



# THE OBSERVATORY

The Newsletter of the  
Canadian Observatory for Military Justice Reform

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**Introducing "The Observatory:"** There is an information gap about the field of *military justice*, with only occasional articles in the news media when there is a high-profile court martial or an announcement of a major event by the Minister of National Defence or the Judge Advocate General. This element of Canada's legal matrix has largely escaped public attention, a consequence of its obscurity and general relevance to the Canadian public.

It has also received scant attention by academics and, most importantly, by Parliamentarians, particularly in the last Parliamentary Session. And, with the exception of legal texts published by the Honourable Gilles Letourneau and Professor (Colonel) Michel Drapeau, there are no reference texts available to the judiciary, legal practitioners, or writers.

In some of the articles I have written on this subject I have described the Canadian military justice system as a medieval process which has not evolved as quickly as the Canadian legal environment which surrounds it. It most certainly has not kept pace with the abundant jurisprudence generated by the Charter of Rights and Freedoms. In fact, the Canadian military justice system increasingly stands separate and apart from the common law. Consider, for instance, that victims of crimes which are tried by military tribunals are presently exempted from the protections offered by the Canadian Bill of Rights for Victims of Crime. Any other person in Canada, citizens, residents, tourists, and visitors benefits from this legislation.

This is where "The Observatory" may be of some assistance in helping you understand our military's justice system, which is mandated by the National Defence Act, Part III, which includes at its core the Code of Service Discipline (CSD).

The CSD is described in the booklet, *The CSD and Me*, as "the basis of the Canadian Armed Forces (CAF) military justice system. The CSD is designed to

assist military commanders in maintaining discipline, efficiency, and morale within the CF. It is found in Part III of the *National Defence Act* (NDA). The CSD:

- sets out who is subject to the military justice system;
- establishes service offences for which a person can be charged;
- establishes who has the authority to arrest and hold CF members in custody;
- establishes service tribunals and their jurisdiction to conduct trials of persons charged with service offences;
- establishes processes for the review and appeal of findings and sentence after trial."

This booklet is available online at: <http://www.forces.gc.ca/en/about-reports-pubs-military-law/code-of-service-discipline.page>

The Canadian Armed Forces operates two forms of disciplinary tribunals, the summary trial and the court martial. The former is, basically, trial by commanding officer or a *delegated officer* (officers to whom a commanding officer has delegated powers of punishment) to try persons for minor military offences, while the court martial, the military's version of the criminal court, hears more serious cases.

Courts martial can take either of two forms: the Standing Court Martial in which the military judge presides alone; and the General Court Martial, composed of a military judge and a panel of five Canadian Armed Forces members selected randomly by the Court Martial Administrator. This panel is to the military as a jury is to civilian criminal courts.

This system comprises:

- The Military Police, which enforces the National Defence Act and investigates allegations of wrongdoing;
- The Director of Military Prosecutions, which reviews cases referred for court-martial, to decide which cases should proceed, and to prosecute those cases in a military courtroom (<http://www.forces.gc.ca/en/caf-community-legal-services/mil-prosecutions.page>);
- The Directorate of Defence Counsel Services (DDCS), which is mandated to provide independent legal advice and representation to persons facing a court martial (<http://www.forces.gc.ca/en/caf-community-legal-services/defence-counsel-services.page>);
- The Office of the Chief Military Judge, which is an independent arm's-length organization of the Department of National Defence and the Canadian Armed Forces and is responsible for courts martial and other hearings held before a military judge (<https://www.canada.ca/en/chief-military-judge.html>)

There will be more about these in forthcoming issues of *The Observatory*.

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### ***The Observatory***

This newsletter is a free service intended to provide a perspective about the process and procedure which we know as "The Canadian military justice system." While I make every effort to confirm and validate all information in this newsletter, it is based on the belief that it is time for a public inquiry into Canada's military disciplinary processes, leading to a reform of the system, to provide our service personnel with the highest quality of legal support, and to introduce justice into the disciplinary system.

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### **Questions and comments**

If you have any questions or comments about the Canadian military's disciplinary tribunals and practices or this newsletter, please contact me. My phone, email and website URL are below.

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