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# Standing Committee on National Defence

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Chair: Charles Sousa





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• (0815)

[English]

**The Chair (Charles Sousa (Mississauga—Lakeshore, Lib.)):** I call this meeting to order.

Welcome to meeting number 12 of the House of Commons Standing Committee on National Defence.

Pursuant to the motion adopted on October 23, 2025, the committee is meeting to resume its consideration of Bill C-11, an act to amend the National Defence Act and other acts.

Today's meeting is taking place in a hybrid format pursuant to the Standing Orders. Members are attending in person and remotely using the Zoom application.

Before we continue, I ask all persons and participants here in the room to consult the guidelines on the table. These measures are designed to help prevent audio and feedback incidents and to protect the health and safety of all participants, including the interpreters.

I would like to remind the witnesses and members to please wait until I recognize you by name before speaking. For those participating by video conference, click on the microphone icon to activate your mic and please mute yourself when you are not speaking. For those on Zoom, at the bottom of your screen, you can select the appropriate channel for interpretation: floor, English or French. For those in the room, please use the earpiece and select the desired channel. Again, all comments should be addressed through the chair.

For members in the room, if you wish to speak, please raise your hand. For members on Zoom, please use the "raise hand" function. The clerk and I will manage the speaking order as best we can. We appreciate your patience and understanding in this regard.

I would now like to welcome our witnesses: Colonel-Maitre Michel Drapeau, professor; retired Lieutenant-Colonel Rory Fowler; Megan MacKenzie, professor and chair in international law and human security; and Charlotte Duval-Lantoine, vice-president, Ottawa operations, Canadian Global Affairs Institute.

Professor Drapeau, I'd now like to invite you to make your opening statement. You have up to five minutes.

**Colonel (Retired) Michel Drapeau (Professor, Faculty of Law, University of Ottawa, As an Individual):** Mr. Chair and committee members, let me open by thanking the members of the committee for giving me the honour of appearing once again before you on a matter that has been of continuing interest to me as someone who served in the armed forces for 34 years before becoming a

lawyer, an author and a law professor specializing in Canadian military law.

As many of you probably know, I have long advocated for the very changes proposed by this legislation. I am, therefore, pleased to note my high level of satisfaction with the contents of Bill C-11 in transferring the jurisdiction over sexual offences in Canada to civilian courts, which mirrors the text of Bill C-66, which was tabled in a previous Parliament. To that end, permit me to congratulate the Minister of National Defence, the Hon. David McGuinty, as well as his predecessor, for tabling this much-awaited legislative reform. Overall, therefore, I accept and support the provisions of Bill C-11 in their entirety.

Also, in preparation for my testimony here this morning, I have listened to the testimonies provided during meeting number 10, which took place on October 27, by the Minister of National Defence, the deputy minister, the chief of the defence staff and other officials. Following this discussion, I apprehend that, at the end of the day, there will be a lack of legislative direction to the exact procedure to be followed by the Canadian Forces in cases of sexual offences committed by Canadian Armed Forces personnel taking place outside of Canada's territorial boundaries.

Obviously, such a significant regulatory gap cannot be corrected by Bill C-11. However, given the multiplicity of scenarios in which sexual offences by armed forces personnel can take place in international waters, in a foreign country's port or during operational deployment in foreign lands, in my opinion there is a need to provide clear legislative direction as to who will investigate and prosecute sexual crimes taking place on aircraft in flight, on vessels sailing beyond Canada's borders and in army units in formation deployed in foreign lands.

In the absence of such legislation, sexual crimes committed abroad by Canadian Forces personnel may continue to be investigated and, perhaps, prosecuted by the military justice system, which has already been found to be seriously deficient in this specific area by several independent reviews.

Thank you, Mr. Chair and members, for listening. I look forward to your questions.

• (0820)

**The Chair:** Thank you, Mr. Drapeau. I appreciate that.

Mr. Fowler, you now have five minutes for your opening statement.

**Lieutenant-Colonel (Retired) Rory Fowler (Lawyer, As an Individual):** Thank you, Mr. Chair, and I'll echo my colleague's thanks for the invitation to appear before you today.

Bill C-11 is presented as a solution to military justice problems relating to sexual misconduct in the Canadian Forces. I contend that not only will it fail to solve the actual issues that the Canadian Forces face, but it will generate additional problems.

The principle challenge faced by the Canadian Forces, not just in terms of sexual misconduct but in terms of military justice broadly, is impunity arising from deficiencies in enforcing accountability. Removing jurisdiction over select criminal offences in select circumstances will not aid in improving accountability. Instead, it will provide a convenient excuse for inaction or, alternatively, overreaction. It will lead to further impunity. It will undermine fairness and access to justice for all members of the Canadian Forces.

We have been down this road before. Prior to the enactment of Bill C-25 in 1998, the code of service discipline did not have jurisdiction over sexual assault when it was alleged to have occurred outside Canada. There was outrage about the Canadian Forces' seemingly inability or lack of motivation to address this issue and, following a variety of studies, including by former justices of the Supreme Court of Canada, Parliament amended the National Defence Act to remove that limitation.

The purpose of the code of service discipline is to maintain the discipline, efficiency and morale of the Canadian Forces. For over 30 years, the judge advocate general and the director of military prosecutions have campaigned through policy development and litigation to encourage the adoption of a broad application of the code of service discipline. They successfully eliminated the military nexus test. The military justice system has jurisdiction over criminal offences that have little or no connection to the Canadian Forces save the identity of the accused. Parliament has reinforced that broad application of jurisdiction, and the Supreme Court of Canada has upheld it.

Now, however, we are told that the jurisdiction should be curtailed, but only for sexual offences and only when they are alleged to have occurred in Canada. This is incongruous with the theory underpinning military justice in Canada. Jurisdiction will remain where such allegations arise outside Canada, even though military judges, prosecutors, defence counsel and military police will now have less experience investigating, prosecuting and presiding over such matters. Those prosecuted for such offences before civil courts of criminal jurisdiction will no longer have access to the defence counsel services free of charge, which fetters access to justice.

Why are the current government, the leadership of the Canadian Forces and the justice advocate general abandoning this principle in a piecemeal fashion? Why is the code of service discipline fit for function and fit for purpose for other forms of criminal misconduct but not for sexual misconduct? Why is it fit for purpose for allegations arising outside of Canada?

If the core problem is a lack of accountability for CF decision-makers, there has been no credible explanation as to how these ju-

risdictional changes will improve accountability. That is because they won't, because they can't.

If the prevailing wisdom is that CF leadership cannot be trusted with enforcing discipline relating to sexual misconduct, then how can it be trusted with leadership generally? How can it be trusted with applying administrative measures where sexual misconduct arises? How is this supposed to improve accountability? How does this jurisdictional change encourage or empower leaders to act? How will it ensure that they act fairly, in a timely fashion and reasonably?

A consistent theme in the discourse that followed the Arbour report was that CF leadership consistently failed to create an environment in which victims of sexual misconduct felt safe to raise concerns and complaints and that the same leadership consistently failed to take appropriate action. Bill C-11 will not correct that problem and may well set conditions to perpetuate or aggravate it by passing the fault to the civilian system as opposed to attacking the source of the problem.

The written submissions that I have provided to the committee, which I believe are still in translation, focus on the myths and mischaracterizations upon which many of these problematic recommendations have been predicated. These include incongruity between the proposed amendments and the purpose of the code of service discipline and the myth of the greater benefit of supposed greater independence for select actors. It also identifies the lack of safeguards regarding implementation of those changes.

● (0825)

The problem the Canadian Forces face is not the jurisdiction of the code of service discipline. The problem does not arise from the tools that are available to CF leadership. The problem is a failure of leadership and a failure to hold leaders accountable.

Junior CF personnel are routinely admonished in administrative and disciplinary processes for a failure to uphold the Canadian Forces' code of values and ethics. Ironically, CF statutory decision-makers have frequently failed to uphold those same values and ethics when punishing subordinates for such failures.

As is detailed in my written submissions, there are some positive elements that arise out of Bill C-11, such as removing judges from the jurisdiction of the summary process. However, ultimately, this isn't just about sexual misconduct. The central issue is accountability. Bill C-11 does not improve the mechanisms to hold CF leaders accountable for inaction or bad decision-making. On the contrary, it provides them with a convenient excuse to avoid action.

Thank you, Mr. Chair. I await your questions.

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

Professor MacKenzie, you have up to five minutes. I hope you're all set up.

**Professor Megan MacKenzie (Professor and Simons Chair in International Law and Human Security, Simon Fraser University, As an Individual):** I am.

Good morning. Thank you, Chair and members of the committee, for the opportunity to appear today.

I have been studying military sexual violence, which is the all-encompassing term I prefer to use in my work, for nearly two decades. Like Mr. Drapeau, I've seen, through this work, the importance of moving cases of sexual violence outside of the internal justice system, not only for the Canadian Armed Forces but for other armed forces.

I'll remind you that the military was given its own justice system because it's set to hold itself to a higher standard than the civilian context. Given that we have now had decades of high levels of sexual crimes and low levels of accountability, I think it's clear that this rationale for an internal system is no longer valid. I congratulate and support Bill C-11. I am encouraged to see the proposals and the ongoing efforts to address sexual violence.

The measures outlined in this bill reflect long-standing recommendations that come from decades of advocacy and research. Moving cases of sexual violence to the civilian justice system has been called for repeatedly. It was a key recommendation of the Deschamps report in 2015, the Fish report and the 2022 Arbour review.

Another essential element is the new appointment process of four select senior CAF leaders. This change is especially important. As we saw in 2021, when 12 senior members of the Canadian Armed Forces were facing allegations of sexual misconduct, including two chiefs of the defence forces, it became nearly impossible to understand who was meant to investigate or prosecute these cases. The current structure, where the chief of the defence staff appoints the provost marshal and many other senior officers, creates conditions where conflicts of interest are unavoidable. These aren't political appointments; they are integrity measures to ensure that the system is capable of holding its most senior members accountable.

While I welcome these important steps, I want to underscore that this bill represents only one piece of the puzzle. Addressing sexual violence in the Canadian Armed Forces requires attention to broader issues, as has been raised, including systemic racism, sexism and other forms of entrenched discrimination.

It's also important to apply a critical eye to claims of progress. I would say that it's a generous interpretation to say that 36 of the 48 recommendations made by Justice Arbour have been fully implemented. Many of these are better described as under way or implemented in spirit, rather than to the letter. There are still no clear guidelines on what happens when victims go to the Canadian Human Rights Commission, and there has been limited attention to how that body will be resourced to handle potential new cases.

Promises of culture change sit alongside evidence of ongoing systemic racism, sexism and misogyny, which often manifests in online CAF communities. Culture change may be incremental, but

it cannot take forever. For the last three decades, we have had many senior leaders talk about the time that will be needed to make these changes. It simply cannot take forever.

I also want to remind the committee that the Justice Fish report in 2021 reiterated many of Justice Deschamps' 2015 recommendations, which, as she herself noted, largely gathered dust for too long. This pattern of delay undermines confidence.

From my own research, I've seen how institutions use narrative to manage scandal. The problem is acknowledged and reforms are announced, yet the structural barriers to justice persist.

It's important to note that from research, approximately 80% of victims of military sexual violence never report. Many who do report experience retraumatization through long trials, institutional resistance and cases that end without conviction. In some of the Canadian Armed Forces high-profile cases, we even see alleged perpetrators countersuing. This pattern has a chilling effect and reinforces the perception, to victims, that accountability is elusive.

As I often emphasize in my work, we need to pay attention to the full life cycle of military sexual violence: the environment that fosters it, including military culture, hierarchy, racism and tolerance of misconduct; the incident itself, including how data are collected, how victims report and whether they have access to information and support; and finally, the response, which includes the justice process, the accountability for perpetrators and adequate restitution and care for survivors. This bill addresses one vital piece of that life cycle but without equal focus on the others, especially prevention and cultural transformation, we risk another cycle of partial reform.

● (0830)

I commend the committee for taking this step. I urge you to ensure this implementation is treated as one piece of a larger puzzle and that this process is guided by data, transparency and survivor-centred principles.

Thank you.

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

Ms. Duval-Lantoine, you're the last to give us the opening remarks in five minutes.

**Charlotte Duval-Lantoine (Vice-President, Ottawa Operations, Canadian Global Affairs Institute):** They're tough acts to follow.

Mr. Chair, vice-chairs, members of the committee, it's an honour being in front of you today.

I will be doing my remarks in English, but, as you can hear, I'm French. It will be my utmost pleasure to answer your questions in French.

My remarks today will focus on whether Bill C-11 helps prevent sexual misconduct and violence, what I view as the core nature of this bill, and how to maximize its effects.

To start, I would push back against the government's framing that Bill C-11 is fundamentally changing the culture of the Canadian military in a way that will minimize sexual violence. That being said, it does not mean that Bill C-11 is not worth passing. Despite bringing necessary and long-sought-after changes of jurisdiction for the investigation and prosecution of Criminal Code offences of a sexual nature, this bill will not help the military prevent sexual violence in its ranks. What it does, though, is give people with lived experience the opportunity to seek justice independent from their chain of command in the case of an offence happening on Canadian soil and to stop using a system they have deemed untrustworthy and that has reinforced institutional betrayal.

This is where we get to the history and the intent of this bill. Most of the amendments proposed in Bill C-11 are in response to the third independent review of the National Defence Act, completed by retired justice Morris Fish in 2021. The goal of this review was to evaluate whether the military justice system is free and protected from undue influence; is effective in maintaining discipline, efficiency and morale; and remains legitimate in the eyes of service members. Changing the jurisdiction of investigations and prosecution of offences of a sexual nature responds to those requirements. Even if it is Justice Arbour who recommended this change, it is aligned with the intent of Justice Fish's review and one of his recommendations, although making it permanent. This makes this bill worth adopting.

I would like to turn your attention now to an underappreciated aspect of Bill C-11, and this is that it is requiring more direct involvement from the Governor in Council in military justice affairs. The challenge is that the Governor in Council has not been the most prompt at appointing key decision-makers. It took four years to appoint our current chief military judge. It took over a year to appoint our current DND/CAF ombudsman. This needs to change. Those positions are fixed terms. It should be easy to have those appointments happen in due time, yet the reality is different.

This bill does address that challenge for the positions of director, defence counsel services, the director of military prosecutions and the provost marshal by imposing a 90-day period for the Governor in Council to appoint someone in these roles. In that vein, I recommend the bill be amended to include the same provision for any Governor in Council appointments related to military justice. Beyond that, it will be upon Parliament and the members of this committee to ensure these appointments are done within the time frame mandated by law.

I will leave you with that.

Thank you. I am now looking forward to your questions.

• (0835)

**The Chair:** Thank you very much for your remarks.

Before we begin with questions, I'd like to advise the members of the committee that we are being scrutinized by the former chair of this committee, Mr. John McKay.

**James Bezan:** No, he's just scrutinizing you.

**Some hon. members:** Oh, oh!

**The Chair:** He's one of the longest-standing members of Parliament, who has since retired, but he still roams the halls—and here he is.

Welcome to our committee, Mr. McKay.

**Some hon. members:** Hear, hear!

**The Chair:** Mr. Anderson, we're going to start off with you for the first six minutes of this first round.

**Scott Anderson (Vernon—Lake Country—Monashee, CPC):** Thank you very much.

Mr. Fowler, you've been critical, I think, of the entire operation, categorizing it as a failure of leadership rather than a failure of process. I think Canadians, regardless of whether we agree with it or not, deserve to hear a little bit more fully what your thesis is.

Professor MacKenzie made the statement that high levels of sexual violence and low levels of conviction in the CAF have been a problem. Would you agree with that statement?

**LCol (Ret'd) Rory Fowler:** It's a loaded statement because the objective of any justice system, whether it's a military justice system or a criminal justice system, is not a 100% conviction rate. If you want a system that has a 100% conviction rate, there are a couple of countries, such as the Republic of North Korea and China. They have systems that ensure a high level of conviction. That's not the objective of a criminal justice system.

I do agree when people observe that the conviction rate in the military justice system is in fact lower—not by as much as some people suggest—than the civilian criminal justice system, but the objective of any criminal justice system is to ensure that those who are guilty are found guilty, and those who are not are not found guilty. There were some high-profile prosecutions of senior members of the Canadian Forces with some remarkable acquittals. To suggest that there is a chilling effect when people who are wrongly accused seek compensation for being wrongly accused fails to recognize that some people who are charged with criminal offences are not, in fact, guilty.

The objective of any system needs to be fair and needs to be reasonable. It needs to have the confidence of not just of victims and complainants, and I do agree with Professor MacKenzie that victims and complainants must have confidence in the system that is being used. Those people who are brought before the system and the Canadian public also have to have confidence in that system.

One of the reasons I suggest—and I posited this in my blog and, in fact, it's in the submissions I placed before the committee—that the conviction rate for the military justice system might be somewhat lower than the civilian justice system is access to justice. Members of the Canadian Forces who are charged with code of service discipline offences, whether they're related to sexual misconduct or any form of misconduct, when they are tried for those offences before a court martial, are represented by the capable lawyers at defence counsel services.

I can point to a perfect example of the exceptional service they provide.

In the case of *King v. Vu*, which went all the way up to the Supreme Court of Canada, *Vu* was found not guilty at court martial. It was upheld by a 2:1 majority at the Court Martial Appeal Court of Canada, and it was upheld by a 6:1 majority at the Supreme Court of Canada, all because of the exceptional service of Major Francesca Ferguson, who was counsel for the accused at each of those levels.

I would suggest that the conviction rate in the military justice system is lower than that in the civilian justice system because members of the Canadian Forces have access to exceptional counsel free of charge. Those same members of the Canadian Forces would not be eligible for legal aid in most, if not all, provinces and territories of Canada. They would be paying tens of thousands of dollars for the quality defence that people like Major Ferguson provide.

● (0840)

**Scott Anderson:** Thank you very much.

You also mentioned, I believe, the code of service discipline and how it differs from civilian life. You described this as piecemeal dismantling of the system itself. Can you explain the importance of the code of service discipline to the military?

I don't know that there's a lot of military experience around the table, and I think Canadians need to understand that difference.

**LCol (Ret'd) Rory Fowler:** If I may, Mr. Anderson, I'll explain that and I'll explain my incredulity about why the current judge advocate general, who has been a staunch advocate for a broad application of the code of service discipline, is now changing his tune. It's because the rationale behind the code of service discipline, which predates Bill C-25 and when most of these issues were previously brought before committees, is to maintain a disciplined force. It's there in the legislation. It's to “maintain the discipline, efficiency and morale of the Canadian Forces.”

It has a broad application. The rationale behind applying it, even in circumstances that don't fall within what used to be called the military nexus—in other words, criminal offences that might arise off base, where the only person involved in the criminal activity is a member of the Canadian Forces and the victims of such criminal activity are not members of the Canadian Forces—and including it in the code of service discipline is that any ill-disciplined conduct by a member of the Canadian Forces affects the discipline of the Canadian Forces.

That is the song that has been sung by the CAF leadership and the judge advocate general for nearly 30 years. Frankly, it could be even longer. I believe it was sung even when my colleague Colonel Drapeau was in the Canadian Forces.

As a result, when we take a specific set of offences and remove them from the jurisdiction in specific circumstances, we're not actually addressing the core of the problem. You've heard it from all of the witnesses here. The core of the problem isn't the tools that are available to the Canadian Forces. The core of the problem is holding leaders accountable for inaction, bad decision-making or over-reaction.

Also, as it has been alluded to by some of the other witnesses, you can't legislate good leadership and you can't legislate culture change. What you can do is have legislation that allows you to hold leaders accountable.

I agree with Ms. Duval-Lantoiné. As a perfect example, there need to be time limits and limitation periods for people to take action to appoint key personnel, even to provide reports. The judge advocate general has consistently—

**The Chair:** Mr. Fowler, I apologize. There's a time limit here too.

**LCol (Ret'd) Rory Fowler:** I understand, Mr. Chair.

If I may, though, the key point here—and I believe my colleagues would agree with me—is that a limitation period or a time limit imposed on any statutory actor that has no real and significant manifest consequences for that decision-maker, is not actually a limitation period; it's just a suggestion.

**The Chair:** Mr. Watchorn, you have up to six minutes.

[*Translation*]

**Tim Watchorn (Les Pays-d'en-Haut, Lib.):** Thank you, Mr. Chair.

I want to thank all the witnesses for their remarks. Their comments are quite informative.

I'll start by drawing a parallel between Bill C-11 and the legislation recently passed in Quebec concerning the creation of a specialized court for sexual and domestic violence. The National Assembly unanimously passed this legislation on November 26, 2021. It came into effect on November 30, 2021. Its main purpose is to restore confidence in the justice system for victims of sexual and domestic violence. It also seeks to give these individuals integrated and tailored psychosocial and legal services starting from their initial contact with the police.

I see a strong parallel between the Quebec government's legislation, which was passed unanimously, and Bill C-11, which we're studying today.

I would like Professor MacKenzie to share her opinion on the need for a specialized court to understand the experiences of victims of sexual violence.

I would also like her to explain how Bill C-11 will improve this service.

• (0845)

[English]

**Prof. Megan MacKenzie:** I think this also responds in some ways to Mr. Fowler's comments.

One thing that is very different about the internal military justice system that results in a failure for victims is that there is essentially an internal monitoring. What happens—and we've seen examples through the Canadian case and other international cases that I have studied—is that you have peers, fellow service members, investigating and addressing a problem that is systemic. That is the core reason that moving to a civilian system may not be perfect. The civilian justice system has not been perfect at convicting sexual violence either. The core problem that it solves, first of all, as Madame Duval-Lantoine mentioned, is the fact that, over the last 20 years, victims have lost faith in the military justice system.

Also, there's a fear of nepotism. There's a fear of colleagues investigating each other. We do know that, at the highest ranks, we often have service members who have served for a long time and may lack the ability to investigate and hold each other accountable in a way that moves outside of that justice system. I think there are two ways that it helps address.... It moves it outside of a system that is a very closed system that can lead to self-reflection and a lack of objective investigations. It also provides victims with an option to move to an institution that they may have more faith in if they have been abused within the system.

[Translation]

**Tim Watchorn:** Thank you for this response.

Ms. Duval-Lantoine, in your opinion, how will Bill C-11 give women confidence and make it easier to recruit them into the military?

**Charlotte Duval-Lantoine:** There isn't really a direct link between cases of sexual misconduct or sexual violence and women's willingness to join the Canadian Armed Forces. There isn't really any published research on this topic.

That said, it sends the message that the armed forces are taking much more active and proactive measures in this area. Once this bill is passed, we'll have to see whether it has the desired effect.

We can't really know whether legislation of this nature will fundamentally change the behaviour of Canadian women. Furthermore, we don't know whether all Canadians are tuning in today to find out what Bill C-11 can do for them.

**Tim Watchorn:** The government is responsible for sending the message that it supports victims to ensure that the majority of people understand this.

Is that right?

**Charlotte Duval-Lantoine:** Yes. That's right.

I'll repeat my earlier comments. This legislation won't prevent sexual violence from occurring within the Canadian Armed Forces. This process will be really necessary to make effective progress within the Canadian Armed Forces.

**Tim Watchorn:** Thank you.

Mr. Drapeau, we had the opportunity to chat briefly before the committee meeting began. You told me a bit about your concerns regarding the transfer of research outside the country.

How will the military services make the connection?

In practical terms, how will they preserve the evidence in order to take civil action when the files return to Canada?

**Col (Ret'd) Michel Drapeau:** First, I have serious doubts about the competence and experience of military police officers when it comes to conducting investigations in this area.

If Bill C-11 is passed, these military police officers will lose the experience gained from investigating crimes committed on Canadian soil. Military judges and the military police will have considerably less experience, and they already don't have much.

The victims outside the country will fall into a somewhat grey area. They may not know how the police or judicial authorities will handle their complaints, if at all.

I've represented a number of these victims. I have my doubts, particularly in the case of victims assaulted outside the country. For example, one woman was raped in a European country where Canadian forces were deployed. When she was sexually assaulted, there were no female medical staff available to take care of her and no rape kit on site. She couldn't be given the opportunity to collect evidence.

She was sent back to Canada, a process that took three or four days. In the end, her complaint was never followed up. There was never any trial. No police investigation took place. She has been living with this ordeal ever since, without even a modicum of justice from the military justice system.

• (0850)

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

[English]

Mr. Savard-Tremblay, you have six minutes.

[Translation]

**Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot—Acton, BQ):** Thank you, Mr. Chair.

I want to thank all the witnesses for participating in our study. I also want to thank them for their remarks.

Mr. Drapeau, I'll make the connection between your comments and the transfer of jurisdiction set out in the bill.

I think that we all agree that it's a good idea to take away the military's ability to set its own rules in this area in order to avoid conflicts of interest. You personally criticized the excessive concentration of power in the hands of the judge advocate general.

In your opinion, is the imbalance caused by this concentration of power still being corrected? Does the minister have too much power?

I gather that we're transferring this jurisdiction to the ministerial power because we no longer want the military to have it.

That said, is it a good idea to put this in the hands of politicians?

**Col (Ret'd) Michel Drapeau:** Yes, it's a good idea.

It's high time that Parliament addresses this issue. This has been done. It sends an important message to the military justice system and to military leaders. They must understand that they don't have full control over the administration of justice in cases involving military members both in Canada and abroad.

It will also send a message to society as a whole. Military members are recruited from this society. In the event of an incident such as sexual assault, the victim should be treated with a minimum level of respect. This doesn't happen under the current system.

Furthermore, the investigation should be conducted by an independent police force and an independent justice system that includes experts. These aren't my words. These are the words of Ms. Deschamps, Ms. Arbour and Mr. Fish.

**Simon-Pierre Savard-Tremblay:** In 2021, you recommended the creation of the position of inspector general of the armed forces.

Given Bill C-11, does this recommendation still stand?

Is it still relevant?

**Col (Ret'd) Michel Drapeau:** Yes, Canada should appoint an inspector general who can take charge of the situation. This person would listen to victims and would have an open mandate. The person could do whatever seems necessary to investigate. The person would also be mandated to report to various individuals, including members of Parliament, as needed.

A number of countries in the North Atlantic Treaty Organization, or NATO, have a similar position. As Justice Létourneau recommended during the commission of inquiry into the deployment of Canadian Forces to Somalia, specifically with regard to the Canadian Airborne Regiment in Somalia, I believe that an inspector general position should definitely be created.

If it were up to me, I would implement this today.

**Simon-Pierre Savard-Tremblay:** Do you have a better idea of which entity would be responsible for appointing this inspector?

**Col (Ret'd) Michel Drapeau:** It would be Parliament. The person would report directly to Parliament, probably to this committee.

We hope that this person will be a type of "Maytag repairperson". The person's mere presence and ability to investigate in the various military formations could have a deterrent effect.

In the event of a serious incident where a victim must bypass the chain of command to file a complaint, the investigator would be empowered to receive the complaint, investigate and take appropriate action.

• (0855)

**Simon-Pierre Savard-Tremblay:** Good to know.

Should the creation of this position be included in Bill C-11?

**Col (Ret'd) Michel Drapeau:** If I were a member of your committee, I would recommend it.

**Simon-Pierre Savard-Tremblay:** Thank you for the recommendation. We're here to study Bill C-11 and to see how we can improve it. I'm sure that all the committee members, regardless of their political affiliation, will take your idea into consideration.

You referred to Justice Deschamps' report and to Justice Arbour's report. Those reports described a culture of complacency. I think that this goes without saying. The evidence is there.

That said, could we consider implementing accountability mechanisms, particularly in this area?

**Col (Ret'd) Michel Drapeau:** You could certainly consider it.

As I said, I have serious doubts about how sexual crimes committed outside the country will be handled.

As for cases involving sexual crimes committed in the country and referred to civilian police and judicial authorities, I don't think that any further specific reports are necessary.

**Simon-Pierre Savard-Tremblay:** Bill C-11 would completely remove the Canadian Armed Forces' jurisdiction to manage this issue. I think that this also falls in line with your recommendations. Everyone here agrees on this. However, military involvement could still be considered, particularly when it comes to securing evidence and making arrests.

How can we ensure that no grey areas remain when we remove this jurisdiction, a removal that we all support?

How can we ensure that, in practice, these grey areas won't affect the investigations conducted by civilian authorities?

**Col (Ret'd) Michel Drapeau:** If an inspector general position is created, this person could conduct an investigation when the alarm sounds and their services are requested.

**Simon-Pierre Savard-Tremblay:** Bill C-11 proposes to remove sexual offences from the jurisdiction of the military justice system. However, it retains the military justice system's jurisdiction to try individuals for other serious offences, such as acts of violence, abuse of power and non-criminal harassment.

My colleague asked a question earlier about Quebec's approach to this issue. We were told that sexual assault was a different type of crime and that it required a level of sensitivity not generally found in the justice system.

Nevertheless, would it be a good idea to keep non-sexual offences within the jurisdiction of the military justice system?

**Col (Ret'd) Michel Drapeau:** I think so.

Military members may be deployed to theatres of operation abroad. For centuries, history has shown that a proper justice system must accompany troops to these locations.

This was certainly the case during the Second World War and during the deployment of Canadian troops to Korea. It will likely also be the case when military operations take place in the future.

In my opinion, the military members need this internal justice system to ensure that justice is served without having to bring all the accused individuals and witnesses back to Canada every time a trial must take place.

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

[*English*]

Mr. Kibble, you have up to five minutes in this second round.

**Jeff Kibble (Cowichan—Malahat—Langford, CPC):** Thank you, Mr. Chair.

Thank you to the witnesses for being here and for bringing your expertise on such an important topic.

Mr. Drapeau and Mr. Fowler, thank you for your service to Canada.

Justice Deschamps' recommendation eight, with regard to civilian and military prosecution frameworks, recommends allowing victims—I prefer to use the term “survivors”—the choice to request civilian or military prosecution.

Mr. Fowler, could you speak to that? I've heard from multiple survivors that they are seeking this as an option for Bill C-11.

**LCol (Ret'd) Rory Fowler:** What we have to remember, and I think people forget this, is that for the past 25-plus years since the enactment of Bill C-25, which provided jurisdiction under the code of service discipline for sexual misconduct arising in Canada, victims, survivors and complainants—whatever term you want to use—have always had that option. There's been concurrent jurisdiction since 1999 for people to bring their complaints to the military justice system or the civilian criminal justice system.

As I've said before several times, the first decision-maker when it comes to enforcement of criminal law relating to sexual misconduct is not a government decision-maker, it's not an investigator, it's not a prosecutor and it's not a lawyer. The first decision-maker is the complainant himself or herself—the victim or the survivor. As it stands right now, notwithstanding policies that have been promulgated by previous ministers of national defence, the complainant gets to choose whether the process is going to be in the civilian criminal justice system or the military justice system.

Bill C-11 takes that option away from them. The fact is that many complainants and survivors went to the military justice system, and some to this day say they'd prefer to go to the military justice system because it makes sure the military is informed of their complaint and can take action. They are going to be deprived of that because of Bill C-11. We have to remember that the code of

service discipline doesn't operate as an independent silo; it operates in a larger mosaic of enforcement within the Canadian Forces along with other disciplinary regimes and along with other administrative regimes.

I will tell you right now that if the military justice system is deprived of prosecuting sexual offences arising in Canada, the chain of command will still feel compelled to act. The only problem is that they're going to be using those tools available to them that are ill-suited to prosecuting sexual misconduct. They're going to use administrative reviews under DAOD 5019-2 to prosecute allegations of sexual misconduct, and those aren't suited to testing contested evidence.

What Bill C-11 is going to do is tell those survivors who want the military justice system to deal with their complaint to go elsewhere. When people are dissatisfied with the civilian criminal justice system and the outcomes there, what then?

• (0900)

**Jeff Kibble:** Thanks, Mr. Fowler.

If I may follow up on that, since December 2021, criminal offences of a sexual nature have been transferred to civilian courts. Have you seen any data on how many cases have been sent to the provincial system? Do you know if any of those have been thrown out because of the Jordan framework?

**LCol (Ret'd) Rory Fowler:** There's relatively little public data. I know the Canadian Forces are tracking this. They're not making it public; one questions that, if the whole point of this is transparency. Cases have been rejected because of delay, including some high-profile ones.

For those of you who remember the prosecution of Lieutenant-General Trevor Cadieu in Kingston, which is where I'm from, that prosecution was stayed for delay. Justice O'Brien of the provincial court of Ontario, who was the presiding judge, delivered a judgment that was scathing about the conduct of the military police in continually dragging their heels on providing disclosure to the Crown. This then prevented the Crown from disclosing that to the defence counsel. To add insult to injury, the then Canadian Forces provost marshal attempted to blame the Crown attorney for the delay when the delay was very clearly due to the military police.

There's a consistent theme throughout many of the prosecutions that have gone sideways, both in the military justice system and in the civilian criminal justice system involving members of the Canadian Forces. Those are failures by the military police.

Bill C-11 isn't going to fix that. It does need to be fixed. My colleague Colonel Drapeau has mentioned some of the failings of the military police.

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

Ms. Lapointe, you have five minutes.

**Viviane Lapointe (Sudbury, Lib.):** Thank you, Chair.

Professor MacKenzie, we know that Bill C-11 separates criminal sexual offence investigations from the chain of command to reinforce independence.

What do you see as the key implementation challenges in making that separation work effectively across both the military and the civilian systems?

**Prof. Megan MacKenzie:** I think we've heard some of those challenges already. Transparency around how quickly these cases are moved to the system and understanding what kinds of supports civilian systems will need immediately to handle these new cases are incredibly important. I also think about having clear data that's very transparent so that those within the internal system understand the process and understand the success rates.

I want to say as a reminder that research from the University of Toronto showed us that it's very hard to know the conviction [*Technical difficulty—Editor*] compared to the civilian because there's such poor data on both. We have a study at the University of Toronto that showed that between 2015 and 2018, of all the sexual assault cases that were brought within the military system, there were four convictions.

We know from data that at least one in four members of the Canadian Armed Forces experiences sexual violence or sexual harassment. We know that very few of those come forward. To have four convictions within a three-year period shows how limited the internal system is. I think it's an imperfect transition, and there will be challenges to implementation. However, it is a very important move.

• (0905)

**Viviane Lapointe:** What metrics would you say are important to use to measure whether confidence in reporting rates improve after implementation?

**Prof. Megan MacKenzie:** The two best ways of understanding this problem are anonymous surveys, which the Canadian Armed Forces often gives to its service members to get a sense of how service members are experiencing and if they are experiencing sexual violence, harassment and other forms of discrimination. These surveys are very important because we know that victims often feel nervous or have a barrier to report publicly. We have a better sense of the scope of the problem through these anonymous surveys.

Comparing those anonymous surveys and the rates of reported experience of sexual violence versus the public convictions and the number of cases that are coming forward publicly and looking at that gap is our best way of gauging the success of the internal system, the military justice system or the eventual civilian justice system.

[*Translation*]

**Viviane Lapointe:** Mr. Drapeau, this bill addresses Justice Arbour's recommendation to transfer sexual assault cases to the civilian system.

Could you explain to the committee why this change plays an important role in restoring the trust of service members and survivors?

**Col (Ret'd) Michel Drapeau:** Over the years, I've represented about 60 victims of sexual assault. Every case revealed major shortcomings. These people felt disillusioned at the end of the process. They felt that they had not received justice or been treated with due respect.

I'll give you an example from a court martial trial. In one of the cases that I handled, the victim was a young cadet attending the Royal Military College in Kingston. The trial took place at the college, in front of all the cadets. This young victim had to testify for two, three or four days. I think that it was five days in this case. All she could see from her seat were her future comrades in arms and the people with whom she had served. In terms of respect and support, the organization simply fell short. This person quickly resigned and pursued a career outside the Canadian Armed Forces. She isn't the only one. I could tell you about a number of other similar cases.

Victims often don't file complaints or show up at trials. For example, a victim of sexual assault at the military college was customarily required to report to the chaplain. After listening to the victim's account of the experience, the chaplain would decide whether to call in the military police. The 60 cases that I saw include all kinds of experiences that show a lack of competence and sensitivity on the part of the military police. Even the cases that made it to trial revealed shortcomings. I told you about one case, but there are a number of others.

The current victims, and certainly their fellow women colleagues, see Bill C-11 as a success in terms of a culture change. It gives them the assurance that, if they ever become victims of assault, they can give their testimony to an independent, experienced and accessible police force. The trial will take place in a civilian court, with a judge and lawyers who have experience in this area. This isn't the case in the military justice system.

Military courts are disciplinary tribunals. Military judges have no experience, unlike judges in higher courts in Canada or abroad. These judges receive special training to preside over sexual assault trials. Military judges don't have that opportunity.

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

[*English*]

Monsieur Savard-Tremblay, you have two and a half minutes.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** We also heard about a lack of accountability within the military system. I gather that an inspector position could be created. This person would receive anonymous complaints and report to Parliament.

That said, what about the lack of accountability within the system?

Would it be a good idea to set up a parliamentary body to carry out a mandatory annual follow-up on the implementation of military justice reforms? I know that this has been done in Australia and the United Kingdom.

If so, could this take the form of a committee, for example?

• (0910)

**Col (Ret'd) Michel Drapeau:** We're on the same wavelength, Mr. Savard-Tremblay.

As I've said many times, Parliament, and this committee in particular, need to be more proactive in holding the military officials to account.

The workforce is expected to double or even quadruple in the months and years to come, so we need this external committee. One way to do this is to create an inspector general position. That doesn't stop this committee from being proactive and holding military officials to account, not just with respect to military justice but in general.

**Simon-Pierre Savard-Tremblay:** Thank you, Mr. Drapeau.

Mr. Fowler, in an article you published in March 2024, you said that the previous version of Bill C-11, Bill C-66, missed the mark. We are currently studying a bill that is virtually identical.

What aspects does the bill ignore? What should we be looking at, improving or monitoring?

**LCol (Ret'd) Rory Fowler:** With your permission, Mr. Savard-Tremblay, I will answer in English.

[English]

You've asked me a question that I'm not going to be able to answer in two minutes, but I will say a couple of things.

[Translation]

**Simon-Pierre Savard-Tremblay:** You can start answering it. I'll come back to this in the next round of questions, if necessary.

[English]

**LCol (Ret'd) Rory Fowler:** You've asked my colleague Colonel Drapeau about the inspector general. I just want to offer something. The vice-chief of the defence staff has studied this on several occasions, and it dates back 20 years, looking at the possibility of an inspector general. There's been profound study on it. I ought to know, because I was the one who wrote the paper 20 years ago about the inspector general. If you really want more information about the possibility of having an inspector general, you can ask the vice-chief of the defence staff about what they've done about that.

With respect to changes to Bill C-11, my fundamental problem with Bill C-11 is that it's not addressing the core issue that brings us all here today, and that core issue is accountability. At its fundamental nature, all it is doing is deferring accountability; it's shifting accountability.

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

We have member's time with Ms. Gallant at this point.

Ms. Gallant, you have up to five minutes.

**Cheryl Gallant (Algonquin—Renfrew—Pembroke, CPC):** Thank you, Mr. Chairman.

CAF members with whom I've spoken, who tried to seek justice after sexual assault, are not presented with a choice of using the civilian system versus the military system. I can think of a specific case.

Is it the initial reporting to the chain of command or the military police that directs them to the military system versus civilian? I can think of a case in particular where the victim did approach the OPP but was refused. She was told that JAG was in charge and that she had subjectively consented that the case be held through the military.

**LCol (Ret'd) Rory Fowler:** Ms. Gallant, is that for me?

**Cheryl Gallant:** Yes, Mr. Fowler, because you're the one who gave this revelation on their having a choice.

**LCol (Ret'd) Rory Fowler:** They do have a choice, and it was wrong of the OPP—if it was the OPP—to tell the complainant that. That is a problem.

Some complainants also think they have to go to the military police. I suspect that's less the case now because of the notoriety of the discussion over the past several years. I've encountered individuals who thought they had to report it to the military police.

There's a flip side as well. There are people who are now being told that they need to report it to the civilian police, but they insist on reporting it to the military police, because they would rather it go to the military police. There are any number of reasons why a complainant, for good reasons or bad reasons, would want the military police to investigate.

If we have civilian police forces in a circumstance where there is concurrent jurisdiction, as there is now, telling complainants and survivors that they can't bring it to a civilian police force, yes, I absolutely agree that action needs to be taken to ensure that they're not misinforming complainants and survivors. That doesn't mean that Bill C-11 is a solution, because all Bill C-11 is doing is depriving them of the option of going to the military chain of command.

Remember that Bill C-11 will take away the jurisdiction of the code of service discipline. It won't take away the responsibility of the Canadian Forces chain of command to maintain a disciplined force. All it's going to do is remove from them a fundamental tool that they currently use—until recently. Then they're going to turn to other tools that are ill-suited for that, which are probably going to abuse the rights of the respondents in those matters and probably not satisfy the complainants either.

● (0915)

**Cheryl Gallant:** You mentioned that the ultimate problem is a problem of leadership and a failure to hold the leadership accountable. If we look to the case of General Vance, it was the refusal of the minister to accept the case, and ultimately we learned that it was the executive deniability afforded to the Prime Minister that drew that case to a close.

Given the ultimate responsibility for accountability going to the minister of the government, how could Bill C-11 be changed to encompass that and ensure that the military leadership be held accountable?

**LCol (Ret'd) Rory Fowler:** The reality is that it's not going to be Bill C-11 that holds ministers accountable. In our parliamentary system of responsible government, the minister is held accountable by Parliament, and the minister's responsibility is to hold the chief of the defence staff and anyone under the minister's responsibility accountable. It falls to the minister.

I don't know the full details of what actually transpired between General Vance and the minister of the day, and I probably never will, but if, in a responsible government, a minister of national defence is informed of alleged wrongdoing by the chief of the defence staff, the minister would then take appropriate action. That falls to the minister, and it's not for Bill C-11 to correct that.

What I would suggest is that we've already seen circumstances of the Minister of National Defence issuing direction to both the Canadian Forces provost marshal and the director of military prosecutions in a manner inconsistent with what the National Defence Act lays out. Direction to the DMP is supposed to flow through the judge advocate general. Direction to the Canadian Forces provost marshal is supposed to flow through the chief of the defence staff and vice-chief of the defence staff.

If we're not holding senior leaders, up to and including the Minister of National Defence, accountable for their actions and decisions, particularly when they are inconsistent with the National Defence Act, then no legislation is going to do that, because ministers are held accountable by Parliament and by the Prime Minister.

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

Thank you, Ms. Gallant.

Mr. Malette, you have up to five minutes.

**Chris Malette (Bay of Quinte, Lib.):** Thank you, Chair.

My questions are for Professor MacKenzie and Ms. Duval-Lantoin.

I think we could agree that institutionally, things have changed for the better. We did improve the culture change within the institution, but it requires ongoing work.

Recommendation five from Justice Arbour is about getting these types of cases outside the chain of command to increase trust. Before 1998, the prosecution, as we know, was in the civilian system. This is why recommendation five proposes that the civilian justice system should be handling these cases.

Are there any additional policy or oversight mechanisms you would recommend to ensure that victims are not retraumatized

when seeking help, and how do we institute them? I think rebuilding trust in the system is fundamental in all of this.

That's to whoever would like to lead.

**Charlotte Duval-Lantoin:** I can.

I think we're forgetting a couple of key facts here. Now, compared to 1998, we have a "Declaration of Victims Rights". Victims or complainants, whatever we want to call them, now have a right to a victims liaison officer, who can support them in getting the key information necessary as the process goes through the military justice system. It is very important to underline that, because the context in which we find ourselves in 2025 is very different from what it was in 1998 on that front.

In terms of the changes of jurisdiction, I want to emphasize that Criminal Code offences of a sexual nature are not the only offences that can happen within the military on Canadian soil that are being prosecuted by the civilian system only. We're talking about murders, manslaughters and cases related to child abuse as well.

As one last thing, I want to underline what Madam Arbour said about recommendation five, which is that giving the choice to victims to choose the jurisdiction in which they find themselves puts them "in an untenable position." If the case doesn't go their way, then they find themselves retraumatized and with the possible question, "Did I make the wrong choice here?" That creates severe psychological distress to a victim.

● (0920)

**Chris Malette:** Thank you.

Professor MacKenzie, please go ahead on the same point.

**Prof. Megan MacKenzie:** I would agree with those points.

I would just reiterate that the idea that having a choice is somehow better for survivors is actually inaccurate for most of the victims and survivors that I've spoken to. In the moments following an incident of sexual violence, it is very difficult for a victim to understand the consequences and the complexity of that choice. The default position for many survivors is to work within the military justice system, not because they think it's better but because that's the system they're in. It's the institution they trust.

Many survivors, after that process, wished that they had been given a different option and are not satisfied with the choice.

We know from that same research I mentioned that there are examples of plea bargains within the military justice system being used in cases of serious sexual assault. These allow individuals to plead guilty to lesser military-specific disciplinary offences, like disgraceful conduct, to avoid a Criminal Code conviction.

For me, I think this idea that giving victims or survivors a choice is somehow “adding” is a misnomer. It does not enhance their experience.

In terms of other options, I think we've had decades of declarations of zero tolerance for sexual violence within the Canadian Armed Forces. I think an additional measure would be stricter responses to “low-level” sexual violence and sexual harassment behaviour, which are often the behaviours that create a permissive culture for greater incidents of sexual violence. I would like to see an actualization of zero tolerance.

**Chris Malette:** Further to that, I've heard some comments from those in the forces that there's a concern that victims will lose access to trauma and mental health counselling once the changes to the systems are implemented.

Can you elaborate on this and perhaps in any way ease their concerns? Again, this goes back to trust and confidence in the system.

**The Chair:** Chris, I apologize. The time is up.

It's a good question. If we can get a response in writing, maybe that will facilitate.

**Chris Malette:** I appreciate that. Thank you.

**The Chair:** Mr. Bezan, you have up to five minutes.

**James Bezan (Selkirk—Interlake—Eastman, CPC):** I want to thank all the witnesses for being here. It's been compelling testimony.

Mr. Fowler, in your commentary, essentially what you're saying is Bill C-11 deprives victims of choice and deprives the accused of access to justice. It's depriving the military police, the Canadian Forces national investigation service, the defence counsel services, the Canadian Armed Forces prosecutor's office and the JAG of opportunities to expand their skills and get more repetition to get better at what they do, and it fails to improve accountability of leadership.

Is this just an exercise, then, in passing the buck by pushing this problem off onto the civilian courts, so that leadership and the minister himself can just say that it's not their problem anymore?

• (0925)

**LCol (Ret'd) Rory Fowler:** To a large extent, it is.

Part of the difficulty here is that the Canadian Forces are still going to have jurisdiction in certain circumstances over sexual offences; it's just that they're going to have less experience with it.

I heard, in meeting number 10, various spokespeople for the Canadian Forces say, “Don't worry; we're going to send people on courses.” That's great. They're already being sent on courses like that, but there is no substitute for actually doing the job. Any young lawyer can tell you that they can go on as many courses as they want, but you step into that courtroom and it's a different thing.

It's counterintuitive. We're going to increase accountability and we're going to increase confidence in the leadership of the Canadian Forces by removing from their jurisdiction a key element of maintaining discipline in the Canadian Forces. We're going to remove from the code of service discipline jurisdiction over sexual offences, but we're still going to call upon them from time to time

when it arises outside Canada to prosecute such matters before courts martial, and it's going to be okay. That's just counterintuitive.

More importantly, if our concern—and I think it is the concern of everybody here—is that we want the Canadian Forces to be more accountable and we want the leadership of the Canadian Forces to take not just procedurally fair but reasonable, decisive and timely action, by taking tools away from them, that's not going to be the result. We're going to be back here in 20 years or 25 years—well, maybe not all of us—talking about the same thing just like we did back in the 1990s.

I was serving in the 1990s when there was a hue and cry for the Canadian Forces to take responsibility for ensuring that members of the Canadian Forces who were victims of sexual misconduct had their day in court. Remember, we're not just talking about sexual misconduct. What about people who are victims of racism? They're still going to be seeking justice in the code of service discipline. What about other people who are marginalized in the Canadian Forces?

If the goal is to improve leadership and if the goal is to improve accountability, that can only be done by holding those leaders accountable. I'll give you an analogy in a military context. If you have a soldier who is incapable of using their service rifle effectively, do you then take that rifle away and have them use something less efficient, or do you teach them how to use that rifle properly, supervise them to make sure they're using it properly and take action if they don't? If we agree that the latter probably makes more sense, then Bill C-11 doesn't make sense.

If we want the leadership of the Canadian Forces to ensure that everybody in the Canadian Forces is treated fairly, is listened to and has a voice, then you have to give them the tools to do so. When they fail to use those tools, you have to hold them accountable, and that goes all the way up to the Minister of National Defence.

**James Bezan:** As you mentioned, in the case of former CDS Vance, the minister refused to accept the evidence that was presented by another subordinate to the minister. Minister Sajjan was responsible for the ombudsman who reported to him as well as the CDS, and when presented with the information, he refused to accept the evidence and instead did a cover-up.

**LCol (Ret'd) Rory Fowler:** Mr. Bezan, all I know is what's public, and if there was a failure of leadership at that level, then something like Bill C-11 wouldn't fix it.

**James Bezan:** I agree with you.

When we look at the—

**The Chair:** I'm sorry, Mr. Bezan.

Thank you, both.

Ms. Romanado, you have up to five minutes.

**Sherry Romanado (Longueuil—Charles-LeMoine, Lib.):** Thank you, Mr. Chair. Through you, I'd like to thank the witnesses for being here.

I want to start with Professor MacKenzie and follow up on what Lieutenant-Colonel Fowler mentioned. In 1998, the investigation and prosecution was moved from the civilian to the military system, yet in your testimony you mentioned that approximately 80% of military sexual trauma victims do not actually report. Is that accurate?

• (0930)

**Prof. Megan MacKenzie:** Based on the research we have, that's the estimation. It's based on the gap between how many people anonymously report experiencing sexual violence versus how many people come forward. It's almost impossible to know exactly how many service members experience sexual violence and don't come forward, but that's how we estimate that number.

That's very common. That's a consistent rate across western defence forces around the world.

**Sherry Romanado:** On that note, I want to really focus on survivors and victims because there are probably thousands of people who have served in the Canadian Armed Forces and were victims of sexual harassment or sexual assault and never reported.

I'll put it in a different frame. Imagine you're working in another workplace and you are sexually assaulted at work. You bring it to your employer and your employer says that they'll investigate and they'll take care of looking into it, but their own subordinate is the actual perpetrator. Do you honestly think that employee would be getting justice? I don't think so.

I can understand why victims want to have the independence of not worrying about their career progression, not worrying about retaliation and not worrying about having to testify in front of their colleagues about what has happened to them.

I have children serving in the Canadian Armed Forces. I hope they never have to experience this, but the reality is that the current system isn't working. That is why three justices have recommended that we move this from the military system to the civilian system. It's to bring back that independence and to bring the opportunity for victims to come forward, tell their stories and get justice.

Professor Duval-Lantoiné, I see your hand up, so I'd like to provide you with the opportunity to chip in here.

**Charlotte Duval-Lantoiné:** Thank you.

I'm very flattered, but I am not a professor. I'm a Ph.D. candidate. I'll get there one day maybe, but not yet.

**Sherry Romanado:** Soon....

**Charlotte Duval-Lantoiné:** Absolutely.

One thing that I would say, which would bring us all together on the disagreement we seem to have with retired Lieutenant-Colonel Fowler, is the fact that even going to the civilian justice system will not necessarily protect victims from retaliation from their chain of command. It will not necessarily protect them from being pushed

aside if they come forward because the culture is such that if you speak against one of your teammates, you're betraying the team.

The framework that the military is pursuing on culture change, to go back to Mr. Malette's comments earlier.... They're founding it on character, which means that the "good guy" idea, when someone comes forward with an allegation of sexual misconduct, is still very much there.

**Sherry Romanado:** On that note, I think we can all agree that Bill C-11 is a part of the solution. It is not the panacea. It is not going to solve everything.

Lieutenant-Colonel Fowler, you talked about the failure of leadership. That is something we also have to deal with. Changing culture is something we're trying to deal with.

Bill C-11 is a component of that, which, I think we can all agree, will solve some things. It will bring the ability for survivors to get justice in an independent...and bring some level of confidence back to the system. It's not going to solve everything, we agree, but it is a start. It is a recommendation that we're doing, but there are other things that we can be doing and that we are working on.

Would you agree that is effective?

[Translation]

Mr. Drapeau, do you have any comments on that?

[English]

**Col (Ret'd) Michel Drapeau:** Bill C-11 is a jolt to the justice system. DND simply did not listen. There have been many stories on CBC and elsewhere on sexual assault. Until recently, Canadian Forces victims did not have access to the charter of rights for victim of crimes. They've argued that for a long while. There were just two types of society. The fact that we're moving to this is long overdue. The ship has sailed. Mr. Fowler is still yesterday's....

Now, let me talk about yesterday. In 1998, when Parliament decided to transfer jurisdiction of sexual assault to DND, there was not any discussion at the parliamentary committee levels. It was just done. I did a lot of research as to how and why this happened.

In an article published in a New Zealand law journal, I found that the judge advocate general mentioned that the key element they used to argue for this change was that DND could do it faster. I would agree with them. Most courts martial normally don't take such a long gestation period to see the light of day. In the civilian courts, sometimes it's going to take four, five or six years before it comes to trial.

Hasty justice is not a reason to give jurisdiction to the military.

• (0935)

**The Chair:** Mr. Drapeau, thank you.

Mr. Savard-Tremblay, you have up to two and a half minutes.

[Translation]

**Simon-Pierre Savard-Tremblay:** Mr. Fowler, I don't know if you remember the question I asked you earlier.

You said you would need more than two minutes to answer. I'll give you a chance to finish your answer, if you wish.

**LCol (Ret'd) Rory Fowler:** Thank you.

[*English*]

What I'd like to do, Mr. Savard-Tremblay, is just build upon what my colleagues have mentioned because I think this will also answer your question. We have to remember that Bill C-25 didn't transfer jurisdiction to the code of service discipline. Bill C-25 created concurrent jurisdiction. Contrary to the perception of some people, in the past several years, the Canadian Forces have demonstrated a great deal of attention to allegations of sexual misconduct. Those allegations are taken extremely seriously, and often the chain of command will not wait for either the code of service discipline or the civilian criminal justice system to proceed before taking administrative action. We're seeing that happen right now, and we will see it happen if Bill C-11 becomes law.

Just this week, I received information from a client where their chain of command—the commander of 2 Canadian Mechanized Brigade Group—has requested an expedited administrative review, notwithstanding that criminal proceedings have not yet been resolved. These are criminal proceedings that the Canadian Forces expressly transferred to the civilian criminal justice system, but the chain of command is not going to wait. They're going to proceed with an administrative review of the very allegations that are still before a criminal court of jurisdiction. I will guarantee you that if Bill C-11 becomes law, we will see that happen significantly, where the respondent will not have access to justice because, first of all, they don't have disclosure, and secondly, the Canadian Forces will be making a significant career decision before the court has even spoken.

I absolutely agree with you that victims and survivors of sexual misconduct must be given a voice. Everybody in the process must be treated fairly, must be treated reasonably and must be given voice. What we're seeing, however, is the pendulum swinging the other way so that victims and survivors of sexual misconduct are rightfully being given a voice, while those people who are respondents, who ought to benefit from the presumption of innocence—because that is how the Canadian criminal justice system functions—are not being given that benefit. They're being treated as guilty until proven innocent.

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

Mr. Bezan, you have up to five minutes and a little extra for our compromise.

**James Bezan:** Thank you. I appreciate that. I got cut off prematurely before.

I just want to continue digging in. Lieutenant-Colonel Fowler, you mentioned the situation where former Lieutenant-General Cadieu had his case thrown out because of the situation of military police dragging their feet in sharing evidence with the Crown.

Is there anything in this legislation that will actually compel military police to give disclosure without unreasonable delay? Proposed section 70.1 and proposed subsections 70.2(1) to (4) are almost contradictory. The bill says that they should be handing over evi-

dence at the earliest possible time, but they get to determine when the earliest possible time is. Is that not the case?

• (0940)

**LCol (Ret'd) Rory Fowler:** If we look at it, in answer to an earlier question that was posed, we have to remember that when military police, particularly the Canadian Forces national investigation service, is investigating allegations, it would be a misnomer and a mis-characterization to suggest that's akin to an employer investigating. Independence of the military police is not an issue and has not been an issue for some time. They are sufficiently independent. The problem with the military police has been incompetence, and I think Colonel Drapeau would agree with me on that. Regarding enforcing competence, we've had a Military Police Complaints Commission for 25-plus years, and we haven't seen much improvement in the competence of the military police.

As you've pointed out, there are several provisions within Bill C-11 that call for certain timelines. Some of those are express and some of those are, as you've mentioned, Mr. Bezan, sort of vague, like "as soon as feasible". There is no concrete, material consequence for any timeline. As I said before, any limitation period without a concrete and manifest consequence for a failure to meet it isn't in fact a limitation period. It's a suggestion—that's all it is. We've seen delay with respect to disclosure. We've seen delay with respect to presenting reports to Parliament, and we've seen delay in grievances. There is no real limitation period. The oldest grievance in the Canadian Forces is over 19 and a half years old, and I ought to know, because it's mine.

If we do not have actual consequences for failure, then you're not going to have any enforcement, and Bill C-11 doesn't really put in any consequences for any failures.

**James Bezan:** Colonel-Maitre Drapeau, you had your hand up.

**Col (Ret'd) Michel Drapeau:** You were talking about the military police and oversight of the military police. We created the Military Police Complaints Commission, but here's the fix: When you complain to the Military Police Complaints Commission, the complaint goes back to the provost marshal for an investigation. It takes them a year or two to investigate it before the MPCC actually looks at it. I have complaints on my desk at the moment from victims of sexual assault that have been worked on by the professional standards cell at the military police level, so the MPCC, even if they're eager to get involved and they know there's a case in there, they can't. Their hands are tied.

I'd recommend to this committee that you hear from the chair of the MPCC, because at the moment, it's not because of incompetence. It's because the system does not allow her to do her work.

**James Bezan:** We'll make sure we add her to the witness list, because I think that is good advice.

The problem here is that getting justice for victims and making sure we have a fair judicial system comes down to the military police and the failures within the military police and the chain of command within that.

Colonel-Maitre Drapeau and Lieutenant-Colonel Fowler, you both mentioned the inspector general concept, which some of our allies have. Under that, you would provide some of the duties and responsibilities that the ombudsman has right now, but you would also move everything—

**A witness:** [*Inaudible—Editor*]

**James Bezan:** Well, there's that possibility. In talking to the ombudsman, they would feel they would become more independent outside of the Department of National Defence and reporting to the minister, and going to Parliament.

Is that not where you'd put the national investigation service and where you'd put the military police?

**Col (Ret'd) Michel Drapeau:** No, I would not.

**James Bezan:** Would you not?

**Col (Ret'd) Michel Drapeau:** This ombud would be totally independent and basically unique in his position and be available to deploy and attend to a specific location or problem and come unannounced if required because of complaints he has received. Basically, he would have free rein to attend to whoever may be able to answer his complaint or solve the issue that he's looking at, and that includes this committee.

**James Bezan:** Okay.

**LCol (Ret'd) Rory Fowler:** To build upon what Michel has mentioned, if you look at the models of inspectors general in allied nations, particularly those that have a common law system like ours, the inspector general does not get involved in criminal or military justice matters. What they're there for is to complement.

This addresses something Professor MacKenzie has raised. One of the things an inspector general could do, independent of complaints of sexual misconduct or sexual assault that would be dealt with either in a civilian criminal justice system or a military justice system, is to look at systemic issues with respect to reporting or failures of the chain of command outside of a criminal or military justice system.

We have to remember that when we talk about the governance of the Canadian Forces, it is an overlapping matrix of authorities. While the inspector general wouldn't deal with discipline, per se, the inspector general would deal with systemic issues arising from complaints that were brought by members of the Canadian Forces, or even members of the public.

• (0945)

**The Chair:** Your time is up.

I've given some time, but I do see that Professor MacKenzie's hand is up.

Do you want to interject before we proceed to Mr. Watchorn?

**Prof. Megan MacKenzie:** Yes, I want to make a quick clarification point. I do think it's important to note that the military police and the claim of total independence is a little inaccurate. I would remind you that the head of the military police is the provost marshal, who is appointed by the chief of the defence staff. This is precisely why it's very difficult, especially when you have high-level,

senior-ranking members of the Canadian Armed Forces facing allegations being investigated by those they have appointed.

**The Chair:** Mr. Watchorn, you have up to five minutes, please.

[*Translation*]

**Tim Watchorn:** Thank you, Mr. Chair.

Mr. Drapeau, I'll let you continue with your idea of what was happening at one time, what is happening now and what will happen in the future.

You talked about some of the incidents that have happened in the past. I hope that Bill C-11 will improve on that.

How do you think Bill C-11 will improve the situation for victims?

**Col (Ret'd) Michel Drapeau:** First of all, I would say that this will improve the level of trust. Nearly 15% of the Canadian Armed Forces personnel are women. Many of the women who have been assaulted haven't reported the incident to the authorities.

We should see an increase in the level of trust today. If women are victims of assault or inappropriate behaviour, they will have more confidence in the system because they know they will be able to appeal to an independent, professional and experienced police force to receive their complaint.

If they eventually have to go to court, they would also receive a judgment similar to what their fellow servicewomen will receive if they have gone through a similar experience.

This doesn't currently exist, but it's a major point. I believe this will be beneficial for the recruitment and retention of female personnel in the armed forces.

**Tim Watchorn:** Thank you very much.

As I was saying earlier, cases of assault and sexual violence are really separate incidents. The Government of Quebec recognized this because it created a court specialized in sexual violence and domestic violence. For my part, I can only see a parallel between the study we're doing here on Bill C-11 and what's being done in Quebec right now.

Do you agree that, by implementing Bill C-11, we'll be able to deal with cases of sexual violence in a better way than previously?

**Col (Ret'd) Michel Drapeau:** I couldn't agree more.

It's important to provide that very important element of trust and send a message to the institution itself that it is no longer responsible for that function. If such an incident were to occur, it would be the civilian authorities that would manage the situation. They would investigate and prosecute, if necessary.

**Tim Watchorn:** Ms. Duval-Lantoine, if we pass Bill C-11, do you think it will give victims more confidence in the justice system, as was the case in Quebec when that province created a specialized court for sexual and domestic violence?

**Charlotte Duval-Lantoine:** Yes, potentially. This measure has been requested by many victims, so I think a change in jurisdiction will be useful and will restore victims' confidence.

That said, the civilian system for handling and prosecuting sexual violence cases isn't perfect.

The provinces and territories of Canada should perhaps consider implementing a system similar to the one adopted in Quebec.

**Tim Watchorn:** Thank you very much, Ms. Duval-Lantoine.

Ms. MacKenzie, we heard the argument earlier that military police and investigators will lose expertise in sexual assault investigations.

Do you believe that's the case?

Will victims be better served in civilian courts?

[*English*]

**Prof. Megan MacKenzie:** I think victims will be better served outside of the military justice system. We have had decades of evidence that shows it has not been successful having the military try to address this internally; you have problems with chain of command investigating themselves. I agree that the civilian system isn't perfect. I agree that this is one piece of the puzzle in addressing sexual misconduct and sexual violence. I agree that there are broader issues of leadership.

We have had so many experts make this recommendation. It is an important step that needs to happen very soon.

• (0950)

[*Translation*]

**Tim Watchorn:** Thank you very much.

Thank you, Mr. Chair.

[*English*]

**The Chair:** There's one minute left.

[*Translation*]

**Tim Watchorn:** Mr. Drapeau, I want to explore this issue a little further.

We're here to improve Bill C-11. You expressed concern about the ability of the military police to gather evidence and then pass it on to civilian authorities.

What would you recommend to improve that process?

**Col (Ret'd) Michel Drapeau:** I'm particularly concerned about cases involving sexual assaults committed outside the country. When I listen to the comments made on October 27, I find that it's unclear.

There are all kinds of nuances, depending on who is speaking. We're talking about the ways in which victims of sexual assault deployed in Ukraine, for example, are taken care of. However, who takes charge of their cases, who investigates them and who initiates the prosecution procedures? It's not clear.

The process needs to be clarified.

**Tim Watchorn:** What would your recommendation be in that regard?

**Col (Ret'd) Michel Drapeau:** As a first step, I recommend creating an inspector general position.

Second, there should be an additional legislative procedure that clearly indicates who is responsible for conducting investigations and following up on complaints of sexual assault in the Canadian Armed Forces outside the country.

**Tim Watchorn:** Thank you very much.

[*English*]

**The Chair:** Thank you.

Mr. Bezan, you have up to five minutes.

**James Bezan:** Thank you.

As we dig in on this, one of the definitions in here is the superintendency of the judge advocate general. Does that still exist when everyone who currently is underneath the JAG is now going to be reporting directly to a minister?

Who's actually in charge? Was it just the minister, or is that going to create a conflict within our military justice system for the other crime investigations they're going to be carrying out?

**LCol (Ret'd) Rory Fowler:** Part of the problem with the judge advocate general's superintendence of military justice, under section 9.2 of National Defence Act, is that "superintendence" is not defined. The judge advocate general views this as supervising how the code of service discipline is used. For 20 years, "military justice" was not defined under the National Defence Act, and under Bill C-77 we defined "military justice" as the code of service discipline. We're using one statutory term to define another statutory term for whatever reason, but what that has meant for the last 25 years is that the judge advocate general will supervise in a public fashion the actions of not only legal advisers advising on military justice but the director of military prosecutions.

You have to remember that if the JAG is going to issue direction to the director of military prosecutions, the default is that it's going to be public and it's going to be in writing, which is why it's problematic when the minister issues direction to the director of military prosecutions directly, because that bypasses the role of the judge advocate general.

A lot was said in the 10th meeting of this committee about having the minister give direction directly to the director of military prosecutions, akin to what the Minister of Justice and the Attorney General does in the Department of Justice. The difference is that the Attorney General is a law officer, the chief law officer of Canada. While the current Minister of National Defence is a lawyer and past ministers of national defence have been lawyers, and it's very easy to advise them when you're a military lawyer, that's not always the case, nor are they a law officer.

The reason why the JAG would give direction to the director of military prosecutions is that it's a lawyer giving another lawyer direction in a very public fashion. By making the director of military prosecutions responsible to the minister—appointed by the minister, accountable to the minister—the JAG is no longer supervising military justice when it comes to military justice before a court martial, because the JAG really isn't supervising the director of military prosecutions. But we're leaving that in evidently. It's great there's an amendment that says the JAG will respect the roles of the director of military prosecutions, the director of defence counsel services and the Canadian Forces provost marshal, or whatever they're going to called, but where is the evidence that the JAG hasn't been doing that?

This is an amendment with no real consequence because there hasn't been a failure of the JAG in those terms. In fact, if we look at the influence on the director of military prosecutions, we don't see the chain of command influencing Colonel Kerr, who's the director of military prosecutions. We don't see that kind of influence going on. There's no evidence of that kind of influence. What does influence those decisions is media scrutiny. For example, I am still trying out the reasoning behind the decisions in the prosecution of Lieutenant-General Whelan, who was prosecuted by court martial. I'm still trying to figure out what was going on there, and I was following it closely.

If we are concerned about the influence of those decisions-makers, if we think the director of military prosecutions is being influenced by the chain of command or by the JAG, I would want to see that evidence, because there hasn't been any evidence of that.

• (0955)

**James Bezan:** Sir, you're saying there's no evidence of that sort, but now we're going to open it up. Supposedly, the concern is that the chain of command is influencing those prosecutions. Now we're increasing that to include political influence as well.

**LCol (Ret'd) Rory Fowler:** Now you're making them political appointees who may or may not be appointed in time. That has been a recurring problem. Ms. Duval-Lantoiné pointed out and I pointed out in my blog the length of time it took to appoint a chief military judge, and that undermines military justice.

The point is, if we're going to have the JAG superintend military justice, then removing the DMP from any actual relationship with the JAG in that regard undermines that very requirement.

**Col (Ret'd) Michel Drapeau:** I don't see Bill C-11 changing that. The JAG currently has superintendence over both the director of military prosecutions and the defence counsel. It remains the same, except the two individuals filling those appointments would now be GIC-appointed.

**James Bezan:** Do you disagree with that?

**LCol (Ret'd) Rory Fowler:** I disagree because it also allows for the minister to give direction to the director of military prosecutions. You have a non-lawyer—the current minister might be a lawyer, but it's not a legal office or position—giving direction to the director of military prosecutions.

That, I would contend, is problematic if you still expect the JAG to superintend military justice.

**The Chair:** Ms. Lapointe, you have up to five minutes.

**Viviane Lapointe:** Thank you, Chair.

[*Translation*]

Mr. Drapeau, I want to continue our discussion on the changes that are needed to ensure the independence of the systems.

What measure do you think would ensure that independence is not only structural, but also perceived as such by victims and the public?

**Col (Ret'd) Michel Drapeau:** Public perception is fundamental. I think the public will welcome the changes to the legislation because they are the result of a long process. Academics have been talking about this and making proposals about it for about 10 years now. Justice Fish and others have made recommendations along the lines of what we're discussing today.

I think that's a normal, logical outcome. This will give confidence not only to the female personnel currently serving in the forces, but also to the mothers and fathers whose daughters are considering a career in the forces.

It's a very noble career. Their safety may not be guaranteed, but if a serious incident of a sexual nature occurs, there will be an independent process through which qualified and experienced people will be empowered to receive complaints and conduct an investigation.

This is very good news in terms of recruiting and retaining women in the forces.

**Viviane Lapointe:** That's a good point, Mr. Drapeau.

You have long called for those involved in the justice system to be isolated from the chain of command.

How do the Governor in Council appointments provided for in Bill C-11 contribute to this objective?

**Col (Ret'd) Michel Drapeau:** I'll give you an example. The judge advocate general is a Governor in Council appointee who does not report directly to the chief of defence and the vice-chief of defence. His career is not dependent on them.

It instills confidence in the public and in the person in that position. The fact that a person is appointed by the Governor in Council makes them much more independent from the chain of command and less vulnerable to pressure that could be exerted in the performance of their duties.

The same reasoning applies to the Governor in Council appointments that are provided for in the bill.

**Viviane Lapointe:** Thank you.

[*English*]

Professor MacKenzie, Bill C-11 ensures that victims have consistent access to liaison officers and clear information about their cases.

We could assume that's effective, but could you tell us how effective this kind of survivor-centred approach is in encouraging confidence in coming forward and participating in the process?

• (1000)

**The Chair:** Go ahead, Professor MacKenzie.

**Prof. Megan MacKenzie:** I'm sorry. I didn't hear at the beginning whether it was for Ms. Duval-Lantoine or for me. I think she'd be very capable of answering this as well.

I do think that the victim advocate is a very important resource.

I actually think Ms. Duval-Lantoine would be a better person to answer this particular question.

[*Translation*]

**Viviane Lapointe:** Ms. Duval-Lantoine, I have the same question for you.

**Charlotte Duval-Lantoine:** Thank you very much.

It's very important for victims that there be a liaison role. In fact, the change of jurisdiction presents a complexity, since the decision on the liaison position is supported by the chain of command.

Under the authority of the chain of command, the commanding officer will help the victim to choose someone to support them during the judicial process. The person chosen will not perform this role full time; it will be in addition to their existing duties and responsibilities. This is a very important form of support, because when someone is traumatized, they may not necessarily have the cognitive abilities necessary to follow the administrative procedures involved in a legal action.

These are necessary services, but we have to make sure they meet the needs of the victims before we meet the needs of the chain of command.

**Viviane Lapointe:** Culture change is successful when there are clear mechanisms for accountability, responsibility and transparency.

What opportunities does Bill C-11 offer to increase transparency and show members of the Canadian Armed Forces and Canadians that we are building a more accountable organization?

**Charlotte Duval-Lantoine:** Having public debates on this allows us to identify our disagreements on certain aspects of this bill, which is very useful if we want to improve it.

I would say that, in terms of transparency, as recommended by former Justice Fish, any directive issued by a minister to the director of military prosecutions should be published in the Canada Gazette so that the information becomes public. I think that's very important.

I don't remember if it's in the bill, but it would be necessary.

**The Chair:** Thank you.

[*English*]

Mr. Savard-Tremblay, you have two and a half minutes.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** Ms. Duval-Lantoine, I don't know if you were already a member of the institute in 2015 when an article was published in the online magazine highlighting the lack of political leadership in dealing with misconduct.

Do you feel like we're somewhere else now?

Where are we at? It's been 10 years, after all.

**Charlotte Duval-Lantoine:** Under the leadership of Minister Anand and Minister Blair, we've seen a greater public reaction when it comes to issues like this.

I have to say that public conversations about this have declined since at least 2024. I have had no contact with the chief professional conduct and culture group since 2024. So we're seeing a bit of a decline.

Having those conversations in a public way is very helpful. However, even in the civilian world, we still live in a culture of military exceptionalism. We tell ourselves that the military must have complete control over the way it operates.

If you look at the reports that have come out on sexual misconduct, or if you look at the recent Auditor General's reports that came out a couple of weeks ago, there is a real problem with the way the military is managing the organization.

If we want to change the culture of the Canadian Armed Forces to have a much healthier culture for women and for everyone, we have to solve this problem.

• (1005)

**Simon-Pierre Savard-Tremblay:** Thank you.

Ms. MacKenzie, earlier you gave some statistics on how cases were decided. Research shows that 80% of victims do not report.

We know that C-11 will provoke reactions because it seeks to put in place better mechanisms for filing complaints.

Do you think this will encourage victims to report their attackers more often?

[*English*]

**Prof. Megan MacKenzie:** As I think I mentioned in my opening comments, this is only one piece of the puzzle in terms of the entire life cycle of sexual violence, which includes prevention, the addressing of the incident, collecting proper data and the justice system.

I do think there could be a positive feedback loop in terms of greater accountability leading to greater trust and, hopefully, reduced levels of sexual violence. There is a possibility that this one piece will have an effect on reducing the number of victims and fostering trust. It's important to remember that the justice system is set up so that.... In cases of murder, for example, we do have examples of cases brought out of the justice system, and we haven't had an example of that causing an inability of the military to handle that particular problem.

I do think there's a potential for a positive feedback loop if we start to see greater accountability.

**The Chair:** Thank you, Professor MacKenzie.

Thank you, Mr. Savard-Tremblay.

James Bezan, you have five minutes.

**James Bezan:** Thank you.

I'll try to leave some time at the end for Ms. Gallant.

I want to look at the application of what we're trying to do in moving investigations and prosecutions into the civilian system. If you have an example where we have a number of soldiers who are training at CFB Wainwright, the accused is from CFB Shilo, the victim is from CFB Petawawa, the witness is from CFB Valcartier and another witness is in CFB Edmonton, you have two different provincial police forces that are going to be involved. The RCMP are going to be involved because of it happening in Wainwright and somebody is from Shilo, and you also have the Edmonton police involved because one of the witnesses is there.

Who is in charge? Where is the jurisdiction?

**LCol (Ret'd) Rory Fowler:** Ultimately, the jurisdiction where it's going to be prosecuted is going to be where it occurred. If, in your example—I'm sorry; you mentioned so many bases—it occurs in Wainwright, it's going to eventually be prosecuted in Wainwright.

What we're going to see is a slippery slope because you're going to have witnesses in a bunch of different jurisdictions, and the Minister of National Defence isn't the boss of any of those police forces. You can have all the memorandums of understanding you want. Coordination of such investigations is inherently difficult, and you're going to have them going to the military police saying, "Could you help us?" Bill C-11 allows for that slippery slope because the military police can secure evidence. Well, you're conducting an investigation when you're securing evidence.

There is a slippery slope that is going to be self-governed by the military police and by the civilian police. This occurs frequently, because we have to remember that, even if all of those CF members are on one base when the alleged offence occurs, by the time it gets reported, they may have dispersed. A lot of these offences occur when people are conducting training and they come together on one base. You're ultimately going to have difficulty investigating that, whereas right now, if that were to happen, you would have one police force investigating it—the Canadian Forces national investigation service.

I'd love it if they were better at it, but at least you have unity of effort.

There's another issue that arises, which is the prosecution. It's going to fall to a Crown attorney in that region, in Wainwright, to be responsible. There's a cautionary tale here—it's in the notes that I provided to the committee—which is the prosecution of Master Warrant Officer MacPherson. That was an allegation of sexual assault that allegedly occurred before Bill C-25 came into force, which meant that Canadian Forces did not have jurisdiction under the code of service discipline.

Those allegations and the investigation were referred to a Crown attorney in the region where it was alleged to have occurred, in

New Brunswick. It's my understanding that it was referred to the Crown attorney twice. Both times, the Crown attorney said that there was not a reasonable prospect of conviction, which is the threshold that an ethical prosecutor must apply. He reported back and said, "I can't prosecute this. There's no reasonable prospect of conviction."

What happened? The director of military prosecutions proffered charges for a court martial, even though they didn't have jurisdiction. Commander Sukstorf, who was the presiding military judge, held that they didn't have jurisdiction, and that was upheld by the Court Martial Appeal Court of Canada. In that case, the chain of command and the director of military prosecutions wasn't willing to accept what the civilian prosecutor said, so they tried an end run. At the very least, Master Warrant Officer MacPherson benefited from being able to make full answer and defence in the court martial.

What happens if the prosecutor in Wainwright says that there isn't a reasonable prospect of conviction? They won't turn to a court martial because they can't. What they'll do is turn to something like an administrative review and attempt to prosecute the offender using a system that is not designed for that purpose. This is what happens when you take away tools from the chain of command.

Contrary to some of the indications that I've heard, what we've seen over the last five years or so is a chain of command of the Canadian Forces that is increasingly motivated to deal with allegations of sexual misconduct, to the point that they will even use tools that are ill-designed for such a purpose in order to prosecute when they feel they don't have the tools available.

• (1010)

**James Bezan:** Is it the case then that they would get a plea bargain or the penalty and call it "conduct unbecoming" under the code of service discipline or other administrative measures?

**LCol (Ret'd) Rory Fowler:** There's another case that I mention in the materials that have been provided to you—R v. Corporal Spriggs, 2019—where, in the wake of the decision from the Court Martial Appeal Court in R v. Beaudry, 2018, temporarily the code of service discipline lost jurisdiction over offences like sexual assault.

What happened in the Spriggs case was that the military prosecutor withdrew the charge of sexual assault that had been laid and substituted a charge of disgraceful conduct to maintain jurisdiction.

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

Mr. Malette, you have the wrap-up for the last five minutes.

**Chris Malette:** Thank you, Mr. Chair.

My question is for Professor MacKenzie.

Further to the issue my colleague Madame Lapointe was raising, what would be your top legislative or policy recommendations to ensure that the CAF provides consistent, trauma-informed and independent victim resources?

**Prof. Megan MacKenzie:** My top recommendation would be that it follow through with the recommendations that have been made over the last two decades. We have endless recommendations that have been made by expert reviews that cost a lot of taxpayer dollars and were informed by a number of experts. We have the recommendations in Justice Arbour's report, the recommendations of Fish and the recommendations of Deschamps. Where those overlap is, number one, an independent justice system outside of the military.

I do think it's been wonderful and important to see the sexual misconduct resource centre being given more resources in terms of supporting victims. They still need to be supported in collecting data, because it's very difficult to address a problem that you don't fully understand. We still have very poor data on where the sexual violence incidents are happening.

The U.S., for all of its problems, collects fantastic data on sexual violence. We know at which bases, for example, women or men are at the most risk for sexual violence. We know the outcomes of justice and cases. Collecting better data so that we can better address this problem is very important in next steps.

• (1015)

**Chris Malette:** Thank you.

My next question is for Ms. Duval-Lantoiné.

In your experience, what lessons can we learn from other jurisdictions that have implemented independent survivor-centred resource systems for military victims or complainants?

**Charlotte Duval-Lantoiné:** Actually, it is Professor MacKenzie who has done extensive comparative research. I'm a historian of Canada, so I will leave it to Megan to answer that question.

I'm throwing the ball back at you.

**Chris Malette:** We'll lob that one right back to Professor MacKenzie, then.

Thank you.

**Prof. Megan MacKenzie:** Could you repeat the question, please, so that I'm sure I'm answering it correctly?

**Chris Malette:** That's fine.

What lessons can we learn from other jurisdictions that have implemented independent survivor-centred resource systems for military victims?

**Prof. Megan MacKenzie:** I've studied defence forces in the U.S., New Zealand and Australia, as well as others, and I think we certainly haven't seen rates of sexual misconduct or sexual violence decrease significantly in any of those countries.

The gold standard in terms of collecting data and offering different options for victims has been the U.S., despite the fact that rates of sexual violence are still high in that defence force. However, the U.S. allows victims to have restricted and unrestricted forms of reporting. There are a number of supports for victims.

We also simply understand the problem better in that context. We know, for example, that Fort Bragg is the most unsafe post for service members, and that allows us to provide more resources in that particular post.

**The Chair:** Thank you.

Thank you to all the witnesses for coming forward and for sharing your concerns.

If you give me a moment, I'm going to pass it over to Mr. Bezan.

**James Bezan:** We are studying Bill C-11, and the witnesses have been excellent. If any of you would suggest amendments to the bill, could you put those in writing and send them in to the committee so that we can consider them?

**The Chair:** Actually, I was going to suggest the same. I appreciated the differences in concerns and the sharing and highlighting of ways that we can take proper steps to improve the system and use Bill C-11 as a means to proceed to do so. I thank you for that.

Before we adjourn, I also want to ask for two agreements.

Is it agreed that the proposed budget in the amount of \$500 for the briefing with the Minister of National Defence on his mandate and NATO defence spending be adopted?

**Some hon. members:** Agreed.

**The Chair:** That's great.

Is it also agreed that the proposed budget in the amount of \$36,500 for the study of Bill C-11, an act to amend the National Defence Act and other acts, be adopted?

**Some hon. members:** Agreed.

**The Chair:** Lastly, we cancelled our last meeting on Tuesday, November 4. It is the intention to convene our next meeting on Monday, November 17, from 11 a.m. to 1 p.m., which means that we may have three meetings that week. That may offer some conflict, but we'll put out a notice and you guys can determine your availability so that we can stay on schedule.

With the committee's agreement, we're adjourned.







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