



National
Defence

Défense
nationale

2016-2017

DIRECTOR OF MILITARY PROSECUTIONS

ANNUAL REPORT

Canada 



National Defence

Défense nationale

Director of Military Prosecutions
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12 May 2017

Major-General Blaise Cathcart, OMM, CD, Q.C.
Judge Advocate General
National Defence Headquarters
101 Colonel By Drive
Ottawa, Ontario K1A 0K2

Major-General Cathcart,

Pursuant to article 110.11 of the *Queen's Regulations and Orders for the Canadian Forces*, I am pleased to present you with the 2016-2017 Annual Report of the Director of Military Prosecutions. The report covers the period from 1 April 2016 through 31 March 2017.

Yours sincerely,

Colonel Bruce MacGregor, CD
Director of Military Prosecutions

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MESSAGE FROM THE DIRECTOR OF MILITARY PROSECUTIONS

I am pleased to present the Director of Military Prosecutions (DMP) Annual Report for 2016-2017, my third since being appointed as DMP on 20 October 2014.

As provided for in the *National Defence Act (NDA)*, the DMP is responsible for the referral of charges and prosecution of cases at courts martial under the *Code of Service Discipline (CSD)*; he acts as counsel for the Minister of National Defence in respect of appeals to the Court Martial Appeal Court (CMAC) and Supreme Court of Canada (SCC); and he provides legal advice to the Canadian Forces National Investigation Service (CFNIS). Bolstered by his security of tenure as set out in legislation, the DMP fulfils his legal mandate in a fair, impartial and independent manner.

Canadians expect disciplined military forces that comply with Canadian and international law. The maintenance of discipline in the Canadian Armed Forces (CAF) is the responsibility of the chain of command and is crucial for operational effectiveness and mission success. A disciplined military promotes a respectful work environment, supportive of diversity, in which members feel valued and are motivated to contribute to mission success and to reach their full potential. The military justice system is designed to support the maintenance of discipline, efficiency and morale of CAF members as well as heightening respect for the rule of law.

During this past year, the focus of the Canadian Military Prosecution Service (CMPS) continued to be conducting prosecutions in a manner that is fair, transparent and responsive. To achieve its goal, CMPS took steps to improve its efficiency on three fronts by; 1) improving data collection and devising tools to enhance decision-making and resource allocation; 2) initiating a complete overhaul of its policies beginning with those affecting victims and prosecutions of sexual misconduct offences; and 3) increasing training for prosecutors, especially pertaining to sexual misconduct offences.



CMPS has been actively involved in support of the efforts of the Court Martial Comprehensive Review (CMCR) mandated by the Judge Advocate General (JAG) by providing comments and data that illustrate the work being done by our military prosecutors and support staff on a daily basis. DMP looks forward to further consultations and opportunities to assist the CMCR.

Respecting appeals, the SCC affirmed the constitutionality of the provisions of the *NDA* conferring a right to appeal to the Minister of National Defence on 22 July 2016 in the cases of *Ordinary Seaman Cawthorne v R*; *Warrant Officer Gagnon v R*; and *Corporal Thibault v R* (ss 230.1 and 245(2) of the *NDA*).

At the CMAC, 11 appellants and two respondents on cross-appeal have raised a new ground of appeal following the decision of the SCC in *R v Second Lieutenant Moriarity*, 2015 SCC 55. These appellants allege that paragraph 130(1)(a) of the *NDA* violates the right to a jury trial under subsection 11(f) of the *Canadian Charter of Rights and Freedoms* (*Charter*). A first panel of the CMAC rejected arguments on this issue in *R v Master Corporal Royes* on 03 June 2016. A second panel heard arguments on 26 April 2016 on this same issue from nine other appellants and two respondents but we are still awaiting its decision. A third panel of the CMAC in *R v Corporal Beaudry* adjourned until the second panel issues its decision. Furthermore, on 23 February 2017, the CMAC heard the Minister's appeal in the case of *R v Corporal Golzari* pertaining to knowledge by an accused of the peace officer status of military police officers and the requirement to adduce evidence of a breach of a standard of conduct under section 129 of the *NDA*.

In closing, I wish to thank once more the CMPS team for their efforts and hard work. While this past year has been rife with challenges, I am confident that we were successful in meeting them and thus, in the process, significantly improved the quality and efficiency of military prosecutions.

ORDO PER JUSTITIA

Colonel Bruce MacGregor, CD
Director of Military Prosecutions

THE CANADIAN MILITARY PROSECUTION SERVICE: *ORDO PER JUSTITIA*

INTRODUCTION

This report, covering the period of 1 April 2016 to 31 March 2017, is prepared in accordance with article 110.11 of the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), which requires the DMP¹ to report annually to the JAG on the execution of his duties and functions².

THE MILITARY JUSTICE SYSTEM

The nature of the operational missions entrusted to the CAF requires the maintenance of a high degree of discipline among CAF members. Parliament and the SCC have long recognized the importance of a CSD supported by a separate military justice system to govern the conduct of individual soldiers, sailors and air force personnel, and to prescribe punishment for disciplinary breaches. In *MacKay v the Queen*³ and in *R v Généreux*⁴, the SCC unequivocally upheld the need for military tribunals to exercise their jurisdiction in order to contribute to the maintenance of discipline, and associated military values, as a matter of vital importance to the integrity of the CAF as a national institution. These principles were unanimously reaffirmed by the SCC in 2015 in *Second Lieutenant Moriarity et al v R; Private Alexandra Vezina v R*; and *Sergeant Damien Arsenault v R*.⁵

1 Colonel Bruce MacGregor was appointed by the Minister of National Defence on 20 October 2014 to be the DMP for a four-year term.

2 Previous DMP Annual Reports, along with DMP Policy Directives and other information can be found at the DMP website: <http://www.forces.gc.ca/en/caf-community-legal-services/mil-prosecutions.page>.

3 *MacKay v the Queen*, [1980] 2 SCR 370 at paras 48 and 49.

4 *R v Généreux*, [1992] 1 SCR 259 at para 50.

5 *R v Moriarity*, 2015 SCC 55, [2015] 3 S.C.R. 485.



In determining whether to prefer a matter for trial by court martial, military prosecutors must conduct a two-stage analysis. They must consider whether there is a reasonable prospect of conviction should the matter proceed to trial and whether the public interest requires that a prosecution be pursued.⁶ This policy is consistent with policies applied by Attorneys General throughout Canada and by prosecution agencies elsewhere in the Commonwealth. What sets the military justice system apart are some of the public interest factors that must be taken into account. These include:

- the likely effect on public confidence in military discipline or the administration of military justice;
- the prevalence of the alleged offence in the unit or military community at large and the need for general and specific deterrence; and
- the effect on the maintenance of good order and discipline in the CAF, including the likely impact, if any, on military operations.

Information relating to these and other public interest factors comes from the accused's commanding officer (CO) when the CO sends the matter to his or her next superior officer in matters of discipline. That superior officer may also comment on public interest factors when referring the matter to the DMP.⁷

6 For further information, please refer to DMP Policy Directive 003/00 Post-Charge Review available on the DMP website: <http://www.forces.gc.ca/en/about-policies-standards-legal/post-charge-review.page>.

7 *Supra* note 6, at paragraph 28.

The consideration of uniquely military public interest factors allows the DMP to support the Minister of National Defence as he works with senior leaders of the CAF to “establish and maintain a workplace free from harassment and discrimination.”⁸

Public interest factors in the military context may require prosecuting a person who was subject to the CSD at the time of the alleged offence but who was subsequently released from the CAF. The jurisdiction of the military justice system extends to such persons.⁹ Prosecuting a former CAF member at court martial communicates to serving CAF members that they will be held accountable for their behaviour in uniform whether they continue to serve in the CAF or not.

Courts martial, in contrast to civilian justice processes, are mobile. This allows courts martial to take place in or close to the military community that was most affected by the alleged offences, whether it be an individual victim or a military unit. Courts martial are open to the public, resulting in increased transparency. Those most affected by an alleged offence can see for themselves that justice is being done.

Where the military justice system is called upon as a means of maintaining or reinforcing discipline, it does so with overlapping, but different objectives than the civilian criminal justice system seeks to achieve. It also has different requirements. First, those judging military personnel for alleged breaches of

8 Minister of National Defence Mandate Letter from the Rt. Hon. Justin Trudeau, P.C., M.P., Prime Minister of Canada.

9 *NDA* sections 60 and 69.

the CSD must not only have the requisite jurisdiction to deal with matters that threaten discipline and effectiveness, they must possess an understanding of the bases, need for, and the intricacies of military discipline. Second, as Colonel (Retired) Michael Gibson [now Ontario Superior Court of Justice Gibson] noted in considering the goals and principles of sentencing under the CSD that have been enacted in a recent amendment to the *NDA*:

This represents a synthesis of the classic criminal law sentencing objectives of denunciation, general and specific deterrence, and rehabilitation and restitution, with those targeted at specifically military objectives, such as promoting a habit of obedience to lawful commands and orders, and the maintenance in a democratic state of public trust in the military as a disciplined armed force. This synthesis illustrates that military law has a more positive purpose than the general criminal law in seeking to mould and modify behaviour to the specific requirements of military service. Simply put, an effective military justice system, guided by the correct principles, is a prerequisite for the effective functioning of the armed forces of a modern democratic state governed by the rule of law. It is also key to ensuring compliance of states and their armed forces with the normative requirements of international human rights and international humanitarian law.¹⁰

¹⁰ Michael Gibson, "International Human Rights Law and the Administration of Justice through Military Tribunals: Preserving Utility while Precluding Impunity" (2008) 4: 1 Intl L and Relations 1, at 12.

As stated by Chief Justice Lamer in *Généreux*, the CSD "does not serve merely to regulate conduct that undermines such discipline and integrity. The Code serves a public function as well by punishing specific conduct which threatens public order and welfare" and "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."¹¹

Criminal or fraudulent conduct, even when committed in circumstances that are not directly related to military duties, may have an impact on the standard of discipline, efficiency and morale in the CAF. For instance, the fact that a member of the military has committed an assault in a civil context may call into question that individual's capacity to show discipline in a military environment and to respect military authorities. The fact that the offence has occurred outside a military context does not make it irrational to conclude that the prosecution of the offence is related to the discipline, efficiency and morale of the military.¹²

Canadian military doctrine identifies discipline as one of the essential components of the Canadian military ethos. Discipline is described as a key contributor to the instilling of shared values, the ability to cope with the demands of combat operations, self-assurance and resiliency in the face of adversity, and trust in leaders. It enables military individuals and units to succeed in missions where military skill

¹¹ *R v Généreux*, [1992] 1 SCR 259 at 281 and 293.

¹² *R v Moriarty*, 2015 SCC 55 at para 52.

alone could not.¹³ Some cases may seem minor until they are seen in their military context as violations of the four core Canadian military values which are: duty, loyalty, integrity, and courage. The value of integrity obliges CAF members to maintain the highest possible levels for honesty, uprightness of character, honour, and the adherence to ethical standards.¹⁴ The military justice system exists in part to address instances where it is alleged that CAF members did not discharge their obligations to the required level.

To these ends, the *NDA* creates a structure of military tribunals as the ultimate means of enforcing discipline. Among these tribunals are courts martial. Additionally, court martial decisions may be appealed to the CMAC, which is made up of civilian justices of provincial superior courts, the Federal Court and the Federal Court of Appeal.

13 Canada, Department of National Defence, "Canadian Military Doctrine," by the Chief of the Defence Staff, Ottawa: 2011-09 [Canadian Military Doctrine]. See, in particular, Ch. 2 "Generation and Application of Military Power" and Ch. 4 "The Canadian Forces" at 4-5.

14 Canadian Military Doctrine. See, in particular, Ch 2 "Generation and Application of Military Power" and Ch 4 "The Canadian Forces".

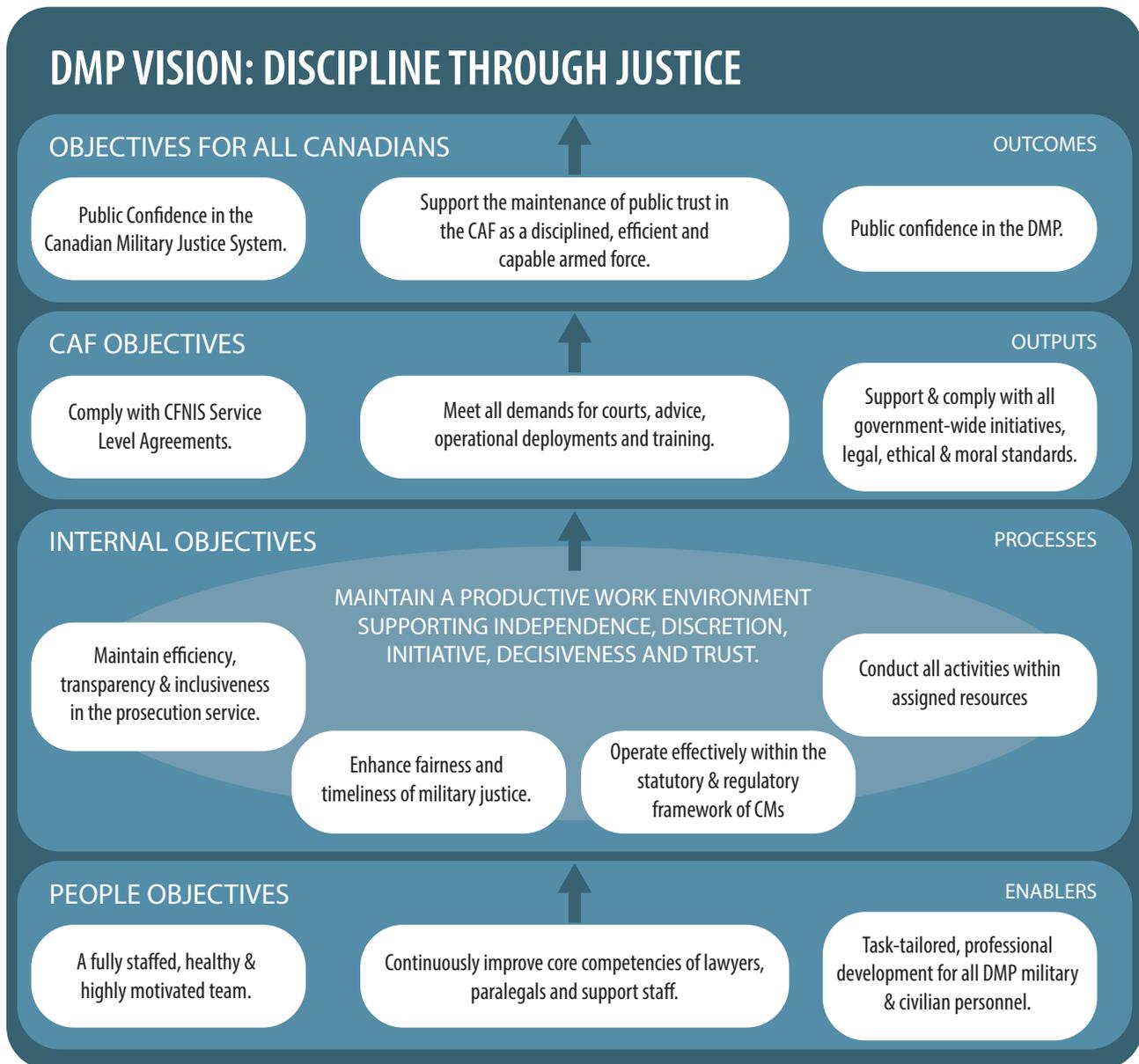
MISSION AND VISION

OUR MISSION

To provide competent, fair, swift and deployable prosecution services to the Canadian Armed Forces in Canada and overseas.

OUR VISION

"ORDO PER JUSTITIA" or *"DISCIPLINE THROUGH JUSTICE"*. The DMP is a key player in the Canadian military justice system helping to promote respect for the law, as well as discipline, good order, high morale, *esprit de corps*, group cohesion and operational efficiency and capability.



DUTIES AND FUNCTIONS OF THE DMP

The DMP is appointed by the Minister of National Defence. Section 165.11 of the *NDA* provides that the DMP is responsible for the preferring of all charges to be tried by court martial and for the conduct of all prosecutions at courts martial in Canada and abroad. The DMP also acts as counsel for the Minister of National Defence in respect of appeals before the CMAC and the SCC. Over the past year, military prosecutors have also represented the CAF at custody review hearings and provided legal advice and training to the CFNIS.

In accordance with section 165.15 of the *NDA*, the DMP is assisted by officers from the Regular Force and the Reserve Force who are barristers or advocates. DMP can also count on a small but highly effective group of civilian support staff. Appointed for a four-year term, the DMP fulfils his mandate in a manner that is fair and impartial. Although the DMP acts under the general supervision of the JAG, he exercises his prosecutorial mandate independent of the chain of command. Those duties and functions, set out in the *NDA*, the QR&O, ministerial orders and other instruments, include:

- Reviewing all CSD charges referred to him through the CAF chain of command and determining whether:
 - The charge(s) or other charges founded on the evidence should be tried by court martial;
 - The charge(s) should be dealt with by an officer who has jurisdiction to try the accused by summary trial; or
 - The charge(s) should not be proceeded with.
- Conducting – within Canada or 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, to the CMAC and to the SCC.
- Acting as the representative of the CAF at all custody review hearings conducted before a military judge.
- Providing legal advice to military police personnel assigned to the CFNIS.

ORGANIZATIONAL STRUCTURE

DMP and his staff of military prosecutors and civilian personnel are known collectively as the Canadian Military Prosecution Service (CMPS). It is organized regionally, and currently consists of:

- DMP headquarters at National Defence Headquarters in Ottawa consisting of the DMP, the Assistant Director of Military Prosecutions (ADMP, who is also responsible for the Eastern Region), one Deputy Director of Military Prosecutions (DDMP) responsible for the Atlantic and Central regions, an appellate counsel, a military prosecutor responsible for policy, training and communications, a legal advisor working directly with the CFNIS, a civilian paralegal, and one legal assistant;
- Regional Military Prosecutors' (RMP) offices, with the exception of the Pacific regional office, have an establishment of two Regular Force military prosecutors and one legal assistant, located at:
 - Halifax, Nova Scotia (Atlantic Region);
 - Valcartier, Quebec (Eastern Region); Ottawa, Ontario (Central Region);
 - Edmonton, Alberta (Western Region);
 - Esquimalt, British Columbia (Pacific Region);¹⁵ and
- Nine Reserve Force military prosecutors located individually across Canada.

The DMP organization chart is provided at Annex A.

¹⁵ The DDMP (Western and Pacific) is currently co-located with the RMP Pacific.

CMPS PERSONNEL



The CMPS team at the 2017 DMP CLE in Ottawa, Ontario on 28 February 2017.

REGULAR FORCE

During this reporting period, CMPS has been committed to integrating newly appointed military and civilian personnel. In our headquarters, an experienced prosecutor who was serving as legal advisor to the CFNIS was appointed as appellate counsel to fill the seat left vacant by last fiscal year's promotion and appointment of our DDMP responsible for the Atlantic and Central Regions. As a consequence, one of our Central Region prosecutors was appointed as our new legal advisor to the CFNIS. His position within the Central Region was filled by a newly posted captain. Another new captain was also appointed to replace our former counsel responsible for communications, training and policies upon his transfer to the Administrative Law Division within the Office of the Judge Advocate General (OJAG).

Our Edmonton office was back at full strength with the return from parental leave of one RMP and the appointment of a newly posted captain. Within the Eastern Region, we saw the departure of one of our experienced military prosecutors who was replaced by a captain with some previous experience with Québec's *Directeur des poursuites criminelles et pénales*.

RESERVE FORCE

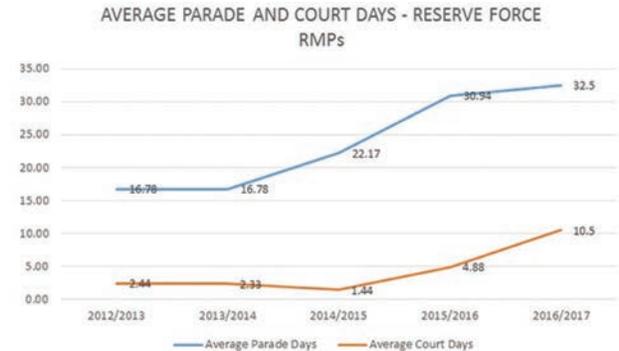
During the prolonged absence of our DDMP Reserves, one of our more experienced Reserve Force RMPs has brilliantly stepped up in the interim. While we have welcomed a new Reserve Force military prosecutor in the Atlantic Region, we are still in the process of recruiting another one for the Central Region.

FIGURE 1



Reserve Force RMPs contributed significantly to advancing CMPS priorities over the last FY. In fact, the number of court days by Reserve Force RMPs more than doubled over the past FY when compared with FY 2015-2016 and is the highest over the past five years. Our reservists were not only heavily involved in actual case work, but they also significantly contributed to the delivery of training, notably by taking on an acting role during the new RMP Training session in December 2016 and the DMP CLE in February 2017. As a result, the averages for the number of parade days and court days have both reached record highs in the reporting period despite the extended leave of absence of our DDMP Reserves and of another reservist RMP. As of note, the averages for both FY 2015-2016 and 2016-2017 were based on a complement of 8 reservist RMPs as opposed to 9 for the first three FYs reported.

FIGURE 2



CIVILIAN STAFF

Both Central and Eastern Regions have welcomed new administrative assistants; the former after the deployment of the new administrative assistant to the DMP and the latter upon retirement of their former administrative assistant. Our paralegal will be leaving CMPS in the coming fiscal year due to her transfer to another position within the public service. Efforts to staff the paralegal position are underway.



SECTION 2

2016-2017 In Focus: THE YEAR IN MILITARY PROSECUTIONS

INTRODUCTION

As part of the Government of Canada, the DMP is accountable for maximizing efficiencies within available resources and reporting on CMPS's performance. The information and analysis provided below seek to describe, in the context of courts martial only, that performance in light of available resources.

OVERVIEW

With the addition of the 64 files carried-over from FY 2015-2016 (either because post-charge decision was still pending, supplementary investigations were requested but not yet received, cases were awaiting a trial date or the courts martial were not yet completed), CMPS had to work on a total 300 files that had either been referred to the DMP by the chain of command during the reporting period or were pre-charge advice sought by CFNIS or Deputy Judge Advocates (DJA); the highest number in four years. For referrals alone, there was a 20% increase in the number of files handled compared to a total of 158 files handled in FY 2015/2016.

Pre-Charge Advice

CMPS is responsible to provide pre-charge advice to the CFNIS, but also to DJAs who are advising individual CAF units in matters of discipline. As per JAG Policy Directive 010/00 - Charge Screening Policy, if the pre-charge review of the evidence reveals that the potential charge or charges can only be tried by court martial, the DJA shall refer the case to a RMP who is then responsible for conducting the pre-charge review using the evidentiary standard applicable at court martial. In FY 2016-2017, a total of 110 pre-charge files were handled by CMPS; 93 were completed and 17 were still pending as of 31 March 2017.

FIGURE 3

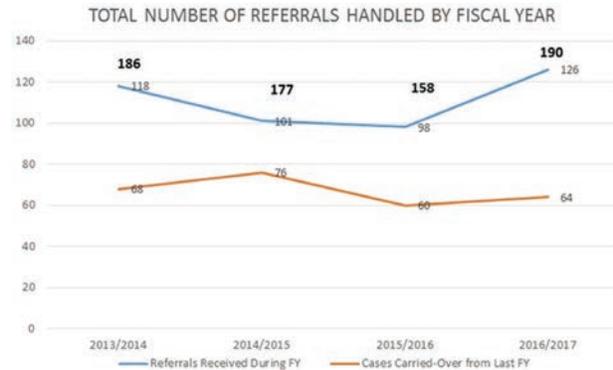


FIGURE 4

PRE-CHARGE FILES HANDLED IN FISCAL YEAR 2016-2017

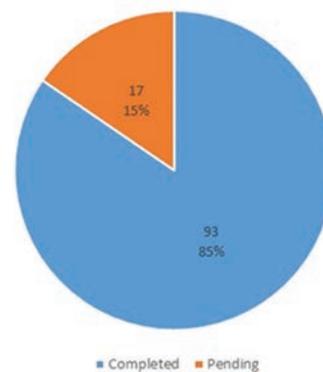
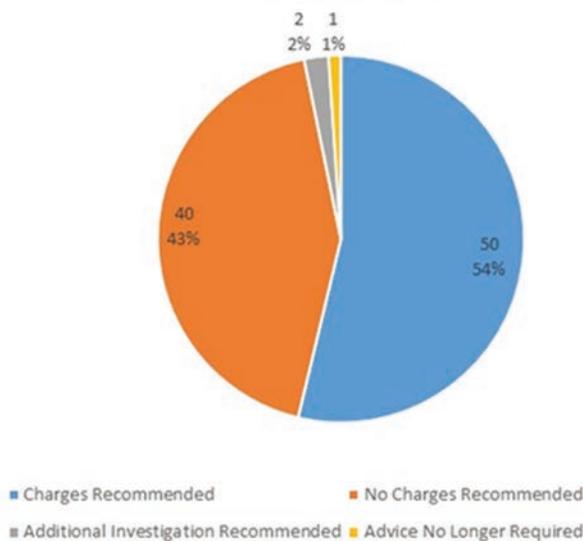


FIGURE 5

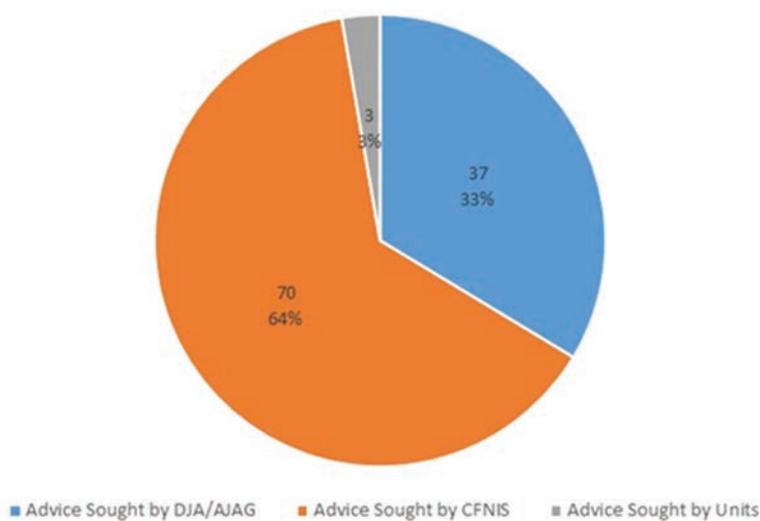
OUTCOME - PRE-CHARGE FILES COMPLETED DURING FISCAL YEAR 2016-2017



In relation to the 93 pre-charge files completed during the reporting period, RMPs recommended that a charge or charges be laid in 50 of them (54% of total files completed).

FIGURE 6

ORIGIN OF PRE-CHARGE FILES DURING FISCAL YEAR 2016-2017



64% of pre-charge files came from the CFNIS and 33% from DJAs during the reporting period. Only 3 files came directly from units.

Referrals

The number of files referred to DMP in the reporting period increased by 29% compared to the previous fiscal year (from 98 to 126); the highest number of referrals received in any given year for the past five years. The yearly average over five years is 114 referrals. For referrals received in FY 2016-2017, 68 files led to charges being preferred for court martial, 34 files were not preferred and 24 files were still pending prosecutorial decision as of 31 March 2017.

FIGURE 7

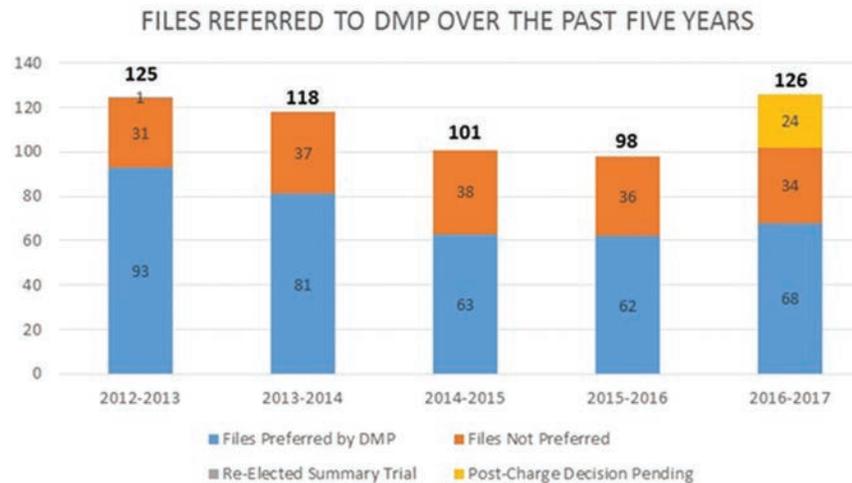
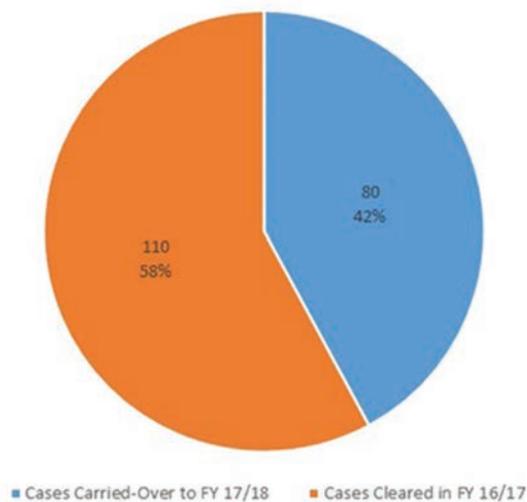


FIGURE 8

REFERRALS HANDLED DURING FISCAL YEAR 2016-2017

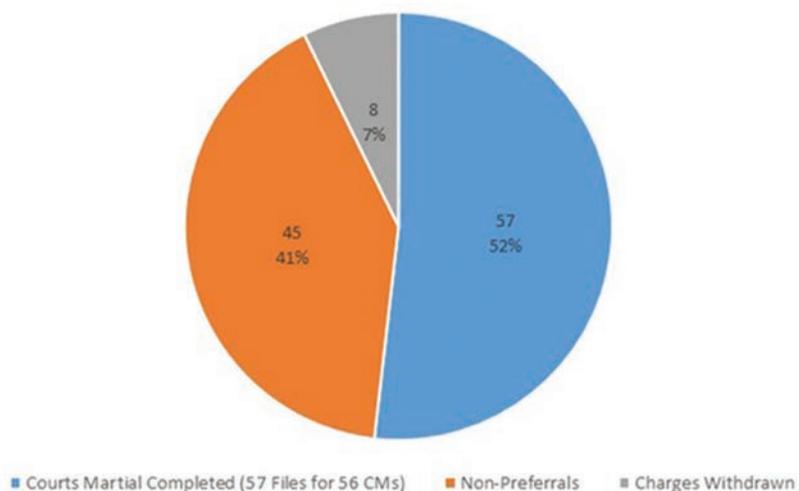


Of those 190 files, 110 files were cleared during the reporting period, either through conclusion of court martial proceedings, through non-preference of charges or through withdrawal of charges. 80 files were not completely resolved as of 31 March 2017; 56 files for which charges were preferred and awaiting court martial completion and 24 for which prosecutorial decision is still pending.

Of the 110 cases cleared in the reporting period (of which 53 were received in FY 2016-2017 and 57 from previous FYs), 57 files were cleared through the conclusion of court martial proceedings (for a total of 56 completed courts martial in FY 2016-2017); 45 files resulted in non-prefferal of charges and 8 cases resulted in withdrawal of charges.

FIGURE 9

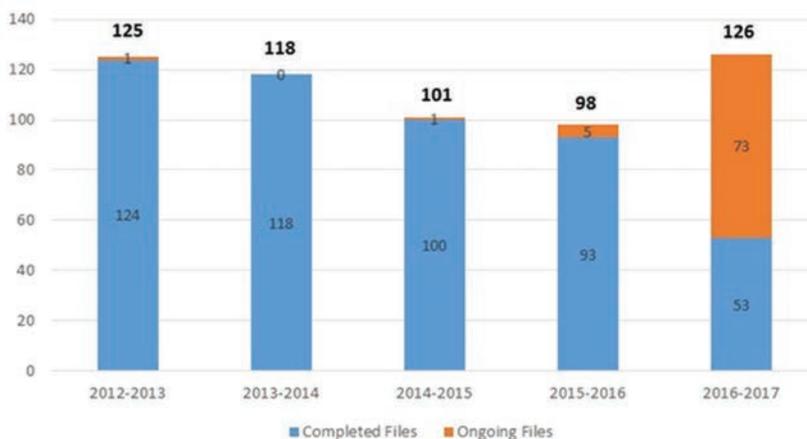
OUTCOME OF CASES CLEARED IN FISCAL YEAR 2016-2017



Current status of all referrals received per fiscal year for the past five years is displayed above. For referrals received in the reporting period, 53 were completed (either through a non-prefferal decision, a completed court martial or withdrawal of charges), thus leaving 73 cases ongoing (pending post-charge decision, awaiting trial date or court martial convened but not completed). As of 31 March 2017, 7 cases from previous fiscal years were still outstanding (for a total of 80 cases carried-over to FY 2017-2018). As of note, in accordance with DMP Policy Directive 003/00 Post-Charge Review, charges are preferred

FIGURE 10

STATUS OF FILES REFERRED TO DMP OVER THE PAST FIVE YEARS



for court martial after review of the referral file by a RMP when it is deemed that there is a reasonable prospect of conviction based on the evidence gathered at the investigation stage and if it is in the public interest to do so¹⁶.

¹⁶ DMP Policy Directive 003/00 – Post-Charge Review; available on the DMP website: <http://www.forces.gc.ca/en/about-policies-standards-legal/post-charge-review.page>

During the reporting period, there was a significant decrease in the percentage of referrals received where the investigation of the alleged offence(s) was done at the unit level (60 out of 126 referrals for less than 50% compared to 59 out of 98 for 60% in FY 15/16). In contrast, Military Police investigations amounted to more than 37% of referrals compared to 22% in FY 15/16. CFNIS investigations remained fairly constant at 15% of all referrals received.

FIGURE 11

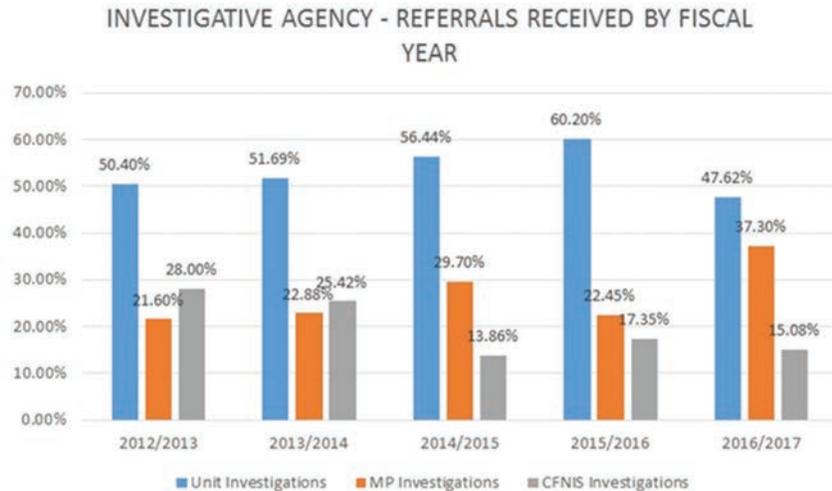


FIGURE 12



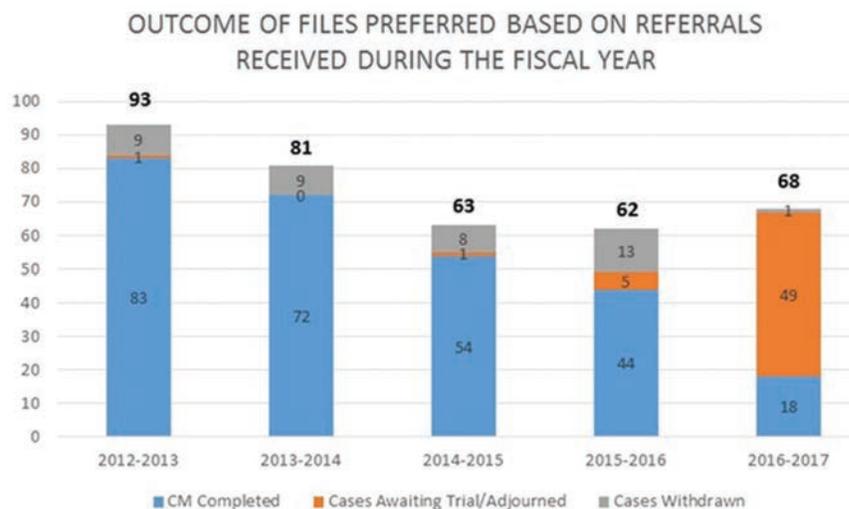
Prosecutorial Decisions

The year 2016-2017 was CMPS' busiest year since 2012-2013 when considering the number of prosecutorial decisions made in relation to referrals received, for a 35% increase compared with 2015-2016. Out of the 190 referrals handled in the reporting period, prosecutorial decisions were made in relation to 127 of them while 39 files carried-over from previous FYs already had charges preferred for court martial and an additional 24 files (all of them received in FY 2016-2017) were still awaiting

post-charge decision as of 31 March 2017. Out of the total of 127 prosecutorial decisions made in the reporting period, 65% resulted in charges being preferred for court martial.

The graph above displays the current status of referrals that were received in the corresponding fiscal year and for which charges were preferred for court martial. As an example, of the 62 referral decisions made for referrals received in FY 2015-2016, 44 cases were resolved at the end of court martial proceedings (either occurring in 2015-2016 or 2016-2017). Out of a total of 82 files that were preferred for court martial in FY 2016-2017, 68 were preferred from referrals received during the reporting period. 19 cases were completed prior to

FIGURE 13



31 March 2017, including 18 out of the total 56 courts martial completed during the reporting period. An additional 32 cases were cleared from previous FYs.

TABLE 1

AS OF 31 MARCH 2017, THERE WERE 7 FILES FROM PREVIOUS FYS THAT WERE PREFERRED FOR COURT MARTIAL AND STILL OUTSTANDING:

ACCUSED	CASE STATUS	DATE	CHARGES
Cpl Alamri	Preferred	12 March 2013	1 X s 88 NDA – desertion 1 X s 90 NDA – absent without leave
PO1 Brown	Court Martial Convened	29 November 2016	1 X s 130 NDA – sexual assault (s 271 <i>Criminal Code</i>)
Lt(N) Clark	Court Martial Adjourned	22 February 2017	2 X s 130 NDA – assault (s 266 <i>Criminal Code</i>) 6 X s 129 NDA – conduct to the prejudice of good order and discipline
WO Dowe	Court Martial Convened	6 March 2017	1 X s 124 NDA – negligent performance of a military duty 1 X s 97 NDA – drunkenness
MCpl Edmunds	Court Martial Adjourned	25 January 2017	8 X s 130 NDA – fraud (s 380 <i>Criminal Code</i>) 9 X s 130 NDA – breach of trust (s 122 <i>Criminal Code</i>)
Cdr Hopkie	Court Martial Adjourned	31 March 2017	6 X s 90 NDA – absent without leave
PO2 Wilks	Court Martial Adjourned	3 February 2017	7 X s 130 NDA – breach of trust (s 122 <i>Criminal Code</i>) 1 X s 130 NDA – sexual assault (s 271 <i>Criminal Code</i>)

FIGURE 14

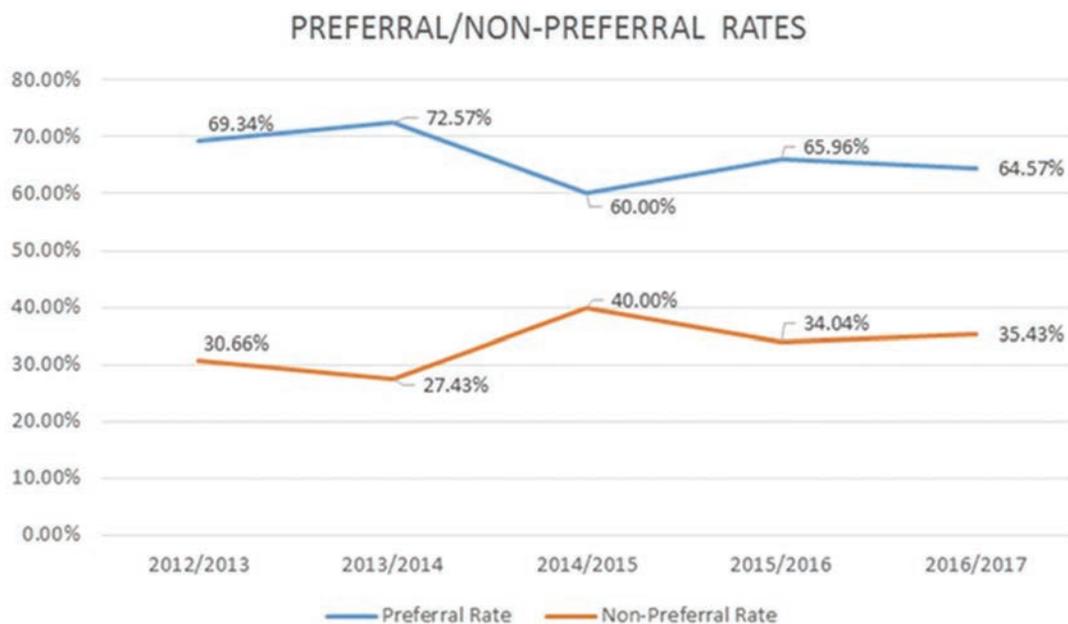
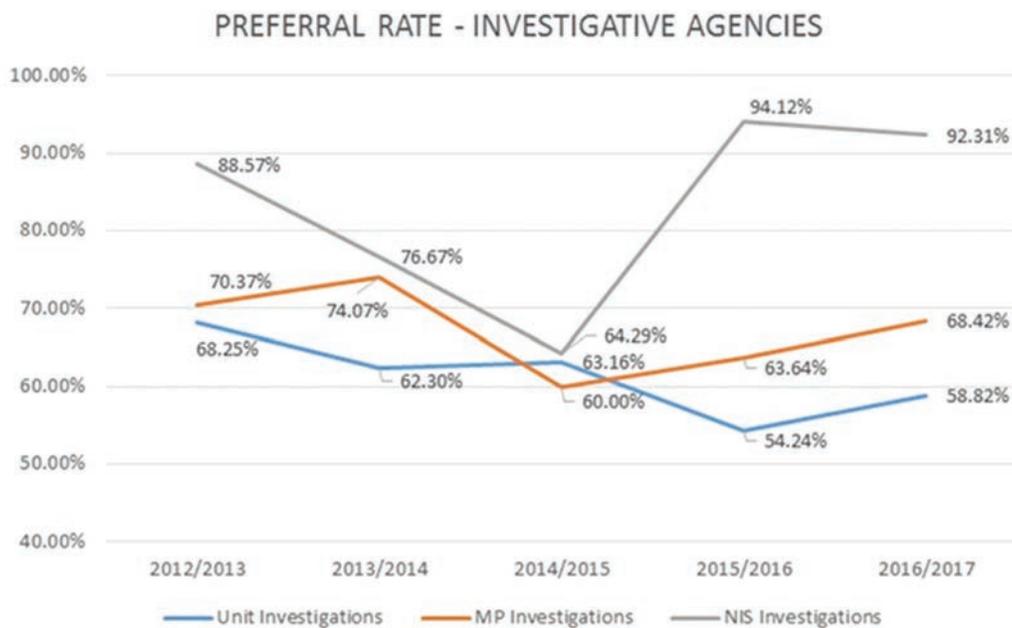


FIGURE 15



Note: FY 2016-2017 figures exclude files pending post-charge decision.

Figures 16 to 18 display different preferal rates from figure 15 because they are calculated on the basis of the total number of investigations conducted by agency, which include the cases for which the post-charge decision was still pending as of 31 March 2017.

FIGURE 16

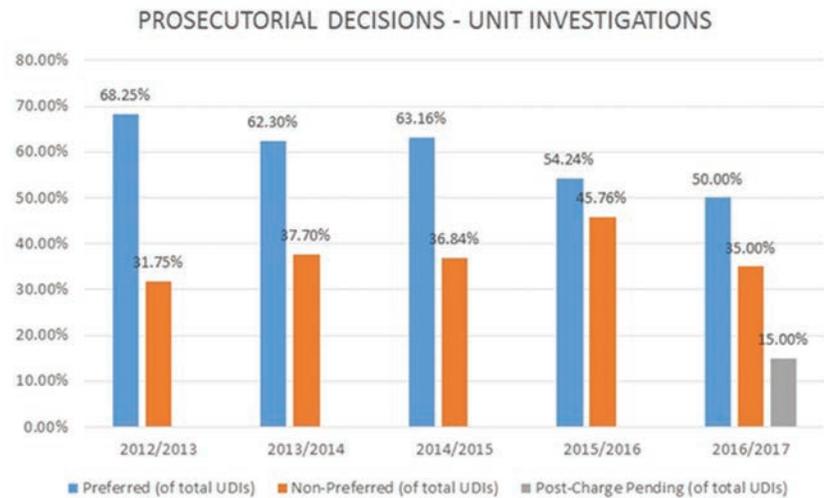


FIGURE 17

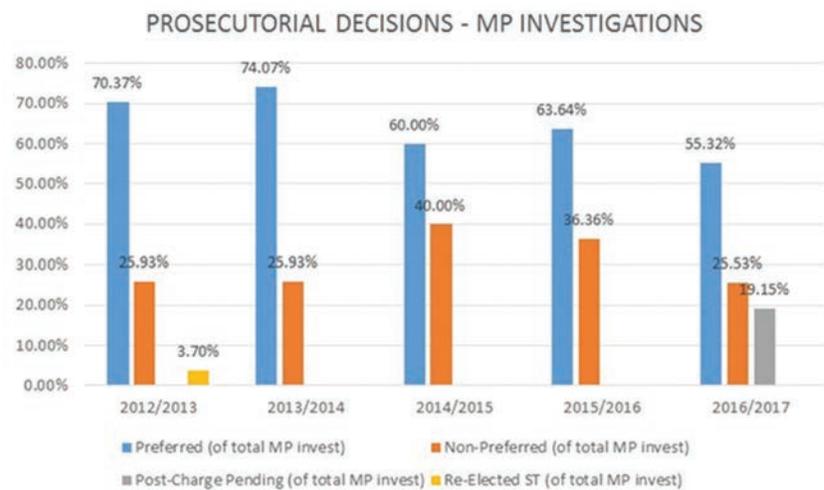
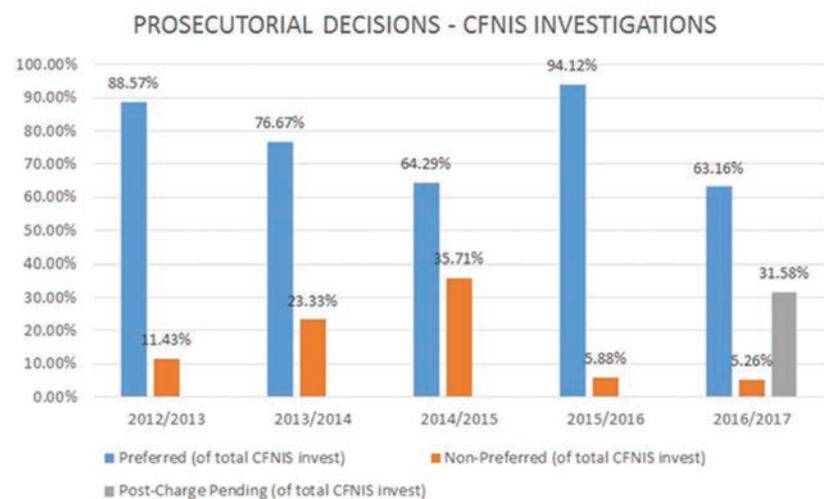


FIGURE 18

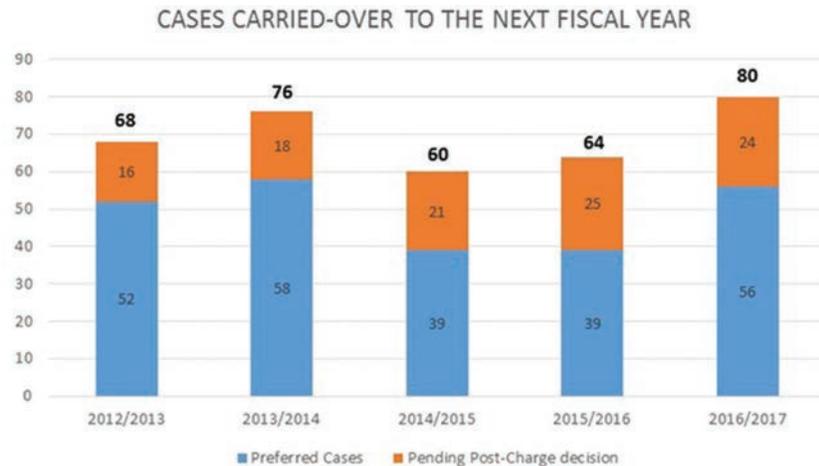


Cases Carried-Over

Of the 80 files that will be carried-over into FY 2017-2018, 56 had charges already preferred for court martial and an additional 24 were still pending prosecutorial decision as of 31 March 2017.

Here is a snapshot of three cases that could not be completed during the reporting period but nevertheless required significant work from the RMPs assigned to them:

FIGURE 19



R v Lieutenant(Navy) Clark

During the reporting period a Standing Court Martial found Lieutenant (Navy) Clark guilty of four counts of conduct to the prejudice of good order and discipline contrary to section 129 of the *NDA*. On several occasions, Lieutenant (Navy) Clark made inappropriate sexual comments and harassed two military members (a Corporal and a Major) and two civilian cleaning staff. Lieutenant (Navy) Clark will be sentenced during the next reporting period.

R v Petty Officer Second Class Wilks

During the reporting period a General Court Martial panel found Petty Officer Second Class Wilks guilty of four counts of breach of trust by public officer contrary to section 122 of the *Criminal Code* and one count of sexual assault contrary to section 271 of the *Criminal Code*, offences punishable under section 130 of the *NDA*. Petty Officer Second Class Wilks completed visual breast inspections and manual breast exams during enrollment medical exams and periodic health assessments contrary to CF policies and procedures. Petty Officer Second Class Wilks will be sentenced during the next reporting period.

R v Master Corporal Edmunds

During the reporting period a General Court Martial panel found Master Corporal Edmunds guilty of four counts of fraud contrary to section 380 of the *Criminal Code*, an offence punishable under section 130 of the *NDA*. Master Corporal Edmunds, the senior non-commissioned officer of the brigade pharmacy, set up his own company and created invoices for the delivery of goods to the brigade pharmacy. He falsified the approval signature or neglected to get the appropriate approvals before issuing the payment for the invoices. Master Corporal Edmunds then deposited the cheques from the CAF into his company's bank account. Master Corporal Edmunds will be sentenced during the next reporting period.

MILITARY JUSTICE PROCEEDINGS

During the present reporting period, military prosecutors represented the Crown in several different types of judicial proceedings related to the military justice system. These proceedings included reviews of pre-trial custody, courts martial, and appeals from courts martial to the CMAC and SCC.¹⁷

Custody Reviews

Military judges are, in certain circumstances, required to review orders made to retain a CAF member in service custody. The DMP represents the CAF at such hearings. During the reporting period, military prosecutors appeared at four pre-trial custody review hearings,¹⁸ no 90-day review hearings¹⁹ and no Release Pending Appeal revocation hearings.²⁰

Further information on custody reviews is provided at Annex G.

Court Martial Proceedings

During the reporting period, 56 courts martial were completed. The majority of these are Standing Courts Martial presided by a military judge alone. Only four General Courts Martial were held before a panel of five military members acting as trier of facts.

During the reporting period, 56 individuals faced a total of 145 charges before courts martial, all of which were held in Canada.

17 The interests of the accused are usually represented at reviews of pre-trial custody, courts martial and appeals from courts martial to the CMAC and SCC by the Director of Defence Counsel Services (DDCS). Representation by DDCS is provided at public expense. The accused may choose to retain counsel at his or her own expense.

18 *NDA*, s. 159.

19 *NDA*, s. 159.8.

20 *NDA*, s. 248.1.

FIGURE 20



FIGURE 21



FIGURE 22

RESULTS - COURTS MARTIAL DURING FISCAL YEAR 2016-2017

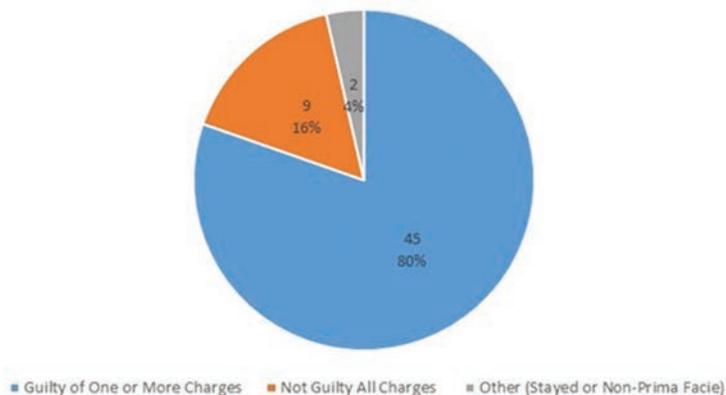


FIGURE 23

COURTS MARTIAL COMPLETED, PREFERRALS AND NON-PREFERRALS BY REGION IN 2016-2017

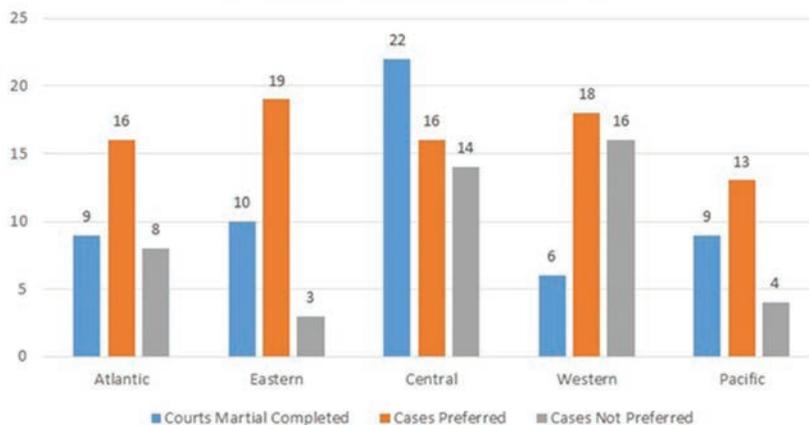
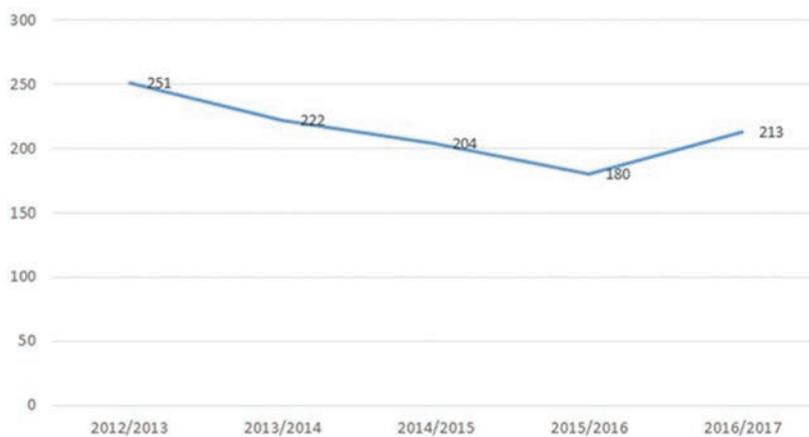


FIGURE 24

COURT MARTIAL SITTING DAYS

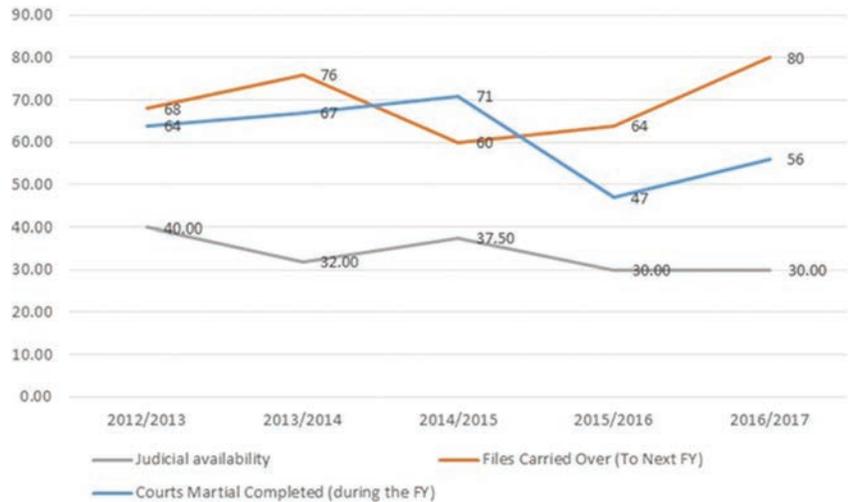


Courts martial sat for 213 days during the reporting period, for an average of 3.80 days per trial.

Figure 25 displays the correlation between judicial availability, referrals carried-over and courts martial completed in any given fiscal year. Judicial availability was determined based on the number of judicial positions that were filled at that time. For ease of graphic representation, the average number of sitting military judges in a given fiscal year has been multiplied by a factor of 10. For example, 4 military judges during the entire year shows as “40” whereas a situation where 1 of the 4 military judge position was vacant for a quarter of the year shows as “37.50”.

FIGURE 25

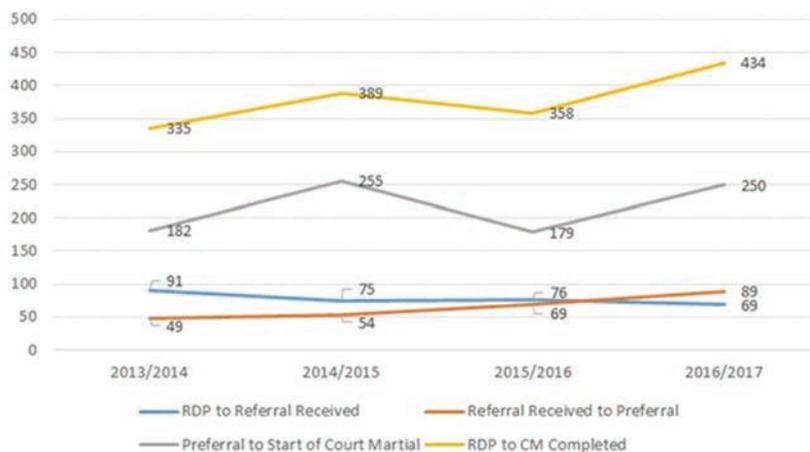
CORRELATION BETWEEN JUDICIAL AVAILABILITY, FILES CARRIED-OVER AND COURTS MARTIAL COMPLETED



For the 56 courts martial that were completed during the reporting period, the average number of calendar days from the date of the record of disciplinary proceedings (RDP) to completion of the court martial was 434 days, for an increase of over 20% based on the average for the last three years (361 days).

FIGURE 26

DELAYS FOR COURTS MARTIAL COMPLETED PER FISCAL YEAR (CALENDAR DAYS)



The time required to prefer charges increased from 69 days in 2015-2016 to 89 days in 2016-2017. This might be due in part to the fact that faster prosecutorial decisions did not automatically translate into trials being scheduled and convened sooner as an additional 250 days were required before commencement of courts martial on average during

the reporting period. The fact that the military justice system could not count on a full complement of four military judges again in FY 2016-2017 and that there has been an increase in both the number of files handled by CMPS (including the number of referrals) and the number of cases carried-over might further explain the increasing delays. The requirement for additional investigations in some instances also contributed to increasing the delays from referral received to preferral of charges.

Moreover, CMPS welcomed 5 new captains just prior to or during the reporting period. Given their lack of experience, they take more time to adequately review files of equal complexity than a more experienced prosecutor would take. They are initially assigned files of lesser complexity, generally requiring less time. They require supervision and assistance from more senior prosecutors, which takes away from the time the latter can devote to their files. The more senior prosecutors end up with a greater proportion of the more complex cases requiring more time, with less time to devote to them than if there was a greater number of senior prosecutors on the team. However, this was a conscious investment in the future on DMP's part. These new prosecutors are extremely talented and promising. We expect that with the benefit of additional experience, those prosecutors will quickly become more efficient at reviewing files, capable of handling more complex cases, require less assistance, thus freeing more senior prosecutors to complete these files. Globally, this should result in a reduction of post-charge review timelines in 2017-2018.

Another potential explanation for the increase in the time required to make prosecutorial decisions might result indirectly from the considerable number of days spent on training

activities in 2016-2017. As will be reported later in this report, the DMP decided to provide all military prosecutors with more training opportunities with a view of improving the overall performance and competence in military prosecutions, particularly regarding offences of a sexual nature.

We further predict that with the development of better performance measurement tools within CMPS and the appointment of a new military judge in March 2017 who will begin hearing cases later in the year, delays should be on a downward trend for 2017-2018.

As of note, the performance of the referral process slightly improved with an average of 69 days from RDP to the referral being received by the DMP.

During the reporting period, the SCC issued an important decision in the case of *R v Jordan* regarding delays in the Canadian justice system which imposed ceilings of 18 and 30 months respectively for proceedings before provincial and superior courts (or before provincial courts after a preliminary inquiry). As a result of the *Jordan* decision, the court martial in the case of *R v Leading Seaman Thiele* ruled that a court martial should be completed within 18 months of the laying of the RDP within the military justice system.

R v Jordan, 2016 SCC 27

The SCC decision in *R v Jordan* developed a new framework to be applied in cases where unreasonable delay is alleged by the accused. “At the centre of this new framework is a presumptive ceiling on the time it should take to bring an accused person to trial: 18 months for cases going to trial in the provincial court, and 30 months for cases going to trial in the superior court” (para 5). This new framework presumes that if the delay, defined as the time between charges and anticipated trial completion, is longer than this timeframe that “the delay is unreasonable and a stay will follow” (para 47).

R v Leading Seaman Thiele, 2016 CM 4015

Prior to entering a guilty plea to three charges of trafficking in a substance contrary to section 5(1) of the *Controlled Drugs and Substances Act*, an offence punishable under section 130 of the *NDA*, Leading Seaman Thiele made a preliminary application alleging that his section 11(b) *Charter* right to be tried within a reasonable timeframe had been infringed. This application was the first time a Military Judge presiding at a Court Martial had been presented with a section 11(b) *Charter* application after the SCC decision in *R v Jordan, 2016 SCC 27* and the first time a Military Judge rendered a decision about the application of the *Jordan* decision to the military justice system.

The Military Judge found that the “main focus of *Jordan* is the individual right of accused persons to a trial within a reasonable time under section 11(b) of the *Charter*” (para. 6) and that this decision and framework should apply to the military justice system (para. 9). Furthermore, the Military Judge found that the “ceiling of 18 months is entirely appropriate for the military justice system” (para. 21).

TABLE 2: CASES OVER 18 MONTHS AS OF 31 MARCH 2017

CASE	DATE – OVER 18 MONTHS FROM RDP DATE
Cpl Alamri	12 July 2014
MCpl Edmunds	08 January 2016
Cdr Hopkie	22 October 2016
PO2 Wilks	12 March 2017

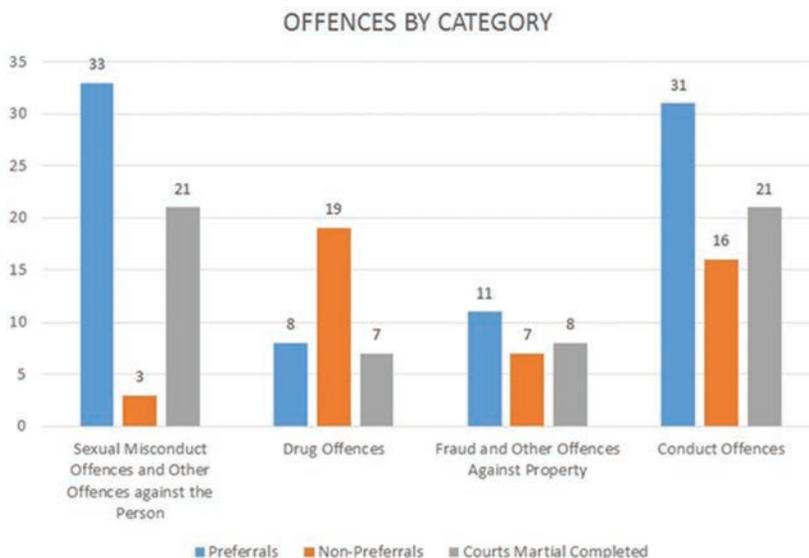
IN FOCUS: SPECIAL INTEREST OFFENCES CATEGORIES

CMPS counsel prosecute offences contrary to the *NDA*, including offences under section 130 of the *NDA*, which import charges from other federal statutes such as the *Criminal Code* and the *Controlled Drugs and Substances Act*.²¹

A selection of courts martial in the following four broad areas is highlighted below:

- Sexual Misconduct Offences and Other Offences against the Person;
- Drug Offences;
- Fraud and Other Offences Against Property; and
- Offences Relating to Conduct (consisting mostly of service offences such as conduct to the prejudice of good order and discipline generally, disobedience of lawful command, absence without leave, desertion, etc.).

FIGURE 27



The cases discussed below are a sampling of those dealt with by courts martial during the reporting period. These cases give a sense of the offenders and offences that were prosecuted, as well as the sentences that were pronounced.

²¹ See *NDA* sections 70 and 130. A service tribunal shall not try any person charged with any of the following offences committed in Canada: murder; manslaughter or an offence under any of sections 280 to 283 of the *Criminal Code*.

Sexual Misconduct Offences and Other Offences against the Person

FIGURE 28

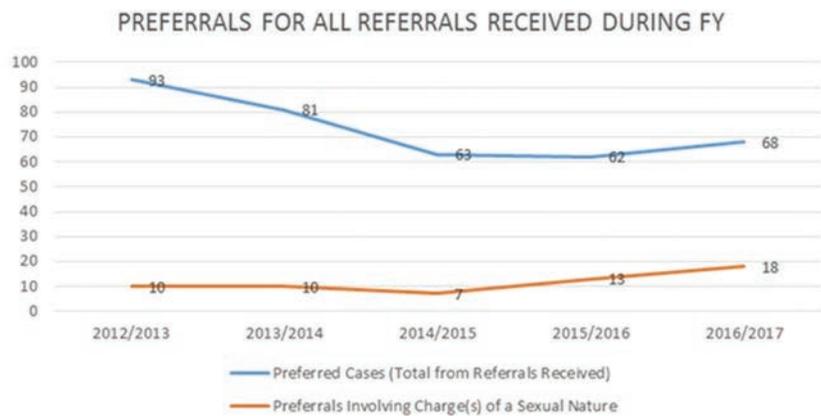


FIGURE 29

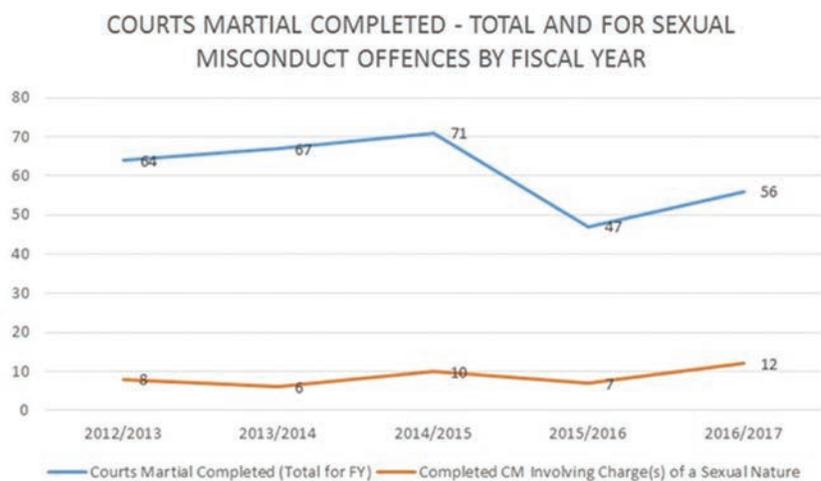


FIGURE 30

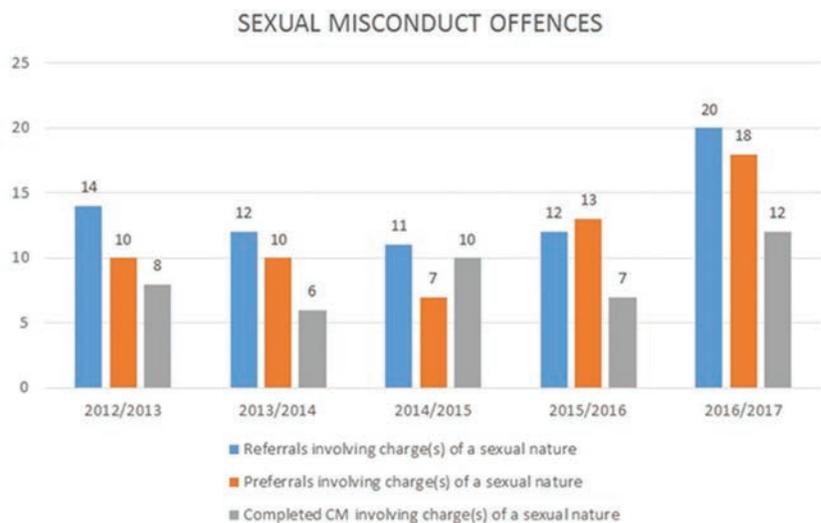


FIGURE 31

SEXUAL MISCONDUCT OFFENCES AND OTHER OFFENCES
AGAINST THE PERSON - COURTS MARTIAL COMPLETED BY
REGION

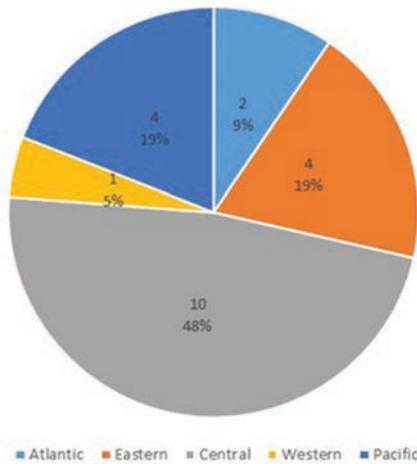
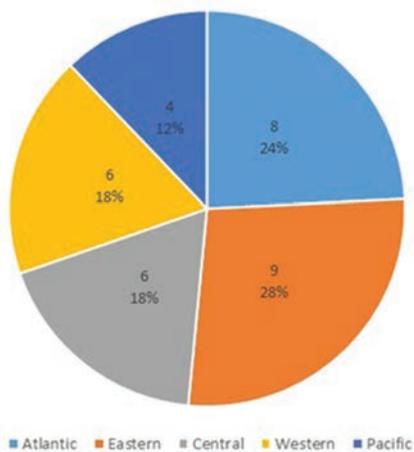


FIGURE 32

SEXUAL MISCONDUCT OFFENCES AND OTHER OFFENCES
AGAINST THE PERSON - PREFERRALS BY REGION



R v Master Warrant Officer Chapman, 2016 CM 4019

Master Warrant Officer Chapman was a member of the Regular Force serving with the All-Source Intelligence Centre in Afghanistan. While on decompression phase in Cyprus, he asked a female Corporal to allow him to sleep in the spare bed in her room, saying that his roommate was with a woman in his own room. Once in bed, he asked the Corporal if she wanted to cuddle and she declined. He went over to her bed and repeatedly attempted to kiss her and grab her breasts. The Corporal demanded that he leave and pushed him towards the door, but he resisted. He finally left once she threatened to call the police. Master Warrant Officer Chapman pled guilty to behaving in a disgraceful manner, contrary to section 93 of the *NDA*. He was sentenced to reduction in rank to Warrant Officer and a fine of \$2500.

R v Corporal Beaudry, 2016 CM 4011

Corporal Beaudry was a member of the Regular Force posted to Wainwright, Alberta. In September 2014, he met with the complainant and two others at a local bar. He made sexual comments to the complainant, who told him that she was not interested in sexual relations. After the bar closed, the group proceeded to Corporal Beaudry's house. He invited the complainant upstairs to his bedroom but she refused, saying again she did not want to have sex with him. He told her it was just to talk, so she accompanied him upstairs. He went to the washroom and returned wearing just a towel. He grabbed her by the neck and pushed her onto the bed, threatening her not to make noise, and assaulted her multiple times. Corporal Beaudry was found guilty of sexual assault causing bodily harm contrary to section 272 of the *Criminal Code*, an offence punishable under section 130 of the *NDA*. The military judge ordered the taking of bodily substances for DNA analysis on the basis of section 487.04 of the *Criminal Code* along with registration of Corporal Beaudry as per the *Sex Offender Information Registration Act (SOIRA)* pursuant to section 490.011(1)(a) of the *Criminal Code*. Corporal Beaudry was further sentenced to 42 months imprisonment and dismissal from the CAF.

Drug Offences

Like all Canadians, persons subject to the CSD are liable to prosecution for drug-related offences as provided in the *Controlled Drugs and Substances Act*. Unlike the civilian population, however, persons subject to the CSD are also liable to prosecution for drug use.²²

FIGURE 33

DRUG OFFENCES - COURTS MARTIAL COMPLETED BY REGION

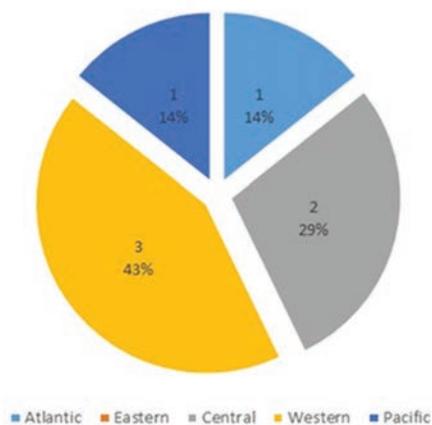
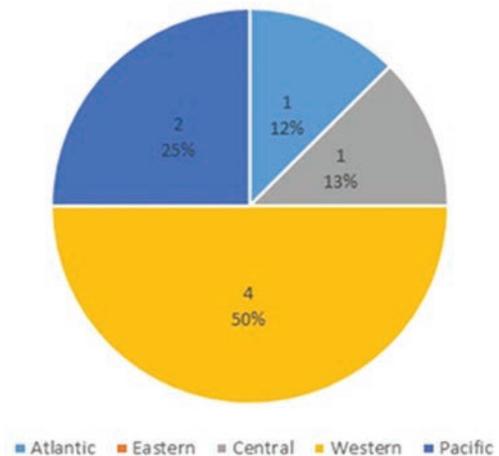


FIGURE 34

DRUG OFFENCES - PREFERRALS PER REGION



R v Private Curran, 2016 CM 4013

Private Curran was a member of the Regular Force serving as an infantry soldier at CFB Gagetown. He was pulled over by the Military Police for a traffic violation on base. While speaking to Private Curran, the police noticed a bag containing what was later confirmed to be 82 grams of marijuana on the vehicle floor. The police later discovered eight additional small bags of methamphetamine. Private Curran was found guilty on two counts of drug possession. On joint submission, the SCM sentenced the offender to 20 days imprisonment and a \$1000 fine.

R v Leading Seaman Thiele, 2016 CM 4016

Leading Seaman Thiele was a member of the Regular Force posted to Canadian Forces Fleet School Esquimalt. He was contacted by an acquaintance, with whom he had previously used drugs, and asked to acquire drugs for her. The acquaintance later contacted the Canadian Forces National Drug Enforcement Team and entered into an agreement as a police agent for the purpose of investigating Leading Seaman Thiele. An undercover agent worked with the acquaintance to coordinate three separate purchases of cocaine and heroin. Leading Seaman Thiele pled guilty to three counts of drug trafficking and was sentenced to 15 months imprisonment (minus time spent in pre-trial custody), a DNA order, and a weapons prohibition for 10 years.

²² QR&O, article 20.04.

Fraud and Other Offences against Property

FIGURE 35

FRAUD AND OTHER OFFENCES AGAINST PROPERTY -
COURTS MARTIAL COMPLETED PER REGION

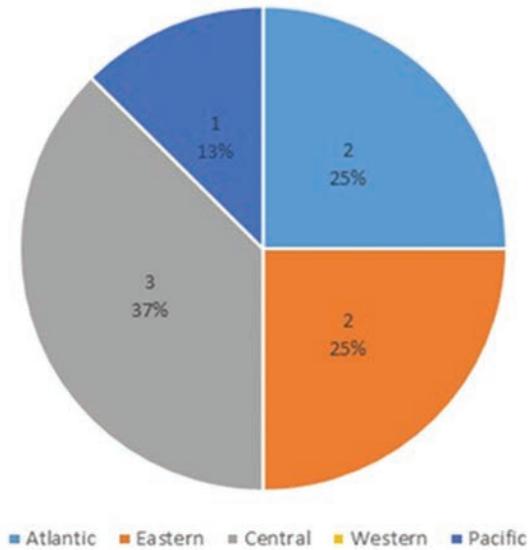
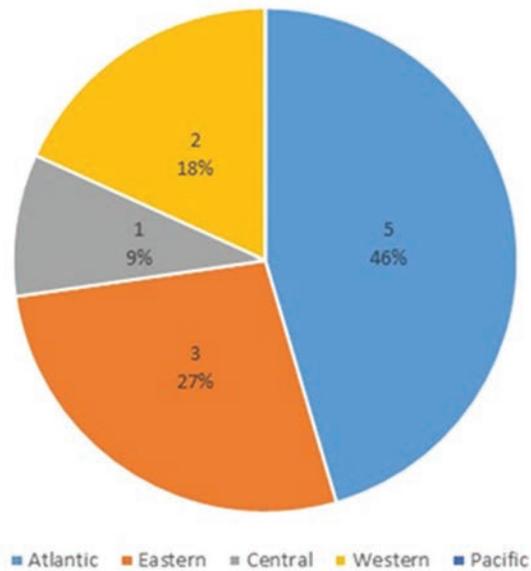


FIGURE 36

FRAUD AND OTHER OFFENCES AGAINST PROPERTY -
PREFERRALS PER REGION



***R v Master Corporal
Downer, 2016 CM
4006***

Master Corporal Downer was a member of the Regular Force serving as Military Police in Ottawa. He requested a \$600 advance in Leave Travel Assistance to visit his family in Newfoundland. When asked to finalize his claim, he submitted a statutory declaration stating that he had lost his stamped leave pass along with all his travel receipts. At trial, it was demonstrated that he had not traveled to Newfoundland and the declaration was untrue. He was found guilty of two counts of wilfully making a false entry, contrary to section 125(a) of the *NDA*, and one count of committing an act of a fraudulent nature, contrary to section 117(f) of the *NDA*. Master Corporal Downer was sentenced by SCM to a severe reprimand and a \$1500 fine.

R v Leading Seaman Korolyk, 2016 CM 1002

Leading Seaman Korolyk was charged with one count under section 129(2) of the *NDA* for neglect to the prejudice of good order and discipline and one count under section 117(f) of the *NDA* for an act of fraudulent nature. These charges related to her receiving a full post living differential (allowance designed to reduce the financial impact when military members and families are posted to an area with a high cost of living) when she was not entitled. Leading Seaman Korolyk challenged the constitutionality of subsection 129(2) of the *NDA*, a provision that makes a contravention of any act, regulation, order, or instruction an act, conduct, disorder, or neglect to the prejudice of good order and discipline, because it creates a non-rebuttable presumption that contravenes section 7 and 11(d) of the *Charter* – the right to life, liberty, and security of person and the right to be presumed innocent. The Military Judge found that “once the breach of an order and its surrounding circumstances is proven, it is simply not credible, in the absence of evidence, to pretend that evidence of actual prejudice resulting from the breach of the order could not be available” (para 25) and declared section 129(2) of the *NDA* to be void.

Offences Relating to Conduct

FIGURE 37

CONDUCT OFFENCES - COURTS MARTIAL COMPLETED BY REGION

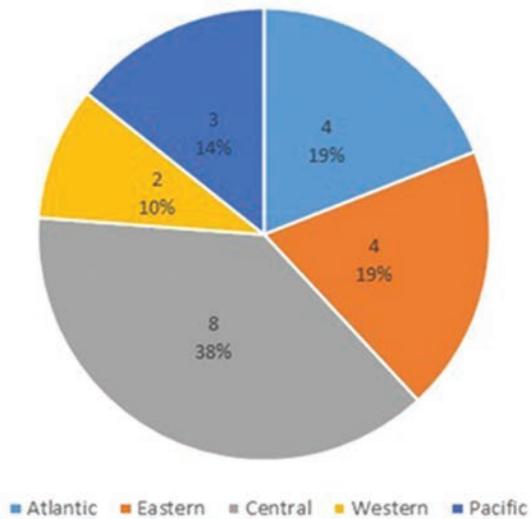
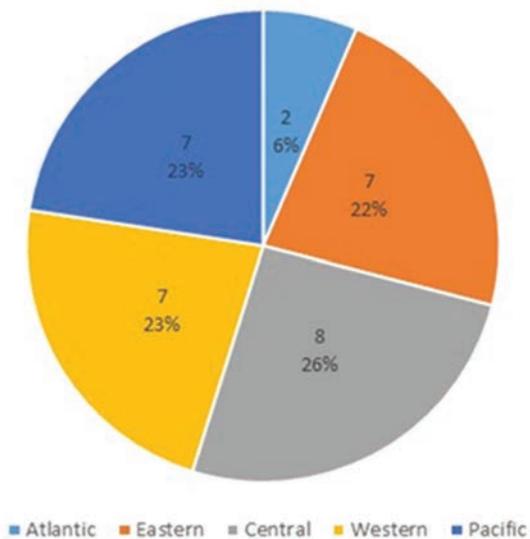


FIGURE 38

CONDUCT OFFENCES - PREFERRALS BY REGION



R v Master Warrant Officer Fancy, 2016 CM 1010

At the time of the offence, Master Warrant Officer Fancy was serving in the Reserve Force as the Squadron Sergeant Major of the Halifax Rifles. A year prior to the offence, Master Warrant Officer Fancy was questioned regarding the medals he wore to a unit dinner, which included the Somalia medal, South West Asia medal, and Operational Jump Wings. Master Warrant Officer Fancy's unit spoke with him about the wearing of these medals as they were unable to locate any record of him earning or receiving these medals. At the next unit function, Master Warrant Officer Fancy did not wear the medals. The following year he decided to wear the unauthorized medals while participating in a Remembrance Day parade with other unit members in downtown Halifax. Master Warrant Officer Fancy pled guilty to three counts of conduct to the prejudice of good order and discipline, contrary to section 129 of the *NDA*. He was sentenced to a reduction in rank to Warrant Officer and a fine of \$300.

R v Master Corporal Morton, 2017 CM 4003

Master Corporal Morton was a member of the Regular Force serving as an Armoured Crewman at CFB Gagetown. He was employed as a crew commander and driving instructor for the Coyote Armoured Vehicle crewman course. On the first day of practical instruction, he was acting as crew commander while a Private trainee was driving. When they discovered a large tree blocking the route, Master Corporal Morton instructed the Private to drive through the tree. The impact severed the vehicle's wire cutter and caused the tree to impact the Private's head, causing significant injuries to the face. Master Corporal Morton pled guilty to negligent performance of a military duty, contrary to section 124 of the *NDA*, and conduct to the prejudice of good order and discipline, contrary to section 129 of the *NDA*. He was sentenced to 90 days detention (suspended) and reduction in rank to Private.

***R v Corporal Cadieux,* 2016 CM 4008**

Corporal Cadieux was convicted by a General Court Martial panel of negligently omitting to do something in relation to a thing that may be dangerous to life, which omission caused bodily injury contrary to section 127 of the *NDA* – revealing that “Cpl Cadieux ... negligently fired his C-8 rifle, resulting in bodily injury to Corporal Trevor Vautour” (para 1) during a live fire night exercise at CFB Petawawa. During the exercise Corporal Cadieux shot two rounds from his C-8 rifle towards a manned firebase. Counsel for the defence and prosecution submitted a joint submission for 21 days detention and the Military Judge sentenced Corporal Cadieux to 21 days detention.



Major Walsh and Major Martin were the military prosecutors assigned to the Cadieux case.

***R v Corporal Cadieux,* 2016 CM 4012**

This case represents the first time a Military Judge has used his discretion to authorize a view.

At the commencement of this trial the prosecution “applied to the Military Judge for an order authorizing a view and a demonstration at the view, in accordance with section 190 of the *NDA*” (para 1), in order to provide “the court with a baseline experience of the operation and capabilities of night vision goggles which will offer appropriate context for the understanding and weighing of other evidence” (para 2). The Military Judge found that the factors to be considered in deciding the application included whether other available evidence would offer a suitable alternative, if there is value to be gained in the appreciation of the evidence, fairness to all parties, and the practical inconvenience. The Military Judge found that this case justified a view and demonstration at the view since there was “no evidence that could be introduced that would offer a suitable alternative to the demonstration being proposed” (para 11) and “the inconvenience and expense involved in holding the view and demonstration at the view ... are minimal” (para 12).

APPEALS

Appeals to the Court Martial Appeal Court

During the reporting period, the CMAC rendered a decision on one appeal and two decisions regarding release pending appeal applications. For appeals launched by the accused, DDCS provides legal representation, at no cost to CAF members, when authorized to do so by the Appeal Committee. Authorization is not required when the accused is the respondent.²³ During the reporting period, four new applications to appeal were filed with the CMAC. Two appeals were initiated by DDCS counsel on behalf of CAF members convicted and sentenced by court martial and two were filed by Her Majesty the Queen. Twelve ongoing appeals were in the process of being dealt with at the end of the reporting period.

Constitutionality of paragraph 130(1)(a) of the National Defence Act

Following the unanimous SCC decision in *Second Lieutenant Moriarity v R*, 2015 SCC 55, that found there is no requirement for a military nexus in order for section 130(1)(a) of the *NDA* – offences punishable by ordinary law committed in Canada – to be consistent with the *Charter*, numerous appellants have raised a new ground of appeal before the CMAC alleging that subsection 130(1)(a) of the *NDA* violates subsection 11(f) of the *Charter* – the right to a jury trial.

During the reporting period the CMAC panel in *R v Master Corporal Royes* rendered its decision on the constitutionality of section 130(1)(a) of the *NDA vis-à-vis* section 11(f) of the *Charter*. A second panel heard arguments on this issue on 26 April 2016 in the cases of Petty Officer Second Class Blackman, Warrant Officer Gagnon, Corporal Thibault, Private Déry, Second Lieutenant Soudri, Lieutenant (Navy) Klein, Corporal Nadeau-Dion, Corporal Pfahl, Petty Officer Second Class Wilks, Master Corporal Stillman and Major Wellwood (in this case the CMAC is also considering an issue related to alleged errors in the instructions to the panel). On 23 February 2017, a third panel in the case of Corporal Beaudry adjourned the hearing until the second panel issues their decision.

23 See QR&O articles 101.20 and 101.21 for information on DDCS involvement in appeals and regarding the Appeal Committee.

R v Master Corporal Royes, 2016 CMAC 1

Master Corporal Royes was “tried and convicted of sexual assault by a Standing Court Martial (2013 CM 4033). He was sentenced to a term of imprisonment of 36 months (2013 CM 4034)” (para 3). Master Corporal Royes appealed the legality of the guilty verdict and the constitutionality of paragraph 130(1)(a) of the *NDA* to the CMAC. In *R v Royes*, 2014 CMAC 10 the CMAC “dismissed all grounds of appeal with respect to the legality of the verdict, leaving open the constitutional question” (para 4).

Master Corporal Royes argued that the SCC decision in *Moriarity* was limited to section 7 of the *Charter* – the right to liberty – and did not apply to a section 11(f) analysis. The CMAC disagreed with Master Corporal Royes’ view that sections 7 and 11(f) of the *Charter* could be considered as two separate concepts: finding that “it [was] not open to [the] Court ... having been overturned in [it’s] analysis by the SCC, to reject the guidance when faced with substantially the same question in relation to a different section of the *Charter*” (para 29).

Furthermore the CMAC found that if “the accused is charged under a validly enacted offence and is, properly interpreted, an offence under military law, then it does not violate section 11(f) to deny the accused a trial by jury” (para 50). The CMAC concluded that “service offences are offences under military law” (para 59) and “the SCC’s decision in *Moriarity* dictates finding that paragraph 130(1) (a) of the *NDA*, interpreted without a military nexus requirement, does not violate section 11(f) of the *Charter*” (para 60).

The CMAC dismissed Master Corporal Royes’ remaining ground of appeal and upheld his conviction for sexual assault contrary to section 271 of the *Criminal Code*, an offence punishable under section 130 of the *NDA*, and sentence of 36 months imprisonment.

Application for leave to appeal

Following the release of the CMAC decision Master Corporal Royes applied for leave to appeal the decision to the SCC. The SCC dismissed MCpl Royes’ application without providing reasons.

R v Master Corporal Royes, 2016 CMAC 3

In dismissing Master Corporal Royes’ motion for release pending his application for leave to appeal and if necessary appeal to the SCC the CMAC found that the Military Judge’s “ability to order judicial interim release ... only extends to the determination of the appeal before this Court” (the CMAC) (para 15) as does the CMAC’s jurisdiction to release an accused pending appeal pursuant to s 248.2 of the *NDA*.

However, the CMAC did find that the *Supreme Court Act* section 65.1 – stay of execution – provided the CMAC with “jurisdiction to grant a stay of the imposition of the sentence of Master Corporal Royes pending the final determination of his leave application, or, in the event leave is granted, the determination of his appeal before the Supreme Court” (para 22). Master Corporal Royes was able to prove to the CMAC that his appeal involved a serious issue and that he could suffer irreparable harm if the release was not granted and he was successful in his appeal to the SCC. However, the CMAC found that the balance of convenience favoured the Crown. Thus the court dismissed Master Corporal Royes’ motion for release and ordered Master Corporal Royes to begin serving his sentence, including his term of imprisonment and all ancillary orders, immediately (para 28).

R v Corporal Beaudry, 2016 CMAC 2

Following his court martial, Corporal Beaudry filed a motion with the CMAC seeking his release from imprisonment pending his appeal to the CMAC. The CMAC found that Corporal Beaudry did not establish he would surrender himself into custody when directed or that his imprisonment was not necessary in the interests of the public or the CAF. The CMAC dismissed Corporal Beaudry's motion.

R v Corporal Golzari, 2016 CM 1008

In October 2014 Canadian Forces Base Kingston was on high alert following the murder of two CAF members in Ottawa and St-Jean. While on high alert the Base Auxiliary Security Force was controlling access to the base at the base gates. Corporal Golzari approached a gate and refused to provide his destination to the corporal at the gate. The corporal at the gate contacted the Military Police who attended the base gate. When the Military Police arrived, Corporal Golzari continued to refuse to provide his destination and also refused to move his car to the side of the road. Corporal Golzari was arrested and taken to the Military Police detachment where he was held in custody until a duty officer from his home unit arrived. Corporal Golzari was uncooperative with the duty officer at first but did eventually provide his destination details. Corporal Golzari was released and escorted back by the duty officer.

Corporal Golzari was charged with behaving with contempt toward a superior officer (the duty officer from his home unit) contrary to section 85 of the *NDA*, obstructing a peace officer in the execution of his duty contrary to section 129(a) of the *Criminal Code*, an offence punishable under section 130 of the *NDA*, and conduct to the prejudice of good order and discipline, contrary to section 129 of the *NDA*.

Following the case for the prosecution, the Military Judge raised on his own motion "whether a prima facie case ha[d] been made out against Corporal Golzari on the charges" (para 1). In finding "that a prima facie case ha[d] not been made out in respect of all charges" (para 19), the Military Judge agreed with the prosecution that the prima facie threshold was not met for the charge of behaving with contempt; found that the prosecution did not provide evidence to establish that Corporal Golzari knew the Military Police officer was a peace officer for the charge of obstructing a peace officer; and found that the prosecution "did not lead any evidence that the accused knew or ought to have known of the standard of conduct, nor that he breached it" (para 18) for the conduct to the prejudice charge.

DMP appealed this decision on the grounds that the Military Judge's findings on the obstruction of a peace officer charge and the conduct to the prejudice charge included errors in law. The CMAC heard this appeal on 23 February 2017, the decision was reserved by the Court.

Upcoming Appeals to the CMAC

R v Corporal Hoekstra, 2016 CM 3010

At the time of the offences Corporal Hoekstra was a member of the CAF Regular Force posted to the Canadian Special Operations Regiment in Petawawa, ON. Corporal Hoekstra was identified as an online seller attempting to sell Canadian Armed Forces ammunition. A search of Corporal Hoekstra's residence resulted in the seizure of almost one pound of marijuana, a number of prohibited devices, and a large quantity of public property including ammunition and explosives worth approximately \$16,000.

Corporal Hoekstra's court martial began in June 2015 for preliminary matters and the trial was then scheduled for January 2016. During the trial Corporal Hoekstra changed his plea to guilty to four offences: possession of a controlled substance contrary to section 4(1) of the *Controlled Drugs and Substances Act*, an act punishable under section 130 of the *NDA*; receiving stolen property contrary to section 115 of the *NDA*; possession of firearms knowing its possession is unauthorized contrary to section 92(2) of the *Criminal Code*, an offence punishable under section 130 of the *NDA*; and possession of explosives without lawful excuse contrary to section 82(2) of the *Criminal Code*, an offence punishable under section 130 of the *NDA*.

The prosecution recommended that the court sentence Corporal Hoekstra to imprisonment for a period of 18 months and to dismissal from Her Majesty's service. Defence counsel recommended a sentence of detention for a period of 60 to 90

days combined with a severe reprimand and a fine in the amount of \$16 273 or alternatively a length of imprisonment not beyond 90 days combined with a reduction in rank if the court found that incarceration was necessary.

The Military Judge found the objective seriousness of the offence, the breach of trust, the nature and quantity of items found in Corporal Hoekstra's residence, the length of time required to collect the items, the reckless storage of the items, and Corporal Hoekstra's rank and experience to be the aggravating factors. Furthermore, the Military Judge identified the mitigating factors as including: Corporal Hoekstra's outstanding performance, age, mental health issues, obedience to conditions pending trial, lack of previous disciplinary incidents or links to criminal or terrorist organizations, and the lack of consequences on the unit.

The Military Judge found that "incarceration in the form of imprisonment [was] the only appropriate sanction in the circumstances of this case" (para 40) and sentenced Corporal Hoekstra to 60 days imprisonment.

DMP appealed this decision on the grounds that the Military Judge erred in principle in his sentencing reasons by considering improper mitigating factors and placing an over-emphasis on those factors while minimizing the aggravating factors and is also seeking leave to appeal the severity of the sentence.

Annex E provides additional information regarding appeals to the CMAC²⁴.

²⁴ Further information may also be obtained by accessing the CMAC website: <http://www.cmac-cacm.ca/index-eng.shtml>.

Appeals to the Supreme Court of Canada

R v Ordinary Seaman Cawthorne, 2016 SCC 32

Ordinary Seaman Cawthorne appealed his court martial conviction on charges of accessing and possessing child pornography contrary to sections 163.1(4) and 163.1(4.1) of the *Criminal Code*, an offence punishable under section 130 of the *NDA*, to the CMAC. A majority judgement of the CMAC found that the military judge erred in law in declining to allow a mistrial related to exposure of the panel to inadmissible evidence and allowed his appeal, set aside the findings of guilty, and directed a new trial. The DMP appealed the CMAC decision to the SCC. The SCC found that the Military Judge did not err in refusing to grant Ordinary Seaman Cawthorne's request for a mistrial and that the Military Judge made a reasonable attempt to remedy the error of the panel being exposed to inadmissible evidence caused by a witness answering an improper question before an objection could be sustained.

Minister's Right to Appeal

In addition to the substantive appeal issue raised by the DMP in Ordinary Seaman Cawthorne's appeal this case also dealt with a motion to quash the notice of appeal. Ordinary Seaman Cawthorne's motion to quash alleged that subsection 245(2) of the *NDA* – the Minister of National Defence's

right to appeal to the SCC – was unconstitutional because the Minister is not an independent prosecutor. Ordinary Seaman Cawthorne was joined with both the Warrant Officer Gagnon and Corporal Thibault cases.

In the case of *R v Warrant Officer Gagnon*, 2015 CMAC 2, which was joined with the case of Corporal Thibault, the CMAC declared section 230.1 of the *NDA* – the Minister of National Defence's right to appeal to the CMAC – to be unconstitutional and of no force or effect. The DMP was granted leave to appeal this decision to the SCC and this case was joined with the Ordinary Seaman Cawthorne case.

The SCC examined whether the provisions of the *NDA* that grant the Minister of National Defence the authority to appeal Court Martial and CMAC decisions infringed on accused's right to liberty under section 7 of the *Charter*. The SCC found that the provisions of the *NDA* that granted the MND the authority to appeal do not violate the *Charter*. Furthermore, the SCC found that "the Minister, like the Attorney General or other public officials with a prosecutorial function, is entitled to a strong presumption that he exercises prosecutorial discretion independently of partisan concerns" (para 32).

Annex F provides additional information regarding appeals to the SCC.²⁵

25 Further information may also be obtained by accessing the SCC website: <http://www.scc-csc.gc.ca/case-dossier/info/hear-aud-eng.aspx?ya=2015&ses=03&submit=Search>.

CONCLUSION

This reporting period, CMPS military prosecutors handled over 190 referrals from the chain of command (126 of those having been received in 2016-2017), cleared 110 cases, worked on 20 appeals (17 at the CMAC and 3 at the SCC) and provided pre-charge advice in relation to 93 files (with an additional 17 files still pending). With 300 files handled (including both referrals and pre-charge files), 2016-2017 was our busiest of the last five years. These accomplishments were achieved despite devoting considerable resources to provide for more training opportunities for our prosecutors, by building new performance measurement tools designed to make military prosecutions ever more efficient, and by remaining engaged with both the CAF chain of command and the Court Martial Comprehensive Review efforts launched by the JAG.



Major Kerr, Colonel MacGregor and Lieutenant-Colonel Antonyshyn at the SCC in *Cawthorne*.

POLICY, TRAINING AND OUTREACH

POLICY UPDATES – ACCOUNTING FOR VICTIM’S NEEDS IN MILITARY PROSECUTIONS

Military prosecutors also play a role in the development of Canadian military justice and criminal justice policy. The DMP publishes all policy directives governing prosecutions or other proceedings (such as custody review hearings) conducted by the CMPS. The Policy, Training and Communications position within the CMPS is a key part of ongoing efforts to review existing policies and in ensuring that the DMP’s guidance in prosecution-related matters is translated into new policies or other written instruments.

A comprehensive examination of all policies pertaining to sexual misconduct offences was completed during the reporting period which effected changes to the following:

- 002/99 Pre-Charge Screening;
- 003/00 Post-Charge Review;
- 004/00 Sexual Misconduct Offences;
- 007/99 Responding to Victim’s Needs;
- 008/99 Plea, Trial and Sentence Resolution Discussions; and
- 012/00 Witness Interviews²⁶.

²⁶ All DMP Policy Directives are available on the DMP website: <http://www.forces.gc.ca/en/about-policies-standards-legal/index.page>.



The CMPS team at the 2016 National Criminal Law Program in Charlottetown, PEI from 4 to 8 July 2016.

DMP had ordered this examination in light of the Deschamps Report, Operation Honour and the Mandate Letter from the Prime Minister of Canada to the Minister of National Defence, all of which have highlighted the need to ensure that DND and CAF are fostering a workplace that is open, transparent, accountable and free from harassment and discrimination.

Highlights

Choice of Jurisdiction. The views of the victim and the victim's Commanding Officer are now formally incorporated into the list of factors that the Prosecutor must consider to determine whether charges should proceed in the military or civilian justice system. Particularly, the following issues shall be considered:

- the urgency of achieving a resolution for the victim;
- safety concerns about possible reprisals;
- concerns relating to conditions imposed on the suspect following release from custody;
- access to victim support services;
- physical or mental trauma resulting from the alleged offence;
- physical or mental trauma resulting from the participation in court proceedings; and

- the needs of any children or other dependants affected by the alleged offence.

Keeping the Victim Informed. It has been acknowledged that victims should be informed about prosecutorial decisions and court proceedings that affect resolution and closure from their perspective. The victim will be informed of all decisions regarding the choice of jurisdiction, whether or not to prefer charges and of the reasons supporting those decisions. Furthermore, victims will be kept informed of court dates and matters that potentially affect their security, such as changes to release conditions. Victims will also be informed of proposed resolutions.

Victims and the Investigation Sexual Misconduct Offences. Prosecutors are to liaise with investigators to ascertain that any investigation into a sexual misconduct offence will account for the views of the victim and that this is reflected in the investigation report. Prosecutors will also encourage the investigator to promptly inform the victim of any jurisdiction or charging decision made.

Consideration of the Public Interest Includes Consideration of the Views of the Victim. In making charging decisions, the public interest is an important factor to consider. The public interest includes consideration of the seriousness of the offence and the mitigating and aggravating circumstances among other things, but also of the victim's views and of the impact a decision to lay a charge may have on her or him.

Witness Preparation. Witness preparation is a vital function of the Prosecutor with carriage of a sexual offence to be tried by court martial. The Prosecutor will offer support, encouragement

and understanding; a non-judgmental attitude where the victim/witness is reluctant, but assurance that it is wise and prudent for a fearful victim to seek justice. Early in preparation for court martial, the Prosecutor should, where possible, meet with the victim and investigator in private and comfortable surroundings and:

- explain the role of prosecution and defence counsel in court martial proceedings;
- explain the role of a witness in court;
- explain the disclosure process and lack of confidentiality;
- review inevitable lines of questioning under cross-examination;
- encourage the victim to testify truthfully to what occurred, telling the whole truth and being explicit;
- discuss any testimonial fears (such as tears, nausea or embarrassment);
- inform the victim of any release conditions imposed on the accused and determine if the victim has any concerns with the accused's compliance with those conditions;
- confirm that the victim has been made aware of available community support services; and
- attempt to answer any questions the victim might have.

Victims' Comfort and Security. Prosecutors will consider the appropriateness and availability, depending on the circumstances, of resorting to any of the following comfort measures provided under the *NDA* and the *QR&O*:

- the use of a screen or closed circuit television;
- the services of a support person;
- the use of affidavit evidence;
- in camera proceedings;
- an order banning publication that might identify the victim;

- a prohibition against production to the accused of the victim's personal records;
- a prohibition against evidence of the victim's prior sexual conduct; and
- any other measure available under section 179(1)(d) of the *NDA*, notably those available under the *Criminal Code of Canada*.

Sentencing. The Prosecutor must ensure that any submissions made at sentencing hearings include information regarding the impact of the offence on the victim, and that the court is made aware of all factors relevant to the protection and safety of the victim and the public.

Counsel for the Victim. The prosecutor represents the Crown, not individuals such as the victim, and as such is obliged to disclose what is learned from the victim. In cases where the victim's personal interest is at stake (such as requests to produce personal records), the prosecutor cannot act as counsel for the victim, but will facilitate requests for legal assistance through available means.

Further review of all other policies is underway and a new policy directive on the appointment of special prosecutors is set to be issued during the next reporting period.

TRAINING — FOUNDATION TO EXCELLENCE & COMPETENCE IN MILITARY PROSECUTIONS

Regular Force military prosecutors, not unlike other legal officers, are posted from within the Office of the JAG to their prosecution position 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 military prosecutors as well as their professional development as officers and military lawyers. The relative brevity of an officer's posting with the CMPS requires a significant and ongoing organizational commitment to provide him or her with the formal training and practical experience necessary to develop the skills, knowledge and judgment essential in an effective military prosecutor.

Given the small size of the CMPS, much of the required training is provided by external organizations. During the reporting period, military prosecutors participated in conferences and continuing legal education programs organized by Québec's *Directeur des poursuites criminelles et pénales*, Federation of Law Societies of Canada, Canadian Bar Association, Ontario Crown Attorneys' Association, Osgoode Professional Development, Law Society of Upper Canada, Barreau du Québec, International Association of Prosecutors, The Advocates' Society and Public Prosecution Service of Canada. These programs benefited the CAF not only through the knowledge imparted and skills developed but also through the professional bonds

developed by individual military prosecutors with their colleagues from the provincial and federal prosecution services.

For the first time CMPS developed a special training session for newly appointed military prosecutors. This training, which was held in Ottawa and available through videoconference on 6 & 7 December 2016, covered topics such as arrests and investigatory advice, pre-charge and post-charge review, disclosure, plea resolutions, court martial procedure, trial advocacy, sentencing and appeals. The training will be available in video format for newly appointed military prosecutors in the future.

CMPS held its annual Continuing Legal Education (CLE) workshop in February 2017 for its Regular Force and Reserve Force military prosecutors. This year, the event was held on two consecutive days prior to the annual JAG CLE workshop and focused on prosecutions of sexual misconduct offences. We notably had presentations on sexual assault trials by a United States Navy military prosecutor who was accompanied by an actual victim and survivor of a horrific sexual assault; on resiliency in prosecuting sexual assaults and child

TABLE 3:

Total Number of Training Days	323.125
Number of Training Events	32
Number of Prosecutors who Have Received Training	27
Average Days of Training per RMP	11.968
Average Number of Training Events per RMP	3.54

pornography cases by a former CAF officer who is currently employed by the Ontario Provincial Police as a forensic psychiatrist; and on sexual violence prosecutions by an experienced Ontario Crown prosecutor.

During the reporting period, all military prosecutors who were not on a prolonged leave of absence (22) took part in at least one training activity focused on sexual misconduct offences, accounting for a total of more than 53 days of training (almost 16% of all training days and over 2.4 days of training per military prosecutor). As a comparison and as reported in the CAF Second Progress Report Addressing Inappropriate Sexual Behaviour²⁷, six military prosecutors took part in three training events pertaining to offences of a sexual nature in FY 2015-2016.

Military prosecutors also took part in a variety of professional development activities, including significant participation from CMPS in the National Criminal Law Program held in Charlottetown, PEI from 4 to 8 July 2016.

Finally, in order to maintain their readiness to deploy into a theatre of operations in support of the DMP's mandate, military prosecutors conducted individual military skills training such as weapons familiarization and first aid training.

CMPS also provides support to the training activities of other CAF entities. During the 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 prosecutions at courts martial. Military prosecutors also provided military justice briefings to JAG legal officers, criminal law/military justice training to members of the CFNIS, and served as supervisors for law

graduates articling with the Office of the JAG.

Finally, legal officers serving outside the CMPS may, with the approval of their supervisor and the DMP, participate in courts martial as "second chair" prosecutors. The objective of this program is "to contribute to the professional development of unit legal advisors as well as to improve the quality of prosecutions through greater local situational awareness"²⁸. The reporting period saw two unit legal advisers, three candidates in the Military Legal Training Program and one articling student participate in courts martial as second chairs. Feedback from the unit legal advisers and military prosecutors indicates that the program objectives were achieved: the prosecution benefitted from local insight and the unit legal advisers came away with a better understanding of the military justice system at the court martial level. These legal officers enjoy the same independent stature and protections of full-time military prosecutors while performing their particular prosecution duties.

Annex B provides additional information regarding the legal training received by CMPS personnel.

27 See the Canadian Armed Forces Second Progress Report Addressing Inappropriate Sexual Behaviour : <http://forces.gc.ca/en/about-reports-pubs-op-honour/2016/second-progress-report-overview.page#anc3> for further information.

28 The DMP and the Deputy Judge Advocate General Regional Services have an agreement whereby unit legal advisors may participate as second chairs to RMPs in preparation for and conduct of courts martial. Please see DMP Policy Directive #: 009/00 (<http://www.forces.gc.ca/en/about-policies-standards-legal/comms-with-legal-advisors.page>) for further information.

OUTREACH

F/P/T Heads of Prosecutions Committee

The DMP is a member of the Federal/Provincial/Territorial Heads of Prosecutions Committee, which brings together the respective leaders of Canada's prosecution services to promote assistance and cooperation on operational issues. The Committee held two general meetings during the reporting period both of which the DMP personally attended. These meetings provided an invaluable opportunity for participants to discuss matters of common concern in the domain of criminal prosecutions and find opportunities for collaboration.



The ADMP and DMP during a panel discussion at the IAP 21st Annual Conference in Dublin, Ireland in September 2016.

International Association of Prosecutors – Launch of a New Special Interest Group Meeting & Global Network on Military Prosecutions

The International Association of Prosecutors (IAP) is a non-governmental and non-political organization. It promotes the effective, fair, impartial, and efficient prosecution of criminal offences through the application of high standards and principles, including procedures to prevent or address miscarriages of justice. The IAP also promotes good relations between prosecution agencies and facilitates the exchange and dissemination among them of information, expertise and experience. The DMP and ADMP both attended the IAP's 21st Annual Conference and General Meeting in September 2016 in Dublin, Ireland and lead efforts in launching both a new Special Interest Group Meeting and a Global Network specifically dealing with military prosecutions.

CAF Chain of Command

The military justice system is designed to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency, and morale. It also ensures that justice is administered fairly and with respect for the rule of law. Operational effectiveness requires a workplace that is fair, respectful, inclusive and supportive of diversity. To meet these objectives, the chain of command must be effectively engaged.

The DMP recognizes the importance of maintaining collaborative relationships with the chain of command of the CAF, which concurrently respect the prosecutorial independence necessary for the prosecution of courts martial and appeals. Collaborative relationships with the chain of command ensure that both entities work together to strengthen discipline and operational efficiency through a robust military justice system.

During the reporting period, the DMP continued his practice of regularly attending court martial proceedings and meeting with senior members of the chain of command. As part of his effort to maintain proactive and effective communication with service authorities in order to keep the chain of command engaged in court martial matters, the DMP gave a presentation to the CAF general officers at the General Officers/Flag Officers Symposium in Ottawa on 31 August 2016 and met with the Chief of the Defence Staff (CDS) on 06 October 2016. Such inclusiveness is subject, however, to the necessary independence required of prosecutors in exercising prosecutorial discretion throughout the court martial process.

Investigative Agencies

The DMP also recognizes the importance of maintaining relationships with investigative agencies, while at the same time respecting the independence of each organization. Good relationships with investigative agencies ensure that both the DMP and the agencies exercise their respective roles independently, but co-operatively, and help to maximize CMPS' effectiveness and efficiency as a prosecution service.

RMPs provide investigation-related legal advice to CFNIS detachments across Canada. In addition, RMPs provide training to CFNIS investigators on military justice and developments in criminal law. At the headquarters level, DMP has assigned a military prosecutor as legal advisor to the CFNIS command team in Ottawa.²⁹

²⁹ The provision of legal services by the military prosecutor assigned as CFNIS Legal Advisor is governed by a letter of agreement dated 30 September 2013, signed by DMP and the Canadian Forces Provost Marshal.

SECTION 4

INFORMATION MANAGEMENT AND TECHNOLOGY

JAGNet continues to be used as the main information management tool for electronic records in CMPS offices. JAGNet allows users to manage sensitive legal information securely. The goal of the JAGNet project is to introduce a suite of information management and information technology capabilities to enable the organization to properly manage legal cases and recorded information and to efficiently search, find, share and use legal information and knowledge, subject to such access restrictions as are necessary. Efforts continued during the reporting period to encourage all members of CMPS to better harness JAGNet's full capability as a knowledge management tool. To that end, more legal content was added to the JAGNet DMP Portal.

In addition to JAGNet, CMPS has been working closely with JAG Informatics Section to develop a new database to track the progress of files referred and to enable the DMP to make timely decisions in the areas of resource allocation and monitoring delays and performance. A new database built in Microsoft Dynamics is set to be implemented during the next reporting period.



FINANCIAL INFORMATION

OPERATING BUDGET

DMP's budget is allocated primarily to operations: that is, to providing prosecution services to the CAF. As a result of the uncertainty inherent in predicting the number of prosecutions that will be conducted in a given year or where they may be held, it is difficult to accurately forecast expenditures.

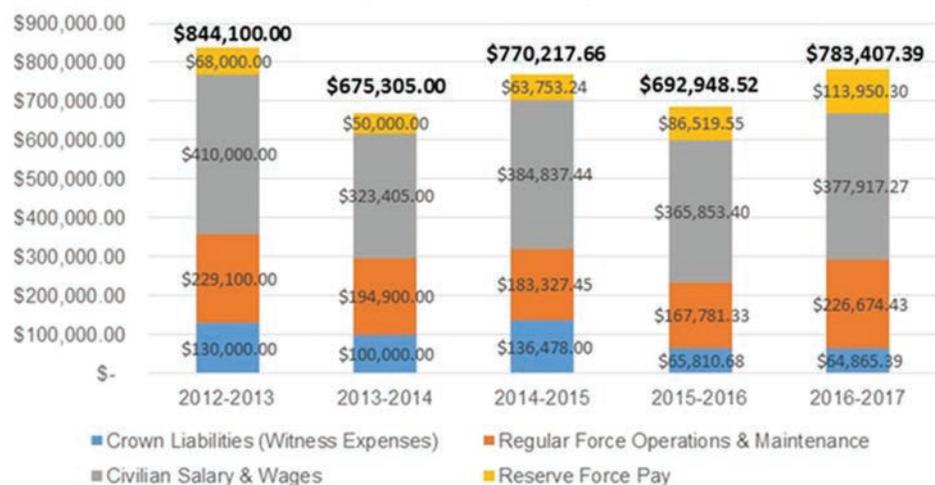
FY 2016-2017 DMP Budget Summary

TABLE 4:

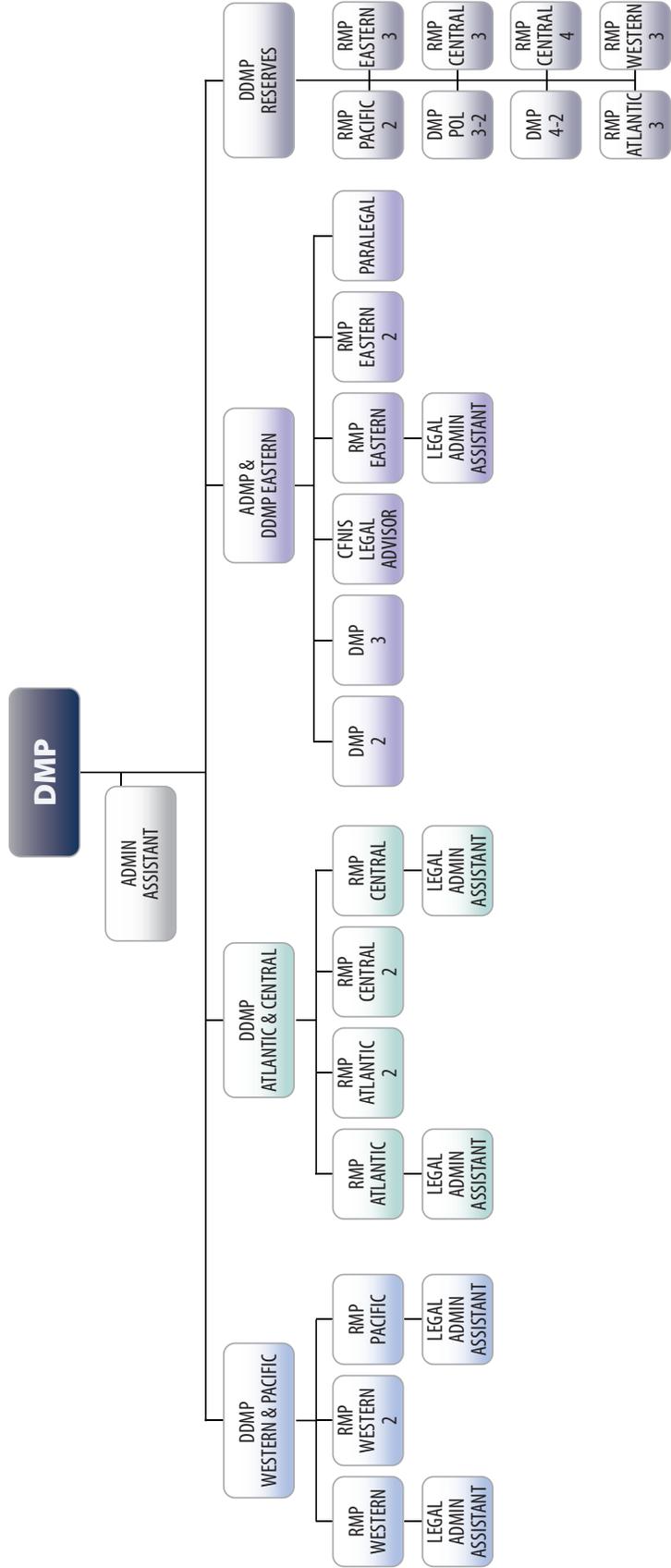
FUND	INITIAL ALLOCATION	EXPENDITURES	BALANCE
Crown Liabilities (Witness Expenses)	\$130,000.00	\$64,865.39	\$65,134.61
Regular Force Operations & Maintenance	\$257,800.00	\$226,674.43	\$30,718.96
Civilian Salary & Wages	\$329,132.00	\$377,917.27	(\$48,785.27)
Reserve Force Pay	\$165,000.00	\$113,950.30	\$51,049.70
Totals	\$881,932.00	\$783,288.39	\$98,237.00

FIGURE 39

DMP OPERATING BUDGET - EXPENDITURES (LAST 5 YEARS)



DIRECTOR OF MILITARY PROSECUTIONS ORGANIZATION CHART



LEGAL TRAINING STATISTICS



HOST ORGANIZATION	NAME OF COURSE	NUMBER OF ATTENDEES
Public Prosecution Service of Canada	PPSC School for Prosecutions – Prosecution Fundamentals (Level I)	2
Justice Canada	Les fondements du secret professionnel de l’avocat dans un contexte gouvernemental	2
Directeur des poursuites criminelles et pénales (Québec)	École des poursuivants 2016 – Infractions sexuelles	1
Directeur des poursuites criminelles et pénales (Québec)	École des poursuivants 2016 – Techniques de plaidoirie et de contre-interrogatoire	1
Federation of Law Societies of Canada	2016 National Criminal Law Program	16
Ontario Crown Attorneys’ Association	Internet Child Exploitation	1
Ontario Crown Attorneys’ Association	Nuts & Bolts	1
Ontario Crown Attorneys’ Association	Search and Seizure	1
Ontario Crown Attorneys’ Association	Trial Advocacy	3
Ontario Crown Attorneys’ Association	Complex Prosecutions	2
Osgoode Professional Development	Self-Defence and Use of Force: Current and Emerging Issues	2
Canadian Bar Association	CBA Criminal Law Conference: The Nuts and Bolts of Sentencing	1
Canadian Bar Association	2016 CBA Military Law Conference	9
Law Society of Upper Canada	The Six-Minute Criminal Lawyer 2016	1
Barreau du Québec	La preuve de propension	2
International Association of Prosecutors	21st Annual Conference	2
International Association of Prosecutors	Specialization Course in International Law and Practice for Young Prosecutors	1
Advocates’ Society	Examining Expert Witnesses	1
Advocates’ Society	Mastering the Art of Oral Communication	2
Advocates’ Society	Vancouver Bench & Bar Series: Challenging Credibility	1
Advocates’ Society	The Art of Communication and Persuasion	1
Legal Education Society of Alberta	34th Intensive Advocacy Program	2
Canadian Institute	7th Annual Conference on the Law of Policing	1

ANNEX B

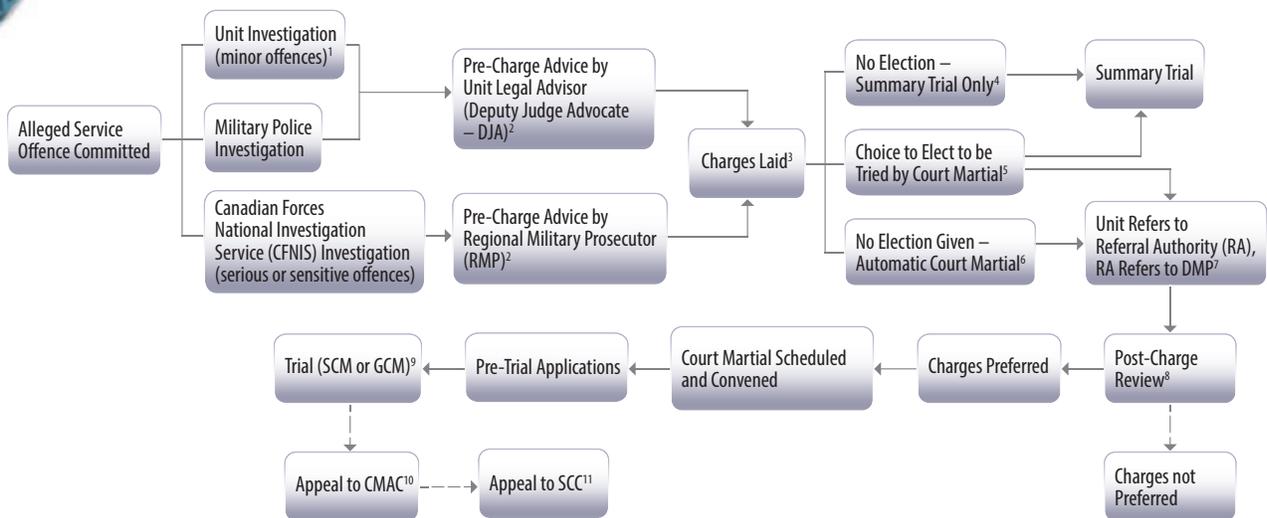
CONTINUED

HOST ORGANIZATION	NAME OF COURSE	NUMBER OF ATTENDEES
University of Moncton	L'art de plaider devant les tribunaux / Intensive Trial Advocacy Programme	1
Continuing Legal Education Society of British Columbia	Detecting Deception in Witnesses Interviews and Negotiations	1
Schulich School of Law at Dalhousie University	Ethics of Sexual Assault Lawyering	2
Groupe MP-Plus (Recognized by the Barreau du Québec)	Réussir sa prise de parole en public	1
Director of Military Prosecutions	New Military Prosecutor Training	12
Director of Military Prosecutions	DMP Continuous Legal Education Seminar 2017 – Sexual Assault	20
Canadian Forces National Investigation Service	Sexual Assault	1





OVERVIEW OF THE REFERRAL PROCESS



¹ See QR&O 106 "Investigation of Service Offences".

² Pre-charge advice is always advisable. Advice is mandatory under the circumstances in QR&O 107.03. See DMP Policy Directive 002/99 Pre-Charge Screening.

³ See QR&O 107 "Preparation, Laying and Referral of Charges".

⁴ Offences listed in QR&O 108.17(1)(a) must be tried by summary trial where the circumstances do not warrant punishment of detention, reduction in rank, or a fine greater than 25% of monthly pay under (1)(b).

⁵ Accused may elect court martial for offences listed in 108.17(1)(a) where the warranted punishment exceeds those in (1)(b), and offences listed in QR&O 108.07(2),(3).

⁶ Offences not listed in QR&O 108.07(2),(3) or where the accused is a LCol or higher must be tried by court martial.

⁷ See QR&O 109 "Application for Referral Authority for Disposal of a Charge".

⁸ See DMP Policy Directive 003/00 Post-Charge Review.

⁹ See QR&O 111 "Convening of Courts Martial and Pre-trial Administration".

¹⁰ See DMP Policy Directive 015/04 Appeals; QR&O 115 "Appeals from Courts Martial"; sections 230 and 230.1 of the *National Defence Act*.

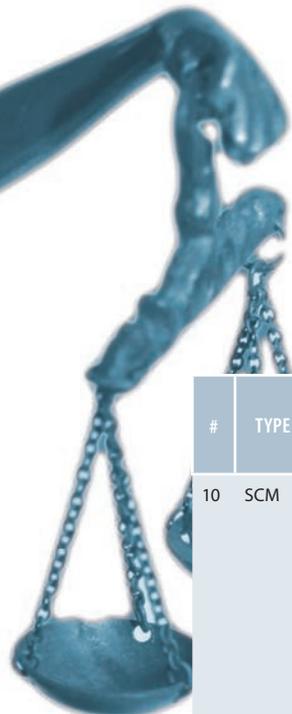
¹¹ See DMP Policy Directive 015/04 Appeals; QR&O 115 "Appeals from Courts Martial"; section 245 of the *National Defence Act*.

ANNEX D

COURT MARTIAL STATISTICS



#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
1	SCM	Cpl Abao	127 NDA	Injurious or dangerous handling of a substance	Not Guilty	N/A	N/A	Edmonton, AB	Wainwright, AB	English
			129 NDA	Neglect to the prejudice	Not Guilty					
2	SCM	Bdr Avon	129 NDA	Conduct to the prejudice	Guilty	\$200 fine	N/A	Valcartier, QC	Valcartier, QC	French
3	SCM	MS Barker	114 NDA	Stealing when entrusted	Withdrawn	Severe reprimand and \$1,500 fine	N/A	Halifax, NS	Shearwater, NS	English
			130 NDA (334(a) Criminal Code)	Theft	Withdrawn					
			124 NDA	Negligent performance of a military duty	Guilty					
4	SCM	Cpl Beaudry	130 NDA (272 Criminal Code)	Sexual assault causing bodily harm	Guilty	42 months imprisonment and dismissal	DNA, SOIRA (20 years), Weapons prohibition (10 years)	Wainwright, AB	Wainwright, AB	French
			130 NDA (246(a) Criminal Code)	Overcoming resistance by choking	Not Guilty					
5	SCM	AB Boyer	97 NDA	Drunkenness	Guilty	Reprimand and \$1,000 fine	N/A	Esquimalt, BC	HMCS Calgary	English
			86 NDA	Fought with a person subject to the Code of Service Discipline	Guilty					
6	SCM	Cpl Brisebois-Bergeron	84 NDA	Stuck a superior officer	Guilty	Reduction in rank, severe reprimand, and \$1,500 fine	N/A	Edmonton, AB	Edmonton, AB	English
			130 NDA (266 Criminal Code)	Assault	Withdrawn					
7	SCM	2Lt Brunelle	93 NDA	Behaved in a disgraceful manner	Guilty	Severe reprimand and \$3,000 fine	N/A	Gagetown, NB	Gagetown, NB	English
8	GCM	Cpl Cadieux	127 NDA	Injurious handling of a dangerous substance	Guilty	21 days detention	N/A	Petawawa, ON	Petawawa, ON	English
9	SCM	MWO Chapman	130 NDA (271 Criminal Code)	Sexual assault	Stayed	Reduction in rank and \$2500 fine	N/A	Gatineau, QC	Cyprus	English
			93 NDA	Behaved in a disgraceful manner	Guilty					



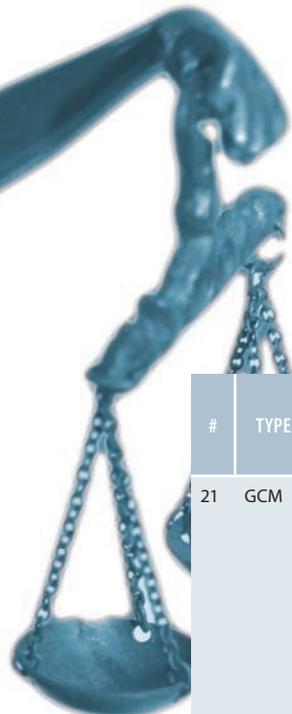
#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
10	SCM	Sgt Charette	86 NDA	Quarrels and disturbances	Guilty	Severe reprimand and \$1,000 fine	N/A	Saint-Jean-sur-Richelieu, QC	Montréal, QC	French
			86 NDA	Quarrels and disturbances	Guilty					
			85 NDA	Used threatening language toward a superior officer	Guilty					
			85 NDA	Used threatening language toward a superior officer	Guilty					
11	SCM	Capt Christensen	130 NDA (271 Criminal Code)	Sexual assault	Stayed	Reduction in rank	N/A	Kingston, ON	Kingston, ON	English
			93 NDA	Behaved in a disgraceful manner	Guilty					
12	SCM	Sgt Conway(2 referrals)	83 NDA	Disobeyed lawful command	Guilty	1 day detention (credit of 39 days pre-trial custody) (suspended), reduction in rank and \$1,000 fine	N/A	Kingston, ON	Kingston, ON	English
			88 NDA	Deserted	Guilty of lesser and included offence of s 90 NDA					
			129 NDA	Conduct to the prejudice	Guilty					
			90 NDA	AWOL	Not Guilty					
			101.1 NDA	Failed to comply with a condition of an undertaking given under Division 3	Guilty					
13	SCM	Cpl Crabtree-Megahy	129 NDA	Conduct to the prejudice	Guilty	\$500 fine	N/A	Edmonton, AB	Borden, ON	English
			85 NDA	Behaved with contempt toward a superior officer	Withdrawn					
14	SCM	Pte Cubias-Gonzalez	130 NDA (268 Criminal Code)	Aggravated assault	Stayed	N/A	N/A	Borden, ON	Kingston, ON	English
			97 NDA	Drunkenness	Stayed					
			86 NDA	Quarrels and Disturbances	Stayed					
15	SCM	Cpl Curkowskyj	129 NDA	Conduct to the prejudice	Guilty	\$200 fine	N/A	Shilo, MB	Shilo, MB	English

ANNEX D

CONTINUED



#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
16	SCM	Pte Curran	130 <i>NDA</i> (5(2) CDSA)	Possession for the purpose of trafficking in a substance	Not Guilty	20 days imprisonment and \$1,000 fine	N/A	Gagetown, NB	Gagetown, NB	English
			130 <i>NDA</i> (5(2) CDSA)	Possession for the purpose of trafficking in a substance	Not Guilty					
			130 <i>NDA</i> (4(1) CDSA)	Possession of a substance	Guilty					
			130 <i>NDA</i> (4(1) CDSA)	Possession of a substance	Guilty					
17	SCM	Cpl Daigle	117(f) <i>NDA</i>	An act of fraudulent nature	Guilty	Reprimand and \$1,400 fine	N/A	Halifax, NS	Halifax, NS	English
			125(a) <i>NDA</i>	Wilfully made false statement in a document required for official purpose	Not Guilty					
18	SCM	MCpl Desjardins	129 <i>NDA</i>	Conduct to the prejudice	Guilty	Reprimand and \$500 fine	N/A	Kingston, ON	Kingston, ON	English
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
19	SCM	Cpl Desroches	83 <i>NDA</i>	Disobeyed a lawful command of a superior officer	Not Guilty	Reprimand and \$500 fine	N/A	Gagetown, NB	Saint-John, NB	English
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
20	SCM	MCpl Downer	130 <i>NDA</i> (380(1) <i>Criminal Code</i>)	Fraud	Not Guilty	Severe reprimand and \$1,500 fine	N/A	Trenton, ON	Trenton, ON and Ottawa, ON	English
			117(f) <i>NDA</i>	Act of fraudulent nature	Guilty					
			117(f) <i>NDA</i>	Act of fraudulent nature	Not Guilty					
			125(a) <i>NDA</i>	Wilfully made a false entry in a document that was required for official purposes	Guilty					
			125(a) <i>NDA</i>	Wilfully made a false entry in a document that was required for official purposes	Guilty					



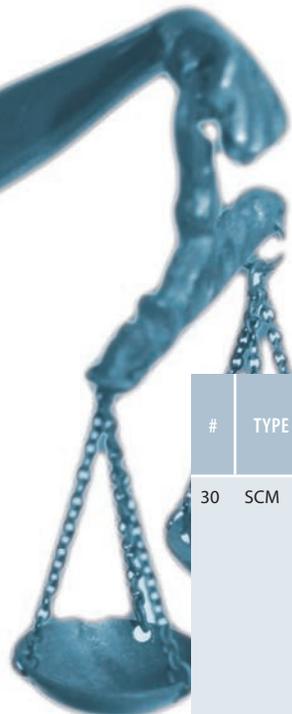
#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
21	GCM	MWO Fancy	129 <i>NDA</i>	Conduct to the prejudice	Guilty	Reduction in rank and \$300 fine	N/A	Halifax, NS	Halifax, NS	English
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
			130 <i>NDA</i> (419 <i>Criminal Code</i>)	Unlawful use of military uniforms or certificates	Withdrawn					
			130 <i>NDA</i> (419 <i>Criminal Code</i>)	Unlawful use of military uniforms or certificates	Withdrawn					
22	SCM	WO Fortin	116 <i>NDA</i>	Wasted public property	Not Guilty	N/A	N/A	Valcartier, QC	Saint-Léonard-de-Portneuf, QC	French
			116 <i>NDA</i>	Improperly sold public property	Not Guilty					
			129 <i>NDA</i>	An act to the prejudice	Not Guilty					
23	SCM	WO Funk	125(a) <i>NDA</i>	Wilfully made a false entry in a document that was required for official purpose	Not Guilty	Reprimand and \$1,750 fine	N/A	Gagetown, NB	Gagetown, NB	English
			129 <i>NDA</i>	An act to the prejudice	Guilty					
			116 <i>NDA</i>	Wilfully damage public property	Guilty					
24	SCM	WO Gagnon	129 <i>NDA</i>	An act to the prejudice	Guilty	\$400 fine	N/A	Valcartier, QC	Quebec, QC	French
25	SCM	Cpl Golzari	85 <i>NDA</i>	Behaved with contempt toward a superior officer	Non-prima Facie	N/A	N/A	Kingston, ON	Kingston, ON	English
			130 <i>NDA</i> (129(a) <i>Criminal Code</i>)	Obstructing a peace officer	Non-prima Facie					
			129 <i>NDA</i>	Conduct to the prejudice	Non-prima Facie					
26	SCM	Maj Hamelin	129 <i>NDA</i>	An act to the prejudice	Guilty	Reprimand and \$1,800 fine	N/A	Gatineau, QC	Ottawa, ON	English

ANNEX D

CONTINUED



#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
27	GCM	Cpl Hoekstra	130 NDA (5(2) CDSA)	Possession for the purpose of trafficking of a substance	Guilty of lesser and included offence possession (s 4(1) CDSA)	60 days imprisonment (appealed)	N/A	Petawawa, ON	Petawawa, ON	English
			114 NDA	Stealing	Stayed					
			115 NDA	Receiving property obtained by the commission of a service offence	Guilty					
			130 NDA (92(2) Criminal Code)	Knowledge of unauthorized possession of a prohibited device	Guilty					
			130 NDA (91(2) Criminal Code)	Unauthorized possession of a prohibited device	Stayed					
			130 NDA (91(2) Criminal Code)	Unauthorized possession of a prohibited device	Withdrawn					
			130 NDA (86(1) Criminal Code)	Careless storage of a firearm	Withdrawn					
			130 NDA (86(2) Criminal Code)	Careless storage of a firearm	Withdrawn					
			130 NDA (86(1) Criminal Code)	Careless storage of ammunition	Withdrawn					
			130 NDA (82(1) Criminal Code)	Possession of explosives for an unlawful purpose	Guilty					
			130 NDA (95 Criminal Code)	Possession of a prohibited firearm	Withdrawn					
28	SCM	MCpl Jackson	130 NDA (271 Criminal Code)	Sexual assault	Not Guilty	N/A	N/A	Gatineau, QC	Ottawa, ON	English
			93 NDA	Behaved in a disgraceful manner	Not Guilty					
29	GCM	LS Korolyk	129 NDA	An act to the prejudice	Guilty	\$250 fine	N/A	Esquimalt, BC	Esquimalt, BC	English
			129 NDA	An act to the prejudice	Guilty					



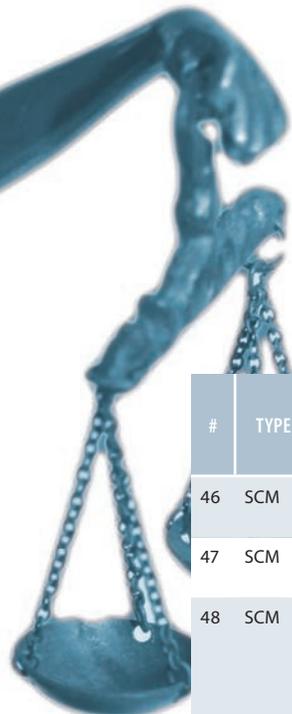
#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
30	SCM	Sgt Laferrière	130 NDA (271 Criminal Code)	Sexual assault	Guilty of lesser and included offence of assault (s 266 Criminal Code)	Severe reprimand and \$2,500 fine	N/A	Bagotville, QC	La Baie, QC	French
			95 NDA	Ill-treated a person who by reason of rank is a subordinate	Guilty					
			97 NDA	Drunkenness	Guilty					
31	SCM	Sgt Landry	130 NDA (4(1) CDSA)	Possession of a substance	Guilty	Reduction in rank and \$500 fine	N/A	Petawawa, ON	Petawawa, ON	English
			129 NDA	Conduct to the prejudice	Guilty					
32	SCM	Sgt Ledoux	129 NDA	Conduct to the prejudice	Withdrawn	Reprimand and \$1,500 fine	N/A	Petawawa, ON	Lviv, Ukraine	English
			129 NDA	Conduct to the prejudice	Withdrawn					
			97 NDA	Drunkenness	Guilty					
33	SCM	Cpl Lefebvre	85 NDA	Behaved with contempt toward a superior officer	Guilty	\$500 fine	N/A	Gatineau, QC	Ottawa, ON	English
			85 NDA	Behaved with contempt toward a superior officer	Not Guilty					
			129 NDA	An act to the prejudice	Not Guilty					
34	SCM	MCpl Lévesque	85 NDA	Behaved with contempt toward a superior officer	Guilty	Reprimand and \$850 fine	N/A	Petawawa, ON	Petawawa, ON	English
35	SCM	Capt MacDonald	129 NDA	Neglect to the prejudice	Guilty	\$200 fine	N/A	Edmonton, AB	Suffield, AB	English
36	SCM	Cpl MacNeil	129 NDA	Conduct to the prejudice	Guilty	\$200 fine	N/A	Shilo, MB	Shilo, MB	English
37	SCM	WO Misiaczyk	130 NDA (267(b) Criminal Code)	Assault causing bodily harm	Not Guilty	15 days detention	N/A	Petawawa, ON	Corner Brook, NL	English
			95 NDA	Struck a person who by reason of rank was subordinate to him	Guilty					
			97 NDA	Drunkenness	Not Guilty					
38	SCM	Sgt Mooney	129 NDA	An act to the prejudice	Mistrial	N/A	N/A	Borden, ON	Borden, ON	English

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CONTINUED



#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
39	SCM	MCpl Morton	130 <i>NDA</i> (221 <i>Criminal Code</i>)	Causing bodily harm by criminal negligence	Withdrawn	90 days detention (suspended) and reduction in rank	N/A	Gagetown, NB	Gagetown, NB	English
			124 <i>NDA</i>	Negligent performance of a military duty	Guilty					
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
40	SCM	Cpl Nicholle	114 <i>NDA</i>	Stealing	Not Guilty	Reprimand and \$500 fine	N/A	Petawawa, ON	Petawawa, ON	English
			115 <i>NDA</i>	Retained property obtained by the commission of a service offence	Guilty					
			130 <i>NDA</i> (354(1) <i>Criminal Code</i>)	Possession of property obtained by crime	Stayed					
41	SCM	Cpl Paquette	129 <i>NDA</i>	Conduct to the prejudice	Guilty	\$600 fine	N/A	Laval, QC	Laval, QC	French
			129 <i>NDA</i>	Conduct to the prejudice	Withdrawn					
42	SCM	OS Penner	117(b) <i>NDA</i>	Improperly demanded compensation in respect of the performance of a military duty	Guilty	Reprimand and \$800 fine	N/A	Esquimalt, BC	Esquimalt, BC	English
			129 <i>NDA</i>	An act to the prejudice	Withdrawn					
			129 <i>NDA</i>	An act to the prejudice	Withdrawn					
43	SCM	Cpl Pichette	86 <i>NDA</i>	Quarrels and disturbances	Guilty	Reprimand and \$650 fine	N/A	Montreal, QC	Gagetown, NB	French
			86 <i>NDA</i>	Quarrels and disturbances	Guilty					
44	SCM	Bdr Plante	130 <i>NDA</i> (266 <i>Criminal Code</i>)	Assault	Stayed	Reprimand and \$1,000 fine	N/A	Valcartier, QC	Québec, QC	French
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
45	SCM	Pte Poirier	88 <i>NDA</i>	Deserted	Guilty of lesser and included offence of Absent without leave (90 <i>NDA</i>)	\$800 fine	N/A	Edmonton, AB	Edmonton, AB	English



#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
46	SCM	Avr Recollet	130 <i>NDA</i> (4(1) CDSA)	Possession of a substance	Guilty	Reprimand and \$700 fine	N/A	Cold Lake, AB	Cold Lake, AB	English
47	SCM	MGen Rouleau	129 <i>NDA</i>	Neglect to the prejudice	Guilty	\$2,000 fine	N/A	Gatineau, QC	Iraq	English
48	SCM	Cpl Sketcher	130 <i>NDA</i> (264.1(1) <i>Criminal Code</i>)	Uttering threats	Not Guilty	N/A	N/A	Trenton, ON	Trenton, ON	English
			86 <i>NDA</i>	Used provoking speeches toward a person subject to the Code of Service Discipline	Not Guilty					
			130 <i>NDA</i> (264.1(1) <i>Criminal Code</i>)	Uttering threats	Not Guilty					
49	SCM	Lt Soares	117(f) <i>NDA</i>	An act of fraudulent nature	Withdrawn	Severe reprimand and \$3,000	N/A	Gatineau, QC	Ottawa, ON	English
			98 <i>NDA</i>	Delaying the cure to infirmity by wilful disobedience of orders	Withdrawn					
			98 <i>NDA</i>	Feigned infirmity	Withdrawn					
			125 <i>NDA</i>	Wilfully made a false entry in a document made by her that was required for an official purpose	Withdrawn					
			129 <i>NDA</i>	An act to the prejudice	Guilty					
50	SCM	MS Steven	129 <i>NDA</i>	Conduct to the prejudice	Guilty	Severe reprimand and \$3,000	N/A	Victoria, BC	HMCS Whitehorse	English
			97 <i>NDA</i>	Drunkenness	Guilty					
51	SCM	Maj St-Pierre	130 <i>NDA</i> (271 <i>Criminal Code</i>)	Sexual assault	Stayed	Reduction in rank, severe reprimand, and \$5,000 fine	N/A	Valcartier, QC	Valcartier, QC and Shawinigan, QC	French
			93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty					
			97 <i>NDA</i>	Drunkenness	Guilty					
			130 <i>NDA</i> (271 <i>Criminal Code</i>)	Sexual assault	Stayed					
			93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty					
			97 <i>NDA</i>	Drunkenness	Guilty					
			130 <i>NDA</i> (271 <i>Criminal Code</i>)	Sexual assault	Stayed					
93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty								

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CONTINUED



#	TYPE	RANK	OFFENCES	DESCRIPTION	DISPOSITION	SENTENCE	ORDERS AT CM	LOCATION OF COURT MARTIAL	LOCATION OF OFFENCE	LANGUAGE OF TRIAL
52	SCM	LS Thiele	130 <i>NDA</i> (5(1) <i>CDSA</i>)	Trafficking in a substance	Guilty	14 months and 28 days imprisonment	10 year weapons prohibition, DNA	Victoria, BC	Victoria, BC	English
			130 <i>NDA</i> (5(1) <i>CDSA</i>)	Trafficking in a substance	Guilty					
			130 <i>NDA</i> (5(1) <i>CDSA</i>)	Trafficking in a substance	Guilty					
53	SCM	Cpl Watson	130 <i>NDA</i> (82(1) <i>Criminal Code</i>)	Possession of explosives without lawful excuse	Not Guilty	N/A	N/A	Petawawa, ON	Petawawa, ON	English
54	SCM	WO Wellowszky	130 <i>NDA</i> (266 <i>Criminal Code</i>)	Assault	Withdrawn	Reduction in rank, reprimand, and \$1,000 fine	N/A	Toronto, ON	Toronto, ON	English
			93 <i>NDA</i>	Behaved in a disgraceful manner	Guilty					
			129 <i>NDA</i>	Conduct to the prejudice	Guilty					
55	SCM	OCdt Whitehead	130 <i>NDA</i> (271 <i>Criminal Code</i>)	Sexual assault	Not Guilty	N/A	N/A	Kingston, ON	Kingston, ON	English
			130 <i>NDA</i> (271 <i>Criminal Code</i>)	Sexual assault	Not Guilty					
56	SCM	Cdr Yanchus	83 <i>NDA</i>	Disobeyed a lawful command	Not Guilty	N/A	N/A	Esquimalt, BC	Hawaii, USA	English
			129 <i>NDA</i>	Conduct to the prejudice	Not Guilty					
			97 <i>NDA</i>	Drunkenness	Not Guilty					

APPEALS TO THE COURT MARTIAL APPEAL COURT OF CANADA



CMAC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
566	Pte Déry	Her Majesty the Queen	Legality of Finding	Waiting for Decision
567	MCpl Stillman	Her Majesty the Queen	Legality of Finding	Waiting for Decision
568	MCpl Royes	Her Majesty the Queen	Legality of Finding	Appeal dismissed
571	Maj Wellwood	Her Majesty the Queen	Legality of Finding	Waiting for Decision
574	PO2 Wilks	Her Majesty the Queen	Legality of Finding	Waiting for Decision
577	Her Majesty the Queen	WO Gagnon	Legality of Finding	Ongoing
578	Lt(N) Klein	Her Majesty the Queen	Legality of Finding	Waiting for Decision
579	Cpl Nadeau-Dion	Her Majesty the Queen	Legality of Finding	Waiting for Decision
580	Cpl Pfahl	Her Majesty the Queen	Legality of Finding	Waiting for Decision
581	Her Majesty the Queen	Cpl Thibault	Legality of Finding	Ongoing
583	2Lt Soudri	Her Majesty the Queen	Legality of Finding	Waiting for Decision
584	PO2 Blackman	Her Majesty the Queen	Legality of Finding	Waiting for Decision
586	MCpl Royes	Her Majesty the Queen	Application for Release Pending Appeal to the Supreme Court of Canada	Dismissed
587	Her Majesty the Queen	Cpl Golzari	Legality of Finding	Waiting for Decision
588	Corporal Beaudry	Her Majesty the Queen	Legality of Finding	Waiting for Decision
588	Corporal Beaudry	Her Majesty the Queen	Application for Release Pending Appeal to the Court Martial Appeal Court	Dismissed
589	Her Majesty the Queen	Cpl Hoekstra	Legality of Sentence and Severity of Sentence	Hearing scheduled for 11 May 17

- At the beginning of the reporting period twelve files were ongoing.
- One notice of appeal was filed by accused during the reporting period.
- Two applications for release pending appeal were filed by accused during the reporting period.
- Her Majesty the Queen filed two notices of appeal during the reporting period.

APPEALS TO THE SUPREME COURT OF CANADA



SCC #	APPELLANT	RESPONDENT	TYPE OF APPEAL	RESULT
36466	Her Majesty the Queen	OS Cawthorne	Legality of Finding, appeal as of right	Appeal granted
36844	Her Majesty the Queen	WO Gagnon and Cpl Thibault	Legality of Finding	Appeal granted
37054	MCpl Royes	Her Majesty the Queen	Application for Leave to Appeal	Application dismissed

CUSTODY REVIEW HEARINGS



#	ACCUSED	DATE	ALLEGED CHARGES	DECISION
1	Beaudry, Cpl	16-17 Jun 2016	s. 130 <i>NDA</i> (272 <i>Criminal Code</i>) Sexual assault causing bodily harm s. 130 <i>NDA</i> (s. 246(a) <i>Criminal Code</i>) Overcoming resistance by choking s. 90 <i>NDA</i> Absent without leave s. 90 <i>NDA</i> Absent without leave s. 130 <i>NDA</i> (4(1) <i>CDSA</i>) Possession of a substance s. 101.1 <i>NDA</i> Failed to comply with condition imposed under division 3 s. 101.1 <i>NDA</i> Failed to comply with condition imposed under division 3	Released on conditions
2	Beaudry, Cpl	5 July 2016	s. 130 <i>NDA</i> (272 <i>Criminal Code</i>) Sexual assault causing bodily harm s. 130 <i>NDA</i> (s. 246(a) <i>Criminal Code</i>) Overcoming resistance by choking s. 90 <i>NDA</i> Absent without leave s. 90 <i>NDA</i> Absent without leave s. 130 <i>NDA</i> (4(1) <i>CDSA</i>) Possession of a substance s. 101.1 <i>NDA</i> Failed to comply with condition imposed under division 3 s. 101.1 <i>NDA</i> Failed to comply with condition imposed under division 3 s. 90 <i>NDA</i> Absent without leave s. 90 <i>NDA</i> Absent without leave s. 83 <i>NDA</i> Disobedience of a lawful command s. 83 <i>NDA</i> Disobedience of a lawful command s. 83 <i>NDA</i> Disobedience of a lawful command s. 90 <i>NDA</i> Absent without leave s. 83 <i>NDA</i> Disobedience of a lawful command s. 90 <i>NDA</i> Absent without leave s. 83 <i>NDA</i> Disobedience of a lawful command s. 90 <i>NDA</i> Absent without leave	Released on conditions
3	Conway, Sgt	30 Jan 2017	s. 88 <i>NDA</i> Desertion s. 90 <i>NDA</i> Absent without leave	Released on conditions
4	Conway, Sgt	21 Feb 2017	s. 83 <i>NDA</i> Disobedience of a lawful command s. 85 <i>NDA</i> Behaved with contempt toward a superior officer s. 90 <i>NDA</i> Absent without leave s. 101.1 <i>NDA</i> Failed to comply with condition imposed under division 3 s. 101.1 <i>NDA</i> Failed to comply with condition imposed under division 3	Retained in Custody