



Project Description

- This study is part of a Comprehensive Review of the Court Martial System conducted by the JAG. The JAG requested DG Eval assistance with a focus on quantitative data analysis and comparisons to Canada's Military Court Martial System to other similar /allied countries and courts operating in Canadian provinces.
- During the review of the Court Martial System, the evaluation team was engaged in the collection and analysis of quantitative data.
- DG Eval has also conducted an Evaluation of the Legal Services within DND/CAF (2016). This evaluation included a section on the military justice system, but the section was later removed following discussions with the JAG.
- While the focus of the evaluation team was on quantitative data, the team also decided to speak to the Director of Defence Counsel Services (DDCS) and the Director Military Prosecutions (DMP) and to the Court Martial Administrator to validate data and other information.



Description

Court Martial System

- Consists of four military judges (only three is currently available), Court Martial Administrator, Deputy Court Martial Administrator, military and civilian reporters and technical, financial, human resources and administrative support.
- In addition, the Defence Counsel Services (DDCS) and the Canadian Military Prosecution Services (CMPS) are part of this system.
- The roles of the Office of the Chief Military Judge together with the Office of the JAG are mandated by the National Defence Act, specifically the Code of Service Discipline. The two organizations operate with independence to ensure judicial integrity.

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Court Martial System

The office of the Chief Military Judge is an independent unit of the Canadian Armed Forces. It includes four military judges, the Court Martial Administrator and the Deputy Court Martial Administrator, military and civilian reporters and technical, financial, human resources and administrative support. Military judges are appointed through a Governor in Council. They preside courts martial and other military proceedings such as the judicial review of accused persons held in pre-trial custody. Military judges preside over Standing and General court martial. The tribunals have jurisdiction over persons charged with committing offences under the National Defence Act's Code of Service Discipline.

The Office of the Chief Military Judge together with the Office of the JAG (including the Directorate of Defence Counsel Services (DDCS); and, the Canadian Military Prosecution Services (CMPS)). It is notable that the Director of Military Prosecutions and the Director of Defence Counsel Services are appointed by the Minister of National Defence for fixed period. They are under the general supervision of the JAG however they act independently from CAF and DND authorities when exercising their roles. are mandated by the National Defence Act, specifically the Code of Service and operate with independence to ensure judicial integrity. The sections of the National Defence Act sanctioning

the jurisdiction of the JAG and the Chief Military Judge are assessed by an Independent review authority every five years. Two reports of the Independent Review Authority have been completed and submitted to Parliament



Areas of Analysis

- Defence Counsel and Prosecutions
 - Workload
 - Current cost and cost of alternatives – using only Reservists or Civilians

- Judges
 - Workload
 - Current cost

- Court Administration
 - Court efficiency – number of trials per year
 - Average cost of running a courts martial

- Offences
 - Cost of trying Criminal Code Offences in the Military Justice system



Methodology/Data Sources

- Program administration data
- Comparison to other countries and provinces
 - Used publicly available data when possible
 - Requested data that was missing from annual reports, other documents



Challenges

- Data requested was not always available
- Comparing the military justice to the provincial justice systems is not always possible— provinces have pre trial hearing, some provinces have days in court dedicated to scheduling trials which the Military does not, Code of Service Discipline charges such as Insubordination, AWOL etc.

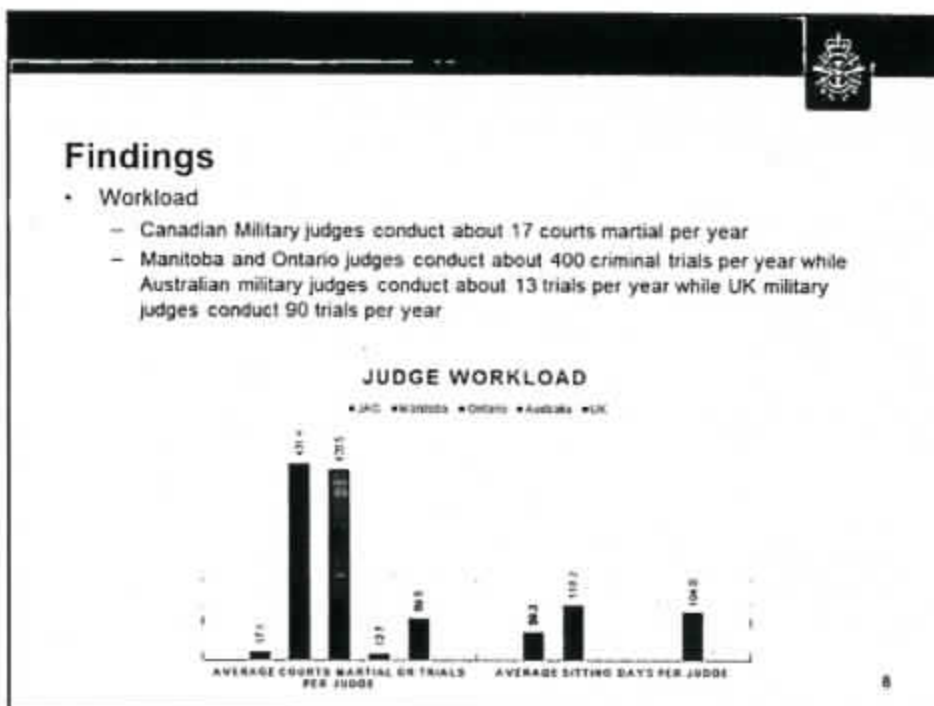


Findings

- Delays in the court martial system are an issue
 - It takes an average of 11 months for an accused person to be charged, for the prosecution to decide whether to prosecute, and for the court martial to be completed – this does not include the time between the offence being committed and the person being charged with an offence
 - A major cause appears to be the poor quality of investigations by military police causing the Prosecutors to re-do investigations, wasting time. Unfortunately, this is out of the scope of the Court Martial Review.
 - Another factor is the number of judges available
 - number of judges decreased from 4 to 3 in 2015/16

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Source: DMP Annual Reports, interviews



The following questions were asked:

How much time can a Judge devote to CMTs in an average year? How many CMTs can a Judge manage in a year? [How long does an average CMT last? How much time can a Judge devote to CMTs in an average year?

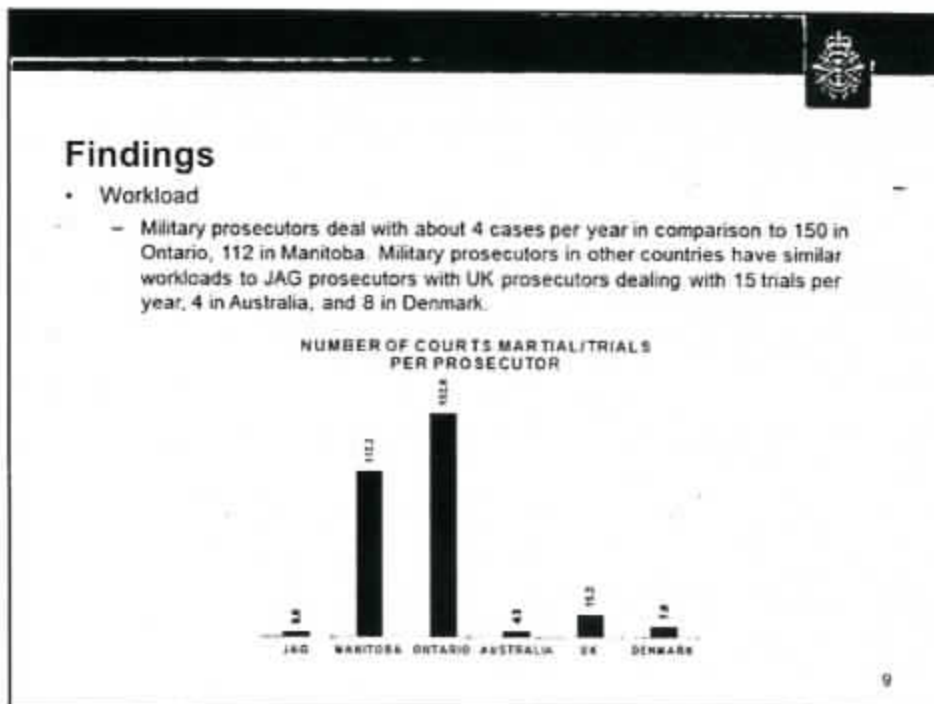
Improvements in travel time for judges, better court scheduling practices would help to increase number of CMs in a year, while keeping judges at the current number.

Source: JAG administrative data

Statistics Canada data on criminal trials

Manitoba and Ontario Annual Reports for various components of the justice system

Written submissions from contacts in Australia and the UK



The following questions were asked:

Is the use of military prosecutors in their current structure, efficient and effective? What alternatives are there to using military prosecutors? What is the cost of these alternatives?

The evaluation study considered the following criteria to make this decision

Current number and workload of prosecutors•

Comparison of workload and number of prosecutors to similar countries, federal, and provincial courts

When comparing workload to other provinces, the current number of military prosecutors could easily handle 35 more CM

Source: JAG administrative data

Statistics Canada data on criminal trials

Manitoba and Ontario Annual Reports for various components of the justice system

Written submissions from contacts in Australia, UK, and Denmark



Findings

- Workload
 - Military defence counsel deal with an average of 83 requests for assistance and 63 courts martial per year. Of the other militaries contacted, there were no similar models of defence counsel services to compare to the JAG.
 - Other provinces and countries do not directly provide defence counsel services to those accused. However, to compare, Legal Aid provided per accused member in the UK is \$4,300, and Ontario provides an average of \$1,700 in legal aid certificates per person. The amount of DDCS expenditure per requests for assistance made to DMP was an average of \$15,500.

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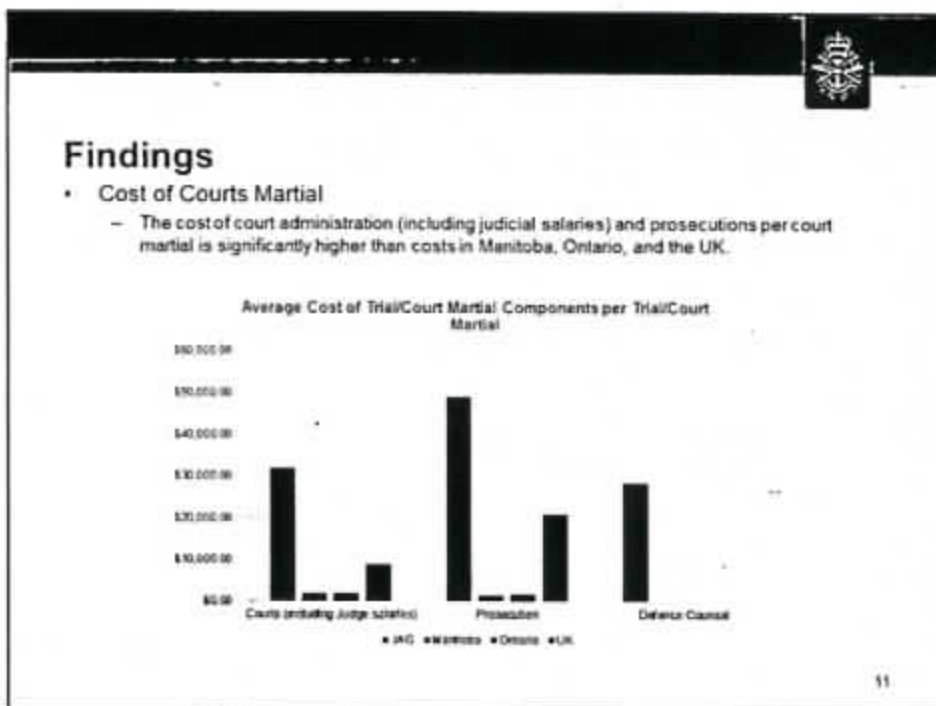
The following questions were asked:

Is the use of military counsellors in their current structure, efficient and effective?

What alternatives are there to using military counsellors? What is the cost of these alternatives?

Is the current model of funding for defence counsel efficient and effective?

Source: JAG administrative data



Source: JAG and CMJ/CMA administrative data

Statistics Canada data on criminal trials

Manitoba and Ontario Annual Reports for various components of the justice system

Written submissions from contacts in Australia and the UK

Note: The DDCS expense found in the chart is the total DDCS expenditure per number of Courts Martial. This amount was provided to give an idea of the amount of resources the DND/CAF expends to run an annual amount of courts martial. This differs from the amount of DDCS expenditure per person requesting assistance, as not all people requesting assistance have a court martial.



Findings

- Cost of alternatives
 - If either DDCS or DMP were to use solely civilian counsel or Reservists, the daily cost of these options would be as follows:
 - Regular Force daily cost: \$535
 - Reservist daily cost: \$1,214
 - Civilian Counsel daily cost: \$1,200
 - Although Reservists and Civilian counsel have a significantly higher daily rate, they would not be employed full time throughout a fiscal year. In order to determine if Reservists and Civilians would be a more economical option than Regular Force counsel, we would need to know the hours worked per year on courts martial by Regular Force counsel.

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Source: JAG administrative data

DRMIS extracts

Estimate of Regular Force costs using Pay Rate tables and counts from annual reports

Interviews with DMP and DDCS



Findings

- Cost of Section 130 (Criminal Code) courts martial
 - It costs about \$100,000 to run a typical court martial. This amount includes the cost of court administration, judicial salaries, prosecutions, and defence counsel.
 - From 2010-2015, there were an average of 25 courts martial where one or more charges were related to s. 130 of the NDA. These charges could potentially be tried in the civilian system as they relate to the Criminal Code.

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Source: JAG and CMJ/CMA administrative data



Other areas of exploration

- There is potential to increase the use of videoconferencing for technical witnesses
- There are many ways to make court scheduling more efficient
 - a calendar accessible to prosecution and defence counsel
 - A "docket day" or similar to schedule trials in front of a judge
- HR issues are potentially adding to delay
 - Not enough experienced lawyers available to DMP, suggested that lawyers have a longer tenure with DMP to build experience
- To reduce number of courts martial, could consider the UK model of allowing summary trials to be appealed – this would reduce elections for courts martial and expand number of charges that could be dealt with at summary trial level while maintaining rights of the accused
- There are potential efficiencies to be gained by creating a permanent court – such as the ability to decide on pre-prefferal motions

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ADM(RS) does not endorse any of these suggestions, this is a record of alternatives that were mentioned in interviews or written submissions from stakeholders and allies. More study is needed to asses the application of these alternatives to the CAF.



Other areas of exploration

- The UK Military Justice System recently launched the Better Case Management System in order to reduce court delay
 - "BCM(CM) emphasises the importance of the effective management of proceedings whilst preserving judicial discretion and disposing of guilty plea cases at the earliest opportunity. It requires the early review and identification of those cases where the defendant is likely to plead guilty and early discussion between parties to identify the issues in contested cases. Thereafter, depending on the complexity of the case, it builds in time for cases to be prepared once the issues have been identified, allowing parties to focus on those matters in dispute and not on those which are not in contention."
 - The BCM includes mandatory timelines for court hearings and deadlines in contested cases

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Source: Practice In The Service Courts Collected Memoranda, Version 6. 1 September 2016. Issued by the Office of the Judge Advocate General. UK.