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Our file: A-2011-01559/ATIP (Analyst)

MAR 2 6 2012

Mr. Francois Lareau
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Ottawa, Ontario K1V 9A4

Dear Mr. Larcau:

This is in response to your request submitted under the *Access to Information Act*, for:

> *Two documents prepared by Bronson Consulting Group for the office of the JAG. The first: Review of the Canadian Military Prosecution Service, 31 March 2008, by Andrejs Berzins and Malcolm Lindsay. The second: Review of the DSC organization, produced after March 2008.*

Enclosed please find an electronic copy of the processed information that could be located using the Department's best efforts, within the constraints of the Act. You will note that no severances have been applied to these documents.

We also wish to advise you that in order to facilitate greater public access to government information, it is DND/CF policy to make most records released under the *Act* available to the public as soon as possible after they have been released to the applicant. Accordingly, we propose to make records which have been prepared in response to your request publicly available and provide the document to the public on an on-demand basis. Your identity as the applicant will not be disclosed as part of this procedure.

Please be advised that you are entitled to file a complaint with the Office of the Information Commissioner concerning the processing of your request within sixty days of the receipt of this notice. In the event you decide to avail yourself of this right, your notice of complaint should be addressed to:

Office Information Commissioner
Tower B, Place de Ville
112 Kent Street, 22nd Floor
Ottawa, Ontario
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Should you require clarification or assistance regarding your request, please contact Sophia Alleyne of my staff at (613) 995-1422, or use our toll free number 1-888-272-8207 or by e-mail at sophia.alleyne@forces.gc.ca.

Yours truly,

SIGNATURE BLANKED OUT FOR PRIVACY REASONS.

Julie Jansen
Director
Access to Information and Privacy

Enclosure: CD

LE GROUPE CONSEIL

CONSULTING GROUP

EXTERNAL REVIEW OF THE CANADIAN MILITARY PROSECUTION SERVICE

Prepared by:

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FINAL REPORT

MARCH 31, 2008

2 EXECUTIVE SUMMARY

"If the competing demands of justice and efficiency are to be satisfactorily reconciled, there must be willingness on the part of all the co-operative participants to change, to some extent, the ways in which they have traditionally carried out their respective functions." (Martin Committee)[2]

2.1 INTRODUCTION

We were asked to conduct a review of the Canadian Military Prosecution Service (CMPS) in order to identify those factors within its purview that contribute to delay in the military justice system and to make recommendations about what the Service could do to reduce those delays.

We conducted a total of 46 interviews, examined Courts Martial files, reviewed applicable legislation, and looked at policies and data available to us. In addition to Ontario, we chose to compare the CMPS with the Public Prosecution Service of Canada in Nunavut and with the Ministry of the Attorney General of New Brunswick where a "charge approval" system is in effect.

As instructed by the Director of Military Prosecutions (DMP), we focused our review on that stage of the overall process where the cases rest primarily in the hands of the military prosecutors, namely, from referral of the charges for disposition until preferral for Court Martial. We quickly came to the conclusion, however, that the delays are system-wide and any improvements at one stage will have limited effect unless changes also take place throughout the system, starting with the investigation until the final disposition of the case at Court Martial. The CMPS plays an important role at the other stages, as well, and our review therefore ended up being somewhat broader than originally anticipated.

We found that the delays in the Court Martial tier of the Military Justice System are so severe that the very purpose of having a separate military justice system is threatened. Nothing less than a "sea change" in approaches, policies, and procedures on the part of all participants is required to correct this. However, it is not an impossible task. Fortunately, the number of cases is small, most of the offences dealt with are not of the most serious nature and there are adequate resources within the system to make it work much better. Unlike the civilian justice systems that have had to deal with increasing caseloads with limited resources, the challenges for the Court Martial system come from within.

2.2 NUMBER AND NATURE OF COURT MARTIAL CASES

The number of Courts Martial cases in Canada is surprisingly small. From April 1, 2007 to March 31, 2008, there were only 78 Courts Martial held. In the seven previous fiscal years starting April 1, 2000 and ending March 31, 2007, there were, on average, 62 Courts Martial per year. The numbers are small because the vast majority of breaches of military discipline are dealt with by Summary Trials.

This means that the four military judges dealt with, on average, 20 Courts Martial each in 2007-08, while the nine Regional Military Prosecutors (RMP's) each handled, on average, 9 cases that proceeded to Court Martial.

Of the 82 Courts Martial cases heard in calendar year 2007, 52 (64%) resulted in pleas of guilty and/or withdrawal of charges. This means that on average, each judge dealt with 7 fully contested trials in 2007, while

[2] Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure and Resolution Discussions, 1993, Queen's Printer for Ontario

each RMP dealt with only three. We acknowledge that Court Martial cases are very different from criminal cases in the civilian system. However, looking at numbers alone, the average civilian system judge and prosecutor deal with much greater case loads.

Delays in the civilian justice systems are often attributed to the lack of adequate judicial and prosecutorial resources to deal with the huge volumes of cases. We have concluded that lack of resources is not a contributing factor to Court Martial delays. Some of the people we spoke to even suggested that the system is over-resourced. Without going that far, we believe that delays are caused by the policies and practices employed in the system rather than by any lack of resources.

On the surface, most of the offences under the Code of Service Discipline appeared quite minor in nature. There were some serious offences, including drug trafficking, sexual assault, assault with a weapon, significant frauds and possession of child pornography. With those notable exceptions, most of the charges were of the type that would be dealt with by "diversion" in the civilian justice system or would be allocated a couple of hours of court time if they proceeded to trial. Of the 82 cases that were dealt with by Court Martial in 2007, only 7 (8.5%) resulted in sentences involving any actual imprisonment or detention.

We appreciate that a charge that may seem minor in the civilian world can have serious consequences with respect to discipline, morale, and collective safety in the military. We conducted our review with that perspective in mind. Good examples to illustrate the point are the case of the soldier who feigns illness and refuses to take his turn on watch while his unit is in theatre, and that of the soldier responsible for guiding helicopters landing on ships who is found in possession of a small amount of marihuana. The "public interest" aspect in prosecuting such infractions is clearly much greater when they arise in the military context.

2.3 THE OBJECTIVE OF A SEPARATE MILITARY JUSTICE SYSTEM

The objective of a separate military justice system was described by the Supreme Court of Canada in the often-quoted passage from the case of *Regina vs. Genereux*:

> The purpose of a separate system of military tribunals is to allow the armed forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the armed forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs.[3]

It is clear that the military justice system is intended to deal with breaches of discipline in an efficient and speedy manner. Its very existence is premised on its ability to deal with them more expeditiously than can be expected of the civilian justice system that has broader, societal goals.

What does "speedy" mean? We spoke to those responsible for enforcing discipline, the commanding officers, to obtain their views about what they expect from the military justice system in terms of efficiency in order to do their jobs. The consensus seems to be that most charges of breach of discipline should be dealt with by the justice system within approximately six months of the incident if enforcement of discipline is to be effective. After that, the formal military justice system becomes largely irrelevant, or worse, even counterproductive.

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3 R. vs. Genereux, (1992) 70 C.C.C. (3d) 1 at p.25, S.C.C.

We were left with the impression that Commanding Officers have become detached from the Courts Martial system. The process takes so long that it has become irrelevant to them for the enforcement of discipline. By the time a trial is completed, the members who were in the Unit when the offence occurred are no longer there and do not see the consequences to the accused of his/her conduct.

We heard that accused persons are electing to be tried by Court Martial in the expectation that it will take so long to complete that the case against them will eventually be lost. Another reason for the election is the perception that Courts Martial result in less severe sentences than at Summary Trials. Although it is hard for us to understand why so many disciplinary offences are electable, we decided not to examine that question in light of the conclusions of former Chief Justice Lamer in his review of the military justice system in 2003.

We believe that it is reasonable to expect a properly functioning Court Martial system to take no longer than six months to deal with the "typical" disciplinary cases. Obviously, complex cases like manslaughter, major sexual assaults, drug trafficking and large frauds will require considerably more time and those responsible for enforcing military discipline would accept that. The civilian jurisdictions, like Ontario, are able to accomplish this timeline because of the large number of cases, 75%, that are resolved without trials. In some of the efficient civilian jurisdictions, even contested trials can be held within six months of the date of the offences.

2.4 EXTENT OF THE DELAY

For Courts Martial completed in calendar year 2007, the mean time from the date of the offence to final disposition was 593 days (19.45 months)[4]. The average from April 1, 2006 to March 31, 2007 was 650 days (21 months). This is more than three times longer than the 6 months delay that Commanding Officers say they can accept and still enforce discipline. The situation has not changed over the last 8 years. It is not surprising, then, that 24 Commanders and 17 CWO/CPO1's interviewed in a survey conducted by the Judge Advocate General from January to March 2007 expressed dissatisfaction with delays in the Court Martial system.[5] This was confirmed by the Commanders with whom we spoke.

Rather than providing a separate speedier forum for dealing with breaches of military discipline as intended, the Court Martial system is, in fact, slower in disposing of cases than the civilian system. Ironically, a serious argument could be made that, if timeliness is the most important consideration, all charges presently laid under the Code of Service Discipline that are based on alleged Criminal Code or other Federal act offences should be dealt with in the civilian criminal justice systems.[6] We are not recommending that be done; but we use it to illustrate the extent of the problem.

2.5 STAGES OF THE COURT MARTIAL PROCESS

Cases destined to be dealt with by Court Martial pass through several stages and many hands in the overall process. They are:

- The Investigation stage, from the time of the incident to the laying of the charge. The investigating authorities, that is, either the Unit investigators, regular Military Police or the National Investigation Service (NIS) of the Military Police play the central role at this stage.
- The Chain of Command stage, from the time the charge is laid until it is referred to the DMP. The Commanding Officers, Referral Authorities, and their legal advisors control this stage.

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4 In order to calculate "mean" time we excluded all cases where the delay was more than 3 years.

5 Annual Report of the Judge Advocate General 2006-2007

6 Currently by CF policy, impaired driving and domestic violence cases are dealt with in the civilian justice system even though they involve military personnel and were committed on military property.

- The Prosecutors' stage, from the time of referral until the charge is preferred for Court Martial. The prosecutors are in charge of the case during this stage.
- The Court Martial stage, from preferral of the charge until final disposition. The Military Judges and the Court Martial Administrator are involved at this stage.

We learned that there are excessive delays at each of the above stages. Furthermore, failure to deal with cases expeditiously at one step in the process contributes to delay at the other steps.

We have tried to determine why a well-resourced system is seemingly unable to deal with a relatively small volume of cases in a timely manner, particularly when efficiency is such an important objective. There are multiple reasons, but a few things stood out:

- The various participants or "players" in the system generally carry out their individual responsibilities as if overall delay was not a problem. Despite the delays, they do not act with a sense of urgency. For example, the Military Police may spend months investigating a simple bar fight, tracking down every witness and videotaping all statements. The Chain of Command may sit on files for a long time before referring them to the DMP. The prosecutors prepare lengthy written legal opinions for their superiors justifying their decisions whether to proceed or not to proceed with a case. The military judges will spend two days on a sentencing matter, even where there is a joint submission. While such expenditures of time would be acceptable in an ideal world, they simply cannot be afforded if the objective of swift justice is a priority.

- The participants are very "risk-adverse". They feel they must do their work very thoroughly, even if it takes a long time. They are unwilling or afraid to "cut any corners", even if such a meticulous approach contributes to overall delay.

- Many of the participants, including investigators, prosecutors, defence counsel and some military judges, are relatively inexperienced and have difficulty making quick decisions.

- Since the reorganization of the military justice system in 1998, there has been a great emphasis on the independence of each branch. Pressure by one branch on another branch to speed up the process is resisted and seen as an interference with independence.

- The Charter of Rights places emphasis on the rights of individuals, rather than the interests of the CF as a whole, and legal procedures have become more complex and lengthy.

- The Chain of Command is not as engaged in the Court Martial process as they are with the Summary Trials and the impetus for change is not coming from them. Once the NIS and the Military Prosecutors get involved, the Commanders generally consider the matters to be out of their hands.

Reducing the time that it takes to deal with even the most simple of cases from approximately 20 months to approximately 6 months, will require a dramatic change in approach. The timeline Chart, attached to this Executive Summary and as Appendix "E", illustrates that point. Reducing or even completely eliminating delay at any one stage will not accomplish this. In order to meet that target, a holistic approach is required, with all participants changing the way they traditionally do business.

2.6 REFERRAL TO PREFERRAL STAGE (PROSECUTORS' STAGE)

The period from the sending of charges by the Referral Authority to the DMP for "disposition" until she prefers them for Court Martial accounts for approximately 15-20 % of the total delay from incident to completion of Court Martial. In 2006-2007, this stage took an average of 103 days to complete, and, in a

sample of 10 typical cases for 2007-08, it took 92 days. Needless to say, this time contributes substantially to overall delays in the system and in our opinion is much too long.

During this stage, the RMP's conduct "post-charge" reviews of cases to determine whether they should proceed to Court Martial, draft charges if the cases are proceeding, and prepare "will-say" summaries of witnesses' evidence to disclose to the defence. They may require additional information from the investigating authority in order to make their decision whether to proceed. The standard applied by the RMP is that there must exist, on the evidence, a reasonable prospect of conviction and that it is in the public interest to proceed.

We found that there are many reasons why post-charge review takes so long. They are referred to throughout the report and include the following:

- Post-charge review is made more difficult by the delays that have occurred earlier in the process, starting from the date of the offence and continuing to the time of the review itself. Time is wasted trying to locate some investigation files, investigators, and witnesses;
- Most RMP's have not been in their positions for very long and particularly lack the court experience that makes it easy for a seasoned prosecutor to quickly assess a file;
- Some investigations, particularly unit investigations and those conducted by regular members of the Military Police, are not of the quality required for Courts Martial;
- RMP's have problems obtaining follow-up to their requests for additional information or investigation;
- Deputy Judge Advocates (DJA's) have not adequately considered what is required for Courts Martial when giving legal advice to investigators and the chain of command.
- The reviews conducted by the RMP's are exceedingly detailed. They are very "risk adverse" and attempt to plug every possible hole in the investigations.
- RMP's have been required to write lengthy, time-consuming legal memoranda to their superiors on every case justifying their decisions. [7] This is sometimes followed by additional questions from their superiors.
- Certain policies and practices of the CMPS have not promoted timely and confident decision-making by the RMP's. There has been insufficient delegation of authority to the RMP's to make prosecutorial decisions on files.
- Time is taken up preparing "will-say" statements of witnesses that must, by Regulation, be disclosed to defence counsel.

The DMP has set a target of 60 days for the completion of post-charge reviews and closely monitors compliance with that timeline. Considering the above statistics, it appears that this target is often not met.

In the civilian justice system, post-charge review is conducted by prosecutors much differently. Rather than taking days, in most cases it takes a matter of minutes. Unlike the CMPS, prosecutors seldom interview witnesses during this stage and complete a standard form rather than drafting a legal opinion. A prosecutor's decision is usually not reviewed by a superior.

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7 During the course of our Review there was a DMP policy shift in this area involving devolution of some decision making to the RMP's

There are reasons why post-charge reviews can be done more quickly in the civilian system. One of them is that the quality of police investigations is more consistent than in the military justice system. Nevertheless, we believe that even the CMPS target of 60 days is far too long. If the overall goal is to complete most cases within 6 months, the system simply cannot afford to have prosecutors take up one third of that time deciding whether charges that have already been laid and referred should proceed to Court Martial.

We have made a number of recommendations in our Report for procedural changes to address these issues, including:

- Instituting a "pre-charge approval" system for those NIS-investigated cases that can only be tried by Courts Martial, and eliminating the formal post-charge review of those cases;
- For the other categories of cases (accused or Commanding Officer elections to proceed by Court Martial), the post-charge review would continue. However, the depth of the review should be proportional to the seriousness of the matters and should generally be less detailed than at present;
- Imposing strict timelines on the investigating authorities for providing follow-up information to the RMP's;
- Delegating even more authority to the RMP's for the decision whether to prefer charges to court martial;
- Eliminating the need for RMP's to submit legal memoranda to their superiors justifying their decisions, except in special circumstances;
- Forwarding the complete investigation file to the RMP's as soon as a Commanding Officer decides to proceed to Court Martial.

We have also made a number of recommendations in Chapter 8 addressing the relative inexperience of prosecutors which we believe is a factor contributing to delays at this and other stages of the total process:

- There is a need to recognize that prosecution is a specialty in the legal profession and it is not reasonable to expect that the work can be done effectively and efficiently by military lawyers who are "generalists";
- The initial appointment to the position of RMP should be for a minimum of 5 years. After that, RMP's should be permitted to remain in the position as long as they wish if their performance is satisfactory;
- The development of a corps of highly experienced military lawyers who specialize in litigation, whether as prosecutors or defence counsel should be encouraged;
- Arrangements should be made with civilian prosecution services to allow newly appointed RMP's the opportunity to do work in placements with those services as a way of getting court experience;
- There should be more opportunities for junior RMP's to act as co-counsel at trials with senior military prosecutors including with the Reservists;
- The Appeals' Counsel (DMP-4) in the CMPS should be made responsible for the co-ordination of a continuing education program for all RMP's, as well as being responsible for distributing information about recent court decisions and other developments in the law to all RMP's on a regular basis.

In Chapter 9 we make recommendations about organizational changes in the CMPS that we feel will strengthen the Service. We believe that, generally, the problem in the CMPS that contributes to delays is the

lack of senior experienced litigators as opposed to a shortage of prosecutors. We recommend, therefore, that two new Lieutenant Colonel positions be allocated to the CMPS. One would be based in Western Canada, and the other (bilingual) in the East/Atlantic Region. Importantly, we want to emphasise that they would replace existing RMP positions in those Regions rather than adding to the total complement of prosecutors. The current Lieutenant Colonel position, which should also be bilingual, would remain in the Central Region. The main responsibilities of the three Lieutenant Colonels would be to act as "senior litigators", conducting trials on a regular basis, providing advice to the police on major investigations and mentoring junior RMP's. The Lieutenant Colonel in the Central Region (DDMP) would also replace the DMP in her absence.

We believe that the possibility of promotion to the three Lieutenant Colonel positions would also provide the incentive for RMP's to remain in the CMPS and to become experienced "career" prosecutors.

2.7 INVESTIGATION STAGE

The investigation of cases ending up in Courts Martial may be conducted by either the units themselves, regular members of the Military Police, or the NIS. Delays at this stage, as well as the inconsistent quality of the investigations, are major problems for the entire system. This subject would merit a separate study; but we felt we must at least refer to it in our Review, as it impacts greatly on the work of prosecutors.

In our analysis of the "mean" timelines for 10 "typical" Court Martial cases in 2007-08, we found that it took approximately 136 days from the date of the incident to the laying of charges (the average time in 2006-07 was 236 days). This amount of delay should be of great concern to everyone, since a good part of the target total time period of 6 months to deal with most cases from incident to final disposition is used up during this initial stage.

Police superiors and legal advisors, including DJA's and RMP's, play a role leading up to the laying of charges. We found that further data is needed, therefore, to identify exactly what the reasons for delays are during this stage.

In Chapter 4 we make a number of findings about investigations. Most of the problems we heard about apply more to the unit and MP investigations and less to the NIS, which is considered to be a maturing, but generally competent, organization. The problems include:

- Investigations don't measure up to Court Martial standards. Prosecutors feel they have to re-do some investigations.
- Investigators are inexperienced and there is a large turnover;
- The length of investigations is disproportionate to the seriousness and complexity of the cases;
- There is a lack of focus on the essential elements that have to be proven at Courts Martial;
- There is indiscriminate video-taping of virtually all witnesses' statements;
- Investigation reports are unwieldy and confusing;
- Prosecutors have difficulty tracking down investigators and witnesses and receiving timely responses to their requests.

We recognize that there is a unique feature in the military justice system that makes addressing the problems of investigations particularly challenging. That is, most disciplinary offences proceed by Summary Trials with very flexible rules of evidence. Investigators usually do not know, until the investigation is completed and the accused is charged and elects, whether the case will be proceeding to a Court Martial with very strict rules of evidence. A different investigation may be required depending on which tribunal will try the case.

We have made a number of recommendations, including the following that we feel could help address some of the problems:

- A time standard or target of one month should be established for the completion of investigations in straightforward cases. This applies to investigations conducted by the Units, regular Military Police officers, and the NIS.
- All investigators and DJA's who provide advice on the files should receive additional training on the essential elements of offences and the type of evidence that is required for Courts Martial.
- When an accused elects to proceed by Court Martial, the DJA's and investigators should give the case special attention. They should make sure that the investigation is complete and that that all the essential elements of the offence can be established at a Court Martial. They should do this pro-actively without waiting for the RMPs' to make the requests.
- As soon as a decision is made by a Commanding Officer to send a case to a Referral Authority, the process of transmitting the complete investigation file to the RMP's in the Region must begin immediately.
- It must be understood by everyone that RMP's cannot wait indefinitely for the investigation of outstanding matters to be completed and that they have the discretion not to proceed with cases which they believe have taken too long to bring to Court Martial.
- A new Service-level Agreement between the CMPS and the NIS dealing with the issues between the two organizations ought to be negotiated and signed as soon as possible.
- Consideration should be given to the appointment of staff in the Military Police, including at the branches of the NIS, to act as "Court Liaison Officers". These officers would carry out similar duties to those performed by Court Liaison Officers in the civilian police forces.

2.8 CHAIN OF COMMAND STAGE (CHARGE TO PREFERRAL)

The Chain of Command is responsible for discipline and it follows that they have a legitimate and important role to play in making decisions or recommendations regarding Court Martial cases. The problem is that the procedure currently followed for their input adds substantially to the overall delay in the completion of those cases. In the sample of 10 typical Court Martial cases dealt with in 2007-08, the cases were in the hands of the Chain of Command for 78 days from "charge laid to referral to the DMP for disposition". During that time, little else happens to advance the cases towards completion and we believe that the system cannot afford this extent of delay.

We found that the cases sometimes pass through too many different officials during this stage and too many legal opinions are requested. We deal with this in Chapter 5 and make several recommendations including:

- In most cases, there should be only one written legal opinion before referral. The opinion should be prepared by either the DJA's, for the members of the Units responsible for laying charges, or by the RMP's for the NIS. These opinions should deal with the sufficiency of evidence, applying the "reasonable prospect of conviction" standard, the charges to be laid, and the "public interest". In deciding whether to proceed, the Commanding Officers should not be required to seek another opinion and should normally act on those initial opinions. The Referral Authorities should do the same when considering their recommendations to the DMP.

We suggest that a time limit needs to be established for input from the Chain of Command and we recommend:

- That the standard time period for Commanding Officers to make their decisions whether to proceed with cases after charges have been laid should be two weeks. If they decide to proceed, they should send a request for prosecution directly to the DMP and forward copies of all documentation to the Referral Authorities. The Referral Authorities should have two weeks to forward their recommendations, if any, to the DMP. If the DMP does not hear from the Referral authorities within that timeframe, she may assume

they have nothing to add to the positions already taken by the Commanding Officers

We believe that it is important for Commanding Officers to have some say in the sentences that are imposed in Court Martial cases since they are most aware of the impact of the offences on the units. We have made recommendations in this report calling for the greater use of resolution discussions between counsel and for procedural changes that would allow for pleas of guilty at the earliest opportunity. We have recommended, therefore, that:

- When cases are sent to the DMP for prosecution, the Commanding Officers indicate their views on the appropriate sentence that should be imposed for the offence if the accused pleads guilty or is adjudged guilty after a Court Martial trial. Those opinions should be taken into consideration by the RMP's; but would not be binding on them.

2.9 PREFERRAL TO COMPLETION STAGE (COURT STAGE)

We learned how cases are dealt with following the preferral of charges and it became obvious that reforms are needed at that final stage if overall delays are to be addressed. For the typical case dealt with by Court Martial in 2007-08, there was a total delay of 196 days (6.5 months) from the date when the charge was preferred to when the Court Martial was commenced. From the laying of charges it was 373 days.

We found that, with the exception of some recent initiatives on the part of the Chief Military Judge, modern case management techniques now widely used in the civilian criminal justice systems in Canada and elsewhere have generally not been applied to the Court Martial system. For example, there is little case-differentiation in the scheduling of trials with Standing Courts Martial routinely set to last one week, even when the allegations are relatively minor and the issues not complex. Similarly, we learned that it is not unusual for sentencing hearings to take two days, even when there are joint submissions. While such generous allocations of court time may be ideal, they can hardly be afforded in a system seemingly incapable of meeting its principal objective of providing swift justice in order to enforce military discipline.

In Chapter 7, we make recommendations that we believe could speed up the process after the preferral of charges. They are based on the findings of various studies dealing with delays in the civilian justice system and on our own experience working as prosecutors in Ontario, particularly following the *Askov* "crisis".

Some feel that an obstacle to the wider use of case-management approaches is the fact that there is not a permanent court in the military justice system. We believe that any problems that issue may have caused should largely be removed if Bill C-45 is passed. If that takes place, court Rules of Practice should be formulated dealing with matters such as notice for Charter applications, mandatory Judicial Pre-trial Conferences, and earlier opportunities for entering guilty pleas.

Experience has shown that co-operation between all of the parties is essential for the efficient operation of the system. We have recommended, therefore, that a Case Management Committee be established that meets on a regular basis and is made up of all of the key participants in the military justice system. In keeping with this same approach, we suggest that a special effort be made by the leadership of the CMPS and DCS to place less emphasis on traditional adversarialism and more emphasis on co-operative case management.

Accurate statistics are key to understanding exactly what is going on and where to focus initiatives. Despite the relatively small caseload, we had difficulty at this stage finding the data required and we make recommendations about keeping management information.

We believe that a target should be established to have Courts Martial commence within 3 months of preferral for ordinary cases and compliance with this standard should be consistently monitored.

Inefficient trial scheduling is clearly a problem. We recommend that the practice of routinely scheduling one week for each Standing Court Martial and two weeks for Disciplinary Courts Martial should be discontinued. The amount of time scheduled for trials should depend on the complexity of the cases, the issues identified by counsel and the time estimate given at Judicial Pre-trial Conferences. To help address this, we recommend the creation of the position of "Trial Co-ordinator" based on the positive experience of that initiative in Ontario. We feel that the practice, recently launched by the Chief Military Judge, of having the judge who travels to a location deal with more than one case is excellent and should become the norm. In fact, we suggest that whenever a judge visits a location, he or she should also have all the pending cases from that location listed in court "to be spoken to".

We found that 64% of all cases are resolved without trial on the date set for the hearing. However, that is too late, and, for the efficient functioning of the courts, those resolutions must take place earlier. We recommend that procedures be put in place to provide an early opportunity for pleas of guilty to be entered before trial dates are set. Consideration should be given to deal with the pleas more often from the courtroom in Gatineau, Quebec, with the proceedings broadcast by video to the accused's Unit in another part of Canada.

We feel that more efficient use, aided by technology, could be made of the Gatineau facility where all of the Judges are located. The traditional practice of holding Courts Martial at the physical location of the Units no longer has much meaning because of the delays. Commanding Officers should be given some say concerning the importance of holding the Court Martial at the location of their Unit in individual cases.

We found that the Court Martial hearings themselves could be streamlined. We recommend that, in the effort to reduce overall delays, sentencing hearings be made shorter and more efficient. Finally, we recommend that a review be conducted of the Military Evidence Act (Military Rules of Evidence) with the view to simplifying the methods for proving certain elements of offences without unduly infringing on the fundamental rights of accused persons.