130 (264.1(1) CCC)	Uttering threats	1	0
130 (266 CCC)	Assault	10	6
130 (267(a) CCC)	Assault with a weapon	1	0
130 (267(b) CCC)	Assault causing bodily harm	2	1
130 (268 CCC)	Aggravated assault	1	0
130 (269.1 CCC)	Torture	1	0
130 (270(1) CCC)	Assaulting a peace officer	0	1
130 (271 CCC)	Sexual assault	11	7
130 (272(1)(c) CCC)	Sexual assault causing bodily harm	1	0
130 (279 CCC)	Kidnapping, forcible confinement, hostage taking	0	2
130 (342 CCC)	Theft, forgery of a credit card	0	3
130 (348 CCC)	Breaking and entering with intent, committing offence or breaking out	0	3

NDA Section		2004–2005	2005–2006
Description		#	#
130 (354(1) CCC)	Possession of property obtained by crime	0	3
130 (362(1)(a) CCC)	False pretences	1	1
130 (366(1) CCC)	Forgery	5	0
130 (368 CCC)	Uttering a forged document	1	1
130 (434.1 CCC)	Fraud	0	4
Total		168	157

Disposition by Case

	2004–2005		2005–2006	
	#	%	#	%
Found/plead guilty	54	84%	34	87%
Not guilty	8	12%	5	13%
Stay of proceedings	1	2%	0	0%
Withdrawal	0	0%	0	0%
Other*	1	2%	0	0%
Total	64	100%	39	100%

* See section 202.12 of the National Defence Act, R.S.C. 1985, c. N-5.
This section refers to the consequences of a finding of unfit to stand trial.

Sentences

Punishment Type	2004–2005	2005–2006
Dismissal	1	0
Imprisonment	8	8
Detention	4	2
Reduction in rank	4	4
Severe reprimand*	9	5
Reprimand	17	9
Fine	40	26
Confined to barracks	3	0
Extra work and drill	0	0
Caution	0	0
Total	86	54

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

* The total of severe reprimand was incorrect in last year's report.
It has been corrected this year.

Language of Trial

	2004–2005		2005–2006	
	#	%	#	%
English	50	78%	28	72%
French	14	22%	11	28%
Total	64	100%	39	100%

Courts Martial by Command

	2004–2005		2005–2006	
	#	%	#	%
National Defence Headquarters (NDHQ)	12	19%	8	21%
Deputy Chief of the Defence Staff	6	9%	3	7%
Chief of the Maritime Staff	6	9%	6	15%
Chief of the Land Staff	33	52%	17	44%
Chief of the Air Staff	7	11%	4	10%
Canadian Defence Academy*	0	0%	1	3%
Total	64	100%	39	100%

* CF Support and Training Group has been re-organized and is now the Canadian Defence Academy.

Courts Martial by Rank

	2004–2005	2005–2006
Private and Corporal (includes Master Corporal*)	51	33
Sergeant to Chief Warrant Officer	7	3
Officer	9	3
Other	0	0
Total	67**	39

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

** Two joint trials involving five accused members.



Appeals Year in Review — Statistics: 1 April 2005 to 31 March 2006



ANNEX F



Appeals Reporting Period 1 April 2005–31 March 2006

Appeals

Court	2004–2005	2005–2006
Court Martial Appeal Court of Canada	5	4
Supreme Court of Canada	0	0
Total	5	4

Appeals by Party

Status of Appellant	2004–2005	2005–2006
Appeals by Crown	1	0
Appeals by Offender	4	4
Total	5	4

Nature of Appeal

Grounds	2004–2005	2005–2006
Finding	1	1
Sentence (Severity and/or legality)	1	0
Finding and sentence	3	3
Total	5	4

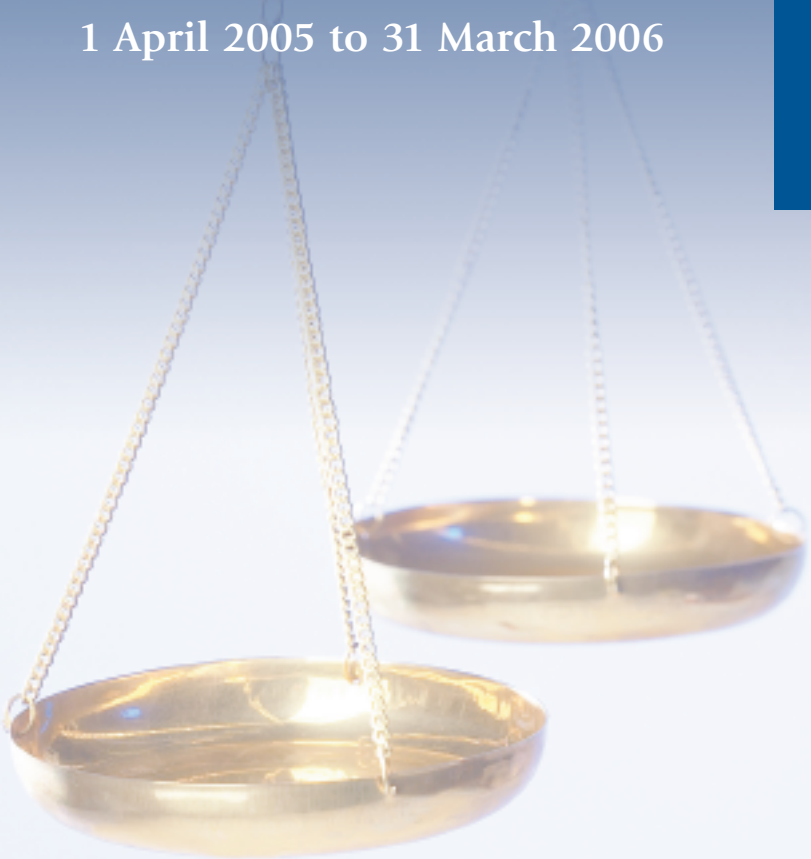
Disposition

	2004–2005	2005–2006
Upheld trial decision	2	1
Overtaken trial decision in whole or part	3	3
Total	5	4

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



Presiding Officer Certification Training & Presiding Officer Re-Certification Test: Period 1 April 2005 to 31 March 2006



ANNEX G



Presiding Officer Certification Training (POCT) & Presiding Officer Re-Certification Test (PORT): Period 1 April 2005 to 31 March 2006

Officers Certified through POCT

	2004–2005	2005–2006
	566	660

Officers Re-Certified through PORT

	2004–2005	2005–2006
	553	354

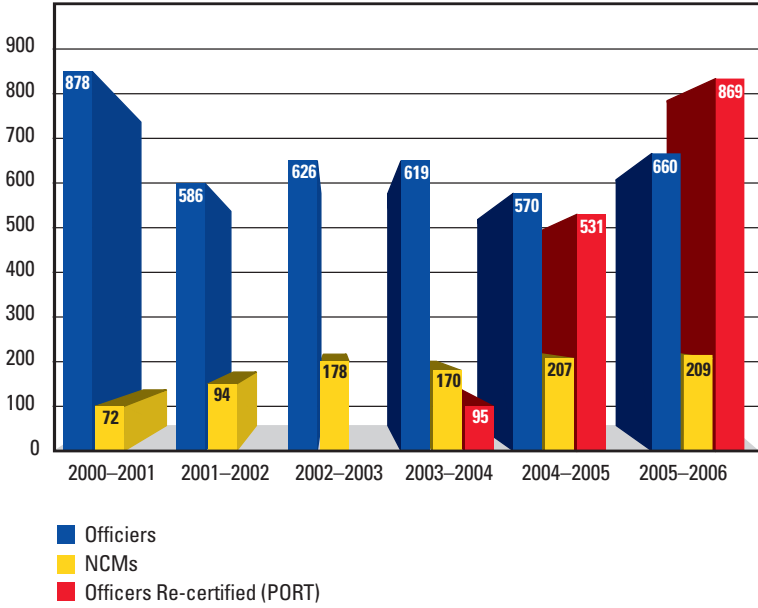
POCT: Officers/Non-Commissioned Members (NCM)

	2004–2005		2005–2006	
	#	%	#	%
Officers	566	73%	660	76%
NCM	207	27%	209	24%
Total	773	100%	869	100%

POCT — Year to Year Comparison

	1999/2000	2000/2001	2001/2002	2002/2003	2003/2004	2004/2005	2005-2006
Officers	2097	878	586	626	619	566	660
NCMs	309	72	94	178	170	207	209
Total	2406	950	680	804	789	773	869

Certification Training Year to Year Comparison





Judge Advocate General Policy Directive



ANNEX H



Judge Advocate General Policy Directive



The following directive on military justice has been published during this report period.

Directive: 034/05	Original Date: April 2005	Update:
Subject: Harassment Prevention and Resolution		
Cross reference: A. DAOD 5012-Harassment Prevention and Resolution B. National Defence Harassment Prevention and Resolution Guidelines - A-PM-007-000/FP-001 C. JAG Ethics Directive 023/02 D. Professional Standards Review – JAG Directive 006/00		

Application

1. This directive applies to all members of the Office of the JAG. Any member of the Office of the JAG can submit a complaint of harassment. This directive is to be read and interpreted in the context of the CF Harassment Prevention and Resolution Policy at Ref A.
2. The CF, DND and the JAG are committed to providing a respectful workplace by ensuring that all members of the Office of the JAG are treated fairly, respectfully and with dignity in a

workplace free of harassment and that all members of the Office of the JAG have the responsibility to treat others in the same manner. Harassment in any form constitutes unacceptable conduct and will not be tolerated. The emphasis of this policy is on the prevention of harassment. An important factor in preventing harassment is the development of a positive ethical climate.

Definition

3. Harassment is any improper conduct by an individual that is directed at and offensive to another person or persons in the workplace and which the individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, or any act of intimidation or threat. It includes harassment within the meaning of the *Canadian Human Rights Act (CHRA)*.

Managers Responsibility

4. All managers are responsible to promote a harassment-free workplace. In particular they should:
 - a. lead by example;
 - b. ensure that subordinates know their responsibilities; and
 - c. take prompt action to address complaints.

Responsible Officers (ROs)

5. The CF Harassment Prevention and Resolution Policy prescribes specific duties for Responsible Officers (ROs), Harassment Advisors (HAs) and Harassment Investigators (HIs). Within the Office of the JAG, the incumbents of the following positions are designated as ROs:

Deputy Judge Advocate General:

- Chief of Staff
- Operations
- Military Justice & Admin Law
- Regional Services

Director of Military Prosecutions
Director of Defence Counsel Services
Assistant Judge Advocate General /

- Halifax
- Montreal
- Toronto
- Winnipeg
- Edmonton
- Victoria
- Europe

Harassment Advisors (HAs)

6. The role of the Harassment Advisor is to provide advice and assistance to supervisors and ROs in respect of harassment situations. The officer filling the DLaw/HR position is designated as the JAG HA while the person filling the Director Civilian Human Resources Service Centre is designated as the Departmental HA responsible for the Office of the JAG.

Harassment Investigators (HIs)

7. Harassment Investigators are responsible for all matters related with the conduct of harassment investigations. They should be appointed based on the personal attributes, knowledge and experience. To enhance the perception of independence and impartiality, they may be external to the JAG organization. They are appointed by a RO on a case-by case basis and must be impartial and unbiased. The HI should be trained in harassment investigation. Within the Office of the JAG the incumbent of the following positions should be trained as HIs:
 - DLaw/Admin Law
 - DLaw/T
 - Comptroller

Alternate Dispute Resolution or Mediation

8. Early resolution and/or the use of ADR techniques usually provide for speedier and more satisfying resolutions to harassment situations. Therefore, early resolution is strongly encouraged. In dealing with harassment situations, supervisors are encouraged to seek the services of their HA. The parties may also agree to mediation. Regardless of the process chosen the aim is to bring closure to the dispute. At times it may be necessary to obtain a HI from outside JAG. The HI is responsible for all matters associated with the handling and conduct of the investigation.

Complaints

9. All written complaints of harassment should be directed to the appropriate ROs with copy to DJAG/COS who will monitor the resolution of the complaint and determine in consultation with the JAG whether or not Legal Standards Review Team (LRST) shall assemble.

Reporting

10. All founded harassment complaints need to be recorded in the PMDSS and reported to ADM(HR-Mil) Harassment Complaint Tracking System (HCTS).

(original signed by)

Jerry S.T. Pitzul, Q.C.

MGen

JAG

992-3019/996-8470

Distribution List

All military and civilian employees in the Office of the JAG

ANNEX I



Annual Report 2005-2006 of the Director of Defence Counsel Services



ANNEX I



Annual Report 2005-2006 of the Director of Defence Counsel Services

Initial report Prepared by Lieutenant-Colonel Jean-Marie Dugas

INTRODUCTION

1. This edited version is the seventh annual report of the Director of Defence Counsel Services (DDCS) presented to the Judge Advocate General (JAG) under whose general direction I perform my duties. The format of this document conforms to *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 101.20. This report, my third as Director, covers the period from 1 April 2005 to 31 March 2006 and contains:
 - An overview of the DCS organization;
 - A review of DCS duties and responsibilities;
 - A review of the relationships between the Director, the staff and counsel of DCS, the Judge Advocate General (JAG) and the chain of command;
 - An overview of the services provided during the reporting period; and
 - DDCS and DCS general activities.
2. This analysis of the activities of the past year provides a constructive opportunity to review the accomplishments of DCS. The control over allocated funds for DCS has been simplified because of the local initiatives that were introduced; however, the fact remains that these funds are drawn from the JAG allotment, similar to the Military Prosecution Service.

3. This year, once again, military members accessed the services of DCS counsel concerning a myriad of disciplinary and administrative sanctions. The number of cases heard at court martial does not reflect the significant duties and accomplishments of DCS lawyers. In certain cases, convening orders were retracted due to the lack of available judges. Also, a portion of those cases for which DCS counsel have prepared themselves and cases that have already received a fixed trial date are beyond this reporting period.

DCS ORGANIZATION

4. Significant changes were noted within the civilian personnel due to job transfers. The incumbents in all three civilian positions changed, which was largely attributable to employment offers at a higher level within JAG as well as outside the organization. For the military lawyers, a senior lawyer was posted after four years of service. His departure took place during the summer posting season. For a second consecutive year, the establishment for military personnel has been filled.
5. The Reserves finally benefited by the addition of a position to DCS in Montreal. The long hiring process delayed his entry into service, but we are nevertheless proceeding with his admittance and training and he should be able to perform his duties in the next reporting period.
6. The support from the Informatics team provided appreciable results. The provision of new equipment assisted DCS personnel in becoming functional, efficient and much more productive, as much in garrison as when travelling. However, there must be increased emphasis on the mode of modern communications and improvements for the Reserve Force DCS lawyers who are otherwise cut-off from direct access to much of the basic information that is necessary for the good management of their files.

DUTIES AND RESPONSIBILITIES

7. The principal services offered and provided to persons subject to the Code of Service Discipline during this reporting period were:

Legal Counsel Services:

- ▶ To detained persons:
 - 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 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];
- ▶ To the respondent (offender), at Court Martial Appeal Court of Canada 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 of Canada 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)] if there is no anticipation that disciplinary proceedings will follow.

RELATIONSHIP DCS/CHAIN OF COMMAND AND ACCUSED

8. DDCS meets with JAG on a regular basis for administrative matters and from time to time on the legal activities of DCS. The “professional independence” of the DDCS and DCS staff presents an on-going challenge. Administrative concerns such as posting forecasts for lawyers and funding for expert witnesses or the approval of the services of civilian counsel factor into these challenges. These concerns will likely be the subject of future consultations between DDCS and the JAG.
9. The ability of defence counsel to fulfill, freely and effectively, the duties and responsibilities entrusted to them revolves around the notions of professional and institutional independence. Since the important changes during the reform of the NDA in 1999, DDCS has continued to stress that military defence counsel must be sheltered from any actual or potential influence from any and all internal sources. The current DCS organization represents the minimum level necessary to permit DCS counsel to fulfill their responsibilities towards their military and other clientele. They have courageously advanced the interests of their clients and, equally, the military justice system.
10. Communication between DCS counsel and clients, on one hand, and assisting officers on the other, is normally achieved regardless of the rank or status of the latter. The accused's place of residence and the geographical location of his or her unit are factors that may influence this professional relationship and reflect on the operational costs of Defence Counsel Services. The difficulty in contacting witnesses and local

resources are additional factors, which render the duty of representation particularly complex.

11. Although the JAG has issued to military lawyers, pursuant to his authority under subs. 249(2) of the NDA, guidelines of general application regarding the protection of privileged documents, he has not issued those guidelines to DCS military lawyers because of their unique role in the military justice system.

PROFESSIONAL DEVELOPMENT

12. Following a request for funding by DDCS, the JAG authorized four positions for the national professional development program in criminal law with the "Canadian Criminal Law Program" in Winnipeg. DDCS requested this funding in order to ensure that professional development continues for Regular Force DCS counsel. Two other professional development activities for DCS lawyers included the JAG annual conference in Ottawa and the professional development workshop for DCS lawyers in Gatineau. On an individual basis, two DCS lawyers participated in professional development activities of their respective Bar associations, and DDCS participated in a training seminar on cross-examination.

THE BUDGET

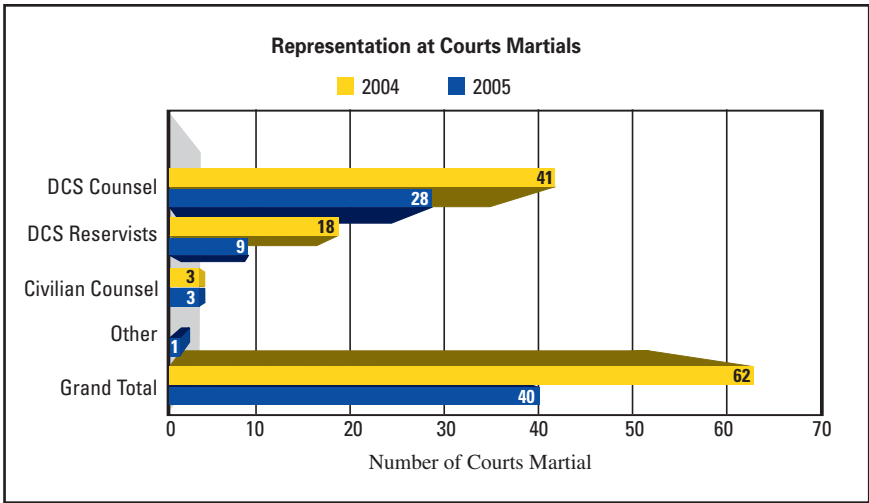
13. As previously mentioned, the DCS budget originates directly from the JAG. Budget management is difficult as the location, number and nature of cases is unpredictable. The defence has no control over its incoming business. Despite a notable increase in funds for Reserve lawyers, who were heavily relied upon this year, the room for manoeuvre within the budget is limited and certain activities have been deferred to the following fiscal year. The support of the JAG on this matter has been positive.
14. The defence now assumes supplementary charges for transcribing witnesses' statements, formerly assumed by Military Police and Prosecution at the time of disclosure. These costs are quite substantial and can no longer be ignored in the budgetary process.

SERVICES PROVIDED

Counsel Services

► Courts martial

15. When facing a court martial, an accused person has the right to be represented by DCS counsel at public expense, may retain legal counsel at his or her own expense, or may choose not to be represented.
16. Relations with the Court Martial Administrator are cordial, but difficulties sometimes arise. On occasion, the Administrator has proceeded with convening courts martial without prior agreement from the defence. This has led to some reworking through judicial procedures to change the dates of hearing, a cumbersome and arduous procedure in the court martial system. Some courts were convened and dates set without waiting for the official designation of a lawyer for the proceedings, or without notice to counsel. Another example of difficulty is that some cases convened and formally set down for trial by the Administrator were recalled without prior formal notice.
17. During the reporting period, DCS was involved in 41 trials commenced before courts martial. One is ongoing and will be accounted for in the following year. Of the 40 accounted for in the following graph, three were conducted by civilian counsel, mandated by the DDCS in view of potential conflicts of interest between co-accused. The sources of representation in these courts martial were distributed as follows:



18. Pursuant to the authority granted under subsection 249.21(2) of the NDA, the DDCS may hire, at public expense, civilian counsel in cases where, having received a request for representation by DCS counsel, no member of the DCS office can represent the particular individual because of a conflict of interest. Reliance on civilian counsel poses two major difficulties: firstly, there are few who have suitable expertise (or a constant conflict with the standards for awarding contracts); secondly, where an inexperienced counsel demonstrates interest, the DDCS must indirectly assume the costs of their professional development in military law, not counting the time spent furnishing them with documents and the minimum of references, due to the time constraints of the file.
19. As demonstrated in the chart above, the involvement of Reserve lawyers has been heavily solicited as a direct result of the change in establishment and the need for experience in discipline matters. Experience is a highly valued and essential resource necessary for the effective functioning of DCS.
- Court Martial Appeal Court of Canada (CMAC)
20. Six cases made their way to the Office of the Clerk of the CMAC. Three requests for representation before the CMAC were presented to the Appeal Committee pursuant to article

101.20(2)(h) of QR&O. These files required the support of the Appeal Committee. One of the requests was refused on the grounds of “no professional merit”; yet the CMAC granted the appeal on sentence. Another refusal by the Committee became irrelevant by virtue of a cross-appeal by the Prosecution on one of the same legal points that had been raised by the Appellant and had been considered “without professional merit” by the Committee. The third application was accepted. The member was required to produce the facts supporting the request in an affidavit. It is hoped that this requirement will not be necessary in the future.

21. DCS counsel were involved in the following appeals during the reporting period:
- **Nystrom** - The accused was charged with sexual assault causing bodily harm, but was convicted of the lesser, included offence of sexual assault. The conviction turned on whether the impugned activities were consensual. The accused appealed both the legality of the finding as well as the constitutionality of the authority of the Military Prosecution Service to select the type of court martial. The CMAC granted the appeal and overturned the conviction, finding that the verdict was unreasonable and the trial judge misapprehended the law concerning credibility. The Court held that it did not need to answer the constitutional question, however, it did discuss this issue in *obiter*.
 - **Ballard** - The accused was convicted of possession of drugs and appealed both the finding and the sentence. Counsel are presently waiting for a hearing date following the filing of factums.
 - **Griffith** - The accused was represented by civilian counsel at the court martial and has requested that the CMAC strike his guilty plea and order a new trial. The Appeal Committee granted his request for DCS representation. The case is presently at the stage of filing the Defence factum.
 - **Constantin** - The accused was charged with use of a controlled drug, but was administratively released prior to the conduct of the trial. The accused pled guilty. The Prosecution appealed the sentence imposed by the court, but withdrew the appeal.

- **Doling** -The accused was a recruit at Canadian Forces Leadership and Recruit School, Canadian Forces Base St-Jean, and was acquitted at court martial. The Prosecution appealed the findings on some of the charges, but withdrew the appeal following service of the trial transcript.
- **Dunphy** -The accused appealed the decision of the trial judge relating to a pre-trial motion concerning the constitutionality of the re-appointment process for military judges. The Prosecution cross-appealed on findings concerning specific provisions relating to the re-appointment process.
- **Parsons** -This is a case concerning stealing and possession of stolen property. The accused appealed the substance of the trial judge's decision and the finding of guilt that followed. The accused also appealed the decision of the military judge, which differed from that of his colleague in other cases, but which had not been appealed. The Prosecution cross-appealed on this last decision of the judge

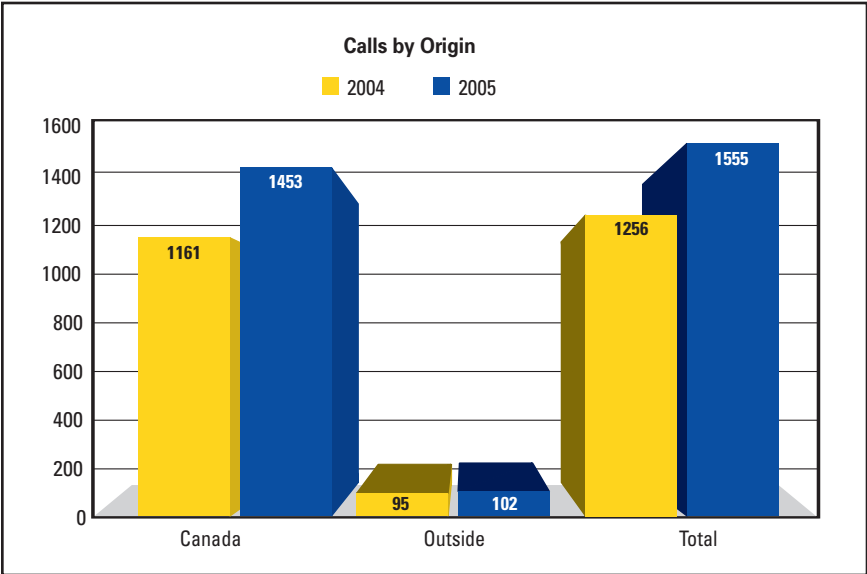
➤ Advisory Services

22. The advisory services provided by DCS counsel remain a dominant aspect of the overall operation of DCS. Indeed, with an increase in deployments, 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.
23. The communications arising from these advisory services highlights both the merit of the DCS contribution to the protection of and respect for these rights as well as the need to respond to practices that may infringe upon them. Rapid intervention by DCS lawyers with the legal advisors of the military authorities in question, or with other directorates of the JAG, have enabled us, at times, to contribute to correcting the situation.
24. Bilingual services are freely available to all CF members and persons subject to the Code of Service Discipline, whether they are posted in Canada or abroad, at all times and without interruption. Telephone and electronic communications are ensured by DCS lawyers through a toll-free number widely disseminated throughout the CF, a national access number and through email. This latter method of communication has become more and more frequent. The change towards a

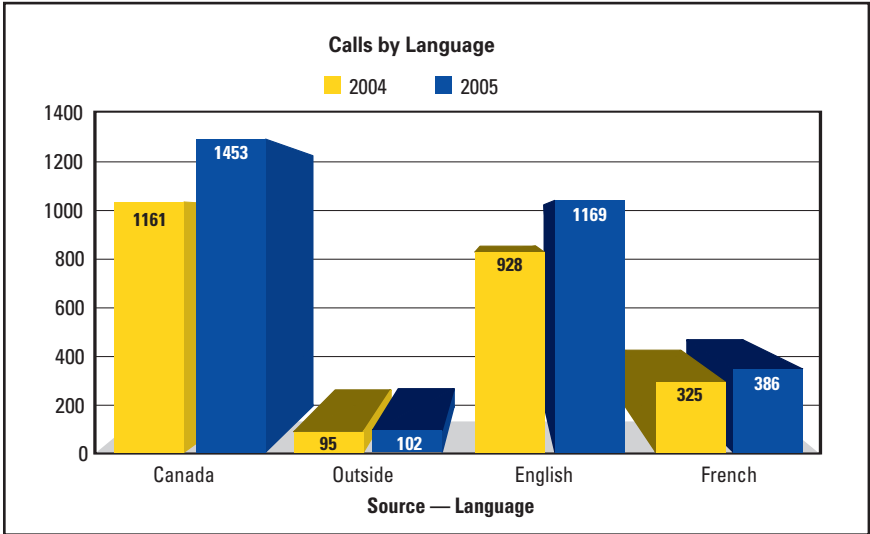
different telephone service provider has caused difficulty in accessing the Service outside the normal working hours. The situation has been reported and the Communications Service is working on rectifying this at time of writing this Report. Usage was distributed as follows:

- 1-800 access line to ensure access to legal advice upon arrest or detention; it is provided to military police and other CF authorities likely to be involved in investigations of a disciplinary or criminal nature.
- Standard direct telephone access, available to accused subject to the Code of Service Discipline, for advice in relation to an election between court martial and summary trial, or questions on other disciplinary matters, or all other matters authorized under the QR&O to all CF personnel.
- Email remains an avenue frequently used in initiating contact or obtaining information.

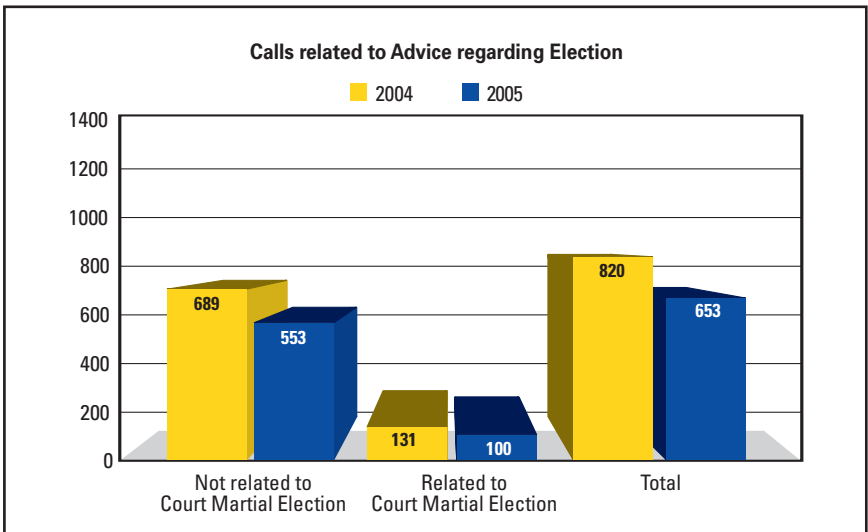
25. During the reporting period, DCS counsel handled a total of 1555 calls. The calls ranged in duration but, on average, were approximately 16 minutes. This undertaking totalled nearly 400 hours, similar to the previous year. The origin of the calls is illustrated in the following graph:



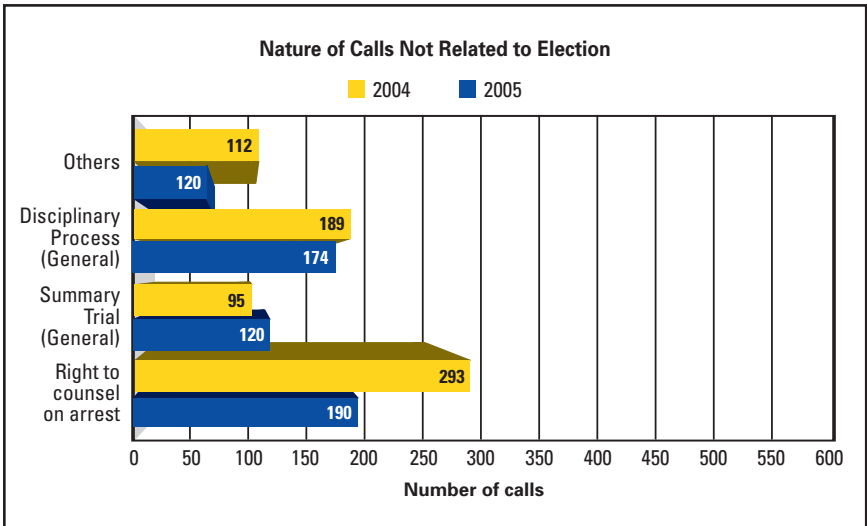
26. We have also tabulated the official language used by the accused, illustrated in the following graph:



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

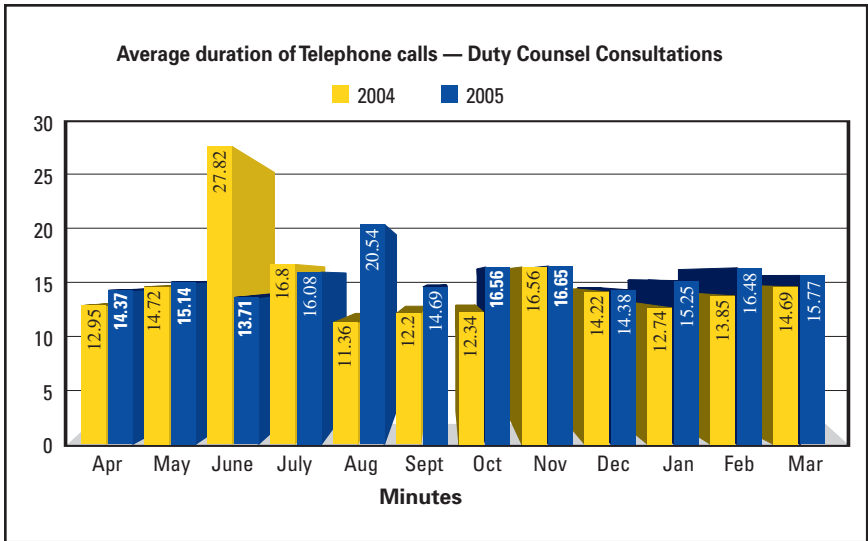


28. Similarly, this graph shows the nature of calls that were *not* related to the election of an accused between court martial or summary trial:



The *Others* portion of the above graph refers to subjects such as the court martial process in general, redress of grievance and release from the CF. While DCS is not specifically 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, DCS counsel provide advice as to the mechanics of the process, but do not get involved in the merits of the matter.

29. Newly collected data added to the information compiled during the year has allowed us to track the regularity and variations of telephone services provides to DCS's clients:



GENERAL ACTIVITIES

30. Our services were required on three occasions for possible hearings to determine whether accused members should be retained in custody. These hearings are held before a military judge pursuant to section 159 of the NDA, to hear evidence and determine whether the accused will be released, with or without conditions. Except for one case in which the member was detained for two days before being released by his unit, the military members were released by their units following preliminary exchanges between defence counsel, the Deputy Judge Advocate and the Regional Military Prosecutor, negating the need for a hearing in those cases.
31. A hearing was held pursuant to QR&O 101.20 (3)(c) in order to determine whether there was sufficient admissible evidence to order the accused to stand trial. They were related to events in Somalia and the former member was originally declared unfit to stand trial. The situation of this former member will soon be submitted to a test. The changes to the NDA, necessitated by a decision of the Supreme Court of Canada on this issue, are expected.
32. DDCS was consulted after having obtained comments on proposed legislative changes relating to the Appeal Committee.

33. DDCS requested an independent legal opinion on the possibility of obtaining intervener status following a motion in the Federal Court concerning an issue between the Director of Military Prosecutions and the Chief Military Judge and the Court Martial Administrator. The motion involved the case of a military member represented by DCS counsel.
34. The establishment of a judicial calendar that is realistic and adaptive to actual needs is still lacking. No significant progress been made on this matter.
35. The final drafting of regulations governing legal representation of CF members who are accused of criminal offences before foreign courts continues, but has been considerably delayed. A formula is required to obtain an amount, based on the actual cost and the member's pay, to be reimbursed to the Crown by the CF member. Initial problems with informatics and logistics contributed to the delays. The initial formula for calculation based on using an Excel spread sheet did not provide constant results. It required extensive review by other agencies, which finally resulted in a viable model. We have incorporated the new mathematical formula, which now provides constant and reliable results. However, we will have to rethink the proposition of a fixed percentage. With the experience acquired in this matter, it is evident that using a single percentage in all cases can result in a very large financial contribution by the offender, sometimes imposing a severe financial burden. A more equitable proposition will be submitted to the JAG during the next reporting period.
36. DDCS continues to administer the legal assistance funds allocated to military members accused abroad, but no activity has been required. The administration of this file is in accordance with Canadian Forces Administrative Order 111-2 - Employment of Civilian Defence Counsel in Foreign Criminal Court.
37. We note also that many accused members are released long before the conclusion of disciplinary proceedings. The medical condition of many accused once again required special attention from DCS counsel as well as follow-up medicals from experts in some cases. Also, the release from the CF of accused

members, sometimes without regard for the procedure or outcome of the military justice system, can severely impede the ability of DCS counsel to communicate with them. More than ever, accused persons restructure their activities to adjust to civilian life following their release and their contact information is frequently unknown. Release from the CF before the end of disciplinary proceedings occasionally jeopardizes the reintegration of the accused, and his or her family, into civilian life. This is often even more difficult for members subject to medical release.

38. As has been identified in previous annual reports, the Performance Evaluations process of DCS lawyers has been the subject of discussion. Unlike other legal officers in the Office of the JAG, DCS counsel do not have their performance reviewed by a Colonel/Captain (Navy). Although exact rank parity is not necessarily a requirement, this factor may be the subject of future discussions.

CONCLUSION

39. The length and volume of courts martial reveal a need to ensure broad financial latitude and flexibility. The JAG understands the unpredictability attached to this task and does not hesitate to support these additional needs. I note that several files are handled and resolved following the Record of Disciplinary Proceedings but prior to the charge being preferred for court martial. The human resources and finances expended in such cases are nonetheless demanding of a significant amount of time and money, especially when medical expertise is required. The comments received from military members, allow me to believe that, in general, the objectives and mission of DCS are being achieved.



Annual Report of the Director of Military Prosecutions



ANNEX J



Annual Report of the Director of Military Prosecutions



SECTION 1 — INTRODUCTION

In accordance with a prescription set out by the Governor in Council in the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*, the Director of Military Prosecutions (DMP) is required to report annually to the Judge Advocate General (JAG) on the execution of her duties and functions.¹ This, the seventh such report submitted by a DMP covers the period from 1 April 2005 to 31 March 2006.²

This report will cover the following areas:

- The DMP: Role, Organization, and Personnel
- Training, Communications and Policy Development
- Military Justice Proceedings: trials, appeals and other hearings

SECTION 2 — THE DMP: ROLE, ORGANIZATION, AND PERSONNEL

The DMP is appointed by the Minister of National Defence. While she acts under the general supervision of the JAG, she exercises her duties and functions independently. Those duties and functions, which are set out in the *National Defence Act*, the QR&O, ministerial

1 See QR&O article 110.11.

2 Previous DMP Annual Reports, along with copies of DMP Policy Directives and other information can be found at the DMP website:
http://www.forces.gc.ca/jag/military_justice/cmpps/default_e.asp

orders and other agreements, include:

- Reviewing all charges referred to her and determining whether:
 - The charges should be tried by court martial;
 - Other charges founded on the evidence should be tried by court martial either instead of or in addition to the charges referred; or
 - The charges should be dealt with by an officer who has jurisdiction to try the accused by summary trial.
- If the charges are to be tried by court martial, determining the type of court martial to be convened.
- Conducting - in Canada or at deployed locations overseas - the prosecution of all charges tried by court martial.
- Acting as appellate counsel for the Minister of National Defence on all appeals from courts martial.
- Acting as the representative of the Canadian Forces (CF) at all custody review hearings conducted before a military judge.
- Acting as the representative of the CF before other boards and tribunals whose jurisdiction touches upon matters relevant to the military justice system.
- Providing legal advice to military police personnel assigned to the Canadian Forces National Investigation Service (CFNIS).

The DMP is assisted in the fulfillment of her duties and functions by a team consisting of regular and reserve force legal officers who are appointed by DMP to act as military prosecutors, along with civilian paralegals and support staff. The service is organized regionally, and consists of:

- A headquarters at National Defence Headquarters in Ottawa staffed by the DMP, Deputy Director, an appellate counsel and two staff prosecutors responsible for communications, training and policy development;
- Regional Military Prosecutors' (RMP) offices, each established for two regular force prosecutors, located at:
 - Halifax, Nova Scotia (Atlantic Region)
 - Valcartier, Quebec (Eastern Region)
 - Ottawa, Ontario (Central Region)
 - Edmonton, Alberta (Western Region)

- Reserve force prosecutors located individually across Canada.³

During the present reporting period, DMP experienced several personnel changes. One new prosecutor was posted to each RMP office, each replacing a legal officer who was posted to a new position within the Office of the JAG. One of the staff prosecutors was voluntarily released from the CF at the end of August 2005. His position was not filled during the reporting period.

There were also a number of civilian staff changes including the departure of the long-time legal assistant in the RMP (Western) office, the taking of a leave of absence by her replacement, a lengthy period of sick leave by the RMP (Atlantic) legal assistant and the maternity leave of the prosecutions paralegal.

SECTION 3 — TRAINING, COMMUNICATIONS AND POLICY DEVELOPMENT

All regular force military prosecutors are military legal officers who are posted to their positions for a limited period of time - usually three to five years. As such, the training that they receive must support both their current employment as prosecutors as well as their professional development as officers and military lawyers. The relative brevity of a military prosecutor's tour with DMP requires a significant and ongoing organizational commitment to providing him or her with the formal training and practical experience necessary to develop the skills, knowledge and judgment essential in an effective prosecutor.

Given the small size of the DMP organization, much of the required training is provided by organizations external to the CF. During the present reporting period, DMP prosecutors participated in conferences and continuing legal education programs organized by the Federation of Law Societies of Canada, the Canadian Bar Association and its provincial affiliates, the Alberta Department of Justice, the Ontario Crown Attorneys Association and various provincial law societies. These programs benefited the CF not only through the knowledge imparted or skills developed but also through the professional bonds forged by individual military

3 An organization chart can be found at http://www.forces.gc.ca/jag/military_justice/cmpps/org_chart/CMPSOrgChart_e.pdf

prosecutors with their colleagues from the provincial and federal prosecution services.

The capstone to DMP's training efforts is an annual workshop of military prosecutors. This year's workshop took place on 24 and 25 October 2005 at Ottawa, Ontario. It was attended by regular and reserve force prosecutors and by the civilian paralegal staff. The focus of the workshop was on current issues of particular relevance to prosecutors with most sessions being devoted to interactive "round-table" discussions chaired by the DMP or the DDMP. Additional presentations were provided by the leadership of the CFNIS and by a senior Ontario Crown Attorney. The workshop was a success, providing an excellent forum for professional interaction among military prosecutors from across the country.

All military lawyers and military officers are required to undertake professional development activities consistent with their level of proficiency and experience. During the reporting period, all available military prosecutors attended the annual JAG continuing legal education workshop. Individual military prosecutors also took part in a variety of professional development activities ranging from the legal officer intermediate training program to the officer professional military education program to continuing language training. Finally, in order to maintain their readiness to deploy in support of DMP's mandate, military prosecutors conducted individual military skills training such as weapons familiarization and first aid training.

DMP also provides support to the training mandates of other CF entities. During the present reporting period, this support included the mentoring and supervision by military prosecutors of a number of junior military lawyers from the Office of the JAG, who completed a portion of their "on the job training" program by assisting in the prosecution of charges at courts martial. Military prosecutors also provided presentations on legal matters to students at the Canadian Forces Military Police Academy and to investigators at regional detachments of the CFNIS.

A hardworking and highly motivated civilian support staff is an integral part of the DMP team and provides a most important service in the carrying out of the prosecutorial function. As a result, significant efforts are also made to provide these individuals

with training and experiences that will enhance their value to DMP and to the DND. During this reporting period, individual DMP civilian staff members undertook a variety of such activities. Of particular note: the appeals paralegal undertook her articles of clerkship with the Office of the JAG and the Canadian Forces Legal Advisor in preparation for her call to the bar; the legal assistant from the RMP (Eastern) office deployed for a second time to Afghanistan for a tour with the Canadian Forces Personnel Support Agency; and the DMP clerk undertook a term position as the travel and claims clerk in the JAG General Office.

Given the geographic dispersal of military prosecutors across Canada, effective communication is vitally important to the operations of the DMP organization. For practical and fiscal reasons, the bulk of internal communication takes place via telephone and electronic mail. To ensure that prosecutors remain aware of the progress of individual disciplinary files, the DMP updates and distributes several different internal reports on a weekly basis. When necessary, the DMP also convenes conference calls among the regular force prosecutors to provide direction and discuss matters of common interest. Following the completion of each court martial the trial prosecutor informs all other prosecutors of the results of the case and the reasons provided by the military judge.

In order to promote transparency and confidence in the military justice system, among members of the CF and of the Canadian public, DMP maintains an internet website. The site contains information regarding the key roles and activities of military prosecutors, along with copies of all JAG General Guidelines and Instructions to the DMP and DMP Policy Directives.

Military prosecutors also play a role in the development of military justice and criminal justice policy. The DMP continues to play a strong role in such efforts through her participation on a committee made up of the heads of all federal, provincial and territorial prosecution services. Other military prosecutors act as her representatives on various sub-committees formed under the auspices of the main committee.

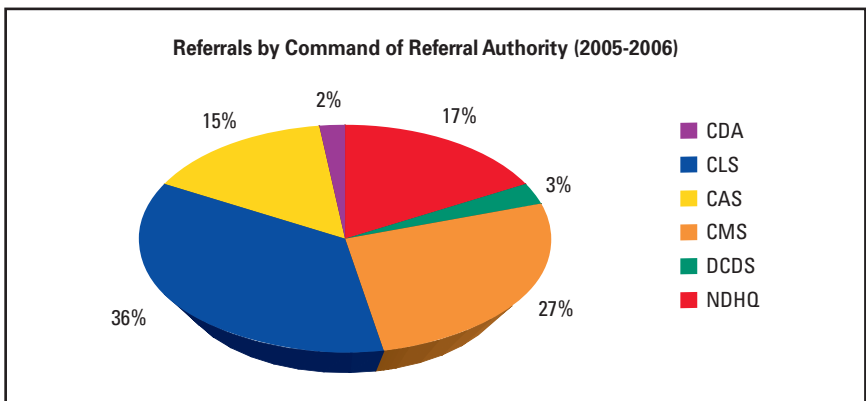
SECTION 4 — MILITARY JUSTICE PROCEEDINGS

The nature of the operational tasks entrusted to the CF requires the creation and maintenance of a high degree of discipline among CF members. Parliament and the courts have long recognized the importance of a separate Code of Service Discipline to govern the conduct of individual soldiers, sailors and air force personnel and prescribes punishment for disciplinary breaches. The Code of Service Discipline also creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are the courts martial.

During the present reporting period, military prosecutors represented the interest of the CF in a number of different types of judicial proceedings related to the military justice system. These proceedings included courts martial, appeals from courts martial, reviews of pre-trial custody and mental health review board.

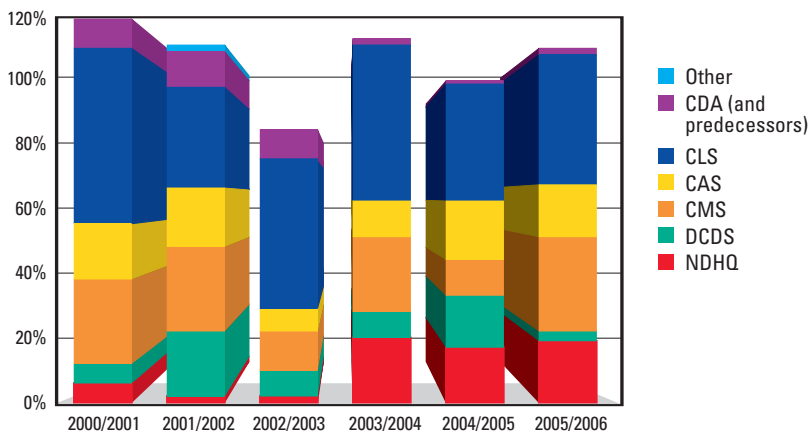
Courts Martial

During the present reporting period, the DMP received 109 applications for disposal of a charge or charges from various referral authorities (see figures 1 and 2). This number is roughly consistent with the numbers of applications received annually since the appointment of the first DMP on 1 September 1999.



Referrals by Command of Referral Authority (Historical)

(Note: 1999-2000 figures are not available)



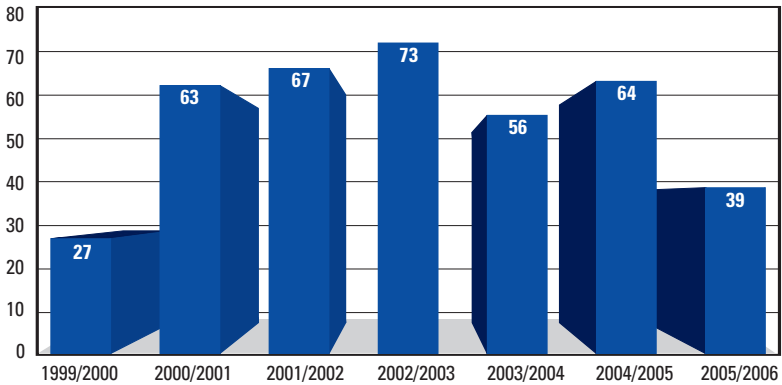
Following review by individual military prosecutors, charges were preferred to court martial in respect of 61 applications. In two of these cases, the accused person, having previously elected to be tried by court martial, changed their election prior to the commencement of trial, choosing instead to be tried summarily by a presiding officer. A decision to not prefer any charges either because the admissible evidence was not sufficient to provide a reasonable prospect of conviction or because of a determination that the public interest did not require the prosecution of charges at court martial was made in respect of 14 applications. Two applications were - at the request of the accused person - referred back to a presiding officer for disposal at summary trial. No decision as to disposal has been made in respect of the remaining 32 applications.

During the present reporting period, a total of 157 charges⁴ were tried before 39 courts martial. In one case, a court martial was convened but the DMP decided to withdraw all preferred charges before the trial could commence. The number of courts martial completed is significantly lower than the numbers completed throughout the history of the independent military prosecution service (see figure 3).

4 This figure includes 20 charges that were withdrawn either before or after the court martial commenced.

Number of Courts Martial Completed (Historical)

(Note: 1999-2000 figures are for 1 Sep 99 to 31 Mar 00)



There appear to be a number of reasons for this disparity, including longer trials and the extended absence of one of the three military judges due to illness. However, the single largest factor in the decreased number of trials was a series of constitutional applications brought and fully argued before four Standing Court Martial (SCM) by accused persons between early-October 2005 and mid-January 2006. The applications challenged the independence of the military judges presiding at the courts martial on a number of different grounds, but focused primarily upon their security of tenure. The hearing of each application proceeded by way of both written and oral submissions. In order to allow for the timely hearing of the applications, the Chief Military Judge revoked her assignment of the military judges designated to preside at a number of other courts martial. At the end of the present reporting period, several of the accused persons whose trials were delayed as a result have still not been tried.

Each of the applications was allowed in part, although the different military judges found that the unconstitutionality resided in different legislative provisions. In all cases, the remedies awarded had no impact on the jurisdiction of the SCM and the trials eventually proceeded. Further similar applications in more recent cases have

met with similar results. As of the end of the reporting period, two unsuccessful applicants have filed notices of appeal with respect to the issue of judicial independence.

The absence of the Chief Military Judge on sick leave has continued to have an impact on the completion of courts martial in the last quarter of the reporting period and has contributed to a significant increase in the backlog of charges awaiting trial before a court martial. Indeed, as of 31 March 2006, four courts martial had been commenced but not completed, eight had been convened but not yet commenced and a further 40 charge sheets had been preferred to the Court Martial Administrator and were awaiting the assignment of a military judge and the convening of a court martial. This total of 52 matters awaiting completion (33% greater than the total number of proceedings completed in the present reporting period) will present a significant challenge to the military justice system going forward.

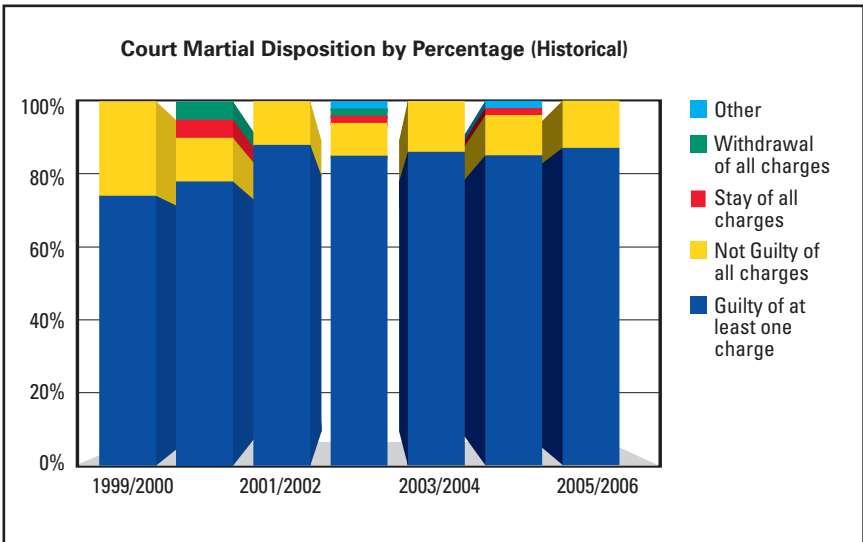
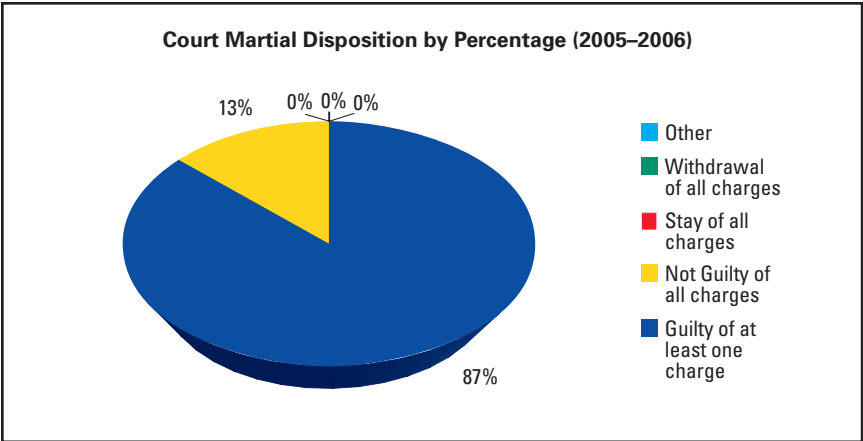
One of the charge sheets in respect of which a court martial has yet to be convened involves an accused person and complainant who are both members of Joint Task Force 2 (JTF2), the Canadian Forces' special operations unit. As a result of security instructions prohibiting the public dissemination of information regarding the unit's operations or the identity of its members, the DMP preferred a charge sheet that was classified "SECRET". The Chief Military Judge refused to assign a military judge to preside at a trial of the charges, holding that to do so would be contrary to the principle of openness in military justice proceedings.⁵ In the absence of an assigned judge, the Court Martial Administrator refused to convene a court martial.⁶ After unsuccessful attempts to resolve the situation, the DMP applied to the Federal Court of Canada for judicial review of the Chief Military Judge's and Court Martial Administrator's decisions. Counsel for DMP anticipates that the application will be heard in the spring of 2006.

All courts martial held during the reporting period were SCM, composed of a military judge sitting alone as both trier of fact and

5 Section 165.25 of the National Defence Act provides that "The Chief Military Judge assigns military judges to preside at courts martial ..."

6 Subsection 165.19(1) of the National Defence Act provides that "When a charge is preferred, the Court Martial Administrator shall convene a court martial ..."

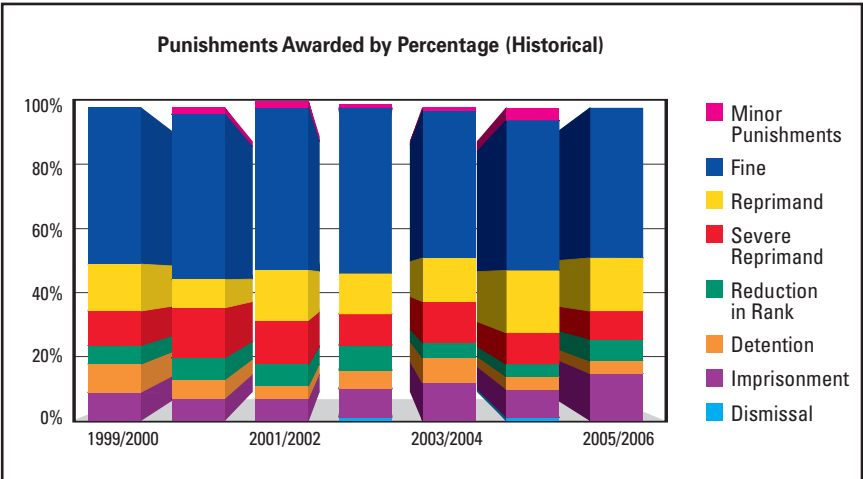
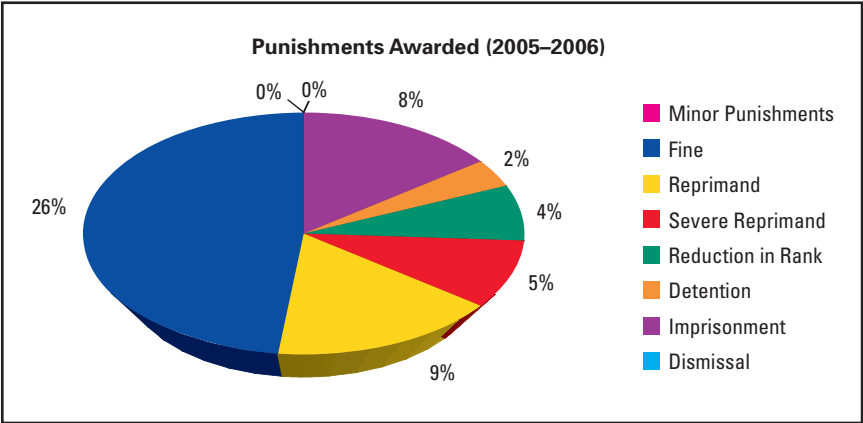
trier of law. At the conclusion of 34 of the trials, the military judge made a finding of guilty in respect of at least one charge (see figures 4 and 5).



Annexes A and B provide additional information regarding the charges tried and the results of each court martial.

While only one sentence may be passed on an offender at a court martial, a sentence may involve more than one punishment. The 34 sentences pronounced by courts martial during the reporting period involved 54 punishments. A fine was the most common

punishment, with 26 fines being imposed. Of note, eight punishments of imprisonment and two 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 ten cases. Military judges heard no applications for release pending appeal in the remaining cases where a custodial sentence was imposed.



Appeals

During the present reporting period, appellate counsel appointed by the DMP represented the CF in ten appeals. A member of the CF who was convicted and sentenced by a court martial brought eight of these appeals. Her Majesty brought the remaining two appeals. Both of the Crown's appeals were abandoned following detailed review of the trial transcripts. The Court Martial Appeal Court (CMAC) held oral hearings in respect of four appeals. The remaining four appeals have not yet been disposed of.

Annex C provides additional information regarding the types of appeal and the progress of each appeal. One of the appeal decisions rendered during the present reporting period is worthy of particular comment.

Lieutenant Nystrom appealed the legality of his conviction by a SCM of one count of sexual assault. He raised two separate grounds: first, that the finding of guilt was unreasonable because the Military Judge misapprehended the evidence and failed to take into account relevant evidence; and second, that section 165.14 of the *National Defence Act*, which grants the DMP the authority to determine the type of court martial that is to try the accused - be it a SCM composed of a military judge sitting alone, a Disciplinary Court Martial (DCM) composed of a military judge and a panel of three members or a General Court Martial (GCM) composed of a military judge and a panel of five members - is unconstitutional. On 20 December 2005, the CMAC allowed the appeal, finding that the military judge had misapprehended the evidence and entered a verdict of not guilty on the charge.

Of more long-term interest to the military justice system were the Court's non-binding comments regarding section 165.14 of the *National Defence Act*, wherein it expressed its "deep concern" with the impugned provision. The Court's reasons suggest that the tactical advantage that it associated with the opportunity to choose the type of court martial falls outside the bounds of prosecutorial discretion and should, instead, be considered to be part of an accused person's constitutionally-protected right to make full answer and defence. Pointing to statistical information as to the numbers of SCM, DCM and GCM convened since 1 September 1999, the Court commented that the evidence pointed to "the virtually

inescapable conclusion that [DMP's authority] under section 165.14 is being abused." These comments have given rise to a new series of trial-level constitutional challenges to section 165.14 that will be determined early in the next reporting period. They have also led the DMP to develop a policy directive setting out the manner in which she exercises her authority to choose the type of court martial. This policy directive will be issued early in the next reporting period.

Other Hearings

Military judges are required to review orders made to retain a CF member in service custody. DMP is mandated to represent the interest of the CF at such hearings. During the present reporting period, military prosecutors appeared at two pre-trial custody review hearings. In both cases the person in custody was released upon giving an undertaking to comply with certain conditions set by the military judge.

During the reporting period two accused persons were arrested on warrants issued by military judges for failing to appear before the courts martial convened to try them. In one case, the presiding military judge ordered that the accused be held in custody for the duration of his trial. In the other, a different military judge decided to release the accused person but held that he had no jurisdiction to require that he undertake to comply with any conditions.

Also during the present reporting period, a military prosecutor represented the CF in three hearings involving Ex-Master Corporal Clayton Matchee. In two of the hearings, a military prosecutor represented the CF before a Provincial Mental Health Review Board hearing in Saskatchewan that determined that the accused remained unfit to stand trial. In the third hearing, a military judge, pursuant to subsection 202.12(1.1) of the *National Defence Act*, extended to April 2007, the time for holding an inquiry to determine whether there is sufficient evidence to continue the prosecution of the charges against the accused.

CONCLUSION - DMP COMMENTS

My first full year as DMP has been an interesting and challenging one. My initial impression of the Directorate of Military Prosecutions Service as an organization of dedicated, hard working professionals has proved to be accurate. The considerable staffing challenges experienced by DMP during the year have only served to highlight the incredible commitment of the military prosecution team to our mission of providing competent, fair, swift and deployable prosecution services in Canada and overseas in support of discipline. This dedication has not only been evident in the long hours worked and the personal sacrifices made by DMP prosecutors and staff but also in their commitment to enhance their professional excellence through the pursuit of academic studies and formal training. In a small organization such as this, I believe it is notable that two members of my team (one military prosecutor who completed his LL.M with "First Class Honors" and the prosecution paralegal who obtained her certificate in advanced litigation support) have completed - on their own time - advanced studies in their respective areas of expertise.

In last year's annual report, I spoke about the possibility of implementing a more formalized program of extra-jurisdictional training for legal officers within DMP. I am happy to report that a legal officer from RMP Eastern was seconded for a three-month period to "Le Bureau des substituts du procureur général du Québec" for the city of Quebec. This was a fruitful exchange for all parties and I am already exploring potential opportunities to repeat this experience with one of our new prosecutors who will be posted to DMP in 2006. This type of initiative highlights the enormous importance and benefits of DMP participation in the Federal/Provincial/Territorial Heads of Prosecution Committee. My colleagues on this Committee continue to provide me with important assistance and counsel in meeting the challenges and developing the necessary initiatives to lead this still young prosecution service.

Nevertheless, the issue of maintaining and improving the expertise of military prosecutors remains. Because of the relative youth of the organization and the requirement for legal officers to be exposed to all three of JAG's pillars, we have yet to see anyone who has previously served as a military prosecutor return for a

second posting. While we rely heavily on our Reserve force members, they cannot completely bridge this gap of experience. I have also been very fortunate to have a very experienced DDMP to mentor and guide the more junior legal officers and this has aided significantly in addressing this issue. Finally, meaningful and comprehensive prosecution policy directives are also beneficial in this regard. However, the challenges are significant, particularly when one is attempting to mentor and supervise legal officers widely dispersed across the country, when policy directives are in need of review and revision as recently demonstrated by a CMAC decision and where there will be a requirement to fill both the DDMP and policy positions within the organization this summer.

In the upcoming year I will attempt to address these concerns by developing and implementing a plan for a full review and revision of current DMP policy directives. I will also partially effect an informal pilot program whereby new legal officers posted to DMP will be posted to a position in either DMP headquarters or RMP Central region prior to posting to any of our field offices outside of Ottawa. This co-location with DMP should facilitate better mentoring and supervision of new prosecutors. Finally, in the Fall 2006, I will be conducting a one-week basic military prosecutors course designed to ensure that all military prosecutors have formal training in the fundamentals of prosecutions.

In conjunction with these internal initiatives, DMP remains firmly committed to an outreach program that is essential to enhancing awareness of the Canadian military justice system among its civilian counterparts thereby supporting JAG's strategic objective of building public confidence in the Canadian military justice system. One of the important forums of this program is the International Association of Prosecutors (IAP). As stated in last years annual report, DMP's goal for this year in respect of the IAP was to "continue to raise the profile of the Canadian military justice system in a manner fully consistent with Canada's broader leadership role in the areas of respect for the rule of law and human rights by maintaining and enhancing [DMP] support and participation in IAP initiatives." This support and participation manifested itself in DMP representation at the last IAP annual convention in Copenhagen and at a conference on "Effective Counter Terrorism

and the Rule of Law” co-sponsored by the IAP in The Hague. DMP will continue this very important involvement with the IAP by having representation at the next annual convention in Paris where the theme will be “Decisions to Prosecute” and by sending a representative to the first regional meeting of the IAP for the Americas in Chile.

Annual Report 2005-2006 (Annex A)

Type	Rank	NDA section	Description	Disposition	Sentence	Location of Court Martial	Location of Offence	Command	Lang. of Trial
1	SCM	Cpl	130 (s. 270(1)(a) Cr. Code)	Assaulting a Peace Officer	Not Guilty	10 days detention (suspended) \$750 fine	Bagotville, QC	CAS	French
				Obstructing a Peace Officer	Not Guilty				
				Obstructing a Peace Officer	Guilty				
				Obstructing a Peace Officer	Not Guilty				
				Drunkennes	Guilty				
				Absent Without Leave	Guilty				
				Absent Without Leave	Guilty				
Absent Without Leave	Guilty								
2	SCM	Cpl	90	Absent Without Leave	Guilty	14 days detention Reduction to rank of Pte	Halifax, NS	DG IM	English
				Absent Without Leave	Guilty				
				Absent Without Leave	Guilty				
				Absent Without Leave	Guilty				
				Absent Without Leave	Guilty				
				Failure to Comply with Conditions	Guilty				
				Failure to Comply with Conditions	Guilty				
				Failure to Comply with Conditions	Guilty				
				Failure to Comply with Conditions	Guilty				
				Failure to Comply with Conditions	Guilty				
Failure to Comply with Conditions	Guilty								

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Type	Rank	NDA section	Description	Disposition	Sentence	Location of Court Martial	Location of Offence	Comm.	Lang. of Trial
		130 (s. 354(1) Cr. Code)	Possession of Property Obtained by Crime	Guilty					
		130 (s. 82(1) Cr. Code)	Possession of an Explosive	Guilty					
		130 (s. 82(1) Cr. Code)	Possession of an Explosive	Guilty					
		130 (s. 82(1) Cr. Code)	Possession of an Explosive	Not Guilty					
6	SCM	Cpl	130 (s. 271 Cr. Code)	Sexual Assault	Stay	Edmonton, AB	Edmonton, AB	CLS	English
			129	Conduct to the Prejudice	Guilty				
			130 (s. 271 Cr. Code)	Sexual Assault	Stay				
			129	Conduct to the Prejudice	Guilty				
7	SCM	Ex-Pte (s. 4(1) CDSA)	130	Possession of a Substance	Guilty	Edmonton, AB	Edmonton, AB	CLS	English
					14 days imprisonment (suspended) \$1000 fine				
8	SCM	Cpl	93	Disgraceful Conduct	Guilty	St-Jean, QC	St-Adèle, QC	CLS	French
			93	Disgraceful Conduct	Not Guilty				
			130 (s. 173(1)(a) Cr. Code)	Committing an Indecent Act	Not Guilty				
			129	Conduct to the Prejudice	Stay				
9	SCM	MCpl	83	Disobeyed a Lawful Command	Withdrawn	Valcartier, QC	Valcartier, QC	CLS	French
			129	Conduct to the Prejudice	Withdrawn				
			97	Drunkenness	Guilty				

10	SCM	Cpl	93	Disgraceful Conduct	Not Guilty	N/A	Borden, ON	Borden, ON	CFHSG	English
11	SCM	Cpl	129	Conduct to the Prejudice	Not Guilty	Reprimand \$500 fine	Valcartier, QC	Quebec, QC	CLS	French
			83	Disobeyed a Lawful Command	Stay					
			129	Conduct to the Prejudice	Guilty					
			83	Disobeyed a Lawful Command	Stay					
			129	Conduct to the Prejudice	Guilty					
			85	Insulting a Superior Officer	Stay					
			97	Drunkenness	Guilty					
12	SCM	LS	130 (s. 271 Cr. Code)	Sexual Assault	Not Guilty	N/A	Esquimalt, BC	Hawaii, USA	CMS	English
			95	Ill-treatment of a Subordinate	Not Guilty					
13	SCM	LS	130 (s. 342(1)(a) Cr. Code)	Theft of a Credit Card	Not Guilty	Severe reprimand \$1800 fine	Esquimalt, BC	Victoria, BC	CLS	English
			130 (s. 342(1)(c) Cr. Code)	Used a Credit Card Obtained by Commission of an Offence	Not Guilty					
			117(f)	An Act of a Fraudulent Nature	Guilty					
			130 (s. 362(1)(b) Cr. Code)	Obtained Credit by False Pretences	Not Guilty					
			117(f)	An Act of a Fraudulent Nature	Not Guilty					
			130 (s. 342(1)(c) Cr. Code)	Used a Credit Card Obtained by the Commission of an Offence	Stay					
			117(f)	An Act of a Fraudulent Nature	Guilty					

Annual Report 2005-2006 (Annex A)

Type	Rank	NDA section	Description	Disposition	Sentence	Location of Court Martial	Location of Offence	Comm.	Lang. of Trial	
14	SCM	Cpl	130 (s. 5(1) CDOSA)	Trafficking	Guilty	Edmonton, AB	Edmonton, AB	CLS	English	
			129	Conduct to the Prejudice	Not Guilty					
			130 (s. 5(1) CDOSA)	Trafficking	Guilty					
			130 (s. 5(1) CDOSA)	Trafficking	Guilty					
15	SCM	Capt	130 (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Guilty	6 months imprisonment	Ottawa, ON	Winnipeg, MB	Joint Staff 4 Mat	English
16	SCM	Ex-Pte	130 (s. 163.1(4) Cr. Code)	Possession of Child Pornography	Guilty	Edmonton, AB	Edmonton, AB	CLS	English	
			130 (s. 163.1(4.1) Cr. Code)	Accessing Child Pornography	Stay					
			130 (s. 163.1(4.1) Cr. Code)	Accessing Child Pornography	Stay					
			130 (s. 140(1)(c) Cr. Code)	Public Mischief	Not Guilty					
17	SCM	Pte	130 (s. 140(1)(c) Cr. Code)	Public Mischief	Not Guilty	St-Jean, QC Kingston, ON	Trenton, ON	ADM HR Mill	English	
			130 (s. 140(1)(c) Cr. Code)	Public Mischief	Not Guilty					
			90	Absent Without Leave	Guilty					
			129	An Act to the Prejudice	Guilty					
18	SCM	Capt	130 (s. 380(1) Cr. Code)	Fraud	Guilty	Valcartier, QC	Victoriaville, QC	CLS	French	
			117	An Act of a Fraudulent Nature	Guilty					
			125	Willfully Made a False Entry in a Document	Withdrawn					

19	SCM	Pte	An Act to the Prejudice	An Act to the Prejudice	Withdrawn	Reprimand \$800 fine	Petawawa, ON	Petawawa, ON	CLS	English
				Assault	Withdrawn					
				Ill-treatment of a Subordinate	Withdrawn					
20	SCM	Ex-CPO2	Breach of Trust by a Public Officer	Conduct to the Prejudice	Guilty	Severe reprimand \$3000 fine	Halifax, NS	Halifax, NS	CMS	English
				An Act to the Prejudice	Not Guilty					
				Absent Without Leave	Guilty					
				Fraud	Withdrawn					
				Breach of Trust by a Public Officer	Withdrawn					
				Breach of Trust by a Public Officer	Guilty					
				Fraud	Withdrawn					
21	SCM	Bdr	Possession of an Explosive	Fraud	Withdrawn	Reprimand \$1200 fine	Gagetown, NB	Gagetown, NB	CLS	English
				Conduct to the Prejudice	Withdrawn					
				Conduct to the Prejudice	Withdrawn					
				Willfully Made a False Statement	Withdrawn					
				An Act to the Prejudice	Guilty					
22	SCM	Pte	An Act to the Prejudice	An Act to the Prejudice	Guilty	Reprimand \$300 fine	Valcartier, QC	Valcartier, QC	CLS	French
				An Act to the Prejudice	Guilty					
				Uttering a Forged Document	Stay					

Annual Report 2005-2006 (Annex A)

Type	Rank	NDA section	Description	Disposition	Sentence	Location of Court Martial	Location of Offence	Comm.	Lang. of Trial
23	SCM	MCpl	129	An Act to the Prejudice	Guilty	Reduction to the rank of Pte	Kingston, ON	ADM HR Mil	English
			130 (s. 271 Cr. Code)	Sexual Assault	Not Guilty				
			130 (s. 271 Cr. Code)	Sexual Assault	Not Guilty				
			130 (s. 348(1)(b) Cr. Code)	Breaking and Entering	Not Guilty				
			130 (s. 271 Cr. Code)	Sexual Assault	Not Guilty				
			130 (s. 348(1)(b) Cr. Code)	Breaking and Entering	Not Guilty				
			130 (s. 348(1)(a) Cr. Code)	Breaking and Entering	Guilty				
97	Drunkenness	Not Guilty							
24	SCM	Cpl	130 (s. 266 Cr. Code)	Assault	Stay	\$300 fine	Trenton, ON	CAS	French
			129	An Act to the Prejudice	Guilty				
25	SCM	Maj	114	Stealing	Guilty	\$150 fine	Kingston, ON	CDA	English
			130 (s. 266 Cr. Code)	Assault	Guilty				
26	SCM	Pte	130 (s. 279(2) Cr. Code)	Forcible Confinement	Not Guilty	\$5000 fine	Edmonton, AB	CFHSG	English
			130 (s. 279(2) Cr. Code)	Forcible Seizure	Not Guilty				
			130 (s. 279(2) Cr. Code)	An Act to the Prejudice	Guilty				
27	SCM	Cpl	129	An Act to the Prejudice	Guilty	Reprimand \$500 fine	Sherbrooke, QC	COS IM	French
			86	Quarrelled with a Person Subject to CSD	Stayed				
			129	An Act to the Prejudice	Guilty				

28	SCM	Ex-OS	130 (s. 5(1) CDSA)	Trafficking	Guilty	12 months imprisonment	Halifax, NS	Halifax, NS	CMS	English
			130 (s. 5(1) CDSA)	Trafficking	Guilty					
			130 (s. 5(1) CDSA)	Trafficking	Guilty					
29	SCM	MCpl	130 (s. 266 Cr. Code)	Assault	Guilty	\$200 fine	North Bay, ON	North Bay, ON	CAS	English
30	SCM	Ex-LS	85	Insulting a Superior Officer	Guilty	Reduction to the rank of Pre	Esquimalt, BC	Esquimalt, BC	CMS	French
			129	An Act to the Prejudice	Guilty					
			83	Disobeyed a Lawful Command	Guilty					
			90	Absent Without Leave	Withdrawn					
			130 (s. 264.1 Cr. Code)	Uttering Threats	Withdrawn					
			85	Insulting a Superior Officer	Guilty					
			84	Offering Violence to a Superior Officer	Withdrawn					
			130 (s. 266 Cr. Code)	Assault	Withdrawn					
31	SCM	Sgt	85	Insulting a Superior Officer	Guilty	Severe Reprimand \$4500 fine	Esquimalt, BC	St. Jean, QC	CFHSG	English
			130 (s. 271 Cr. Code)	Sexual Assault	Stay					
			93	Behaved in a Disgraceful Manner	Guilty					
32	SCM	MCpl	130 (s. 266 Cr. Code)	Assault	Withdrawn	Reprimand \$2000 fine	Edmonton, AB	Kabul, Afghanistan	DCDS	English
			86	Used Provoking Gestures Toward a Person Subject to CSD	Guilty					
			97	Drunkenness	Guilty					
33	SCM	Ex-Pte	130 (s. 267 Cr. Code)	Assault Causing Bodily Harm	Not Guilty	N/A	Shilo, MB	Gagetown, NB	CLS	English

Annual Report 2005-2006 (Annex A)

Type	Rank	NDA section	Description	Disposition	Sentence	Location of Court Martial	Location of Offence	Comm.	Lang. of Trial
34	SCM	Cpl	114	Stealing	Not Guilty	Reprimand \$2000 fine	Greenwood, NS	CAS	English
			129	Conduct to the Prejudice	Guilty				
			114	Stealing	Not Guilty				
			129	Conduct to the Prejudice	Not Guilty				
			129	Conduct to the Prejudice	Not Guilty				
35	SCM	Ex-OS	130 (5(1) CDSA)	Trafficking	Guilty	60 days imprisonment (suspended) \$500 fine	St. John's, NL	CMS	English
			130 (5(1) CDSA)	Trafficking	Not Guilty				
			130 (5(1) CDSA)	Trafficking	Not Guilty				
			130 (5(1) CDSA)	Trafficking	Not Guilty				
			130 (4(1) CDSA)	Possession	Not Guilty				
36	SCM	Ex-AB	130 (5(1) CDSA)	Trafficking	Not Guilty	Reduction in Rank \$1000 fine	Halifax, NS	CMS	English
			130 (5(1) CDSA)	Trafficking	Guilty				
			130 (5(1) CDSA)	Trafficking	Not Guilty				
			130 (5(1) CDSA)	Trafficking	Not Guilty				
			129	Conduct to the Prejudice	Withdrawn				
37	SCM	Sgt	97	Drunkenness	Not Guilty	N/A	Wainwright, AB	CLS	English
38	SCM	MCpl	130 (163.1 (4.1) Cr. Code)	Accessing Child Pornography	Guilty	10 days imprisonment (suspended) \$2500 fine	Gagetown, NB	CLS	English
			129	Conduct to the Prejudice	Stay				
39	SCM	MCpl	97	Drunkenness	Not Guilty	N/A	Shilo, MB	CLS	English

Disposition By Court Martial

	2005–2006	
	#	%
Guilty of at least one charge	34	87
Not guilty of any charges	5	13
Stay of Proceedings	0	0
Withdrawal of all charges	0	0
Other (NDA section 202.12)	0	0
Total	39	100

Sentences

Punishment Type	2005–2006	
	#	%
Dismissal	0	0
Imprisonment	8	15
Detention	2	4
Reduction in Rank	4	7
Severe Reprimand	5	9
Reprimand	9	17
Fine	26	48
Confined to Barracks	0	0
Extra Work and Drill	0	0
Caution	0	0
Total	54	100

Language of Trial

	2005–2006	
	#	%
Trial in English	28	72
Trial in French	11	28
Total	39	100

Courts Martial By Command

	2005–2006	
	#	%
National Defence Headquarters	8	21
Deputy Chief of Defence Staff	3	7
Chief of Maritime Staff	6	15
Chief of Land Staff	17	44
Chief of Air Staff	4	10
Canadian Defence Academy	1	3
Total	39	100

Courts Martial By Rank

	2005–2006	
	#	%
Private and Corporal (Includes Master Corporal)	33	84
Sergeant to Chief Warrant Officer	3	8
Officer	3	8
Other	0	0
Total	39	100

Annual Report 2005-2006 (Annex C)

CMAC #	Appellant	Respondent	Type of Appeal		Result
			Legality of Finding	Severity of Sentence	
479	Cpl Rose	Her Majesty the Queen	Legality of Finding	Severity of Sentence	Appeal allowed. New trial ordered.
481	Cpl Kemp	Her Majesty the Queen	Severity of Sentence	Legality of Finding	N/A
			Severity of Sentence	Severity of Sentence	Appeal dismissed
			Severity of Sentence	Severity of Sentence	Appeal dismissed
483	Lt Nystrom	Her Majesty the Queen	Legality of Finding	Legality of Finding	Appeal allowed. Appellant acquitted.
485	Lt Baptista	Her Majesty the Queen	Legality of Finding	Legality of Finding	Appeal dismissed
			Severity of Sentence	Severity of Sentence	Appeal allowed. Sentence of Severe reprimand and \$5000 fine substituted.
487	Her Majesty the Queen	Ex-Pte Constantin	Severity of Sentence	Severity of Sentence	Appeal abandoned
488	Cpl Griffith	Her Majesty the Queen	Legality of Finding	Legality of Finding	Ongoing
489	Cpl Ballard	Her Majesty the Queen	Legality of Finding	Legality of Finding	Ongoing
			Legality of Finding	Legality of Finding	Appeal abandoned
490	Her Majesty the Queen	Ex-Pte Doling	Legality of Finding	Legality of Finding	Appeal abandoned
491	MCpl Dunphy	Her Majesty the Queen	Legality of Finding	Legality of Finding	Ongoing
492	Cpl Parsons	Her Majesty the Queen	Legality of Finding	Legality of Finding	Ongoing



Glossary of Terms and Abbreviations



AB	Able Seaman
ADM(PER)	Assistant Deputy Minister (Personnel)
AJAG	Assistant Judge Advocate General
CA	Court of Appeal
Capt	Captain
CBA	Canadian Bar Association
CCC	Criminal Code of Canada
CDS	Chief of the Defence Staff
C.D.S.A.	Controlled Drugs and Substances Act
CF	Canadian Forces
CFJOG	Canadian Forces Joint Operations Group
CFNIS	Canadian Forces National Investigation Service
CFOO	Canadian Forces Organizational Order
CLE	Continuing Legal Education
CM	Court Martial
CMAC	Court Martial Appeal Court of Canada
CMPS	Canadian Military Prosecution Service
CO	Commanding Officer
COS	Chief of Staff
Cpl	Corporal
CP01	Chief Petty Officer 1 st Class
CRS	Chief of Review Services
CSD	Code of Service Discipline
CWO	Chief Warrant Officer
DAOD	Defence Administrative Orders and Directives

DCBA	Director Compensation and Benefits Administration
DCS	Defence Counsel Services
DDCS	Director of Defence Counsel Services
DJA	Deputy Judge Advocate
DJAG	Deputy Judge Advocate General
DJAG/COS	Deputy Judge Advocate General/Chief of Staff
DJAG/MJ&AL	Deputy Judge Advocate General/ Military Justice and Administrative Law
DJAG/Ops	Deputy Judge Advocate General/Operations
DJAG/Reg Svcs	Deputy Judge Advocate General/Regional Services
DLaw/AL	Directorate of Law/Administrative Law
DLaw/HR	Directorate of Law/Human Resources
DLaw/I&IO	Directorate of Law/Intelligence and Information Operations
DLaw/MJP&R	Directorate of Law/Military Justice Policy and Research
DMP	Director of Military Prosecutions
D.N.A.	Deoxyribonucleic acid
DND	Department of National Defence
DND/CF LA	Department of National Defence/Canadian Forces Legal Advisor
HTML	Hypertext Mark-up Language
IAW	In Accordance With
IT	Information Technology
JAG	Judge Advocate General
JIRT	JAG Internal Review Team
LL.M	Masters of Laws
LCol	Lieutenant-Colonel
Lt(N)	Lieutenant (Navy)
LS	Leading Seaman
MCpl	Master Corporal
MJCC	Military Judges Compensation Committee
MJSC	Military Judges Selection Committee
MND	Minister of National Defence
MOO	Ministerial Organizational Order
MOZART	Military Occupational Structure Analysis Redesign and Tailoring
MP	Military Police
MWO	Master Warrant Officer
NCM	Non-commissioned member
NDA	National Defence Act
NDHQ	National Defence Headquarters
NDSI	National Defence Sensitive Information
NGO	Non Governmental Organization
OCdt	Officer Cadet

OJT	On-the-job Training
OPME	Officer Professional Military Education
OS	Ordinary Seaman
PDF	Portable Document Format
PER	Performance Evaluation Report
PG	Post Graduate
PO2	Petty Officer 2 nd Class
POCT	Presiding Officer Certification Training
PORT	Presiding Officer Re-certification Training
Pte	Private
Q.C.	Queen's Counsel (Conseil de la reine)
QR&O	Queen's Regulations and Orders for the Canadian Forces
RDP	Record of Disciplinary Proceedings
RMC	Royal Military College
RMP	Regional Military Prosecutor
SCC	Supreme Court of Canada
SCR	Supreme Court Reports
Sgt	Sergeant
Stn	Station
Tpr	Trooper
VCDS	Vice Chief of the Defence Staff
WO	Warrant Officer
2Lt	Second Lieutenant

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