Senate Foreign Affairs, Defence and Trade References Committee

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: **P27**

Date Received: 16.02.04

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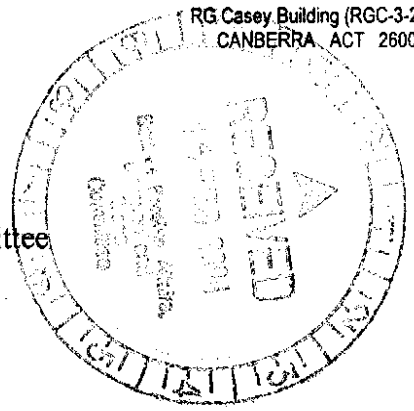

The Secretary
Senate Foreign Affairs Defence and Trade References Committee
Suite S 1.57
Parliament House
CANBERRA ACT 2600

Dear Secretary

SUBMISSION RELATING TO THE COMMITTEE'S INQUIRY INTO THE EFFECTIVENESS OF AUSTRALIA'S MILITARY JUSTICE SYSTEM

Purpose

1. The purpose of the Submission is to raise for the Committee's consideration the desirability of formally establishing a standing military court to try offences against the *Defence Force Discipline Act 1982* (DFDA) currently tried at the level of court martial or Defence Force magistrate (DFM).

Background

2. When the DFDA was enacted in 1982 it provided for a court martial structure that was largely unchanged from what had prevailed in this country and the United Kingdom (UK) since the late 19th century. It was a system similar to that then used by the armed forces of our Commonwealth common law allies.

3. One significant advance introduced in Australia by the DFDA was the concept of a DFM. The DFM is a legal officer appointed pursuant to DFDA s.127 to sit alone as the Tribunal of fact and law, with the same powers of punishment as a restricted court martial. The concept is similar to that of the Military Judge under the United States Code of Military Justice. The DFM proceedings are much more convenient from the perspective of administration, and offer the advantage of published reasons for both findings and sentence. They have been embraced to the extent that in 2002, 46 of the 49 trials at the court martial/DFM level were conducted by DFM. DFM trials have been conducted in connection with most of our recent overseas deployments, including Rawanda, Somalia, Cambodia, East Timor and the Middle East. I believe it is highly desirable that DFM trials be retained in any consideration for reform.

4. The purpose of the military jurisdiction established by the DFDA is the maintenance of discipline in the Defence Force. Many of the offences are purely disciplinary in nature with no civilian counterpart (eg absence without leave) and even in the case of offences with a civilian counterpart (eg assault) there will inevitably be disciplinary aspects that may aggravate the offence. This disciplinary aspect of the DFDA is also reflected in the punishments available to Service tribunals. A number of the punishments (eg reduction in rank and detention) have no civil counterpart. Proper consideration of the disciplinary aspect

of offences and their punishment requires the involvement of serving officers, with substantial military experience, in the finding and sentencing process of military tribunals.

Recent Developments Overseas

5. Since 1982, the traditional court martial structure in Australia and our common law Commonwealth allies has been the subject of significant legal challenge and scrutiny.

6. In the UK, there is a legal obligation arising under the Convention for the Protection of Human Rights and Fundamental Freedoms for an accused person to be provided with a fair trial by an independent and impartial tribunal established by law; Article 6.1 of the Convention refers.

7. In Canada, s.11(d) of the Canadian Charter of Rights and Freedoms guarantees a person charged with an offence the right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal".

8. Against these standards, the traditional British and Canadian court martial structures (which largely reflect the current Australian arrangements) have been found not to be independent and impartial. In Canada this was as a result of the decision of the Supreme Court in *Reg v Genereux* [1992] 1 SCR 259. So far as the UK is concerned, there has been a succession of cases in the European Court of Human Rights claiming inconsistency with article 6 of the European Convention on Human Rights, 1950 (ECHR), which guarantees trial by an independent and impartial tribunal. The cases start with *Findlay v United Kingdom* in 1997 and culminate with *Grieves v United Kingdom* in 2003 (both decisions are available from the Court's web site). As a result, both the UK and Canada have had to substantially change their respective structures in order to maintain the superior military tribunals, be they court martial or military judge sitting alone. The New Zealand (NZ) arrangements have not been the subject of successful challenge, but the NZ defence force is moving of its own initiative to change the traditional structure so as to provide greater guarantees of independence and impartiality for its Service tribunals.

9. The traditional structure of the disciplinary tribunals in the UK and Canada were found wanting in several respects, including the lack of perceived independence of uniformed judicial officers. So far as our Commonwealth common law allies are concerned, only Canada and the Royal Navy (RN) maintained uniformed military judges/judge advocates. The British Army and Royal Air Force (RAF), and the NZ forces have, since shortly after WWII, used civilian judges from the County/District Court benches to sit as judge advocates at trials. The ECHR considered that the presence of a civilian judge at the court martial was an important safeguard to the independence and impartiality of the tribunal; see *Grieves V United Kingdom*. Civilian judges are not, however, equipped to sit alone and consider the disciplinary aspects inherent in Service offences, and have not been used in that role by any of our common law allies. Rather, the civilian judges sit only with a court martial.

10. This aspect of the challenges is important to any consideration of the DFDA because, as already mentioned, it is highly desirable that we retain the DFM trials. For the reasons given earlier, these appointments must, in practise, be restricted to serving legal officers of the ADF.

Australian Position

11. While the Australian position is not governed by the Convention applicable to the UK, or to a charter of rights similar to Canada, Australia is a signatory to the International Convention on Civil and Political Rights, of which article 14(1) embodies the same principles as article 6 of the ECHR. In any event, I submit that neither Parliament nor the ADF would wish to maintain a court martial/DFM system that did not offer a "fair and impartial trial"[1].

12. To date the major challenges to the DFDA considered by the High Court[2] have focused upon constitutional and jurisdictional issues rather than whether the tribunals established by the DFDA afforded a "fair and impartial trial", or whether such was required by law. The Canadian decision of *Reg v Genereux* was, however, briefly considered by the High Court in *Re Tyler; ex parte Foley* 181 CLR 18. The major thrust of the challenge to the DFDA in that case was whether the Parliament had power under s.51(vi) of the Commonwealth Constitution to provide for the trial of Service offences by way of court martial and not by way of trial by jury as provided by s.80 of the Constitution. In considering *Genereux,* Mason CJ, Brennan, Dawson and Toohey JJ held that if there is to be found outside Chapter III of the Constitution a requirement for sufficient independence on the part of Service tribunals exercising disciplinary power, that requirement is met by a general court martial constituted in accordance with the DFDA.

13. *Re Tyler*, was decided almost ten years ago. Since that time, there have been significant developments affecting the court martial jurisdictions of our Commonwealth common law allies, in particular, the later decisions of the ECHR and the changes initiated by NZ. The question must arise as to whether the High Court, as currently constituted, would continue to uphold the existing arrangements under the DFDA in light of those changes overseas. It is also the case that the "fair and impartial trial" issue has not been comprehensively argued before the Court.

14. The *Defence Legislation Amendment Act 2003* made a number of changes to the court martial system established by the DFDA. These included:

a. The elimination of the multiple roles of convening authorities to ensure that a convening authority has no role in the subsequent review of the outcome of a court martial or DFM trial convened by that convening authority;

b. Formalisation of the procedure for the Judge Advocate General (JAG) to appoint officers to act as judge advocates for courts martial and for nominating officers as DFM's as opposed to these members being appointed by the chain of command;

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[1] Australia ratified the International Covenant on Civil and Political Rights on 13 August 1980. Article 14, paragraph 1 is in similar terms to the ECHR in terms of which the UK court martial structure has been found wanting. Although, this has not been enacted into Australian domestic law, in certain circumstances the High Court may apply the principles embodie in it: *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

[2] *Re Tracey; Ex Parte Ryan* (1989) 166 CLR 518; *Re Nolan; Ex Parte Young* (1991) 172 CLR 460; and *Re Tyler; ex Parte Foley* 181 CLR 18

c. Formalisation of the procedure for the JAG to appoint the president and members of courts martial as opposed to these members being appointed by the chain of command;

d. The creation of the statutory position of CJA to assist the JAG in the discharge of his functions; and

e. Provision for three year fixed terms, subject to renewal, for the CJA and other members of the JA/DFM panels.

15. In legislation proposed for introduction into the Parliament in 2004, amendments will be sought:

a. For the establishment of a Director of Military Prosecutions (DMP) to take over the prosecution discretion currently vested in convening authorities;

b. To establish the independent statutory position of Registrar of Military Justice (RMJ) within the Office of the Judge Advocate General (OJAG) to assume the responsibilities of a convening authority for the convening of courts martial and the raising of references to Defence Force magistrates, and to nominate the President and members for a court martial;

c. Provision for the remuneration of the CJA, RMJ and DMP to be independently fixed by the Commonwealth Remuneration Tribunal; and

d. To provide for each of those appointments to be for a term of five years subject to renewal.

16. These arrangements go a substantial way to modernising the court martial structure established by the DFDA, but I submit to the Committee that consideration should be given to doing more to genuinely establish the perception (as well as the reality) of the independence of the JA's and DFM's consistent with the judicial functions of these appointments.

Way Ahead

17. In considering whether further change should be made to the DFDA, the Canadian example is particularly useful because:

a. The Canadian Defence Force is of similar size to the ADF and generates comparable numbers of trials at the court martial/DFM level. (The United Kingdom has many more trials in the case of the Army, and New Zealand has very few trials.)

b. The discipline system is administered by means of a tri-Service Act (unlike the present position in the UK).

c. The Canadian military justice system uses uniformed military judges sitting alone (as the equivalent of our DFM) and with a court martial (as the equivalent of our judge advocate). Neither the UK nor New Zealand have provision for a judge alone trial; and

d. The Canadian system has been the subject of substantial recent review.

18. The current Canadian structure provides for a distinct separation between the judicial, prosecution and defence functions. The military judges are appointed by the Governor-General in council following a selection process that parallels that for other Federal judicial appointments. Appointments are for a five year term with renewal criteria. The Chief Justice of the Courts Martial Appeals Court chairs the Renewal Committee. Military judges can only be removed for cause.

19. The salary of military judges is set by the Judicial Salaries Committee, and is currently paid at a rate equivalent to that of a provincial judge. Essentially, the selection, tenure and remuneration are entirely independent of the defence force.

20. The arrangements have been the subject of very recent review by former Chief Justice the Right Honourable Antonio Lamer PC, CC, CD in a report submitted to the Canadian Minister of National Defense on 3 September 2003. The report is available at the Canadian Defense Force website, but in case it should be of assistance to the Committee, I have enclosed a copy. In particular, I invite the Committee's attention to Part IV – Military Judges and Court Martial Administrator. Former Chief Justice Lamer recommends, inter alia:

a. That military judges be awarded security of tenure until retirement from the Canadian forces, subject only to removal for cause on the recommendation of an Inquiry Committee (Recommendation 5); and

b. The amendment of the National Defense Act to establish a permanent military court of record (Recommendation 13).

21. For the reasons canvassed by former Chief Justice Lamer, the establishment of a permanent military court offers significant advantages that would fully translate to the Australian position. In our case it would:

a. comply with the provisions of Chapter 3 of the Constitution, noting that the non compliance of the current arrangements has been the basis of a number of challenges to the High Court;

b. overcome the difficulties in perception created by renewable terms of appointment to which I refer subsequently in connection with the appointment of the JAG;

c. give judge advocates and DFM's legitimate independence both in reality and as a matter of perception;

d. facilitate the transfer to these independent judicial officers of issues such as pre-trial custody and release, the issue of search warrants, etc; and

e. facilitate a much smaller panel of judge advocates and DFM's than exist at present, leaving the way open for greater specialisation and expertise.

22. Were these changes to be adopted, the traditional arrangements for the court martial should be changed to provide that the judge advocate presides in a manner directly parallel to a civilian judge sitting in a jury trial. The legitimate independence of the judge advocate would provide an important safeguard to the independence and impartiality of the court martial as a whole. In the event of a conviction, the judge advocate should sentence, giving published reasons.

23. A possible approach within the existing framework of Commonwealth courts would be to consider establishing a military bench within the Federal Magistrates' Court. Appointments could be made by the Attorney General on the advice of the JAG thereby ensuring that only legal officers with suitable Service experience were appointed. The appointments could be made until compulsory Service retirement age, and the existing legislation contemplates part time appointments which would accommodate the Reserve officers who presently sit in a large number of cases.

24. DFDA Part IX currently provides for the automatic review of all proceedings resulting in a conviction. The review requires a legal report pursuant to s 154. This is an important safeguard in the case of summary proceedings which are conducted by officers without legal qualifications. However, proceedings before courts martial/DFM, are conducted by, and before, qualified lawyers. In particular, the accused is independently represented and advised by a lawyer. In these circumstances I believe that in relation to court martial/DFM trials consideration could be given to either:

a. Moving from an automatic review to the position where such review would only be conducted at the request of the accused. This would remove the time consuming process of having the proceedings independently legally reviewed and the conduct of the review itself in cases where the independently advised accused accepts that he/she has been appropriately dealt with; or

b. Broadening the rights of appeal to the Defence Force Discipline Appeals Tribunal (DFDAT) to include appeals against sentence and abolishing the review procedure for trial by court martial and DFM. This is the approach taken in the UK in connection with trials conducted by the Army and RAF. The previous system of review (similar to that currently provided under the DFDA) was criticised in the 2002 decision of the ECHR in *Morris v United Kingdom*; paragraphs 73-76 of the Court's judgement refer.

Of these options, I believe that the second is preferable. Issues of stays on execution of sentence could be vested in officers appointed to the judge advocates' panel if my earlier suggestion of establishing a standing military court were adopted.

25. Summary trials conducted by commanding officers (CO), superior and subordinate summary authorities present their own difficulties. In my view it is not possible to imbue these tribunals with guarantees of independence appropriate to the higher level tribunals. That being so, I suggest that consideration be given to providing the accused in each case with a right to elect trial before a DFM or court martial. This is currently done before a CO or superior summary authority may have resort to the elective punishments for which provision is made in schedule 3 of the DFDA.

Approach

26. I commend to the Committee the approach recommended by former Chief Justice Lamer in his recent report to the Canadian Minister of National Defense. At page 21 he states:

> "In *Genereux*, the Court stated that the Constitution did not necessarily require that military judges be accorded tenure equivalent to that enjoyed by judges of the regular criminal courts. However, constitutionality is a minimum standard. As I said at the outset, those responsible for organising and administrating a military justice system must

> strive to offer a better system than merely that which cannot be constitutionally denied. For this reason I have come to the conclusion that military judges should be awarded tenure until retirement from the Canadian forces."

JAG' s Appointment

27. The JAG plays an important part in the oversight of the military justice system. This is achieved through the requirement under DFDA s.180 that the JAG be, or have been, a judge or justice of a superior court and by means of the JAG's annual report to the Parliament furnished pursuant to DFDA s.196A(1). The current and proposed arrangements for placing the CJA and RMJ within the OJAG, and making the JAG responsible for the appointment of the judge advocate or DFM for a particular trial, rely upon the guaranteed independence of the JAG for the integrity of these functions.

28. The JAG is appointed pursuant to DFDA s.183(1) for a term not exceeding seven years. The practice for some years has been for the JAG and the Deputy Judge Advocates General (DJAGs) to be appointed for a lesser term which is then frequently the subject of a further extension. As former chief Justice Lamer observes in his report (at page 19):

> "When setting up a court, renewable terms must be used with extreme caution. ... Provisions governing renewal must be crafted with care to ensure that those subject to a judicial decision do not believe that a judge's desire to be renewed will influence his or her final decision."

29. I submit that it would be preferable for the JAG and DJAGs to be appointed for the maximum fixed by the DFDA (which could perhaps be reduced from seven to five years) rather than having the appointments subject to renewal.

Boards of Inquiry

30. One of the problems of BOI's conducted under the Defence Inquiry Regulations is the lack of perception of independence. At the same time, there are advantages in the inquiry being directed and scoped by officers of suitable military experience. There is also the potential for these inquiries to be required to sit in an area of operations.

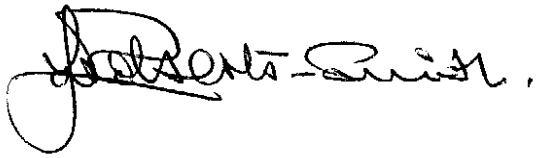
31. Were a properly independent military judiciary to be established, a DFM nominated by the JAG could be appointed to preside at a BOI. The genuine and demonstrable independence of the presiding officer would, I submit, go a long way towards the perception of independence of the inquiry as well as affording the opportunity for the development of individuals with relevant experience in the conduct of such inquiries and for consistency of approach.

32. Recommendation 45 of the Joint Standing Committee on Foreign Affairs, Defence and Trade report "Military Justice Procedures in the ADF" (June 1999) was that the ADF provide a single annual report on the operation of the military justice system to the Minister of Defence for tabling in Parliament. The Committee noted that the report should address the operation of the DFDA, the military inquiry system and the administrative action system.

33. At present, the only statutory requirement for a report to the Parliament through the Minister is s.196A(1) of the DFDA which requires the JAG to report annually on the operation of the DFDA and related legislation. The JAG has no responsibility for the military inquiry system nor the administrative action system. That is as it should be. The Committee may however, wish to consider whether, consonently with the principle of civillian judicial

oversight of the military discipline system, the JAG might exercise some general supervisory oversight of the military justice system as a whole by way of an annual report to Parliament through the Minister. This role would not involve responsibility for those matters, which would remain with The Defence Legal Service and those commanders and authorities whose responsibility they are currently.

Yours sincerely



THE HONOURABLE JUSTICE L.W. ROBERTS-SMITH
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16 February 2004

Enclosure:

1. Report to the Canadian Minister of National Defense by the Right Honourable Antonio Lamer PC, CC, CD

Comments of the Minister of National Defence on the First Independent Review of Bill C-25

(An Act to amend the National Defence Act and to make consequential amendments to other Acts)

Introduction

Bill C-25 received Royal Assent in December 1998. It made several amendments to the *National Defence Act* that brought changes to the military justice system, modernized the Code of Service Discipline and promoted integrity and fairness within the system. Bill C-25 also made a number of amendments to the *National Defence Act* in non-military justice areas, including a new grievance process as well the establishment of the Canadian Forces Grievance Board and the Military Police Complaints Commission. The amendments made by Bill C-25 represent approximately 45% of the provisions in the current Act.

Bill C-25 requires the Minister of National Defence to conduct an independent review of the provisions and operation of the Bill every five years, and to table a report on the review in Parliament. On March 21, 2003, the Minister of National Defence appointed the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, to carry out the first five-year review of Bill C-25. He enjoyed complete access to Department of National Defence employees and Canadian Forces members, as well as to the Canadian Forces Grievance Board and the Military Police Complaints Commission, for the duration of his review of this legislation.

This document provides the Minister of National Defence's comments on former Chief Justice Lamer's Report - which is being released concurrently - following careful consideration of all its recommendations.

The Lamer Report makes 88 recommendations, of which nearly two-thirds deal with the military justice system while the rest concern the Canadian Forces Grievance Process and the Military Police and Military Police Complaints Commission. The vast majority of these recommendations are accepted and the Department of National Defence and the Canadian Forces are already actively engaged in implementing them. The small

number of recommendations that remain require further study and consultation.

Military Justice System

Former Chief Justice Lamer's Report offers 56[1] recommendations related to military justice. At this stage, almost 80% of them are accepted. With respect to some of the more complex issues involving the structure of tribunals, further study will be necessary, as former Chief Justice Lamer recommends.

In 1992, the Supreme Court of Canada expressed the rationale for a distinct system of military justice in the following words:

> 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. 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. (*R v. Genereux* [1992] 1 S.C.R. 259)

In order to modernize and strengthen this distinct system, comprehensive amendments to the military justice system were introduced in Parliament in December 1997 as part of Bill C-25. The vast majority of these reforms came into force in September 1999, and responded to recommendations made in the two reports of the Special Advisory Group chaired by the late former Chief Justice of the Supreme Court of Canada, the Right Honourable Brian Dickson, as well as to recommendations made in the Somalia Commission of Inquiry Report.

The essence of these reforms was to clarify the roles of key actors within the military justice system, to enhance the institutional separation of military justice functions and to modernize the two forms of service tribunals - courts martial and summary trials.

Former Chief Justice Lamer reports that "as a result of the changes made by Bill C-25, Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence." He also observes that these changes have not gone unnoticed in other countries and that,

indeed, "It is not surprising that observers from other countries see it as a system that their country might wish to learn from."

Recognizing that "those responsible for organizing and administering Canada's military justice system have strived, and must continue to strive, to offer a better system than merely that which cannot be constitutionally denied", former Chief Justice Lamer finds that despite the significant progress made there is still room for improvement in such areas as:

- arrest and pre-trial custody procedures;
- the charge laying process;
- tribunal structure; and
- sentencing reforms.

The military justice recommendations made by former Chief Justice Lamer provide a unique opportunity to continue to improve upon Canada's military justice system. While many of the suggested reforms will require changes to the *National Defence Act*, progress is already being made where possible. In particular:

- the initial study of all recommendations has been completed;
- the policy development necessary to implement about one half of the recommendations has been completed;
- a working group, recommended by former Chief Justice Lamer, is being organized to study the recommendations involving the more complex issues; and
- the Department of Justice has commenced the drafting of regulations that will implement more than one quarter of the recommendations relating to military justice.

The recommendations contained in the Report will contribute significantly to the objective that the Minister of National Defence shares with former Chief Justice Lamer and the Judge Advocate General - the further improvement of an already sound and fair military justice system.

Grievance Process

Of the eighteen[2] recommendations in former Chief Justice Lamer's Report that deal with the Canadian Forces Grievance Process, sixteen are supported and action is underway to implement them. The remaining two recommendations in this area - those dealing with funded judicial review to the Federal Court and subpoena power for the Canadian Forces Grievance Board - require further study and consultation.

Former Chief Justice Lamer's Report acknowledges a number

of positive developments in the grievance process stemming from the enactment of Bill C-25. The process has been streamlined and de-layered resulting in only two levels of decision making. The establishment of an independent and external grievance board to provide findings and recommendations to the Chief of the Defence Staff brings added value. The establishment of the Canadian Forces Grievance Authority brings further focus to the grievance process.

At the same time, the Report concludes that, while the process appears to be sound, the manner in which it has operated to date has given rise to two serious issues. The Report expresses concerns about a substantial backlog of cases and what it characterizes as unacceptable delays in bringing those grievances to resolution.

In this context, the Report's recommendations that deal with strengthening the grievance process focus on five key areas:

- ***Elimination of the Backlog***. The Report recommends that the grievance process be resourced to fully meet its requirements. As well, it suggests the creation of a senior task force to work solely on reducing the backlog and that a 12-month time line be adopted for eliminating the backlog.

- ***Elimination of Delays.*** Key recommendations include the adoption of a 12-month time limit to resolve most grievances and removal of the current limitation on the Chief of the Defence Staff's ability to delegate grievances referred to the Grievance Board. The Report advocates an increase in process time limits at the initial authority level to provide a better opportunity for early resolution. Improved training and work instruments to support the process are also recommended.

- ***Improved Remedies.*** To strengthen confidence in the grievance process and increase efficiency of dispute resolution in general, the Report recommends that the Chief of the Defence Staff and any delegated final authority be given the necessary financial authority to settle financial claims in the grievance process, including the making of *ex-gratia* payments. It also recommends that the current authority to reinstate a Canadian Forces member who has been released be broadened to cover any case of wrongful or unjust administrative release.

- ***Enhanced Transparency.*** To strengthen review, reporting, and transparency, the Report recommends an annual report on the process, as well as an independent, cyclical five-year review of the grievance process. It also recommends that better information be provided to grievors concerning the status of their case.

- ***CF Grievance Board Governance.*** In order to strengthen Grievance Board case management and reporting, the Report suggests that Board members whose terms have expired be authorized to complete their caseloads, that the Board's annual report be required within three months of fiscal year end.

Implementation of these recommendations is ongoing in a number of areas. Under the direction and guidance of the Minister of National Defence and the Chief of the Defence Staff, a senior task force dedicated to reduction of the grievance backlog has been at work for approximately a month, an action plan is in place to eliminate the inherited backlog of grievances by December 2004 and additional resources have been designated for the Grievance Board. In terms of delays, the Canadian Forces Grievance Authority has now eliminated most of the case backlog between the Grievance Board and the Chief of the Defence Staff.

In support of enhanced transparency, the Canadian Forces Grievance Authority and the Canadian Forces Grievance Board are collaborating on a common statistical methodology for reporting on the grievance process. They each have in place a 1-800 line for grievors to seek either case specific or general information. The Canadian Forces Grievance Authority has also adopted a procedure for contacting grievors and keeping them abreast of progress, and has also begun work to develop Initial Authority training and best practices for users of the grievance process.

Military Police and The Military Police Complaints Commission

Former Chief Justice Lamer's Report also deals with the Military Police and the Military Police Complaints Commission, specifically Part IV of the *National Defence Act* which outlines the procedure for filing complaints against the Military Police and the civilian oversight responsibilities of the Military Police Complaints Commission.

Of the fourteen[3] recommendations that deal with the Military Police and the Military Police Complaints Commission, twelve are supported and two require further study and consultation. More specifically, further study and consultation are required to clarify the responsibility of the Chief of the Defence Staff to deal with conduct cases wherein the Canadian Forces Provost Marshal is implicated, and the provision that personnel seconded to or working for the military police be deemed as military police for the purposes of Part IV of the legislation.

The Report acknowledges the very considerable efforts that have been made over the past five years to address the issues raised in the Somalia Report and the First Dickson Report. Much progress has been made in terms of creating a highly professional, independent and accountable police service, with appropriate external oversight through the creation of the

Military Police Complaints Commission

While this portion of the Report is generally positive, former Chief Justice Lamer concludes that certain changes are necessary to the framework governing the Canadian Forces Provost Marshal role and responsibilities, as well as to the framework governing oversight mechanisms:

- ***Solidification of the framework governing the role and responsibilities of the Canadian Forces Provost Marshal.*** The Report recommends that the role of the Canadian Forces Provost Marshal and the relationship between the Canadian Forces Provost Marshal and the military police, including the National Investigation Service, be clearly articulated in the legislation. In addition, it suggests that the office of the Canadian Forces Provost Marshal be required to produce an annual report to the Minister of National Defence.

- ***Solidification of the framework governing oversight.*** The Report proposes a number of changes in this area, including statutory protection for those persons making a complaint, and time limits for both completing an investigation and requesting a review of the result. It also recommends increased clarity in a number of areas, including information to be provided to the Military Police Complaints Commission under given circumstances and the right of Chair of the Military Police Complaints Commission to initiate conduct complaints for investigation by the Canadian Forces Provost Marshal. An audit of the Military Police Complaints Commission to ensure resources assigned are consistent with workload is recommended as well.

Pay and Allowances

Former Chief Justice Lamer's Report also includes, as an Annex, a submission by the Chief of the Defence Staff in respect of certain issues surrounding the administration of Canadian Forces pay and reimbursement of member expenses, as well as the administration of benefits for teachers employed at Department of National Defence schools. Although no specific recommendations are made, the Report expresses support for any changes that enhance simplicity and efficiency in respect of such matters. To this end, the Department of National Defence and the Canadian Forces will take steps to improve certain aspects of the compensation and benefits administration framework.

Conclusion

The Right Honourable Antonio Lamer's Report on Bill C-25 is both an important and welcome document, and its findings have proven instructive to the Department of National Defence and the Canadian Forces. The bulk of former Chief Justice

Lamer's recommendations are accepted and work has already begun to implement them through a combination of legislative, regulatory and administrative action. Opportunities for early implementation will continue to be actively pursued consistent with the requirement for further study and consultation of the few remaining recommendations. The Minister of National Defence will report publicly on progress in implementing the Report's recommendations as appropriate.

Recommendations 2-57.

Recommendations 1and 72-88.

Recommendations 58-71.

This website is maintained by
Assistant Deputy Minister (Public Affairs) / ADM (PA)
Publication Date: 2003-11-05 **Important Notices**