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## **Standing Committee on National Defence**

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**EVIDENCE**

**Tuesday, November 20, 2018**

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**Chair**

**Mr. Stephen Fuhr**



## Standing Committee on National Defence

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• (1140)

[English]

**The Chair (Mr. Stephen Fuhr (Kelowna—Lake Country, Lib.)):** Welcome, everybody, to the defence committee this afternoon. To our guests, my apologies for being late. We had a vote and it took some time.

In the interest of time, I'm going to introduce Lieutenant-General Charles Lamarre, who will speak on Bill C-77.

I understand and appreciate that you have a number of colleagues here, but to save time, I'll turn the floor over to you for your opening remarks. Then we can get to questions. I understand that you have to leave by 12:45. We'll endeavour to get you out of here at that time.

Sir, the floor is yours.

**Lieutenant-General Charles Lamarre (Commander, Military Personnel Command, Department of National Defence):** Thank you very much, Mr. Chair.

[Translation]

Good morning, ladies and gentlemen.

[English]

First, I am Lieutenant-General Chuck Lamarre. I'm commander of military personnel command, the organization that recruits, trains and does the care, service, pay and so on and so forth for all of our members. We assist with the eventual transition out of military as well. Thank you for inviting us to come here and speak to you today.

The care and support of all Canadian Armed Forces personnel are of paramount importance to our operational success. Our military justice system deals with people, and it is also critical to operational success, so I'm pleased to have the opportunity to engage in the committee's study of Bill C-77.

I will introduce our experts in a moment. They will also be able to provide details and answers to all of your questions.

I want to start by stating, however, that the Canadian Armed Forces has a system of care that is world class and available to all of our members. The CAF health system has 37 clinics, of which 31 have in-house mental health professionals. There are approximately 465 dedicated mental health positions distributed among those 31 clinics.

In addition, there are over 4,000 mental health care providers in the civilian system who have registered to provide care to military members in their own practices.

Finally, we have also teamed up with Veterans Affairs Canada to create the Canadian Armed Forces and Veterans Affairs Canada joint suicide prevention strategy, which was launched on October 5, 2017.

The experts we have with us today can speak more to the excellent level of care that we provide to our members. They are Colonel Peter Clifford, deputy surgeon general, and Colonel Rakesh Jetly, senior psychiatrist and mental health adviser for the Canadian Armed Forces.

Mr. Chair and members of the committee, the leadership of the Canadian Armed Forces has a duty to proceed from the point of view of care and compassion towards all of our members. It is part of the profession of arms, a code of conduct for all members of the Canadian Armed Forces that is underpinned by a high standard of values and ethics.

In instances where a member has committed an act of self-harm, the foremost priority of leadership is to provide care and support to that member. It is not to charge or punish a member in already difficult circumstances, and we do not.

We are also happy to have with us today two of our legal experts, Colonel Steve Strickey, deputy judge advocate general, military justice; and Lieutenant-Colonel Geneviève Lortie, director of law, military justice and policy. This is their second appearance before the committee, and they would be pleased to address any legal issues surrounding the study of this bill.

We take the health and well-being of our members, including their mental health, very seriously. Our members are always our highest priority.

We look forward to answering your questions.

Thank you, Mr. Chair.

**The Chair:** Thank you, General.

I'm going to give the first 10-minute period of questions to MP Gerretsen.

**Mr. Mark Gerretsen (Kingston and the Islands, Lib.):** Thank you very much, Mr. Chair.

Thanks to our delegation for being here today to answer some of our questions.

I want to focus my questions on the issue of the minor sanctions. We know that minor sanctions and expressions will be defined under the regulations instead of through Bill C-77. Can you comment on the benefit of defining them under regulation instead of through legislation on specific cases?

**Colonel Stephen Strickey (Deputy Judge Advocate General, Military Justice, Department of National Defence):** Thank you, Mr. Chair.

Thank you very much for that question.

In terms of the minor sanctions, as you all know, there were some comments made in a previous meeting concerning the minor sanctions, and in particular the confinement to barracks. With regard to outlining those in the regulations, the government has looked at other parallel systems, and in particular, a system along the lines of the RCMP disciplinary scheme, which also outlines their minor punishments in regulations. That was what...the decision was made at the time to put those in regulations.

I will note as well that the decision as to what those minor sanctions will be has yet to be made. They will be determined, obviously, in the regulations.

**Mr. Mark Gerretsen:** What is the benefit of defining them under these regulations instead of through legislation?

**Col Stephen Strickey:** In terms of benefit, certainly it's the government's decision to legislate any sanctions in the service offences. As you well know, the service offences are currently laid out and—

**Mr. Mark Gerretsen:** What can be the practical benefit of doing it through the regulations instead of through the legislation?

**Col Stephen Strickey:** The practical benefit of putting anything in regulation, sir, as you well know, is that it is much more expedient to make the changes. It's much more expedient if we feel, with any regulation, that we need immediate action. From a legal and procedural perspective, it's easier to regulate than legislate.

•(1145)

**Mr. Mark Gerretsen:** In a previous committee meeting on November 1, Pascal Lévesque said that he had concerns with defining service infractions and minor sanctions through future regulations instead of through the bill. He cited concerns specifically with respect to the perspective of transparency.

I want to give you an opportunity to engage on this subject and to explain how defining service infractions and minor sanctions through future regulations impacts transparency specifically.

**Col Stephen Strickey:** Thank you for that question.

Pascal Lévesque is a former colleague, and certainly a friend of mine. We've worked together. We've appeared before this committee not as witnesses, but in support. I respect his opinion and his submission.

With regard to his concerns, service offences are laid out in the National Defence Act. They are codified. As Pascal knows very well, because we did work together, the same can be said of regulation. If we take the view that any disciplinary regulation will be set out in volume II of the Queen's Regulations and Orders, which is currently the disciplinary volume.... All members, and all those

who use it—accused, presiding members and commanding officers—will be well aware of what those service infractions are.

The one advantage I'll point out procedurally as well, not necessarily in this realm, but generally, is that with the QR and O we have the ability to put in notes. A note to the QR and O does not have a meaning in law, if you will, but it's very helpful in terms of adding some assistance to those members who would use either the summary infraction system, or any other aspect of the QR and O.

In response to Mr. Lévesque's question, I can assure this committee that as with the legislation, although it's a different system, all users of the summary infraction system will be well aware of those service infractions.

**Mr. Mark Gerretsen:** Are you of the opinion that there will be greater transparency through regulations?

**Col Stephen Strickey:** It's not my view, Mr. Chair, to have an opinion one way or the other in this conversation.

**Mr. Mark Gerretsen:** No, I'm sorry, I'm not asking you for a political opinion or even an opinion. I'm just asking, from a practical perspective, would you agree that things become more transparent through regulation?

I don't want your opinion. I want to know what you think the practical impact would be on the ground.

**Col Stephen Strickey:** Thank you for the question.

From a hypothetical perspective, I can assure the committee, as a member of the Canadian Armed Forces and a legal officer who advises commanders, that regulations are very well known among all members of the Canadian Armed Forces. The QR and Os are published. They are transparent, and all members must be aware of their content. It is a different process, obviously, as compared to legislation, but I'm very confident in saying as a member of the Canadian Armed Forces that the QR and Os are very well known among the rank and file, sir.

**Mr. Mark Gerretsen:** Thank you.

How much time do I have, Mr. Chair?

**The Chair:** You have about a minute.

**Mr. Mark Gerretsen:** I'll hold it there. My next question has a lot to it.

**The Chair:** Next is MP Martel.

[Translation]

**Mr. Richard Martel (Chicoutimi—Le Fjord, CPC):** Good morning. I am pleased you are here today.

My question is for you, Lieutenant-Colonel Lortie.

What do you think about the possibility of amending section 98 of the National Defence Act with respect to maiming or injury?

**Lieutenant-Colonel Geneviève Lortie (Director of Law, Military Justice, Policy, Department of National Defence):** I was here and I heard the previous discussions. Of course, the Department of National Defence and the Canadian Forces ensure the health and well-being of all members. This includes mental health, which is taken very seriously.

We believe that it is very important to continue to follow the discussions taking place in the committee, to hear from the expert witnesses and their contribution to the committee's consideration of Bill C-77.

• (1150)

**Mr. Richard Martel:** The committee heard testimony from retired Lieutenant Colonel Jean-Guy Perron and representatives from the Barreau du Québec. They shared with us some of their concerns about Bill C-77.

I would like to know what you think of this. Clause 55(2) of Bill C-77 specifies that members of the Canadian Armed Forces are subject to the Code of Service Discipline even when they are not on duty. However, this section may be inconsistent with section 60 of the National Defence Act, which states that, although regular force members are subject to the Code of Service Discipline at all times, reserve force members are only subject to it when on duty, in uniform, in a military establishment or in or on any vessel.

Why does the new clause in Bill C-77 not reflect the National Defence Act?

[English]

**Col Stephen Strickey:** As the deputy JAG for military justice, that would be our collective responsibility. As I alluded to earlier, we recently received the submissions that were received by the committee, and we are in the process of reviewing those submissions.

It would be premature at this stage, because we have our teams reviewing those submissions, to provide any kind of opinion or comment on them. I can assure the chair, however, that we are actively reviewing the submissions by former legal officers and colleagues of both Lieutenant Colonel Lortie and me.

[Translation]

**Mr. Richard Martel:** Do I still have time left?

[English]

**The Chair:** You have about four minutes.

[Translation]

**Mr. Richard Martel:** Okay.

My question is for Peter Clifford.

The Canadian Armed Forces have made it a priority to support their members and veterans suffering from post-traumatic stress disorder or other illnesses caused by operational stress.

Do the Armed Forces still have work to do with their members to end the stigma caused by this syndrome and mental illness?

[English]

**Colonel Peter Clifford (Deputy Surgeon General, Department of National Defence):** We have certainly made tremendous progress in the last decade or so. There's always more we can look at and do as research evolves, but in terms of operational stress injuries and reducing stigma, I'm confident it has been significantly reduced among our entire population.

[Translation]

**Mr. Richard Martel:** Thank you.

[English]

Do I still have a couple of minutes?

**The Chair:** You still have about two and a half minutes.

**Mr. Richard Martel:** I will share my time with Mr. Bezan.

**The Chair:** Mr. Bezan.

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

Gentlemen, it's great having you at the committee again.

Colonel Jetly, it's always great seeing you. We did a lot of work together on mental health within the armed forces.

As you know, there has been quite a bit of discussion around paragraph 98(c) of the National Defence Act, which isn't in Bill C-77. However, there is quite a bit of concern that it adds to the stigmatization of mental health within the armed forces, and possibly hasn't been used in the past.

Colonel Jetly, could you respond from a mental health perspective, if that section prevents people from coming forward?

**Colonel Rakesh Jetly (Senior Psychiatrist and Mental Health Advisor, Directorate of Mental Health, Canadian Forces Health Services Group, Department of National Defence):** Sadly, it's been my job of being involved in every completed suicide in the last decade and many of the attempts. I'm not aware of a single person who has been charged with self-harm. When we do the deep dives and actually go and revisit this, it hasn't been an issue. The number one priority has always been the care of the individual after self-harm. The medical folks will treat the person in confidence. If the chain of command is aware, the person would immediately receive care.

We stopped doing some reinvestigations for self-harm, instead replacing them with a process to make sure that the senior doctor and the chain of command talk to make sure the person is in care.

The default stance of health services will be to care for the individual, and for the chain command the care of the individual has been the number one priority. I have no knowledge or experience speaking to family members, chain of command, colleagues, doctors that this rule has been a factor in people not seeking care.

• (1155)

**Mr. James Bezan:** Colonel Strickey, as the the deputy JAG, do you concur that the removal of this section of the National Defence Act would not undermine the chain of command and the work that you do in investigations and prosecutions within the military justice system?

**Col Stephen Strickey:** Well, sir, when both the minister and the JAG, and I, for that matter, were here in the previous meeting, they undertook to look at this issue. I can say that we continue to do that.

From a statistical perspective, in answer to your question, since 2000, section 98 of the NDA has been used 17 times. Four charges were preferred to court martial, which means the Canadian military prosecution service decided to proceed with the charges via the court martial: three charges were under paragraph 98(a)—I know that's not the issue here—malingered; and one was under paragraph 98(b), aggravating disease or injury. All four of those charges were withdrawn at trial. Thirteen charges under section 98 were disposed of at summary trial: 10 charges were under paragraph 98(a) of the NDA. Eight charges resulted in a finding of guilty; two charges were stayed. There were two charges under paragraph 98(b). One charge resulted in a finding of guilty and one charge was stayed. One charge under paragraph 98(c), injuring self or another under the NDA, was laid, but this charge was not proceeded with.

Based on what I've just stated, since the year 2000 there was one charge laid under paragraph 98(c) of the National Defence Act. You may recall that the last time I was before the committee I alluded to it as the modern military justice system, if you will, following the changes that were made in 1999.

**The Chair:** I let that run over because I think the committee wanted to hear that.

I'm going to have to move to MP Garrison.

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Thank you very much, Mr. Chair.

Thank you, all of you, for being here again today.

As you know, one concern of mine has been self-harm and suicide within the Canadian Forces. I first want to start by acknowledging the progress the Canadian Forces have made with the suicide prevention strategy, with the emphasis on mental health. Certainly your statement today reflects that progress. That said, there's still a lot that we need to be doing in this area. We still have a rate of death by suicide in the Canadian Forces, which is, of course, unacceptably high. However, I do want to acknowledge the progress.

Colonel Jetly, in the remarks you just made, you said you had no knowledge or information of anyone citing paragraph 98(c) as a reason, but what I have heard from families is it's a broader question of the concern that if someone in the forces discloses mental health issues, it will somehow damage their career or result in their leaving the Canadian military. Would you say that concern has been raised?

**Col Rakesh Jetly:** Yes, you're speaking about, in general, barriers to care.

Barriers to care can include concern about career. It can be a stigma: what people are going to think about me, what people are going to think about my self. The number one barrier to care, actually, has always been that people are unaware they have a mental illness and that they could benefit. That's why we've put in place the educational initiatives. There's a whole series of barriers to care that are consistent within militaries across the world, and our own research shows the same thing. Over the last 18 to 20 years we've developed specific countermeasures to all of those, so we have the resources in place, the education, the cultural shift from leadership. There definitely is that.

The treatment of a serious mental illness is actually the best shot you have of keeping your career. That's what we say, because if

you're ill it's going to affect your work, your family. You're going to be on that spiral. You can't guarantee a career is saved through treatment, but it's the best shot you have. That's the continual messaging we give people.

**Mr. Randall Garrison:** In the suicide prevention strategy, I guess one goal of yours has been to remove as many barriers as possible. If paragraph 98(c) hasn't really been used for discipline and order reasons, then is there any reason to keep it there when it might, in fact, contribute to that stigmatization, then, as a barrier?

**Col Rakesh Jetly:** I'm not sure that's a question for a doctor to answer. I don't have any evidence of it as being a barrier. There may be other reasons to keep it and/or remove it that are more subject—

**Mr. Randall Garrison:** You don't believe it might contribute to stigmatization.

**Col Rakesh Jetly:** I don't believe it does.

**Mr. Randall Garrison:** Okay. Thank you.

**LGen Charles Lamarre:** Can I hop in on that question as well?

Another thing that perhaps needs to be understood is that people have the impression—and I'd like to set it straight—that if you're identified as having a mental illness, somehow your career is over. Nothing could be further from the truth.

As part of the education programs that Dr. Jetly was referring to, we have quite a few leaders who have stepped forward. These are senior people in our organization who speak openly about the problems they've had with mental health. They explain that they stepped forward and asked for help from our mental health system and have really benefited from this.

When we're talking about senior folks, we're talking about general and flag officers and chief warrant officers who took that brave step, if you will, to go and get service from a system that was intended to help them, and did help them, so they could continue to go forward. This includes people on deployed operations, who are being treated for mental illnesses but are entirely operating in the way they should be. We are fortunate to have a medical system that allows us to have this resource that enables folks to go forward.

The education situation that Dr. Jetly was talking about has the full support of the chain of command. Having a lot of folks hear this and see the availability of the resources, which extend beyond just going to your doctor but include a whole network of people who are there to help you, is significant in making sure that our folks have access to help.

Phone lines, chaplaincies, chains of commands and informed colleagues and friends who have themselves seen what's available are all tools that members of the forces have to go and get help. As Dr. Jetly said, if they go and get that help, it's their best path to well-being as individuals, and of course to continuing their careers as well.

● (1200)

**Mr. Randall Garrison:** Thank you.

Colonel Strickey, you said very few charges have been laid under section 98 altogether, and only one under 98(c). Is there any evidence that this section is making a positive contribution towards discipline or maintaining order in the military?

**Col Stephen Strickey:** As I mentioned, one of the things the minister and the JAG undertook to do was to look at this. As the deputy JAG for military justice, I can tell you we are actively looking at it, but it may be a bit premature for me to comment on it at this time.

**Mr. Randall Garrison:** We suggested at the time that there was a deadline coming up and the committee was going to have to deal with the bill. If you're going to give us advice on it that's going to be useful, it has to be very soon.

**Col Stephen Strickey:** Yes, sir. Thank you. We will. We're absolutely working hard on that, sir.

**Mr. Randall Garrison:** Thank you.

**The Chair:** Next is MP Spengemann.

**Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.):** Thank you, Mr. Chair.

General Lamarre, it's good to see you again. Thank you for being with us with your team.

Thank you, all, for your service to our nation.

My questions are going to fall under the broad rubric of women and peace and security. I say this with respect to both promoting the project within the armed forces and members who currently serve, but also as a way to recruit more women into the armed forces, including international service and peacekeeping missions.

I wanted to ask if you've had a chance to review the ombudsperson's report. It's the Office of the Federal Ombudsman for Victims of Crime, and there's probably room for a name change there. Heidi Illingworth is the ombudsperson and she made recommendations on Bill C-77 this month.

Has this document been shared with members of your team?

**LGen Charles Lamarre:** I haven't personally reviewed that document. I'm not sure if my colleagues have.

**Mr. Sven Spengemann:** There's one specific point, and if you haven't had a chance to review it, I'd be curious if you could submit your views to the committee in the coming days. The recommendation I'm most interested in is her recommendation number six, which goes to division 1.1 in the bill, the declaration of victims' rights.

She recommends that we consider an appeal mechanism and the identification of an oversight body with statutory powers to review such appeals related to infringements or denials of victims' rights to ensure the effective oversight and enforcement of victims' rights.

Her main argument is that it's great that we have division 1.1. She points out that it's incredibly important to encourage women, especially, to consider the Canadian Armed Forces as a career option, but that unless there's some enforceability of these victims' rights through an appeal mechanism, they would ring hollow. They would be declaratory, and there would be no way to apply them.

I understand you haven't had a chance to review her report, but as a general principle, would the department be open to considering some sort of a mechanism that would introduce an option to appeal? If a decision is taken that takes insufficient account of a victim's rights, then could there be a way to correct it?

**LGen Charles Lamarre:** At this point, all I can actually say is that we'll take it back and have a look at it. We'd have to see the entire context to be able to understand what that might mean.

For the most part, we have methods of appeal for just about everything. If a person feels they've had a wrong done to them, there is an appeal process that applies and it should be followed up there. Oftentimes it's nested in the chain of command. They can actually go up and say, "You know what? I didn't get a chance to get this or that," and then they have a chance to go all the way up, including to the CDS.

• (1205)

**Mr. Sven Spengemann:** I'd be very grateful if I could ask for an undertaking to review the legislation with an eye on potentially existing appeals mechanisms. Sometimes there's a need to kick them up to too high a level. It might be easier to have something that's at a lower level. It might be more expeditious, the main point being that if there's a bill of rights that's not enforceable, they're really just paper rights rather than real rights.

**LGen Charles Lamarre:** We'll undertake to do that, then, and come back.

**Mr. Sven Spengemann:** Colonel Strickey.

**Col Stephen Strickey:** I'll just jump in, sorry.

As you're well aware, in the bill the proposed subsection 71.22(1) is the complaint mechanism section. To your point, and I think we may have addressed this during the last committee meeting, the provisions that are outlined in the current proposed legislation mirror sections 25 to 29 of the Canadian Victims Bill of Rights. I will cite 71.22(2), complaint mechanisms, in which regulations that will be made by the Governor in Council could, among other things, provide for three things: the review of complaints involving alleged infringements under the declaration of victims' rights in this bill; the power to make recommendations to remedy such infringements; and the obligation to notify those victims of the result of those reviews.

Again, the principle behind that particular section is a mirror of the current legislation found in the Victims Bill of Rights.

**Mr. Sven Spengemann:** The procedural gap, if there is one, might be to connect division 1.1 with proposed new subsection 71.22(2) through some sort of reference that this would be the mechanism under which the review would take place.

**Col Stephen Strickey:** Yes, sir.

**Mr. Sven Spengemann:** Okay. That's super helpful. Thank you for that.

I also wanted to ask you about two mechanisms that I think are particularly important for women serving in the Canadian Forces today and women contemplating the Canadian Forces as a career. Those are the right to protection and the right to restitution. The right to protection, in common language, would be a restraining order.

Can you comment on the way this is currently being done pre-Bill C-77 if somebody needs to be protected from another member of the armed forces and what Bill C-77 adds?

The same is true for the right to financial restitution. How significant is that? Is that entirely new legal turf through Bill C-77?

I have about two minutes remaining.

**Col Stephen Strickey:** In terms of restitution, I think we were asked that question. I believe you asked that question, actually, on the aspect of restitution.

If you give me one—

**Mr. Sven Spengemann:** There wasn't a clear sense at the time whether this was numerically significant—

**Col Stephen Strickey:** I'll let Colonel Lortie fill in the gaps, but generally speaking vis-à-vis restitution, since restitutions have been allowed.... You may recall that on September 1, 2018, through Bill C-15, the restitution provision was brought into force. Since then, five courts martial have been completed. None featured a restitution order. Certainly Bill C-77 will allow a restitution to be made at the request of a victim rather than just the director of military prosecutions. It will also require the court martial to inquire of the prosecutor, after a finding of guilt and before imposing the sentence, if the victim is seeking restitution.

That's the restitution aspect.

**Mr. Sven Spengemann:** Just to put it in perspective, it doesn't seem that financial restitution is a significant gap to close within the Canadian Forces.

**Col Stephen Strickey:** I would say that statistically, you know, these are fairly early days. Only five courts martial have taken place thus far, so it's hard to identify any trends vis-à-vis the restitution.

**Mr. Sven Spengemann:** On protection orders, how significant an issue is the need to protect members from each other?

Is the protection order mechanism under Bill C-77 something that's new?

**Col Stephen Strickey:** The protection mechanism adds a number of provisions into really a mirroring of the Criminal Code with a number of provisions such as non-production orders, assisting witnesses to testify behind a screen, with an aide. There are mechanisms.

We will certainly undertake to look at what's currently in the act to make sure that I give you a complete answer. But certainly in terms of the bill, the bill does contemplate for a number of protection mechanisms that mirror the Criminal Code, which further legislates and codifies what is currently perhaps in practice in the common law. But to ensure that I'm giving you the proper answer, I would ask that maybe I could get back to you on that.

• (1210)

**Mr. Sven Spengemann:** Sure.

I think that's my time, Mr. Chair.

**The Chair:** We're going to go to five-minute rounds of questions now.

The first one will go to MP Robillard. The floor is yours.

[*Translation*]

**Mr. Yves Robillard (Marc-Aurèle-Fortin, Lib.):** Thank you, Mr. Chair.

My thanks to our witnesses for being here this morning, and a special thank you to Lieutenant-General Lamarre for his excellent French translation of his presentation. This is particularly welcome these days.

My first question is this: how does Bill C-77 expand upon the right to information currently held by victims within Canada's military justice system?

**Col Stephen Strickey:** Could you clarify your question, please?

**Mr. Yves Robillard:** How does Bill C-77 expand upon the right to information currently held by victims within Canada's military justice system?

**Col Stephen Strickey:** Certainly, sir, the right to information provides victims with general information about the military justice system and the services and programs to which they are entitled. Then, each victim is entitled to updates on the investigation and the place where the court martial will be held.

[*English*]

The right to information will also include the right to obtain information regarding an offender, while they were in, or released from, a service prison or detention barracks. Certainly, the bill calls for not only the general right to information, but some specific rights to provide further information for victims.

I would add as well, in terms of information, that the bill calls for, as you are well aware, sir, a victims liaison officer. The victims liaison officer would be there to assist victims to understand the complexities of the military justice system, for those victims who may be unaware of the particularities of a system that they may not have had any contact with. The victims liaison officer would provide assistance in that regard.

[*Translation*]

**Mr. Yves Robillard:** Thank you.

Bill C-77 would add a new section 71.05 to the National Defence Act to provide victims of service offences with the right to have their security considered by the appropriate authorities in the military justice system.

Since the term "appropriate authorities" is not defined in the bill, who do you think will be or should be considered "appropriate authorities"?



**Col Stephen Strickey:** Thank you for your question.

First, the bill would give a judge the right to make court orders.

[*English*]

Examples would be, abstaining from communicating with the victims, non-disclosure orders, publication bans, as well as preventing an accused person from directly cross-examining the victim.

As well, the right to protection would entail three important things. The first is regarding the security and privacy of victims, as considered by military authorities, and I'll let my colleague Colonel Lortie fill in the details on that. Second, it would also provide reasonable and necessary measures to protect the victim from intimidation and retaliation. Third, as I alluded to before in a previous question, it would also identify protection and testimonial aids on request.

In all, it's envisioned that there is a cadre of mechanisms that are available to military authorities to better protect victims.

[*Translation*]

**LCol Geneviève Lortie:** In terms of the right to protection, all the rights that will be protected are recognized in the Victims Bill of Rights. Subsequently, certain mechanisms may be added to the regulations to provide information, to determine who will be able to take various tangible actions or how those actions will be taken. The regulations will subsequently contain more of that.

**Mr. Yves Robillard:** Thank you.

[*English*]

**The Chair:** There's about 20 seconds for a question and a response. If you're able to do that, please proceed.

**Mr. Yves Robillard:** No, I'm not that fast.

**The Chair:** There will be time to circle back, for those who want to add more later.

I give the floor to MP Bezan.

●(1215)

**Mr. James Bezan:** Thank you.

Colonel Jetly, as you are a medical practitioner, I want to be clear regarding 98(c) of the National Defence Act. Should we keep it or get rid of it?

**Col Rakesh Jetly:** That's not my call. I don't see it interfering with the job that our health practitioners do. I haven't seen it interfering. We care for people. I've cared for suicidal people in theatre and for different allies. As health practitioners, we look after people, victims, perpetrators and enemy combatants. We have a job to do and that's what we do.

**Mr. James Bezan:** I appreciate that. I just want to come back to some of the questions that we've been having.

As you know, we've had a number of recommendations that have come to the committee from Jean-Guy Perron, as well as from the Quebec bar association. To follow-up on some of the other questions that we've had here, there's a lot of concern around the issue in Bill C-77 regarding disciplinary infractions versus service infractions. When you compare C-77 to the old C-71 that was tabled back in

2015, is there any evidence that we need to lower service infractions to such a level versus the way we used to treat, and currently treat, those types of infractions today through summary trial?

**Col Stephen Strickey:** I can't really speak in terms of evidence, but what I can put forward, as all the committee members are aware, is that the summary trial reforms are intended to create a non-criminal, non-penal disciplinary system that will deal promptly with service disciplinary misconduct.

Certainly in terms of our allies, there was some discussion of that at the committee during the last meeting. We did take a look at that. In terms of Australia, I think this system would perhaps compare the closest. That system comprises of a summary scheme called the discipline officer scheme. I'm certainly not an expert on the Australian summary trial system, but just for the benefit of the members of the committee, from what we have researched, once people elect to have an offence dealt with by a discipline officer, they're deemed to have admitted to the infringement and they do not have the right to any type of representation.

It seems very analogous to the type of hearing that is proposed in Bill C-77, an administrative-type hearing. As well, as I discussed in my previous appearance before the committee, there are some analogies as well to the RCMP disciplinary scheme. Clearly, the needs of discipline, morale and efficiency in the Canadian Armed Forces are just that they are nuanced to the Canadian Armed Forces, but one can draw a rough analogy with the RCMP scheme.

I would point out—and again, I'm certainly not an expert in the disciplinary scheme of the RCMP—but that is a two-tier system, conduct authority and conduct board, and the balance of probabilities as well based on that system. As well, from the cursory research that we have done, there is legal representation only before a conduct board on the more serious infractions.

As I said, the balance of probabilities is the standard, and the infractions are also enshrined in the regulations. Whether we discuss theoretically a justice system or a disciplinary system, as you know, sir, there's no perfect system, but what is proposed here is a non-disciplinary, non-penal system.

**Mr. James Bezan:** Since the bill was drafted and tabled, of course we had the Beaudry decision through the Court Martial Appeal Court, and we're still waiting for the Supreme Court to pronounce on it. Have you looked at Bill C-77 since that decision through the Beaudry lens to see whether or not you feel that it cuts the mustard according to any of the changes that are being suggested in that decision?

**Col Stephen Strickey:** I think whenever there is any major decision by any court martial appeal court service—and you discussed that during the last hearing—it's the job of my division, the military justice division, to take a look at that decision in light of all of the military justice system. Certainly we do that on an active basis, not always on a daily basis, depending on the decisions, but we certainly actively look at these things. Yes, sir.

●(1220)

**Mr. James Bezan:** Thanks.

**The Chair:** Thank you.

Next is MP Fisher.

**Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.):** Thank you, Mr. Chair.

Thank you very much, folks, for being here.

This may have been touched on by Mr. Spengemann, but how does the declaration of victims' rights proposed in Bill C-77 compare, how is it the same and how does it differ from the rights that already exist through the Canadian Victims Bill of Rights? Also, is the definition of "victim" the same in both?

**Col Stephen Strickey:** In terms of the comparison to the victims' bill of rights, the Canadian Victims Bill of Rights does not apply to the military justice system. As for the declaration of victims' rights, when we're at the clause-by-clause study at some point in the future, you'll see that the vast majority of the victims' rights, as laid out in those materials, mirror those rights that are purported in the Canadian Victims Bill of Rights.

That could be said as well for the term "victim". I point out that the Interpretation Act provides that a "person" refers to both a human and a corporation, as this committee would know. The declaration of victims' rights is not meant to apply to corporations, thereby the term "victim".

I would say, as it is laid out clause by clause, to the extent possible, the bill does mirror in principle the rights afforded in the Canadian Victims Bill of Rights. There are some differences, and I did talk about one earlier, and that is the victim liaison officer. The victim liaison officer is designed, and the role will be outlined in regulation to assist victims to understand the nuances of the military justice system. There is no victims liaison officer, to my knowledge, called for in the Canadian Victims Bill of Rights.

**Mr. Darren Fisher:** Okay.

As Mr. Bezan said, Bill C-71 and Bill C-77 are very similar, Bill C-71 being the bill that died on the Order Paper in 2015.

It seems like a minor change. Bill C-77 I think uses "summary hearing" and Bill C-71 uses "summary trial". Is that accurate? If that's the case, on the surface it doesn't seem like a big change, but what is the rationale for making sure that all through the NDA, Bill C-77 would replace the term "summary trial" with "summary hearing"?

**Col Stephen Strickey:** Generally speaking, the term "summary hearing" would denote the fact that it is a non-penal, non-criminal vehicle to enforce discipline.

Also, in essence—and I'll let Colonel Lortie interject here with details—when we talk about a service tribunal throughout the current National Defence Act, in many instances it may mean a summary trial or it may mean a court martial. There are many technical amendments that are put forth in this bill to ensure the delineation between a court martial, which would obviously be penal and criminal in nature, and the summary hearing.

**Mr. Darren Fisher:** Okay.

I have one final thing. How are service infractions different from service offences?

**Col Stephen Strickey:** Again, sir, the service infraction would be non-penal and non-criminal in nature and designed to enforce

discipline, of course, and the objectives of the summary hearing system are set forth in the bill, as the committee is aware. Summary offences are just that and are laid out in the National Defence Act.

**Mr. Darren Fisher:** Thank you, Mr. Chair.

**The Chair:** Next is MP Bezan.

**Mr. James Bezan:** Thank you.

I want to come back to the issue of the penalties described under Bill C-77 for summary trials. There are still very much penal consequences, such as confinement to barracks, reduction of pay and allowances and reduction in rank, yet we don't hear anything on burden of proof beyond a reasonable doubt. Is that a violation of the charter?

**Col Stephen Strickey:** Well, I want to be very careful in offering any opinion with regard to the constitutionality of any legislation before the committee, but what I can say is that the bill that is put forth before this committee vis-à-vis the summary hearing system is designed to be a non-penal, non-criminal mechanism to enforce discipline within the Canadian Armed Forces. That said, any sanctions that are put forth in the regulations would presumably take that into account, the very nature of the non-penal, non-criminal system.

Again—and I did speak about the RCMP disciplinary scheme—while not entirely analogous to the system that we have before us for the needs of the Canadian Armed Forces, those sanctions that would include demotion, loss of pay and things like that are set forth in regulations as well. The sanctions in Bill—

• (1225)

**Mr. James Bezan:** As it currently sits right now, if somebody has been found guilty and that's going to happen, first, it has to be beyond a reasonable doubt in terms of the burden of proof and how that's defined. It was defined in that way under the old Bill C-71 as well.

Plus, they had the whole concept that if they wished to, they had the option of going to a trial by their peers through court martial. Does that option still exist in Bill C-77?

**Col Stephen Strickey:** Because the system is envisioned to be non-criminal and non-penal, there would be no—

**Mr. James Bezan:** It is penal when you have restriction to barracks. It is penal when you reduce pay. It is penal when you reduce rank.

**Col Stephen Strickey:** In terms of the minor punishments that were put forward by some of my legal colleagues in a previous meeting, confinement to barracks is not set out in Bill C-77. Any minor punishments will be set forth in regulation.

In terms of the current sanctions put forth in Bill C-77, again, those are taken into account...of a non-penal, non-criminal system. That's what is envisioned in the bill.

**Mr. James Bezan:** As you know, we've had a lot of suggestions, amendments and recommendations. I haven't counted them up from the Quebec bar association, there were so many of them. There were 15 from former justice Jean-Guy Perron.

Has there been an opportunity for the JAG to take a look at this and those particular recommendations? Do you see anything of value in having another set of eyes look at the bill with suggestions on how we move forward?

**Col Stephen Strickey:** Thank you, sir, for that question.

As I alluded to earlier, we have recently received the versions of both the Barreau du Québec and the submissions by retired Lieutenant-Colonel Perron. As always, we welcome any suggestions to make the military justice system better and we are looking at those.

Could I return just for a moment to answer one of your previous questions on sanctions. I apologize; I was fiddling through my binder. The proposed section 162.7 of the bill calls for the following sanctions, as you may be aware, sir, the highest of which is reduction in rank, then severe reprimand, reprimand, deprivation of pay up to 18 days, and minor sanctions.

The issue of confinement to barracks that was talked about before this committee would indeed be a minor sanction, as it is now in the current National Defence Act, the current Queen's Regulations and Orders. But, I would state that minor sanctions, whatever they may be, will be put forth in regulations, so the confinement to barracks as an issue is not here.

I just wanted to clarify that for the committee.

**The Chair:** That's it. We're at five minutes.

Next is MP Gerretsen.

**Mr. Mark Gerretsen:** Thank you.

Retired Lieutenant-Colonel Perron's name came up. When he was here, he mentioned that if minor sanctions be identical or quite similar to minor punishments that exist today, then some of the punishments that can be assigned include punishments of confinement to barracks and extra drill work, which would raise concerns. He further mentioned that commanding officers can confine a person to barracks for up to 21 days.

I wanted to hear from you, being the department experts on this. What are the limits on what can be imposed as punishment under minor sanctions in Bill C-77?

**Col Stephen Strickey:** Thank you for that question.

I have not personally reviewed retired Lieutenant-Colonel Perron's submission yet. That being said, the minor sanctions will be promulgated in the QRs and Os, so clearly, when we work on that, my legal experts from the office of the judge advocate general—the judge advocate general's legal experts—we will look at all of those issues in terms of what is the proper scope vis-à-vis minor sanctions taking into account the system.

• (1230)

**Mr. Mark Gerretsen:** What are the limits on them of what can be imposed?

**Col Stephen Strickey:** I think when we speak of limits, then we're suggesting legal limits and when we're suggesting legal limits, I can't really say with any clarity—and I apologize for that—from a legal perspective what the bright line is vis-à-vis charter or non-charter and things like that.

**Mr. Mark Gerretsen:** Do you see the opportunity for criticism in not being able to identify what those lines are? If the lines are drawn early, it's easier to be able to identify exactly what a threshold is and what isn't. Do you not see the benefit to establishing that?

**Col Stephen Strickey:** I clearly see that, sir, and thank you for the question.

I think it would just be improper at this stage, before this committee, to delineate what Steve Strickey thinks is a proper line or not. What I can say as the deputy judge advocate general for military justice is that should this bill be given royal assent, there will be much work done by—

**Mr. Mark Gerretsen:** —to establish that line.

**Col Stephen Strickey:** Absolutely, sir.

**Mr. Mark Gerretsen:** Okay. That's what I was getting at.

Will minor sanctions be identical or similar to minor punishments?

**Col Stephen Strickey:** Thank you, sir. That's a great question.

As set out in your clause-by-clause analysis, under 162.7, the minor punishments, and if you forgive me for just citing this line, minor sanctions would be expected to resemble the minor punishments found in article 104.13 of the QRs and Os and may include confinement to barracks, extra work and drill, stoppage of leave and/or caution.

Just to clarify, based on our discussion, sir, clearly work has to be done on an entire host of QRs and Os that are linked to this bill, and should this bill be given royal assent, then clearly, my division will be given the order from the judge advocate general to develop the regulations in conjunction with the Department of Justice.

**Mr. Mark Gerretsen:** I have one final question. This has come up in a number of different discussions today, so it might be redundant. I'll ask it as pointedly as I wanted to.

Will there be any mechanisms to oversee fairness and proportionality in terms of the punishments?

**Col Stephen Strickey:** Thank you for that question.

There is a review mechanism for the summary hearing system. In this current summary trial system, there are two mechanisms for review under 108.45 and 116.02 of the QRs and Os. I'm going by memory.

**Mr. Mark Gerretsen:** You're a great table of contents, too. You're rhyming these off so well.

**Col Stephen Strickey:** The review will be largely similar to what we have in the current system. I cited those two reviews before. The QRs and Os 108.45 review is an offender—if I can use that word non-legally—initiating a review. The 116.02 review is a CO-initiated review. Those two reviews could certainly be part of that process in regulation.

Just to clarify, the final answer is that it will be set out in regulation. I'll just go back to what I stated before.

**Mr. Mark Gerretsen:** The issue of the fairness and proportionality will be set out there?

**Col Stephen Strickey:** That's correct, sir.

**Mr. Mark Gerretsen:** I just want to take the opportunity to thank you. I've been following this as it has made its way through the House and now to committee and I'm very much looking forward to where it goes from here. I think that the work that you contributed to this point is very good and to be commended.

**Col Stephen Strickey:** Thank you, sir.

**The Chair:** We're going to have time for one more question. I've talked to Mr. Gerretsen and he's going to give that time to Mr. Spengemann.

You have three minutes, Sven.

**Mr. Sven Spengemann:** Thank you very much. I really appreciate it.

I have two questions. The first repackages Mr. Gerretsen's questions.

How concerned are you, if at all, that we—across the system, as it's currently contemplated through Bill C-77—will have the emergence of different disciplinary cultures within the Canadian Armed Forces? I'm not talking about offences. I'm talking about discipline for minor offences across different units.

Is that a concern? Is it going to happen? If it does happen, do we worry about it?

Then I have a second question.

**LGen Charles Lamarre:** I would offer to you that we're not concerned about that happening. We have a good progression of what is going to be taking place, with both the hearings and the admissibility for other things like courts martial, depending on what the offence may be.

I want to just add that I applaud the comments that were made of the discipline that was taken to undertake this bill, if you will, to put it forward. I can just add that this is so essential to us for the conduct of our operations. When we're deployed at the far end of the world, we need to have the ability to deal with things expeditiously and fairly for the individuals. I think that we will be well equipped to do so.

I've been deployed in operations where I've seen other nations that do not have it and, frankly, it stops them from being effective as an operational force. This is why it's so useful for us have something that's going forward and that is being subject to this level of scrutiny, so that we will be well equipped to undertake the tasks we have to do.

•(1235)

**Mr. Sven Spengemann:** Thank you very much for that, General.

I will now go to my second question. Would it be a good idea, in your view, to designate specific officials to be responsible for accepting and reviewing victim complaints, and require annual summaries of these complaints rather than having victims complain to whoever they are subordinate to locally? Should there be a centralized mechanism?

**Col Stephen Strickey:** Thank you for the question, sir. That's an excellent point.

As I alluded to earlier, the complaint mechanism that's set forth in the bill very much mirrors the Canadian Victims Bill of Rights. Moving forward in developing this complaints mechanism in regulations, I think it's fair to say that the office of the judge advocate general, will be looking at those complaint mechanisms that have been brought forth in other provinces vis-à-vis the way in which complaints are received.

**Mr. Sven Spengemann:** Thank you.

Thanks, Mr. Chair.

**LGen Charles Lamarre:** If I could just add one final word, Mr. Chair, on that.

The idea of keeping track of what is occurring—complaints and redresses of grievance and the like.... We do track those things, all of them, very carefully, because of course the intent is always to make sure that if something is occurring where we can identify a trend or a pattern of difficulty, we can deal with it. There's a fair amount of introspection on these types of things and on that one in particular.

Thank you.

**The Chair:** Thank you for coming.

Just to give you a heads-up, we have an hour on Thursday the 22nd, and I think we're going to call you back. Maybe not all of you, but we can determine who it's going to be.

Colonel Strickey, we have to dispose of this quickly. It's part of our responsibility. We do need some substantive advice on 98(c). We do need a little bit more substantive advice on some of these other recommendations. I know you're in a bit of a dilemma because you're the ones who will be governed by the rules that we're asking you to give us advice on, but you are the utmost of professionals, so we really value your advice on this.

If you could maybe drill into some of those other recommendations to guide us on our way forward as we recommend to the Government of Canada how we should proceed, we would really appreciate that. Again, we need more substantive advice on 98(c), because that's an important piece. Although it wasn't part of the legislation, it is an important piece to this committee and to people that have come before us—you—to talk about. We would appreciate that.

Again I'll give you a heads-up that we'll probably be asking to see you again on Thursday.

**Col Stephen Strickey:** Yes, sir.

**The Chair:** Does anyone have anything else?

Thank you all for coming, and thank you for your service to Canada.

We're going to suspend to go in camera.

[*Proceedings continue in camera*]

•(1235) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1240)

[*Public proceedings resume*]

**Mr. Sven Spengemann:** I would request that this be a recorded vote as well.

**The Chair:** Okay.

DEPARTMENT OF NATIONAL DEFENCE

Vote 15a—Debt write-off.....\$1

(Vote 15a agreed to: yeas 6; nays 3)

**The Chair:** Shall the Chair report this to the House?

**Some hon members:** Agreed.

**The Chair:** Okay, we will go back in camera.

[*Proceedings continue in camera*]

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