



National Defence Défense nationale
National Defence Headquarters
Ottawa, Ontario
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Our file: A-2011-01559/ATIP (Analyst)

MAR 26 2012

Mr. Francois Lareau
55-890 Cahill Dr.W.
Ottawa, Ontario K1V 9A4

Dear Mr. Lareau:

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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Canada

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,

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SIGNATURE BLANKED OUT
FOR PRIVACY REASONS.

for

Julie Jansen
Director
Access to Information and Privacy

Enclosure: CD

L E G R O U P E C O N S E I L

C O N S U L T I N G G R O U P

EXTERNAL REVIEW
OF
DEFENCE COUNSEL SERVICES

FINAL REPORT

Prepared for:

DEPARTMENT OF NATIONAL DEFENCE

Prepared by:

BRONSON CONSULTING GROUP
6 MONKLAND AVENUE
OTTAWA, CANADA, K1S 1Y9

September 15, 2009

EXECUTIVE SUMMARY

INTRODUCTION

Many changes have been made to the military justice system in the last three decades. One significant change has been the creation of the Directorate of Defence Counsel Services (hereinafter DCS) which is an organization that is independent from the chain of command. Its role is to advise and represent Canadian Force members charged with offences that are tried by court martial.

Bronson was asked to do an external review of the DCS to assess its efficiency and to provide recommendations. Our review included research and extensive interviews with participants in the military justice system.

While the DCS generally provides good service to Canadian Forces members, a number of concerns relating to its function became apparent. Some of the problems identified were the following:

- The caseload was small compared to the civilian system, yet some counsel felt overwhelmed and demoralized;
- The Director acted primarily as an administrator and did not carry a caseload or share in the responsibility of the duty phone;
- Most defence counsel were relatively inexperienced yet there was an absence of adequate training and mentorship;
- The duty phone was identified as an onerous and disruptive responsibility;
- Travel was identified as demanding and disruptive to one's home and family life;
- The role of the support staff did not include much assistance to the lawyers other than research;
- Frequent postings resulted in fewer staff to handle cases;
- The inability to deploy was a factor that made a posting to DCS unappealing and
- The staff at DCS felt that it was not a well respected part of the JAG branch.

We have made a number of recommendations to address these issues, including but not limited to:

- Developing the role of the Director to include taking a caseload and mentoring and training counsel;

- Implementing a comprehensive training and mentoring program which includes secondments to legal aid staff offices or to the offices of private criminal defence counsel;
- Training one of the support staff to take the duty phone to screen calls and respond to inquiries of an administrative nature;
- Developing an easily accessible FAQ website to respond to frequently asked questions of an administrative nature;
- Training the support staff to assist counsel substantively on client files;
- Adding two staff lawyer positions to better manage deployment and other absences by counsel for extensive training or education;
- Regionalizing some operations;
- Creating a career path in litigation, including 5 year postings with an option to renew for a second 5 year term; and
- Showcasing DCS, as well as CMPS, as an important and integral part of a fair and just military system.

THE LEGAL AID ONTARIO TARIFF AND MANDATE

The mandate and tariff of Legal Aid Ontario was compared to the mandate of the DCS. We concluded that it would not be appropriate for the DCS to be governed by the same tariff that governs legal aid. The many differences between the civilian and military justice system make this infeasible.

That being said, we concluded that guidelines ought to be set to manage the staff lawyer's time spent preparing a case. We therefore recommend that guidelines be developed to assist counsel to manage the time they spend on a file to ensure it is appropriate and reasonable.

ACCOUNTABILITY

Another concern we identified as part of our review of the DCS was a lack of accountability. We are not suggesting that the office has acted improperly in the course of carrying out its work; our observation however, was that the lack of structure in the office and the manner in which it operated could leave the office vulnerable to criticism regarding its accountability.

We recommend:

- DCS be governed by a Board of Directors;
- Composition of the Board of Directors include military personnel who do not provide legal advice to the chain of command in any capacity;

- The Board should oversee the operation of the DCS and to review its activities monthly; and
- The Board direct policies to be implemented in DCS and be responsible for evaluating the performance of the Director on an annual basis.

DELAY

While other participants in the military justice system are partially responsible for delays in the system, we found that the DCS contributed to delay by some of its practices.

We recommend:

- Complete disclosure be provided as soon as possible after a charge is laid and well before the charge is preferred;
- The Director have weekly meetings with staff lawyers and reservists to discuss cases including caseload and that the issue of delay be canvassed in the allocation of new files;
- The Director's practice of assigning cases to himself in order to delay the opening of a file until the next budget year be discontinued;

TENSION BETWEEN THE DCS AND PROSECUTION

We heard from almost all of the interviewees that there was a considerable amount of animus between the DCS and the CMPS.

We recommend:

- Measures regarding co-operation set out in the External Review of the CMPS¹ be implemented immediately;
- The two Directors meet together with the staff at both the DCS and the CMPS as well as the Court Martial Administrator and the staff in the Military Judge's Office, to set the tone for future more cooperative relationships; and
- CMPS and the DCS implement and attend joint training on an annual basis.

ORGANIZATIONAL STRUCTURE OF THE DCS AND REGIONALIZATION

One of the lightning rods for criticism was the fact that the Director of CMPS's position is ranked as a full Colonel and the Director of DCS is ranked as a Lieutenant Colonel. It is perceived as unfair and there is a concern that it is prejudicial to the career progression of the staff lawyers.

¹ Andrejs Berzins and Malcolm Lindsay, Bronson Consulting, "External Review of the Canadian Military Prosecution Service (2008)" p. 60

Also perceived as unfair was the inequality of staffing between the DCS and the CMPS. In addition to better staffing, the fact that the CMPS was regionalized was believed to be a benefit not available to DCS.

For a number of reasons, we concluded that the staffing at DCS should be increased and the office should be reorganized and regionalized.

We recommend:

- The Director of DCS should have an opportunity to achieve the rank of Colonel;
- Two new staff lawyer positions be created for the DCS one of whom should be a Deputy Director and who should be able to achieve the rank of Lieutenant Colonel;
- DCS be regionalized;
- The regional offices be co-located in a cost-sharing arrangement with reservists where possible, or private defence counsel to address the issues of isolation and support;
- All motions and applications be conducted centrally by the Director and a staff lawyer in Asticou; and
- Reservists be treated as a much more integral part of the team than they are at present.

THE COURT

It was the view of a number of participants in the military justice system that the lack of permanence of a military court was an obstacle to the implementation of a number of efficiencies that are present in the civilian system.

We recommend:

- Bill C-45 be re-tabled in order to allow court martial judges to make rules;
- The Chief Military Judge convene a meeting with the Director of DCS and the Director of CMPS to try to implement "practices" that will be followed by counsel; and
- The Chief Military Judge, the Director of DCS and the Director of CMPS should meet monthly or bi-monthly to discuss systemic issues and other matters of mutual concern.

CHARTER MOTIONS

At present, a number of Charter motions are being filed in many of the cases coming before the court. The motions are a challenge to perceived systemic unfairness to an accused. These motions are prolonging proceedings. In addition, there was some concern expressed that some clients may not be aware that there is delay occasioned in their cases when Charter motions form part of the proceedings.

We recommend:

- Clients be provided with an information sheet about the motions associated with their case and further, that the information sheet address the issue of delay in relation to the said motions;
- The challenges to the system that arise out of the aforementioned motions ought to be expedited to the Court Martial Appeal Court for consideration;
- The systemic issues set out above should be reviewed and discussed with the Judge Advocate General by all parties including the DCS with a view to considering recommendations for legislative amendments; and
- Monthly Bench and Bar meetings be convened for the purpose of discussing procedural problems and issues of mutual concern with a view to addressing and resolving them.

CONCLUSION

Our conclusion was that while there were some similarities between the military justice system and the civilian justice system, there were also many notable differences. It is these differences that explain how such a small caseload can be difficult to manage at times.

We have made numerous recommendations to improve the functioning of the system but we concluded that the kind of efficiency possible in the civilian system is probably not attainable in the military justice system at present. We have outlined numerous reasons for this result in our report.

It is our hope that our review of the DCS provides some insight regarding the significant problems in the current system and that the participants in the military justice system have the will to make the system better.

ACKNOWLEDGEMENTS

We would like to begin by thanking Lieutenant Colonel Jean-Marie Dugas for being so tolerant of the intrusion in his offices and allowing us unfettered access to his staff and his boardroom.

We were grateful to all of the participants for their willingness to talk to us and for their candor. In particular, we were thankful to Major Steve Turner for meeting with us twice and for responding to our many emails. He and Major Edmond Thomas provided us with thoughtful written submissions. In addition, Major Pascal Levesque shared his draft ~~Master's~~ Master's Thesis with us and although we could not quote it because it was a draft, some of his observations were noted in our report.

Finally, thank you to Colonel Michel Drapeau for sharing his book on Canadian Military Law with us. It was an extremely valuable and allowed us to understand how the military and the military justice system worked.