

OPINION: MILITARY JUSTICE

Canada has one of best military justice systems in the world

The Office of the Judge Advocate General, which is responsible for military justice policy, is continually engaged in a rigorous and transparent examination of all aspects of the military justice system and is the leading proponent for its continuous improvement.



BY COLONEL MICHAEL GIBSON

OTTAWA—Two articles have recently been published in *The Hill Times* that appear to present a one-sided and critical view of the Canadian military justice system (Michel Drapeau's Sept. 19 opinion column, "Falling out of step? Canada's military justice system has opportunity to strengthen bond between Canada and England," on summary trials, and Tim Naumetz's Oct. 24 article reporting his interview with Mr. Drapeau and Justice Gilles Letourneau regarding their newly published book, "Drapeau, Letourneau push to update military justice, say military members deprived of Charter freedoms"). We welcome the opportunity to present a more balanced and accurate account.

The reality is that Canada is widely viewed as having one of the best military justice systems in the world. This was recognized by the former chief justice of Canada, the late Antonio Lamer, in his 2003 independent review of the provisions of the National Defence Act, wherein he stated that "Canada has developed a very sound and fair military justice framework in which Canadians can have trust and confidence." As he noted, other states, including the United Kingdom, Australia, and New Zealand, have studied the Canadian military justice system and looked to it as an example to emulate in many respects in making improvements to their own systems.

Justice Letourneau and Mr. Drapeau criticize some differences between the military and civilian justice systems. These differences exist for a reason. The real question is not whether there are differences, but rather whether the military justice system is compliant with constitutional requirements and effective in fulfilling its purpose.

A separate military justice system exists because of the unique needs of the Canadian Forces to accomplish its mission of defending Canada. This was recognized and endorsed by the Supreme Court of Canada in its seminal 1992 judgment in the case of *R. v. Généreux*.

The Canadian military justice system has two fundamental purposes: to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and, to contribute to respect for the law and the maintenance of a just, peaceful and safe society. It thus serves the ends both of discipline and justice. The two types of service tribunals—courts martial and summary trials—are designed the way they are because they possess the functional attributes necessary to fulfil these purposes.

The purpose of summary trials is to provide prompt but fair justice in respect of minor service offences and to contribute to the maintenance of military efficiency and discipline, in Canada and abroad, in time of peace or armed conflict. Summary trials are vitally important to the operational effectiveness of the CF. Two of the most eminent constitutional jurists of the Charter era in Canada, former Supreme Court of Canada chief justices Brian Dickson and Antonio Lamer, have both conducted independent reviews of the military



Photograph by Sergeant Robert Bottrill, Canadian Forces Combat Camera

Into Kandahar: Lieutenant-Commander April Inglis, a Canadian Forces legal officer, is seen in Kandahar, Afghanistan in 2007. Through an interpreter, foreground, she discusses the Afghan justice system with Najee Bulah, left, Chief Justice of the Kandahar Primary Court, and Abdul Jalil Moulawvi Zada, right, Chief Justice of the High Court of Kandahar.

justice system during the past 15 years and supported the importance and constitutionality of the summary trial system.

Mr. Drapeau presents a very partial depiction of summary trials. The full picture must be taken into account in order to make a responsible and accurate assessment of the fairness and constitutionality of the summary trial system. This includes the crucial role played by the offering of elections to accused persons between summary trial and court martial, and the long list of statutory and regulatory provisions that promote fairness at summary trials.

Justice Letourneau observes that members of the Canadian Forces are not entitled to a trial by a jury of 12 persons. This is true. It is what section 11(f) of the Charter provides. But to argue that a provision of the Charter is not consistent with Charter principles is not viable. Because of the unique needs of military discipline and efficiency, the findings at trials by General Courts Martial are determined by a panel of five military members. The differences between panel and jury trials have been judicially considered and the courts have upheld the validity of court martial panels.

Mr. Drapeau nominates himself to "give voice where members of the military cannot" to critical comments and suggestions for reform because serving members "would be court-martialled if they did." This is an unfounded assertion. The Office of the Judge Advocate General, which is responsible for military justice policy, is continually engaged in a rigorous and transparent examination of all aspects of the military justice system and is the leading proponent for its continuous improvement. It conducts regular surveys of members of the Canadian Forces at all rank levels to receive feedback on the operation of the system.

The Canadian military justice system is a fair, efficient and essential element in promoting the operational effectiveness of the Canadian Forces and ensuring justice for its members. Constructive criticism, debate and suggestions for its improvement are necessary and welcome. But contemplated changes should always have regard to the fundamental first principles that inform the military justice system.

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