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MILITARY LAW AND OPERATIONS Chris Madsen Release No. 1, May 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in October 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the October 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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What's New in This Update:

- An order-in-council terminated the employment of Admiral Art McDonald, after the senior officer demanded his job back as Chief of Defence Staff claiming that a military police investigation had “exonerated” him for alleged sexual misconduct. The military police responded that charges were not pursued because a threshold of evidence was not met, and the prime Minister and cabinet decided McDonald’s service was no longer desired, exercising the Crown prerogative to terminate the original appointment: see § 3:4.
- ● Anita Anand became Minister of National Defence on 28 October 2021, replacing Harjit Sajjan.
- General Wayne Eyre has been confirmed as Chief of Defence Staff, effective 25 November 2021. He had previously been in an acting capacity since the stepping down of Admiral Art McDonald in January 2020, pending an investigation for sexual misconduct: see § 3:4.
- On 4 November 2021, Minister of National Defence Anita Anand announced that cases involving sexual misconduct will be transferred to civilian law enforcement for investigation and provincial criminal courts for prosecution: see § 4:18.
- On 14 February 2022, Prime Minister Justin Trudeau invoked the Emergencies Act, to deal with trucker protesters occupying parts of downtown Ottawa and roadways leading to border crossings in several provinces affecting the Canadian economy. The Royal Canadian Mounted Police, as a federal police force, was central to the government approach to the crisis. Provision of military assistance to federal law enforcement was available under existing statutes: see § 5:8.
- Courts martial lists for 2020 and 2021 have been updated and courts martial for 2022 added.
- Of the new case law discussed in this release, the following are of note:
 1. In *R. v. McGregor*, the Court Martial Appeal Court considered the effect of the North Atlantic Treaty Organization (NATO) Status of Forces Agreement (SOFA) in the case of a Canadian soldier convicted by court martial of offences against another Canadian military member in a foreign country and the admissibility of evidence obtained by search warrant executed at a private residence: see § 6:3.
 2. In *Neri et al v. Canada*, the federal court turned down an application for an injunction from unvaccinated military members challenging the mandated policy in

the Canadian Armed Forces to be fully vaccinated, in order to continue in service and not face release and be denied certain housing and benefits. The federal judge found the policy to be reasonable given public health knowledge about the COVID-19 virus and its spread. If released, applicants should first take advantage of existing administrative remedies and the grievance process: see § 4:4.

3. In *Fortin v. Canada (Attorney General)*, a federal court judge decided that a senior officer removed from a public position with another federal government agency, after accusations of previous sexual misconduct, must exhaust the grievance procedures available to any military member before seeking judicial review contesting the action. Major-General Dany Fortin is scheduled to appear before a Quebec provincial court judge on charges related to the alleged misconduct, in September 2022: see § 4:17.
 4. In *Primeau v. Canada (Attorney General)*, the apportionment of disability entitlement related to hearing loss due to close proximity to loud weapons during periods of service in the military and the Royal Canadian Mounted Police was reviewed. The issue involved which legislation properly applied in such situations and whether previous decisions of veterans review panels were fair and reasonable: see § 4:11.
- Case sentencing digests for courts martial have been added.

ProView Developments

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