

**REPORT ON QUASI-
JUDICIAL ROLE OF
THE MINISTER OF
NATIONAL DEFENCE**

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*Submitted by:
Special Advisory Group on Military Justice
and Military Police Investigation Services*

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LIST OF RECOMMENDATIONS

1. We recommend that the authority conferred upon the Minister of National Defence by ss. 159(2) and 159(3) of the *National Defence Act* in respect of pre-trial custody be abolished and be given instead to military trial judges.
2. We recommend that the power of the Minister of National Defence to designate an officer not below the rank of colonel as an approving authority pursuant to ss. 163(3) of the *National Defence Act* be repealed.
3. We recommend that the authority of the Minister of National Defence to appoint or prescribe superior commanders provided for in ss. 164(1) of the *National Defence Act* be abolished and that it be given instead to the Chief of the Defence Staff.
4. We recommend that the authority to convene General and Disciplinary Courts Martial conferred onto the Minister of National Defence by s. 165 of the *National Defence Act* be abolished and that it be vested in the Chief Military Trial Judge to be exercised upon request by the independent Director of Prosecutions.
5. We recommend that the authority of the Minister of National Defence to appoint military trial judges for fixed terms be retained.
6. We recommend that the independent Director of Prosecutions be authorized to decide whether or not civilians who are subject to the Code of Service Discipline should be tried by a Special General Court Martial and that the Minister of National Defence's powers in this regard be abolished.
7. We recommend that the Minister of National Defence's authority pursuant to section 101.09 of the QR&Os to order a joint trial, or to appoint an officer for the purpose of making such an order, should be revoked. Such authority should be vested in the independent Director of Prosecutions. The right of an accused to apply to a military judge, or to a judge assigned by the Chief Military Trial Judge, to be tried separately, should be provided for in the *National Defence Act*.
8. We recommend that ss. 202.26(e) of the *National Defence Act* be repealed and that the authority to appeal a finding that a person is not a "dangerous mentally disordered accused" be transferred to the independent Director of Prosecutions.
9. We recommend that ss. 140(g) of the *National Defence Act* relating to the imposition of hard labour as punishment be repealed.

10. We recommend that the requirement set out in ss. 206(2) of the *National Defence Act* for ministerial approval of the punishment of dismissal and dismissal with disgrace be abolished.
11. We recommend that the powers of clemency given to the Minister of National Defence by the *National Defence Act* be transferred to the Governor in Council and that these be modeled, as much as possible, on the similar powers contained in the *Criminal Code of Canada*.
12. We recommend that the decision to proceed or not with a new trial be vested in the independent Director of Prosecutions, and that the Minister of National Defence's authority in this regard be abolished.
13. We recommend that the authority of the Minister of National Defence to exercise the suspending power provided for in section 215 of the *National Defence Act* be abolished and that this power be expressly vested in all service tribunals.
14. We recommend that the authority of the Minister of National Defence pursuant to section 230.1 and ss. 245(2) of the *National Defence Act* to exercise a right of appeal from appellate courts be abolished and be exercised instead by the independent Director of Prosecutions.
15. We recommend that the authority of the Minister of National Defence to adjudicate on grievances arising from summary trial findings, prescribed pursuant to section 29 of the *National Defence Act*, be repealed.
16. We recommend that appropriate structures be put in place promptly to ensure that the Minister of National Defence has available, within the Department of National Defence, independent legal advice from the Attorney General of Canada.
- 17a) We recommend that an independent review of the implementation of the changes recommended in this Report and in our March 1997 Report be undertaken before the end of 1999; and,
- 17b) We recommend that an independent review of the legislation that governs the Department of National Defence and the Canadian Forces be undertaken every five years following the enactment of the legislative changes required to implement the recommendations contained in this Report and in our March 1997 Report.