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## **Standing Committee on Public Accounts**

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**Chair**

**The Honourable Kevin Sorenson**



## Standing Committee on Public Accounts

Monday, October 22, 2018

• (1530)

[English]

**The Chair (Hon. Kevin Sorenson (Battle River—Crowfoot, CPC)):** Good afternoon, colleagues. This is meeting 113 of the Standing Committee on Public Accounts, on Monday, October 22, 2018.

We are here this afternoon in consideration of report 3, “Administration of Justice in the Canadian Armed Forces”, of the 2018 spring reports of the Auditor General of Canada.

I remind our committee that we are televised today, so I would kindly ask that you turn your cellphone or any other type of communication device to mute or vibrate, or whatever causes fewer interruptions.

We're honoured to have with us from the Auditor General of Canada's office, Mr. Jerome Berthelette, Assistant Auditor General; Mr. Andrew Hayes, Senior General Counsel; and Ms. Chantal Thibaudeau, Director. From the Department of National Defence, we're pleased to have Ms. Jody Thomas, Deputy Minister; and Geneviève Bernatchez, Judge Advocate General of the Canadian Armed Forces. Welcome.

We will turn the floor over to you, Mr. Berthelette, on behalf of the Office of the Auditor General.

**Mr. Jerome Berthelette (Assistant Auditor General, Office of the Auditor General):** Thank you, Mr. Chair, for this opportunity to discuss our spring 2018 report on the administration of justice in the Canadian Armed Forces.

Joining me today is Andrew Hayes, who is the principal responsible for the audit and is now our senior general counsel. Also joining me is Chantal Thibaudeau, the director of the audit.

Canada's military justice system functions in parallel with the civilian justice system. The purpose of the military justice system is to maintain discipline, efficiency and morale in the Canadian Armed Forces. Like the civilian system, the military system must be fair and respect the rule of law.

[Translation]

Charges in the military justice system can be dealt with through a summary trial or by court martial. The circumstances of each case, including the nature of the charges and the rank of the accused, will determine the type of trial. In some cases, the accused can select the type of trial.

Summary trials are intended to dispense prompt but fair justice for less serious offences. These trials are presided over by commanding officers or other authorized officers. A court martial is a formal trial presided over by a military judge. A court martial follows many of the same rules that apply to the criminal proceedings dealt with by civilian courts.

This audit focused on whether the Canadian Armed Forces administered the military justice system efficiently, including whether they processed military justice cases in a timely manner.

We concluded that the Canadian Armed Forces did not administer the military justice system efficiently.

[English]

We found that there were delays throughout the various stages of the military justice process and that the Canadian Armed Forces did not set time standards for some stages, which contributed to the delays. For example, we found that it took a long time to lay charges. For court martial cases, it took a long time to refer cases to prosecutors to decide to proceed to court martial and to set the date for hearing.

The Supreme Court of Canada has established a principle that most trials should be completed within an 18-month timeline after charges have been laid. For the 20 court martial cases we looked at, we found that the average time to complete the cases after charges were laid was 17.7 months, and that nine cases took more than 18 months to complete.

In the 2016-17 fiscal year, a court martial dismissed charges in one case because of the delay. In nine other cases, delay was one of the military prosecutor's reasons for not proceeding to trial. Canadians expect their armed forces to be disciplined and to address unacceptable behaviour promptly. The Supreme Court of Canada has also emphasized the importance of prompt administration of justice.

We also noted that the frequency of rotation of legal officers across the various legal service areas prevented prosecutors and defence counsel from developing the necessary expertise and experience to effectively perform their duties.

Furthermore, we found that the office of the judge advocate general did not provide effective oversight of the military justice system. The regular reviews of the system that were required had not been conducted, and case management systems and practices were inadequate. Some military units had their own tracking systems, but they did not capture all the information needed. Other units did not have any system or process to track and monitor their military justice cases.

• (1535)

[Translation]

We found that prosecutors had rarely documented their reasons for proceeding to courts martial. Prosecution decisions involve a high degree of professional judgment, and poor decisions may undermine confidence in the military justice system.

Without information about why prosecutors decided to proceed with court martial cases, the Director of Military Prosecutions cannot monitor and show how prosecutors applied legal principles and exercised professional judgment in each case.

We also found the Canadian Military Prosecution Service did not develop clear and defined processes to implement its prosecution policy. The delegation of prosecutorial duties and functions was not always documented, and the procedure for assigning cases and decision-making authorities was not clear.

National Defence agreed with our recommendations. The Department has prepared an action plan with milestones and time frames to address the recommendations. We have noted that, according to the action plan, some actions and milestones identified by National Defence should have already been completed.

Mr. Chair, this concludes my opening remarks. We would be pleased to answer any questions the committee may have.

Thank you.

[English]

**The Chair:** Thank you very much, Mr. Berthelette.

We'll now go to the Department of National Defence.

Deputy Minister Thomas, please.

**Ms. Jody Thomas (Deputy Minister, Department of National Defence):** Thank you very much.

Good afternoon, Mr. Chair and members. I am pleased to be appearing before you today alongside Commodore Geneviève Bernatchez, the judge advocate general. She does not like me to talk about this, but Commodore Bernatchez is the first woman ever to hold the position of judge advocate general in Canada. She was appointed in June 2018.

Before we begin, I'd like to thank Mr. Ferguson, Mr. Berthelette and their team for their hard work and insights on the administration of justice in the Canadian Armed Forces.

[Translation]

I also appreciate the committee's interest, and your contributions to enhancing military justice.

The military justice system is an important part of enforcing the high standards the Canadian Armed Forces hold themselves to.

[English]

An efficient and effective military justice system helps maintain discipline, efficiency and morale within the Canadian Armed Forces, which means that the Canadian Armed Forces is better prepared to defend Canada and Canadians at home or abroad in times of peace or conflict.

The Auditor General's report identified areas in the administration of our military justice system where we need to do better. We are committed to addressing them. We recognize that some of the Auditor General's observations reflect previous recommendations from other reports that were not fully actioned. We're acting on them now.

[Translation]

Commodore Bernatchez is implementing an action plan that ensures each of the Auditor General's recommendations is addressed and results in meaningful change.

[English]

This will allow the Canadian Armed Forces to strengthen the military justice system and ensure that the judge advocate general has proper oversight of that system. Today I will focus on what we've done in these areas so far and how we will continue to improve. I will keep these remarks short in order to leave more time for discussion.

[Translation]

The Auditor General identified a concern that some of our prosecutors and defence counsel have been rotating through their positions too quickly.

Commodore Bernatchez acted quickly to address this and has lengthened current postings to the recommended five years.

This will be the minimum duration for these positions from now on.

[English]

We also agree that the office of the JAG has not always had the information it needs to provide meaningful oversight of the military justice system. We appreciate the Auditor General's attention to this important point. We have been working on an electronic case management and monitoring system—namely, the justice administration information management system, or JAIMS—since 2017. JAIMS will track military justice files from the very first report of an alleged infraction through its investigation and the laying of charges to the trial disposition and review in both summary trial and court martial processes.

JAIMS will be used by key actors within the military justice system, including investigators, those laying charges, presiding officers, review and referral authorities, legal advisers, prosecutors and defence counsel. They will update JAIMS at each stage of the process so that files can be tracked in real time. JAIMS is nearing completion. We will begin pilot-testing it in early 2019. We are confident that this will improve the JAG's ability to oversee the military justice system and its administration.

• (1540)

[Translation]

We will also finish reviewing the time requirements for each stage of the military justice system early next year.

And we will establish clear new time standards, as the Auditor General recommended. These standards will respect the rules of fairness and legal requirements.

[English]

They will be incorporated into JAIMS so that key actors in the military justice system are prompted to move cases forward steadily. If anyone is unable to meet these time standards, the system will require that they provide reason for delay and they will tell us what has caused the delay so that we can figure out how to fix it.

These standards will also contribute to the timely disclosure of information to those charged with an offence, and these same time standards will be incorporated into the performance measurement system that we are developing. We will know when our standards are not met, and we will know why they were not met. That information will allow us to continue to improve the military justice system.

[Translation]

Because our work does not stop once we address Mr. Ferguson's recommendations.

We will continue to build on the excellent work that he and his team conducted with periodic, formal reviews of the military justice system.

[English]

We will act on the information that those reviews provide. The changes that we are making to how we manage our people, our communication and our case files will mean that the military justice system will be stronger. It will have appropriate oversight and will be responsive to the needs of the Canadian Armed Forces.

We look forward to discussing this in detail with you this afternoon, and we welcome your questions. Thank you.

**The Chair:** Thank you very much, Ms. Thomas.

We'll now move to the first round of questioning.

Madam Mendès, you have seven minutes.

**Mrs. Alexandra Mendès (Brossard—Saint-Lambert, Lib.):** Thank you very much, Mr. Chair.

Thank you all for being here.

I'm sorry. I'm trying to organize my notes. I took a few during your testimony.

Mr. Berthelette, you found that prosecutors rarely documented their reasons for proceeding to court martial. Why would they do something like that? It seems to me that in the legal system, whichever one it may be, not documenting your case is almost immediate grounds for dismissal of a case. What justification did they offer you for not documenting it?

**Mr. Jerome Berthelette:** I'll ask Mr. Hayes to answer the question.

**Mr. Andrew Hayes (Senior General Counsel, Office of the Auditor General):** We were interested in seeing the documentation that was prepared by prosecutors to justify their decisions so that we could assess the timeliness of those decisions. The question that you're asking about why they didn't document might be one that the judge advocate general can answer.

What I will offer, however, is that the exercise of discretion by the prosecutors is an important feature of their job. For oversight and monitoring, it's important for the judge advocate general—and I guess in this context I really mean the director of military prosecutions—to understand how decisions were made, on what basis, and when they were made, to be able to understand what improvements can be effected.

**Mrs. Alexandra Mendès:** Precisely. I understand that point. Yes, maybe Commodore Bernatchez would like to respond.

• (1545)

**The Chair:** We're having a little bit of a problem with the sound of Mr. Hayes' mike, and it's almost impossible for the interpreters to pick it up.

I would suggest that until they come to fix it, Mr. Hayes, you borrow Ms. Thibaut's mike or Mr. Berthelette's mike. I think everything else is fine.

Continue on, Madam Mendès. This isn't taken from your time.

**Mrs. Alexandra Mendès:** Thank you very much, Mr. Chair.

[Translation]

Commodore Bernatchez, you will probably be able to give me an answer.

How have prosecutors been able to justify the lack of a way to track decisions? It seems a little strange to me, in a legal setting, that decisions are not tracked, because ultimately they have repercussions on the lives of individuals.

So what reason has been given for not keeping track of those decisions?

**Commodore Geneviève Bernatchez (Judge Advocate General, Canadian Armed Forces, Department of National Defence):** First of all, I want to state that the comments made by the audit team and in the Auditor General's report point to shortcomings in documenting those decisions.

I want to assure the committee that the Director of Military Prosecutions' team made those decisions and justified them regularly. As I told you, that is one of their obligations.

The problem that was brought to the attention of the director of military prosecutions, and which is well founded, is that this was not done, or documented, in a strict and systematic way in each case.

The Director of Military Prosecutions reacted immediately to that comment, that observation. He issued directives last summer to make sure that each time a decision is made by one of the prosecutors in a case, it is recorded by the prosecutor assigned to the case.

I also want to draw to the committee's attention the fact that the Director of Military Prosecutions also completely reviewed the entire group of policies that apply to his prosecutors to make sure that there was an immediate response to the comments and observations made by the Auditor General.

I have the full review of the policies here, in English. I will try to translate it as I read.

**Mrs. Alexandra Mendès:** Go ahead. You can read it in English. *[English]*

**Cmdre Geneviève Bernatchez:** The DMP looked at updating all the policies related to the change to instruments for appointment of prosecutors, clarifying the limits of the powers of a prosecutor on a file and indicating at what level charges could be disposed. Also, he reviewed all the policies that specified the timeliness of disclosure to the accused, which was also raised very validly by the Auditor General's reports.

He has also issued a policy regarding better communications between his prosecutors and investigators at all stages of a file, and has issued policies regarding the specific time frames for the scheduling of courts martial, which was also noted in the Auditor General's report.

Not only did he address specifically what had been *[Translation]*

used by the Auditor General, but he went further by doing a complete audit of his policies to make sure that they are current and adequate.

**Mrs. Alexandra Mendès:** Thank you very much. *[English]*

If I may, I would refer you, Deputy Minister, to paragraph 3.73, page 17, of the report of the Auditor General—the overseeing of the administration itself—and the reference made to the insufficient reviews of the office of the judge advocate general.

We have a new judge advocate general, and I congratulate Commodore Bernatchez. How did the fact that there were no reviews or very insufficient ones impact the administration of justice in a very real way, a concrete way, for personnel who have had to deal with the system? Was this a question of human resources? Was there a problem with staffing the JAG? What was the issue?

**Ms. Jody Thomas:** I certainly will invite the JAG to jump in. I think the question at hand was that we could always use more people. There's absolutely no doubt, and I think that Commodore Bernatchez herself would say, yes, she'd like to have more people, but the core of the problem was a lack of adherence to policy, a lack of review of those policies and a lack of follow-up periodically to ensure that cases were properly documented.

The impact was that we did not proceed to prosecution because of timeliness in at least one case, and then there were problems with another nine. That doesn't sound like many, but with the number of prosecutions in the course of a year within the Canadian Armed Forces, it has an impact. If anybody is denied justice because of a procedural problem, that is a problem for the Canadian Armed Forces both in the administration of general military discipline and reputation.

Rather than just looking for more people, the judge advocate general has done a complete review of policy and the implementation of the new tracking system—the case management system, essentially. She reports to the chief of the defence staff, me and the minister, depending on the situation. Now we can go in and questions can be asked, timelines can be assessed and we can ensure this system is being properly administered.

• (1550)

**The Chair:** Thank you very much, Ms. Thomas. We're a minute over.

We'll now move to Mr. Nuttall, please.

You have seven minutes.

**Mr. Alexander Nuttall (Barrie—Springwater—Oro-Medonte, CPC):** Thank you, Mr. Chair.

Thank you to the team from the Auditor General's office.

Usually I start with questions of the Auditor General. I'm going to skip right over that to get the deputy minister to answer some questions here.

What I find frustrating as I look through the response to the report is that there's a lot of “will”, “will”, “will”, and I hope there is the will to get it done, because it hasn't been done in the past. As you mentioned, these are items that have been consistently brought forward through previous audits.

What I find perplexing is.... Let me start here. What is the target timeline you put in place to get through a case? I realize there are going to be complex and simple cases and everything in between, but what would be a target timeline example? Do you have targets put in place for different offences?

**Ms. Jody Thomas:** The judge advocate general will get into the detail with you, but the response to that is, absolutely.

I will just take a minute to address the “will”. Most, if not all of the management action plan items are under way. We say “will” because they're not yet done, and we're happy to report back to you, and we do report back to the committee when things are completed in the management action plan. Many of them started before the audit was finished, because Commodore Bernatchez recognized that there were changes that had to be made. We have accepted every recommendation because we agree.

In terms of things that haven't been done previously that we had agreed to, we have put a new oversight view into the department. We're tracking things through data analytics in a way we never have in the past. We acknowledge, as a department, that in not just this audit but other audits, we have not always followed up and completed the things we said we would.

**Mr. Alexander Nuttall:** Before we move over, I agree that's fine and dandy, but tracking the length of time it takes to go through the process is pretty elementary.

**Ms. Jody Thomas:** We agree.

**Mr. Alexander Nuttall:** This is the justice system for the Canadian Armed Forces—

**Ms. Jody Thomas:** Right.

**Mr. Alexander Nuttall:** —for the best country on Earth.

**Ms. Jody Thomas:** Right. We agree.

**Mr. Alexander Nuttall:** How...?

**Ms. Jody Thomas:** I can't speak to the people who were in my job before me, and I know that upsets people.

**Mr. Alexander Nuttall:** I understand that, and I respect that completely. There are lots of things that I can't speak to for previous governments, etc., even governments of my own persuasion.

At the end of the day, you're not here representing yourself. You're representing the department. When I look at this, it is.... We track these things in our daily lives that are so simple, yet we can't track something that is so clearly important when the Supreme Court identifies a timeline to say this is a timeline in which justice can and should be served. We can't track, in the department, how long it's taking to do that overall—it takes the Auditor General's office to do that—and then we can't track each step of the process to say where we're falling short, where we need to do better, and where we have already hit the targets. We come in 2018 and say that we're going to put new systems in place; we have this great system we're going to put in place.

I don't think it's a new system that needs to be put in place in terms of what you're talking about here. I think that this is straight-up discipline of personnel to hold them accountable and to hold the people below them and above them accountable. The fact that we're talking about discipline related to the Canadian Armed Forces justice system is mind-boggling.

It should be the gold standard.

• (1555)

**Ms. Jody Thomas:** Right. I don't disagree with a thing you've said. It's not that we can't. It's that we haven't. There isn't a systematic method across all aspects of the judge advocate general's organization to direct things in the same way. When people are doing things manually, they slip and they don't all account for things in the same manner.

I don't think there is an assumption that we haven't been able to do it. It's that it hasn't been done consistently. Why we're putting a system in is that it's 2018, and we think these things should be done in a case management system. We should be able to track data, and we should have various data points that we're not doing handrolically, that we're doing through a sophisticated methodology so that we understand where there are bottlenecks in the system and where we need to do better. At this point, if the judge advocate general were to look into systemic weaknesses, she's guessing. We need data to do that.

**Mr. Alexander Nuttall:** You're changing the technique by which that data is processed. You're not changing the.... It doesn't say here

that we need to change not the personnel but their training to make sure they actually follow through on it. You're talking about the systems rather than about the failures and where people need to do better. It's nice to say, "Hey, there's a big shiny thing over here that's going to change everything," but that's only if the input is good.

**Ms. Jody Thomas:** Right. There will be reporting that compels people to enter information in the system. If we find weaknesses in personnel who are not doing what they're supposed to do, the judge advocate general, obviously, will have to deal with those people.

**Mr. Alexander Nuttall:** Maybe they've never been trained to do so. Maybe the requirements haven't been there in the past to do so. It sounds like the targets weren't in place to train somebody to meet them in order to have the data put in. It is so simple that anywhere, in the smallest business in Canada, they would have these things in place.

**Ms. Jody Thomas:** We agree completely, and that's why we're changing the process.

**Mr. Alexander Nuttall:** Okay. I'll just end with this. This is where I wanted to dive into.

The report states:

We found delays throughout the various stages of the military justice process. We also found that the Canadian Armed Forces did not set time standards for some steps of the process. In our opinion, it...took too long to decide whether charges should be laid and to refer cases to prosecutors. Prosecutors did not meet their time standards for making decisions to proceed to court martial. Where they did proceed, it took too long to schedule the court martial.

In that one paragraph, there is a lot of work that can be done, very easily, to fulfill the requirements, both the requests of the report and also the commitments you're making in this response.

**The Chair:** Thank you, Mr. Nuttall. We'll have an opportunity to come back to you again later.

In the meantime, we now go to Mr. Christopherson.

**Mr. David Christopherson (Hamilton Centre, NDP):** Thank you, Chair.

Thank you all for being here, in particular, Deputy and Commodore.

I spent a few months as my party's defence critic. One of the things I came away with was a better understanding that esprit de corps in the armed forces is everything. It is so critical.

I have to admit that as I was going through this, my emotion was one of sorrow more than anger. I was saddened that we, you, the department, let our forces down so severely in an area that is so crucial to Canadian values, and that is a fair justice system. For the most part, when you sign up, you pretty much turn your life over to the department, and there is an obligation.... It's disheartening to think that an important part of our defence department could be operating so poorly and so incompetently.

There are two pieces to this, as I see it. One is the deputy minister being accountable for the implementation of policies overall. There's a failure here. That's at your doorstep, Deputy, and that's partly why you're here. That's part of the accountability process. That stands alone. You and your minister carry the can for that.

Now, drilling down and being a bit more fair-minded, I can appreciate that you and the minister and the chief of the defence staff would rely on JAG for legal advice and the legal system within the department, so I'm putting a lot of the details for responsibility on the part of JAG. If I put myself in the shoes of the minister, that's who you rely on to give you the expert advice, that's who you rely on to make sure that the fundamental rights of Canada are being upheld.

To me, Commodore, you're a bit on the spot here. I don't want to leave the deputy's responsibility, but I do want to talk about the audit.

The objective of the audit was to determine whether the Canadian Armed Forces administered the military justice system efficiently. Under "Conclusion", it says, "We concluded that the Canadian Armed Forces did not administer the military justice system efficiently." Deputy, overall you own this.

However, when I go to page 14, headed up "Overseeing the administration of the military system", and I quickly look at 3.62, "Context", it tells me, and this is from the AG's report, "The Judge Advocate General is responsible for ensuring that the military justice system operates efficiently, effectively, and in accordance with the rule of law."

The subheading, under "Overseeing the administration of the military justice system", says, "The Office of the Judge Advocate General did not provide effective oversight of the military justice system". The first point on that page, "Overall message", says, "Overall, we found that the Office of the Judge Advocate General did not provide effective oversight of the military justice system."

This process here is about accountability.

Commodore, explain yourself and this department's complete failure to ensure that there was a proper justice system in our military system. Please explain how we got in this mess.

• (1600)

**Cmdre Geneviève Bernatchez:** First I want to indicate my full personal commitment to ensuring that all of the management action plan that is described—that has been communicated to the committee—gets implemented. That is crucial for me as judge advocate general.

The second thing that I want to affirm to the committee is that I have responsibility for the superintendence of the military justice system. This is quite right. This is my responsibility. This is my duty. It falls on me. I acknowledge that. It's absolutely right that a military justice system that will respond to the requirements of our Canadian Armed Forces—a system that they have every right to expect will be fair and just and timely—needs to remain such.

**Mr. David Christopherson:** Remain? It needs to get there.

**Cmdre Geneviève Bernatchez:** It is a system that, in order to remain legitimate, needs to be transparent, and that's what we're doing today. That's what we're doing every time we're being

reviewed by external reviews. This is what we're doing every time the Supreme Court of Canada is reviewing aspects of our military justice system. It's one that needs to remain accountable. That's what we're doing today.

**Mr. David Christopherson:** Commodore, I'm sorry to interrupt but you know we have limited time. I don't mean to be rude, but I'm sorry, the accountability is here and I asked you to be accountable. I didn't ask you what you're doing going forward. That's a separate part. This is a committee of accountability. We look in the rear-view mirror to see what's been done.

This department is a mess. You're responsible. I didn't hear an explanation yet.

**Cmdre Geneviève Bernatchez:** I think to put things in context, we need to nuance what has been said by the Office of the Auditor General. What they have said is that there was not "effective oversight". The Auditor General has never said that there was no oversight. We fully agree, as the deputy minister said, that this oversight has been fraught with challenges for the last several years, and that's what we're trying to fix.

It's a military justice system that spans across the entire territory of Canada and is even administered overseas. As mentioned in the Auditor General's comments at the beginning, it is one that is administered not only by courts, by service tribunals that are courts martial, but also by units all over Canada.

What the Auditor General has found, and it's completely accurate, is that currently the units are taking stock of how things get done on pieces of paper, on Excel spreadsheets. This data is then communicated to my office in order for us to maintain visibility on the aspects of how many summary trials, what charges, what are the outcomes...so there is performance measurement. There is oversight and monitoring, but that is not sufficient in 2018, and we recognize that.

With the justice administration and information management system that we will put in place and that we're currently developing—it's at stage two of its development, and we're testing every single phase as we go through—that will allow not only me, but every single actor that has a role to play as a decision-maker in the military justice system to see in real time where a case is and whether the time standards that have been defined and included in this computer-based system have been respected. If not, why not? Because they will be required to enter into that system the reasons that time standards were not met.

Then—

• (1605)

**The Chair:** We're a minute over so we'll maybe come back to that.

We'll now move to Monsieur Massé.

[Translation]

Mr. Massé, you have seven minutes.

**Mr. Rémi Massé (Avignon—La Mitis—Matane—Matapédia, Lib.):** Thank you, Mr. Chair.



Ms. Thomas and Ms. Bernatchez, as a follow-up to the questions from my colleague Mr. Christopherson, can you explain to me what prevented the implementation of a case management and information management system?

Given that most departments and most lawyers' offices have, for a number of years, implemented systems to help them properly manage and administer their files, how is it that such a system has still not been implemented today? How do we explain why the department is so slow in implementing a system of that kind?

[English]

**Ms. Jody Thomas:** Thank you very much for the question. I'll begin. Certainly, the commodore can jump in.

It wasn't a priority within the department. Other systems were a priority—operational systems for the forces out fighting, systems for the air force, army, navy, to support them as they were conducting operations. This system has now been prioritized as a result of the Auditor General's report—there is absolutely no doubt—and as a result of Commodore Bernatchez's leadership.

One of the reasons we're putting a system in place is, yes, because it's overdue and things should be tracked electronically and through a case management process, but also, we no longer want the priorities, the measurement, the management of the office of the JAG to be individual and personality-dependent. This particular JAG has a very broad interest in ensuring proper oversight of her operations. The next one might not, which is not acceptable. I totally understand that, and I am accountable for ensuring the proper administration of the department, but we want to remove personality from the process and ensure that we have proper data management.

It wasn't a priority previously. It is now.

[Translation]

**Mr. Rémi Massé:** I understand completely that important military activities have to be undertaken. In an office as important as yours, are finances in issue? If you had had the funds needed to implement such a system, would you have been able to make it a priority before now?

**Cmdre Geneviève Bernatchez:** Thank you.

Let me put things in perspective and explain for the committee.

The military justice system has all the independent participants found in a justice system. By that I mean investigators, prosecutors, defence counsel, judges and upper courts that review cases. It's a complete criminal law jurisdiction that has to be contained within a self-sustaining system.

Let me go back to the question you first asked. You asked me why we had not implemented a case management system on the scale of JAIMS before now—

• (1610)

**Mr. Rémi Massé:** Excuse me for interrupting.

You mentioned the scale of the JAIMS. So that ordinary Canadians can understand, can you tell us in broad terms how many people will be using the system?

**Cmdre Geneviève Bernatchez:** I would not be able to tell you exactly.

**Mr. Rémi Massé:** Are we talking 100,000 people, 10,000 people?

**Cmdre Geneviève Bernatchez:** It is everyone who has a role. When a complaint is filed in a given case, the person responsible for the complaint has to make an entry in the management system, until the case is completely resolved.

These are the same people I talked to you about earlier. It is difficult to put a number on them. We know—

**Mr. Rémi Massé:** Okay, but you have to have—

[English]

**The Chair:** [Inaudible—Editor]

[Translation]

**Mr. Rémi Massé:** Excuse me, Mr. Chair. We sometimes get carried away when we are asking questions.

[English]

**The Chair:** I'll give you extra time. Thank you.

[Translation]

**Mr. Rémi Massé:** This is to Ms. Bernatchez through you, Mr. Chair.

You developed a game plan for implementing the system. In your action plan, you targeted the 2018-2019 financial year, together with your assistant deputy minister. There will be a trial period at the beginning of January and then the system will be launched in September 2019.

In order to be able to establish a specific action plan, you probably know how many people will be using the system. If not, it would be a little difficult to establish an action plan when you do not know how many people will be using the system every day.

**Cmdre Geneviève Bernatchez:** Thank you, and I am sorry for the problems with procedure. I have certainly taken note of it.

At the moment, we are not in a position to have exact numbers, because it will vary. However, we do know the number of files that the system will generally process. It's about 2,000 files per year, from the filing of the complaint until the case is completely processed.

You also need to know that the case management system will need to authorize specific access for each person involved, so that the information is protected. Not everyone will have access to all the information. If they did, the system would not be watertight and robust.

**Mr. Rémi Massé:** Through you once more, Mr. Chair.

In general terms, what funding has been allocated to this system, from acquiring it to complete implementation? I am just asking for an idea of the funding that will be invested in the project.

**Cmdre Geneviève Bernatchez:** The current budget for developing and implementing this system is about \$450,000. Of course, there will be costs for staff training. You cannot launch a system like this without training the staff involved. We will also have to maintain the system on a regular basis. We have set aside an amount of between \$79,000 and \$80,000 annually to maintain the system.

As for any computerized program, we will have to update it at some stage, of course. We have also allocated funds for that.

**Mr. Rémi Massé:** Okay.

[English]

**The Chair:** Very quickly, please....

[Translation]

**Mr. Rémi Massé:** My last question was about managing human resources, but since that will probably take more time than I have been given, I will drop it.

Thank you.

[English]

**The Chair:** Thank you. We'll come back to you.

We'll now go to Mr. Kelly.

We're in the second round now.

**Mr. Pat Kelly (Calgary Rocky Ridge, CPC):** Commodore Bernatchez, much of the response to this report is all based around the implementation of the JAIM system, and yet, to the point that Mr. Nuttall made, a system merely keeps track of information. The quality of the information and the action taken from the information is really how system improvement is going to be made.

The report talked about an average of one and a half weeks to complete an investigation for summary offences, those that are handled in unit, and typically taking the average of five weeks for commanding officers to lay a charge. How do you explain that delay if a matter that is of a summary nature only takes a week and a half to investigate and then it takes five weeks to make a decision on charging? How is merely adopting a data system, a case management system, going to change that if there is this systemic delay that goes on from investigation to charge?

•(1615)

**Cmdre Geneviève Bernatchez:** To go to the comment on ensuring that people are doing what it is that they're supposed to be doing, entirely, that's a question of ensuring that we have proper oversight and proper control over what people do.

As it pertains to unit disciplinary investigations currently being carried out, it's very difficult to predict, just like in the civilian system, how long an investigation will have to take and how long it will be carried. On the fact that it took, on average, five weeks, I don't think that we can take the time that it took to investigate as the only standard.

What is for sure though is that by reviewing the time standards—which we're currently doing with all of the military justice stakeholders including the Canadian Forces provost marshal, including representatives from the chain of command—establishing the time standards and making sure that they are part of our electronic management system and monitoring system, that will allow us to see where the choke points are. If somebody doesn't meet the time standards, they will have to indicate why, and as the superintendent, I will be able then to have access immediately to these results to identify where the vulnerabilities are, where the challenges are, and go to the heart and the roots of the reasons why it is taking longer than expected. Is it an issue of training, for example,

for unit disciplinary investigations? Do our unit investigators need more training in order to be able to do their jobs more efficiently? Is it a question of resourcing by units that are deployed on operations and have not the flexibility to allocate sufficient resources for investigations?

These are the types of things that will be yielded by the justice administration information management system.

**Mr. Pat Kelly:** Forgive me as a non-lawyer, but it would seem that if in a week and a half you have the facts from an investigation, I just cannot grasp why it takes three and a half times as long to gather the information to decide yes or no on whether to proceed with a charge.

**Cmdre Geneviève Bernatchez:** I fully get the nature of your question. One has to ask why it does take so long to investigate. This is not unique to the military justice system.

**Mr. Pat Kelly:** No, I'm not asking why. I'm talking about the difference between just deciding what to do when an investigation is complete.

**Cmdre Geneviève Bernatchez:** Pardon me.

**Mr. Pat Kelly:** About the average time, it says on average, units completed the investigation within one and a half weeks, but commanding officers took an additional five weeks on average to lay charges. I'm skeptical that merely adopting a software system will change the behaviours that cause that delay.

**Ms. Jody Thomas:** If I may respond, you're absolutely highlighting a point that we haven't brought out.

Obviously for us, the system will help provide information to us, but if the underlying human behaviour doesn't change and we don't prioritize investigations and we don't train commanding officers differently and ensure that they give this kind of work and their responsibilities in the system for discipline the attention it needs, nothing will change other than the JAG will have better information about what's going wrong.

Therefore, there has to be a systemic view and investment in commanding officers and everybody who plays a part in this system to ensure that they understand their responsibilities. Certainly this audit is a first step in that. The JAG has a role, the chief of the defence staff has a role, the department has a role, as do commanding officers across the system. It is critical that we change human behaviour in this process.

**The Chair:** I think the part of the problem we're having a hard time with is the fact that the Auditor General said in his report that there are other reviews that have taken place. I would assume there have been people from the department who have come here and said much the same thing.

What we have to try to do is to somehow instill in the department the fact that we just can't keep doing an Auditor General report and having you come back. I'm sure that they make great claims and promises too, yet the next one shows that nothing has been accomplished. That's why we have action plans and we follow them up. If timelines aren't met, we get you back here and it's not nearly as nice.

We'll now go to Ms. Yip.

•(1620)

**Ms. Jean Yip (Scarborough—Agincourt, Lib.):** Thank you for coming.

Once again on the timeline question, why is the office of the judge advocate general undertaking its first formal reviews of the military justice system in September 2019? Why is it not happening sooner?

**Ms. Jody Thomas:** I think we're starting the testing of the system in 2019.

We're implementing the system in 2019.

**Ms. Jean Yip:** Okay.

Is your first priority the implementation of this whole system?

**Ms. Jody Thomas:** If I may, and I'll ask the commodore to jump in, we're doing a number of things in parallel. We're reviewing the process, implementing the system and extending the posting period of the officers who work for Commodore Bernatchez in the JAG. She's also reviewing training and all the policies and procedures that have to do with military justice. A number of those, as she mentioned at the beginning of her statement, have already been implemented in order to respond.

There is a range of activities being done. We highlight the system because without data, we can't provide the kind of oversight and data management that the Auditor General says is lacking without all these millions of Excel spreadsheets, which we would like to get away from. The system will be fully implemented in September 2019. We will start to test it in January 2019, along with a number of other activities to change behaviour and to ensure that proper training exists and that the prosecutors and the lawyers in the system are able to conduct their duties as required of them.

**Ms. Jean Yip:** Can you tell me more about the military justice round table and how the first meeting went?

**Cmdre Geneviève Bernatchez:** The military justice round table goes to the heart of the need for better communications between the military justice actors. It brings together representatives from the Court Martial Appeal Court, the courts martial, the Canadian Forces provost marshal, the director of military prosecutions, the director of defence counsel services of the division of military justice and me.

It's a table that brings together these actors to discuss issues of mutual concern and to look at potential solutions. Issues of mutual concern are delays. This is preoccupying the civilian criminal justice system just as it does us. We're very mindful of the independence of these actors as we proceed.

The first meeting was held in June of 2018. The next meeting will be held in January. We develop agendas and discussion points to go to the most urgent of things. The conversations so far are very collegial. We are very happy to be brought back together to have those discussions and to be able to find solutions together, in a collegial manner, moving forward.

**Ms. Jean Yip:** What was the most urgent of those things?

**Cmdre Geneviève Bernatchez:** The first order of business was to re-establish connections and contacts amongst us because we realized, as did the Auditor General, that there was no fluid communication between these actors. The very first meeting was dedicated to ensuring that we had a better understanding of each

other's expectations of that body and what it could do for us as we progress.

**Ms. Jean Yip:** Thank you.

**The Chair:** We will now move to Mr. Nuttall, please.

**Mr. Alexander Nuttall:** Thank you, Mr. Chair.

Thank you for much of the information you are bringing forward to the questions from my fellow committee members.

Ms. Bernatchez, before I went off a little bit, we were going into some of the targets related to different types of offences, complex and simple offences. Could you provide that technical information to us?

•(1625)

**Cmdre Geneviève Bernatchez:** I'm sorry. Could you repeat the question?

**Mr. Alexander Nuttall:** Could you provide the technical information in terms of the targets for timelines for summary offences and all the way up?

**Cmdre Geneviève Bernatchez:** Right now it's a bit premature, because we're in the midst of consultations with the various stakeholders, but these will be defined. We'll establish the time standards required.

**Mr. Alexander Nuttall:** Going back to my original question—and I didn't ask it there—were there targets in place?

**Cmdre Geneviève Bernatchez:** Some targets were established. It's not a system that was completely devoid of time frames and time standards. We had time standards in place for certain things, as noted in the Auditor General's report, but we're aiming to have those time standards established and enforced for all steps of a case within the military justice system. If actors are not able to respect those time standards, we need the reason why.

**Mr. Alexander Nuttall:** I understand there are multiple offices looking at each case. When it starts to be investigated and eventually moves to the commanding officer's or the prosecutor's hands, there must be some sort of standard that says it's going to take this long overall. We know the Supreme Court is saying 18 months is the time within which justice must be served. If it is 18 months, is there not some sort of matching, already-established, already-in-place goal or target for the military justice system to meet, perhaps some in summary, simple cases, and different ones in more complex cases?

**The Chair:** Madam Bernatchez.

**Cmdre Geneviève Bernatchez:** Timeliness is at the heart of the military justice system.

[Translation]

That's what it is all about.

[English]

It's a system that needs to respond to the requirements of the Canadian Armed Forces in a timely manner and that needs to be portable. In order for that system to deliver what it needs to deliver, absolutely, it needs to respect timelines.

In 2016, the Supreme Court of Canada, in the Jordan case, established time standards. For our courts martial, it has been determined that the 18-month time standard applied to the military justice system. Just like the civilian justice system—

**Mr. Alexander Nuttall:** I'm sorry, if I may, that 18 months, as far as I could read, was basically “no longer than”. It wasn't a target. It should not take more than 18 months. If my boss came to me and said, “I don't want this to take longer than one week,” I'm going to set a target of three days, so that at day five, at the end of that workweek, he or she definitely has from me what was asked for.

What did you do to respond to said target?

**Cmdre Geneviève Bernatchez:** Just like the civilian criminal justice system, the military justice system has been addressing its mind very closely to delays, because of the Jordan decision. That's not to say it is not a topic or a concern or a subject of conversation that was not addressed prior—

**Mr. Alexander Nuttall:** This is two years ago, so what is that line?

All I'm trying to figure out is this. On day one, we know it can't take longer than 18 months, or it shouldn't, except for some very difficult circumstances that may be the one in 100 case. For the other 99 cases, what targets do you set up? What are the established targets within the military justice system to be met?

I'm finding this very difficult, Mr. Chair. I've asked the question three or four different ways and it might be that I'm not asking it the right way. I understand that, or I might not have the right language, but—

• (1630)

**The Chair:** Madam Bernatchez—and we're a little over time—we'll have just your answer and then that will be it.

**Cmdre Geneviève Bernatchez:** There are time standards that are established, for example, by the Canadian Forces provost marshal. How long should his police investigation last? As noted in the Auditor General's report, sometimes they were longer than that and we did not often know why. There are time standards for the provision of legal advice to units and prosecutors when charges are being considered. Again, as noted by the Auditor General's report, it was not always documented as to why they were not respected. That's what needs to be fixed. We need to define time standards. We need to be able to hold people, actors, accountable for respecting those time standards and know why they're not able to meet the time standards when they can't.

**The Chair:** Thank you. We're over time. We'll come back as well if you want to try.

Monsieur Falcon Ouellette.

[*Translation*]

**Mr. Robert-Falcon Ouellette (Winnipeg Centre, Lib.):** Thank you for coming to meet us today. It is very pleasant and very important. My thanks to you all.

[*The member spoke in Cree.*]

[*English*]

I'd just like to ask a few little questions.

I have a bit of a different perspective, in fact, from that of, I think, most of my colleagues. I was in the armed forces for about 22 years. I was actually the disciplinarian in my many units, either in the navy, as the regulating petty officer, or in the 5<sup>e</sup> brigade, where I was the sergeant-at-arms. I was actually the one doing the investigations and helping to lay the charges against personnel who had committed infractions of the code of service discipline.

I would just like to confirm with Commodore Bernatchez whether it's within three years after an infraction has been committed that you have to lay a charge. If someone commits an infraction, do you have three years from that date? If they commit the infraction, let's say, today, is there three years? Is that true, or is there unlimited time?

**Cmdre Geneviève Bernatchez:** A statute of limitations is provided for different offences. As it pertains to summary trials, the statute of limitations currently is that the matter must be proceeded with within one year of the alleged infractions. That's the criterion that is applied.

**Mr. Robert-Falcon Ouellette:** The charge must be laid within one year.

**Cmdre Geneviève Bernatchez:** That's correct.

**Mr. Robert-Falcon Ouellette:** Often, for instance, people talk about timeliness. Five weeks is actually very short for a military unit that is in operations and has a very high tempo. Five weeks to do an investigation for someone like me is a very short period of time, in fact, to turn it around, because often we're deployed at the same time or doing other things that have a lot of other priorities. If we have a year, we don't want to get to that year, but we have that time period.

I'm actually concerned about the education within the justice system. Who's actually responsible for the education of non-commissioned members, the ones who actually lay the charges and do all the hard work, the groundwork? Who's actually responsible for that education system?

**Cmdre Geneviève Bernatchez:** Mr. Chair, I want to correct myself. I talked about one year, and I had forgotten that the regulations pertaining to Bill C-15 had come into force on September 1, 2018. That statute of limitations has been reduced to six months—six months for charges to be laid after the alleged commission of an offence.

The responsibility for legal education as it pertains to the military justice system falls to me. I define the standards. I define the content of the legal education. For example, presiding officer courses are developed under my authority. Of course, I do not have the wherewithal to ensure there's proper delivery, so I rely heavily on the defence academy to support and to ensure there is distributed training and support for training, and more to the point, that this training is decentralized and carried out at the unit level. The chain of command has also a great role to play in that regard.

•(1635)

**Mr. Robert-Falcon Ouellette:** This is actually my criticism of the report from the Auditor General. In fact, I don't think you look at anything related really to the education system within the Canadian Armed Forces—for instance, in the Osside school for the non-commissioned members, the senior NCOs and the non-commissioned officers who actually do disciplinary hearings and charges and who actually have to come up and read the code of service discipline to find out what the charges are, obviously in conjunction with prosecutors. I don't think you reviewed that.

One of the things that irked me quite a bit is that you have a chart here, which is exhibit 3.2, “Primary roles and responsibilities for military justice”, and you have commanders of military units, but you actually don't have the NCMs. Once again, you're going back to the old way of doing the military system, where you have officers but everyone else is kind of forgotten about.

For me, obviously you could delegate some of these authorities, but often they are always delegated to people like me who have to carry out that work.

What I found in my time in the Canadian Armed Forces was that there was a lack of education. We had a very, very brief overview of some of these issues and what needed to occur. Because of that lack of education.... For instance, in the advanced leadership course or the intermediate leadership course, because they're so short—two weeks, three weeks—there is not enough time to really gain any greater understanding of the military justice system. We look at the charges in front of us and sometimes it makes it very difficult for the NCMs, the non-commissioned members, and the senior NCOs, the non-commissioned officers, to actually proceed with charges in a timely way.

Because obviously the Canadian Forces are supposed to be about team and how we work together, I'd actually like the Auditor General's office to reconsider their report and what they have done, because I think they've actually missed a major component of the report. I can read it here and what you have examined, and while it's very good and interesting, I think you've missed the essential component of it and who is actually responsible for doing that.

I must say that I was also—

**The Chair:** Would you like to give Mr. Hayes an opportunity just to respond to that?

**Mr. Robert-Falcon Ouellette:** I understand that he is....

One question I do have for him—because I have a limited amount of time—I must say I'm actually quite impressed—

**The Chair:** Actually, it's a minute over, and that's why I said that I wanted to give some time.

**Mr. Robert-Falcon Ouellette:** Really quickly, I was really impressed with the justice round table, but once again, I think you missed including non-commissioned officers in that issue. I think you missed including the units that actually have to lay the charges, like the operational units and not just simply units that have a lot of administrative personnel, but units that are actually doing the combat, fighting on the ground and on the ships, and the regulating petty officers and the senior NCOs, the chiefs and the *adjudants-mâitres*—all these personnel who are doing all this work. They're so

important to the justice system. If we forget about them, the justice system will never be at its full potential.

**The Chair:** Thank you, Monsieur Ouellette.

I'm going to go to Mr. Hayes just in response to some of the concerns in regard to the study itself.

**Mr. Andrew Hayes:** Thank you very much, Mr. Chair.

Of course, as the honourable member mentioned, training is important. Obviously the success of the military justice system falls on the people who have to implement it.

Our audit focused on those who were accountable, so of course powers are delegated, but at the end of the day there is an accountability that rests with the commanding officers for the military units. Training, of course, as the commodore has mentioned, is going to be an important feature in how this military justice system is improved.

**The Chair:** Thank you.

We'll now move to Mr. Christopherson, please.

Mr. Christopherson.

**Mr. David Christopherson:** I suspect I am sharing some of the frustration I think Mr. Nuttall is showing.

Part of this process is that, yes, we acknowledge that we screwed up and we're going to make it better and here is how we're going to do it, but that doesn't end the accountability. I haven't heard a lot of accountability. This is a bad report. There is not much in here, Deputy, that is positive. I can't think of anything. There might be, but it certainly doesn't stand out. It's all negative.

My first question is this. Has anybody been personally held to account at a supervisory or senior management level for this boondoggle?

•(1640)

**Ms. Jody Thomas:** Thank you for the question, Mr. Christopherson.

The answer to that is no. There is a new judge advocate general, and she has a new staff. She came into the job in June 2018, and she exercised leadership to change the process before the Auditor General's report came out, but in conjunction with it. I don't think she disagreed with a single recommendation that was made, and she has worked with the Auditor General.

Sorry, she came in, in June 2017.

**Mr. David Christopherson:** That's fine. I hear your answer, thank you.

Was the previous commodore—the previous JAG—the problem?

**Ms. Jody Thomas:** I think there's been a series of problems.

The previous JAG retired and he did not put in monitoring and oversight, as required. The department did not ensure that there was monitoring and oversight, as required.

**Mr. David Christopherson:** I know we can't go this far publicly, but it makes me wonder whether the retirement was part of the solution, whether that was an escape hatch, or a push out....

If you're telling me it was the previous JAG, it would have been nice if we had heard that earlier, instead of having to wait towards the end of the meeting before we actually get a drip of accountability.

Deputy, in 2008 and 2009, the Bronson Consulting Group was brought in. They did two reviews. It looks to me like they were ignored, twice ignored. Why?

**Ms. Jody Thomas:** If we want to talk about accountability, there has been a habit in the Department of National Defence, as well as other departments, to not fully implement...or to say that perhaps the department—or the JAG or whomever—agreed with previous recommendations and actually did nothing about them.

We have been very clear that we do agree and we are implementing every single recommendation. The JAG has—

**Mr. David Christopherson:** I appreciate that.

That also suggests that every major oversight system that was in place didn't work.

**Ms. Jody Thomas:** It didn't work to the extent it should have. That's the conclusion, and we agree.

**Mr. David Christopherson:** We're going to be following this, as you know.

I want to ask about the cases that were dropped because of the delay. It comes back to where Mr. Nuttall was, I believe, in terms of, okay, you have new standards.... It's on page 4:

In the 2016–17 fiscal year, a court martial dismissed charges in one case because of delay, and delay was a reason why military prosecutors decided not to proceed to trial in an additional nine cases.

Even though there are new standards in place and new tracking, there must have been something in place. We're talking about lawyers who, for the most part, care about the justice system. How could they let that happen? How could all of this keep going on? It would still be going on if the Auditor General hadn't come in. How could that be? Are we back to, “We didn't have a very good JAG”?

**Ms. Jody Thomas:** Mr. Chair, I did not say that we did not have a very good JAG. I would not like that to be on the record.

We have said that Commodore Bernatchez came in as the audit was going on, has started to implement change and has pushed forward with the change recommended by the Auditor General.

**Mr. David Christopherson:** Deputy, you can appreciate that I asked the questions, “How could that be? Who is held accountable?” and I'm not getting much of an answer.

When I push it a little more and say, “Okay, we had a real problem with the JAG”, you say, “Well, I don't want to say anything not nice about the previous JAG.” Okay, that's fair. Maybe they don't deserve that. Who does?

**Ms. Jody Thomas:** I'm sorry, Mr. Chair. I don't think that I can answer that to a person. The system is responsible. The system is accountable, and I am accountable as the deputy to ensure that we implement everything that the Auditor General has recommended.

I will not name a person.

**Mr. David Christopherson:** I don't expect you to. I have to tell you, Canadians are getting....

Phoenix is another example. We're getting a little bit tired of all of these major screw-ups and nobody is really held to account.

I'm held to account on the doorstep, every election and every day I'm in my riding. This is the bureaucracy being held to account.

Account for yourselves.

**Ms. Jody Thomas:** We are accounting for ourselves in that we are not arguing with the Auditor General. We are not arguing with you. We acknowledge that this was not well done and in six months we will have evidence for you that we have taken this seriously and changes have been made. Changes have already been made.

In my opinion, Mr. Christopherson, this is not the same as Phoenix. This is a problem that we have to resolve within the department. We have the leadership in place to do that with Commodore Bernatchez.

• (1645)

**Mr. David Christopherson:** Thank you, Chair.

**The Chair:** Thank you very much, Ms. Thomas.

We'll now move to Mr. Sarai.

**Mr. Randeep Sarai (Surrey Centre, Lib.):** Thank you, Ms. Thomas and Judge Advocate General.

I'm the son of an officer. I know how military training works. I grew up in a household where my dad had those standards and we all had to adhere to them. I'm also a lawyer, so I know how justice delayed is justice denied. Timely disclosure and performance measurements are all basic departmental requirements, whether you do them on Excel or in a fancy computer. If there's no attitude or will, nobody is going to implement them. It seems like there's a big attitude or will problem because, on its own, I don't think the technology is a reason for delay. I'm a little concerned that, if we're implementing a technology next year, we're going to have problems and we're going to blame it on the technology. I think it should be beyond that.

Military is usually one of the best organizations where systems, checklists, timelines, accountability and follow-throughs are ingrained in an officer's, or a soldier's, or a JAG member's psyche. In fact, I would hope that JAG was a standard that, across the country, other departments of justice would hold to and say they do really well. In fact, it's the other way around. The Canadian Bar Association has critiqued the previous system as being inadequate. It should be the other way around, where departments of justice should take leadership from JAG, by looking at how well they do it, how timely and how effectively, just because of the culture of how military should operate.

What is the timeline for the new system and can we ensure that there's no gap, for example, if the deputy minister or the commandant is changed, so that we don't have this delay again? It seems to be an epidemic that whenever senior staff is changed then the new staff says they don't know what the other staff did. These are simple things, like when a teacher runs their curriculum, they have a system in a binder, so that if they're sick or away, the substitute can come in and pick up right from there and the class goes on.

How are we ensuring that this new system will be managed well, so we don't have those changes?

**Ms. Jody Thomas:** Thank you very much for the question.

I agree that it is difficult when senior leadership changes. We tend to go from one person's priorities to another. This is ingrained in our governance, in that our assistant deputy minister's information management system reports to us on the progress of this system, so they are independent of me or the judge advocate general. It is on its own timeline. To ensure it doesn't have the problems that we've seen in other systems, it's being rolled out in phases and it's being thoroughly tested in sandboxes. We're doing user acceptance testing to ensure that it does function.

Your point is well taken and it underscores everything that we've said today. The system doesn't fix all the problems. Human beings have to fix the problems. The system will give the JAG a different insight into what's going on in our organization that we think will help improve standards. The system alone won't do it.

**Mr. Randeep Sarai:** My concern is that I'm a father of two daughters. There are women officers in the room and you're both distinguished women in the military. I don't want another story where women, who bring about their assault charges or harassment claims within the military, which have been rampant, are not getting justice or that justice is denied. Even if they get justice, if it's so late and they're so mentally and psychologically tormented through the delay of that outcome that their advice to others is to not join the military because it's going to be very troubling....

How do we ensure that message goes right from the top down that there will be no tolerance of that? If they are seeing delays in their cases, how can they bring them forward? Normally, a victim cannot have that access, but I think in a JAG situation, they should be able to have access because I don't want that problem being out there.

**The Chair:** Go ahead, Commodore Bernatchez.

**Cmdre Geneviève Bernatchez:** I want to reaffirm here for the committee that inappropriate sexual behaviour is not accepted in the Canadian Armed Forces and that our chief of the defence staff completely committed to ensuring that this would be dealt with. The military justice system is one of the important tools put at the disposal of the chain of command to ensure that we eradicate these behaviours within our midst.

You're absolutely correct that a computer system cannot, in and of itself, solve everything. When we're talking about timeliness, when we're talking about the effectiveness of the system, there needs to be a complete cohesion of things coming together. The solutions we're looking at and are currently working on are the time standards and the litigation experience, as has been noted by the Auditor General, to ensure that our prosecutors and our defence counsel have the

expertise required moving forward. That requires training as well from all actors in the military justice system.

Going back to a previous question or comment, the Canadian Armed Forces disciplinary advisory committee, made up of senior NCOs, is the key advisory body for the Canadian Armed Forces in that regard. Better communication between actors was also noted in order to ensure that the system runs smoothly and benefits from the perspective, the expertise and the points of view of all of the major actors.

I would be remiss not to mention also Bill C-77, which is currently before Parliament for discussion. That is expected to significantly reduce the delays within the military justice system, because it will simplify summary hearings and bring them back to simple disciplinary infractions that commanding officers, delegated officers, can deal with.

● (1650)

**The Chair:** We'll now move to Mr. Bezan.

Welcome to our committee, Mr. Bezan. The time is yours.

**Mr. James Bezan (Selkirk—Interlake—Eastman, CPC):** Thank you, Mr. Chair.

I want to thank our witnesses for being here.

I read through report 3 from the AG's office. It is a condemnation of our military justice system. I have to say that when you look at all the recommendations here and the conclusions, it's disappointing. Then you look at the delays and you look at the decision by the Supreme Court on the Jordan decision. Essentially, justice delayed is justice denied.

Why is this happening? Is it a human resource problem? Do we have not enough judges, not enough lawyers, not enough investigators? Even the investigations are taking beyond 30 days.

Deputy Minister Thomas, why is this happening? Why isn't our military justice system properly resourced?

**Ms. Jody Thomas:** I have spoken to Commodore Bernatchez about her resource level, and she believes she is properly resourced.

I think there are a number of elements. There is no one answer. I can't give you a simple answer as to why there are delays. Sometimes the victim doesn't want to come forward, or the people involved in the case are deployed. It's an operational organization where people are moving all of the time. Time delays within units have to do with being deployed on operations. Sometimes it has to do with training. Sometimes it has to do with the availability of judges or prosecutors. There are a number of factors.

I do believe, and I may be alone in this, that data will help Commodore Bernatchez manage the operation differently, because she will see.... She believes she has enough resources; perhaps she doesn't, and we will see a particular bottleneck in one part of the country or one part of the process or the way in which we execute certain parts of the process.

**Mr. James Bezan:** But there's no doubt that by having these delays, you're undermining your own rules and service codes, such as the code of service conduct, that are in place today. When you try to maintain good order and discipline, when you try to maintain that morale, how do you get that when you have everybody languishing in court?

I know that you guys are well versed on the Beaudry decision by the Court Martial Appeals Court. Is maybe part of that decision of actually pulling everything out that would be considered a court martial and moving all of those into the civil court rather than their being in the military justice system the solution? There are people out there who are advocating and some have been advocating for years that it should be outside of the military justice system, but I believe it really does undermine the code of conduct. It undermines the military ethos and it undermines the chain of command.

I'm glad CAF is appealing that decision to the Supreme Court and asking for a stay of proceedings, but at the same time, when we see reports like this—you have your critics out there, outside of the AG's office—aren't you just adding fuel to that fire?

**Ms. Jody Thomas:** We agree that the report is problematic in the conduct of the military justice system. It's not the intent or the purpose or the validity of it. It's that the conduct of some cases in the military justice system has been problematic, and it does affect esprit de corps, which is why we are determined to fix it.

The Beaudry case is before the courts so we can't speak about it, but we have to be cognizant of the fact—and this is a comparison but it is not intended to deflect—that the civilian justice system has similar if not more profound time problems. It isn't a one-for-one and it will get better if you move.

• (1655)

**Mr. James Bezan:** Commodore, you mentioned that Bill C-77—and we'll have you at committee tomorrow as we start the study on it—will address some of the shortfalls we currently have in the National Defence Act. I'm glad that we are going to be addressing victims' rights to reflect what we already have in the Victims Bill of Rights brought in by our previous Conservative government.

Can you speak to how this will streamline the process in the summary hearings and change the way summary convictions are carried out versus the court martial system?

**The Chair:** Thank you, Mr. Bezan.

Commodore Bernatchez.

**Cmdre Geneviève Bernatchez:** The current system provides for offences that may be tried by courts martial or summary trial. When charges are laid, oftentimes the accused is given the choice to elect between one of the two forums. Then it goes to summary trial or.... There are a lot of steps as a consequence of the evolution of Canadian law. The military justice system must keep step with Canadian legal standards and Canadian values, and that's how the

system developed. Over time, though, it put an incredible burden, an incredible responsibility on the shoulders of commanding officers who, as rightfully noted, are not legally trained, and that complexity, in and of itself, inserted delays in the process.

Bill C-77 aims to introduce summary hearings. For the simplest disciplinary instances within the units, for example, being late for duty, things of that nature, a commanding officer or a delegated officer will be able to try the cases, without giving elections to the member, because there will be no penal or criminal consequences. It will be akin to the disciplinary hearings we have in the public service or the RCMP. Minor things will be kept at the unit level. It will de-clog the court martial level of tribunals. It will also ensure that there are less steps to follow, so things will be addressed more quickly. That's how it will address delays.

**The Chair:** Thank you very much. Those were good questions and good answers.

We'll come back, I think, to the final question, unless anyone else wanted in after that.

Monsieur Robert-Falcon Ouellette.

**Mr. Robert-Falcon Ouellette:** Once again, thank you very much, Commodore Bernatchez. I was just reading your resumé. It's very impressive, by the way. You were in the naval reserves. You were a combat officer in the naval combat trade, and then you transferred over in 1990, in Yugoslavia and Afghanistan. That's very interesting.

I have a question for the Auditor General's office. You've done this review. Are you going to be coming back to do an additional review after you've allowed time for the military justice system to make its changes to Bill C-77?

**Mr. Andrew Hayes:** We are in the process of looking at our forward-looking audit schedule. The decisions about what we audit and what we follow up on are determined in part by the action plans and the time frames for the department—in this case, National Defence—to complete their tasks. Obviously, we're interested in the work the committee does to hold departments to account. I can't say that we will be back looking at this in the very near future, but it is an important area that has grabbed our attention.

As you probably know, we are completing an audit connected in some ways to this, in relation to inappropriate sexual behaviour, so the office will be before the committee again, I'm sure, when we table that audit.

**Mr. Robert-Falcon Ouellette:** Concerning postings of military personnel, the Auditor General suggested five years or a longer time frame. The military had a tendency to do two- to three-year postings in the past, a maximum of four years in the same position. The reason for that was that you wanted to train people in various positions so they could have an understanding that if they moved into a command position, they would know all of the jobs, or much of the jobs, that they might be in charge of commanding later on.

How would this change impact the level of expertise in the long term for the military justice system?

• (1700)

**The Chair:** Commodore Bernatchez.



**Cmdre Geneviève Bernatchez:** It is recognized that in order to be a performing litigator, one needs experience and needs expertise. This was noted by the Bronson reports in 2008 and 2009.

We acknowledged that, and I've issued orders to my chief of staff that the vast majority of litigators who are part of the military justice system stay in place for a minimum period of five years. Of course, this will be done as per the director of military prosecutions' and director of defence counsel services' wishes as well, because certain people are just not cut out to be litigators, so they need to have the flexibility to say this person is not working and they will need a replacement.

That will build the expertise, but you're absolutely correct. We need to look at the entire organism that is the office of the JAG and see where we need to balance in order to ensure that there is also the generalist approach, because the office of the JAG is responsible for providing legal advice in all areas of military law and we need to develop the knowledge of it.

What I've asked for the support of the Canadian Armed Forces to do, and we've started this fall, is an occupational analysis of legal officers to see where we need the training, how long the posting should be, and what types of experience the legal officers need, whether they are litigators or generalists within the office of the JAG.

It's quite a long process. It usually takes five years in order for it to be meaningful. After we have completed the occupational analysis, we will be able to determine how we adjust our personnel management practices to ensure that we yield the best results for our clients.

**Mr. Robert-Falcon Ouellette:** I have one final question.

**The Chair:** Go ahead, Mr. Ouellette.

**Mr. Robert-Falcon Ouellette:** It's related to the idea of summary trials. Obviously, before Bill C-77, which is in Parliament right now, that left you with a record. You were criminally responsible. It was a criminal case. Now it has changed.

Is there going to be an education program? One of the issues with the military justice system is that people were very afraid to use it. If you were late, you were charged and you would eventually have to go and get a pardon, at some point in the future. A lot of people were very wary, because 20 years ago you could be charged and you would have a criminal record for life when you left the military, just for having been 15 minutes late.

Now it's changing. Will there be an education program through the NCMs and the units on the ground to actually ensure people know that this instrument has changed, that they can use it, that they can go about and actually start imposing the discipline? Discipline is important for one reason. If people make mistakes, people can die. If you don't use your arms properly, your weapons, if you discharge your weapon in an inappropriate way, if you're doing things that are inappropriate, your comrades could die while in operations, and obviously, we don't want that.

What are you doing to help ensure that the disciplinary structure is flexible on the ground, related to education?

**The Chair:** Thank you very much, Mr. Ouellette.

Commodore Bernatchez.

**Cmdre Geneviève Bernatchez:** You are correct in stating that some of the offences currently tried by summary trial could eventually lead to records that are akin to criminal records. The changes that would be brought by Bill C-77 would ensure that everything that is done by summary hearings doesn't result in penal or criminal consequences.

That will be a sea change. If we go from the summary trial process to the summary hearing process, it will require significant training of all actors within the military justice system. That's something that the office of the judge advocate general and the Canadian Armed Forces did in 1998 when there was a sea change in the military justice system, and we're quite used to doing this. It will be significant. It will need to be deliberate.

As you mentioned previously, it will need to address not only the officers within the Canadian Armed Forces, but all of the disciplinarians—the senior NCOs, the NCMs, everybody who has a role to play, from the person who receives a complaint to the person who leads the investigation, to the person who lays the charges, to the person who finally hears the summary hearing process.

● (1705)

**The Chair:** Thank you.

I have a question that I would like to ask our guests. We do a study and we do a report. We table a report in Parliament as to the study that we have undertaken in regard to the Auditor General's study. My analysts here have given me one question that we would like to have for the report that we will build. That is the question regarding the department's response to paragraph 3.86, pertaining to the independence of the two directorates.

Let me just read into the record what the recommendation is from the AG, and then your response to that. Paragraph 3.86 reads:

The Judge Advocate General should assess whether its practices and processes affect the independence of the Director of Military Prosecutions and the Director of Defence Counsel Services, and whether any adjustments or mitigation measures should be established.

In your response to that, you agreed with him and said that:

By January 2019, the Office of the Judge Advocate General (JAG) will perform a thorough review of its relationship with the Director of Military Prosecutions and the Director of Defence Counsel Services to ensure their respective independent roles within the military justice system are respected. This will encompass a review of all existing policy directives to the Director of Military...

How is that review coming? You're going to have it completed by January. It's not very far away. How independent are the directorates, the prosecution and defence? What can you tell us as far as how independent they are currently?

**Cmdre Geneviève Bernatchez:** Thank you.

In reality, independence and the perception of independence are crucial for a legitimate military justice system. We take this matter very seriously.

The independent role of both the director of military prosecutions and the director of defence counsel services is provided for in the National Defence Act. The reporting relationship, or the general supervision that is exercised by the judge advocate general, has been provided by Parliament to the judge advocate general vis-à-vis those two actors.

In practice, on a day-to-day basis, I am exceedingly mindful of the independence of these two actors. In my strategic policy direction for the next three years, I have issued an obligation for all members of the office of the judge advocate general to assist me in the superintendence of the military justice system, in full respect of the independence of these actors.

As we're speaking, we have also completed a complete policy review of all the JAG policies as they pertain to the director of military prosecutions and the director of defence counsel services. We did that in consultation with these two directors, and we found no issues related to independence as far as these policies were concerned. The next thing we are doing currently is to continue to consult with the two directors to see what better practice we could develop to ensure not only factual independence but also the very important perception of independence.

One of the practices I've put in place this year for the reporting period is that, for the first time ever, I told the director of defence counsel services and the director of military prosecutions that they are responsible for their own personnel evaluation. I will have absolutely no role to play in this. They will evaluate them and send them directly to the centre for the selection for promotion.

I've also agreed with the director of military prosecutions' suggestion that he engage directly with the Minister of National Defence for matters that pertain to prosecution. He fully agreed with this. Where there could have been the perception before that the JAG had a role to play in that relationship, I am ensuring that, perception-wise, this is no longer the case.

When the director of military prosecutions and I discuss matters, they are strictly related to the administration of his office, the resourcing of his office, where cases might be pursuant to his determination. The National Defence Act provides for the fact that I could issue general or specific guidance in certain cases. This has never been the case. I have never issued such guidance. On the record, my predecessors who have always accomplished their duties to the very best of their abilities and very professionally have not issued such guidance. If I were to have issued such guidance, it would have to have been made public. I could issue general guidance for the director of defence counsel services. This has never been done. This would have to be made public.

Finally, these two independent actors have never brought issues of independence to the judge advocate general's attention, via their annual report mandated through the National Defence Act. They have never questioned whether in practice or in perception there was a concern in that regard. Because this is so crucial, because this goes to the heart of the legitimacy of that system, we are currently

reviewing means and manners to interact that will reinforce the independence, not only factually but also the perception.

● (1710)

**The Chair:** Thank you very much.

Part of what you said has prompted my friend Mr. Christopherson to ask one more question. It will be the final question of the day.

**Mr. David Christopherson:** It's a gentle one.

Mr. Berthelette, the report said the Auditor General was concerned that there was a risk that the independence could be jeopardized. I want to hear from you. Are you satisfied with the answer you've heard, and that it answers the concerns you've raised?

**Mr. Andrew Hayes:** I think that in the report we identified independence issues. The perception of independence was one of the things that we were concerned about. One of the areas that did give rise to some concern was the rotation of officers, which has been already addressed by the judge advocate general. The movement of officers between defence counsel and prosecution was one area that did come to our attention.

At the end of the day, we support the judge advocate general's commitment to examine the independence of those two officials, and we're looking forward to the results of that.

**The Chair:** Thank you all for being here.

I usually sum up a day like this by just saying that when you leave here, you may go over in your mind some of the questions that were asked and some of the answers that you gave. In the course of doing that, if you feel that you could better provide information to this committee, we would encourage you to send information in if there's anything you would like to expand on. As we build our study fairly soon, we always leave the door open for you to get hold of our clerk with that added information.

We do thank you for coming. Democracy is great, and as Mr. Nuttall, Mr. Christopherson and others have said, Canada really is the shining light in that. This is part of that. This is the transparency and the accountability part—this committee—on how government resources are spent and delivered so that Canadians can have confidence in the system.

We take the action plan very seriously. When you send us an action plan, this is the road that we're going to go down in order to accomplish the recommendations that we've agreed with. We follow up on them. We have researchers who go through it and analyze whether it's efficient or not. If it isn't, we invite you back. Really, you probably don't want to come back when that happens.

We thank you for letting us know if any of these timelines change. If you're advanced, if you're ahead of schedule, that is also good to know. We thank you for being here.

Thank you, committee, for the good questions and good day. The meeting is adjourned.







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