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• (1545)

[*English*]

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

Welcome to meeting number 16 of the House of Commons Standing Committee on National Defence.

Pursuant to the motion adopted on October 23, 2025, the committee is resuming 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 we have one person here remotely who is trying to get his audiovisual compliance in order.

Before we continue, I ask participants to consult the guidelines on the table. These measures are there to help prevent audio and feedback incidents and to protect the health and safety of our interpreters.

I would like to remind witnesses and members to please wait until I recognize you by name before speaking. If you wish to speak, please raise your hand. The clerk and I will manage the speaking order as best we can.

All comments should be addressed through the chair.

Now I would now like to welcome our witnesses. We have one here in person, the Honourable Marie Deschamps.

You now have up to five minutes.

[*Translation*]

Hon. Marie Deschamps (Lawyer, As an Individual): Good afternoon, members of the Standing Committee on National Defence.

Thank you for inviting me to participate in your committee's work. As you know, more than 10 years have passed since I submitted my report. During these 10 years, I've had limited contact with the Canadian Armed Forces, or CAF. I therefore have no new information to share with you on the current situation, either in terms of culture, which was one important aspect of my review, or processes, which was another. In any case, that's not the main focus of your work. The bill that you're considering relates more specifically to various aspects of military justice.

I assume that you want to ask me about transferring all cases involving sexual misconduct, or having sexual connotations, from the military justice system to the civilian justice system. Two reports,

each of them more recent than mine, have addressed the topic of military justice to an extent that was largely beyond my mandate. Those reports were submitted by Justice Fish, who could possibly make it here to join you, and Justice Arbour, whom I believe has testified before other committees already. The legislative changes that you're considering now are based on the recommendations in those reports.

To prepare for today's hearing, I listened to testimony presented to you by a number of witnesses. I noted that the witnesses' positions, despite some differences, seemed genuine and informed. Your work is made all the more difficult by the fact that the proposed changes will likely have a real impact on the lives of CAF members.

I was particularly interested in the testimony given by Dr. Karen Breeck for a number of reasons. First, she's a CAF medical resource. This reminded me of having discovered during my research review that health services are often the first resource contacted by victims and by the persons whose behaviour is at issue.

Second, the people who provide these services function independently of the justice system and see multiple facets of the lives of persons in need. They see the effects of assaults and the consequences of the judicial process, both military and civilian. Independence and multiple facets are two important factors.

Third, and without trying to minimize the value of the other witnesses' testimony, I believe Dr. Breeck's opinion is based not only on her expertise, but also on decades of personal experience.

Dr. Breeck and certain witnesses stressed two points that resonate a lot with me and align with certain aspects of my own review. First, the fact that inappropriate conduct of low severity is unlikely to be prosecuted in civilian courts is something I observed myself 10 years ago.

Today, the civilian justice system is still facing challenges and even making headlines. As you might have seen yesterday, the Globe and Mail published an article on criminal justice system delays and the number of proceedings stayed.

• (1550)

We therefore have few reasons to believe that low-severity misconduct will be prosecuted in the civilian system any time soon. As I explained in my report, a culture of sexualization emerges through many small, day-to-day actions. If these small actions go unchecked, a culture of impunity takes hold and opens the door to more serious wrongdoing.

I therefore believe that transferring jurisdiction for offences of lesser severity involves significant risks. Unless such actions are punished, the people within the CAF who commit them could develop a sense of invulnerability. The CAF could end up perpetuating, or reviving, an atmosphere ill-suited to culture change.

Another point raised by Dr. Breeck and other witnesses is the need to gather data. I made this item an important focus of my review. I noted that data were not being compiled consistently. A lack of data creates a vulnerability, and I see that data collection is still a point of tension. This bill is an opportunity to address those weaknesses.

In closing, I'd like to return to the difficulty of your work. Several witnesses have suggested a cautious approach that allows some progress but limits the risks. This involves placing a limitation clause on the obligation to transfer all files. I heard some English-speaking witnesses call this a sunset clause.

Robust information gathering combined with a limitation clause would let you accomplish two things at once. It would provide you with evidence-based data for evaluating a new process and it would limit the risks.

I do not believe that a simple, periodic legislative review is enough. As you know more than most, the legislative process is very long. If the legislation remains in force until its possible amendment, and if the transfer of cases to the civilian justice system produces negative outcomes, the CAF will suffer the consequences.

However, if a limitation clause is passed, this aspect of the bill would no longer remain in force and the option system would resume. I think this is the more cautious approach.

Thank you for your attention. I'll be pleased to answer your questions.

• (1555)

[English]

The Chair: Thank you so much, Justice Deschamps.

Mr. Anderson, you have up to six minutes.

Scott Anderson (Vernon—Lake Country—Monashee, CPC): Thank you very much for coming here, Madame Deschamps. It's obviously a sensitive subject. I appreciate your time here.

I think you've answered these questions. Have you been watching the testimony as it goes by?

Hon. Marie Deschamps: Yes.

Scott Anderson: Have you read Bill C-11?

Hon. Marie Deschamps: Yes.

Scott Anderson: A lot of witnesses, as you know, as well as the military, have suggested that the culture has in fact changed over the last 10 years. You just recognized that part of the culture change is addressing the small things. It's sort of like the broken window theory, where if you stop the small things from happening, the bigger things tend not happen.

You mentioned that the lower end is unlikely to be prosecuted in civilian courts. I believe the witness you referenced, Dr. Breeck, also said that. Others have as well.

The chief of police of Victoria has indicated that they don't have the capacity to do it. They have the ability, but not the capacity. Would you say that's a widespread problem in civilian police forces?

Hon. Marie Deschamps: During my review, I was exposed to witnesses who attempted to go to the civilian system. In many cases, they were dismissed without any explanation.

At the time, this was not prosecuted. As I mentioned in my introduction, I have no reason, with what I observed about what's going on, to believe there would be any change to that situation.

The criminal justice system is already overwhelmed. Some legislatures are talking about taking action in response to a decision of the Supreme Court, which imposed some delays. The justice system has received more funding, but there seems to be a chronic issue with the volume.

Scott Anderson: Since December 2021, criminal offences of a sexual nature have been transferred to a civilian authority. Have you seen any data on how many cases have in fact been sent there?

• (1600)

Hon. Marie Deschamps: I have no data.

Scott Anderson: Given the backlogs in the civilian system, do you believe the legislation will ensure justice and not just backlogs and delays? I think you've answered that, essentially.

Hon. Marie Deschamps: I have no additional comment.

Scott Anderson: In your legal opinion, would the amendments related to investigations and evidence result in any evidence collected prior to the civilian authority's arrival being deemed inadmissible? This is in clause 8.

Hon. Marie Deschamps: To deem evidence inadmissible, you need multiple factors. It would be deemed contaminated because it was collected prior.... There are many circumstances in which evidence needs to be collected, for example, as a matter of emergency. You would have to examine the piece of evidence and how it was collected before concluding that it was inadmissible.

Scott Anderson: Is the onus on the victim to communicate the incident to the CAF command structure in order to be properly protected?

Hon. Marie Deschamps: There shouldn't be any onus put on the victim. She needs support. There is no onus.

Scott Anderson: I'm going to give the rest of my time to my colleague.

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

Thank you, Justice Deschamps, for joining us and for the work you did going back to 2014 and 2015 and your report. It's unfortunate that former minister Sajjan and former chief of the defence staff Vance didn't even look at it and implement it back then, because then we wouldn't have been dealing with this now. We might have prevented some more victims of military sexual trauma.

The bill is trying to address the lack of military judges. There is talk about using retired CAF members who have been members of a bar in any province as potential appointments to become military judges.

Do you support that to deal with the lack of judges currently being experienced in the CAF?

Hon. Marie Deschamps: I've been exposed to officers who were very conscious of the problem and who were very concerned about it. I would not say that everyone is—I will use the word again—contaminated. Sometimes, experience is a positive factor.

If the appointment is done appropriately with the right person, the fact that they have a military background should not be a factor that would exclude them outright.

James Bezan: It would be an advantage, though, to have somebody with a military background appointed as a military judge. They understand the language, the chain of command and potentially the culture of the everyday operations of every CAF member.

Hon. Marie Deschamps: I would not say that it would be a definitive advantage. I'll give you the example of my own case. When I started the review, I was told that I didn't know anything about the Canadian Forces, so I could not conduct the review. Judges are very used to looking into issues that they don't initially have experience on.

That said, I would say that if it's a panel where there is more than one judge, having someone with a military background would certainly be of benefit.

The Chair: Thank you.

Mr. Watson, you have six minutes.

An hon. member: Did you say Mr. Watson?

The Chair: I said Mr. Watchorn. You misunderstood.

Voices: Oh, oh!

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

Is that like "Mr. Kimble"?

Voices: Oh, oh!

Tim Watchorn: I'm sorry.

[*Translation*]

Thank you, Mr. Chair.

I'd like to start by saying that it's an honour to ask questions of a former Supreme Court of Canada justice. I never expected such a thing would happen to me. It's an honour to speak with you.

• (1605)

Hon. Marie Deschamps: Keep in mind that I'm appearing before your committee as an ordinary person who wrote a report.

Tim Watchorn: You will never be an ordinary person.

Many victims told us that trust was a major issue for them when it came to filing a complaint or engaging with the justice system. I'd like to start by reading a section of your 2015 report. I have the English version and so I'll read that section in English.

I'll ask you a question afterward.

In your report, you wrote that:

[*English*]

Victims will generally not be comfortable taking a confrontational position with their harasser, particularly when the harasser was of a higher rank. Moreover, many interviewees who did bring their complaint forward to a supervisor reported that the complaint was not taken seriously...

For these reasons, among others, victims, concerned about how they will be treated by the military justice system, tend not to report sexual assaults. Many of those victims who did report an offence said that their experiences were "atrocious". To rebuild trust in the system, complainants need to be reassured that the CAF is committed to ensuring that their complaints are appropriately investigated. This can be achieved, in part, by allowing the victim to request to have her case transferred to civilian authorities...

Similarly, allowing victims of sexual assault to request that their complaints be brought to civilian authorities will send a strong signal that the CAF is prioritizing their needs.

[*Translation*]

In 2015, I presume you observed that victims didn't trust the military justice system.

Did I understand correctly?

Hon. Marie Deschamps: That's right. First of all, I didn't have the authority to impose legal proceedings, because this aspect of military justice was outside my mandate. I was also reluctant to suggest forcing that on the victims.

For instance, in low-severity assault incidents, the victims may not want to make a big deal of it. They want the misconduct to stop, and they want to see some kind of punishment handed out, but they don't necessarily want to get involved in a complex legal proceeding.

For low-severity offences especially, the civilian justice system can be slow. This means that victims have to travel, for example, if they've been deployed to another military base. I thought it was more appropriate for victims to have a choice.

Tim Watchorn: If I understand Bill C-11 properly, low-severity offences not set out in the Criminal Code are not transferred.

Is that right?

Hon. Marie Deschamps: No, some low-severity sexual assault cases are also transferred.

I wondered about which cases wouldn't be transferred. These include harassment cases, which are dealt with administratively. Harassment also has to be punished, but there's more than harassment. Many low-severity assaults, including non-consensual sexual touching, are also considered reprehensible actions.

Tim Watchorn: Your report dates back to 2015.

Is that right?

Hon. Marie Deschamps: Yes.

Tim Watchorn: Justice Arbour's report dates back to 2022. Justice Arbour interviewed 14,000 people during the time between the publication of these two reports. Once again, she suggested that the civilian justice system would be a better option for victims of sexual offences than the military justice system.

Do you agree with Justice Arbour on that point?

Hon. Marie Deschamps: I have some reservations on that as far as less severe cases of misconduct are concerned.

Tim Watchorn: Would you agree in cases of severe misconduct?

• (1610)

Hon. Marie Deschamps: Absolutely.

Tim Watchorn: That's perfect. That's good news.

I don't know if you've been following the earlier testimony, but I've often held up the system used in Quebec, which created a specialized tribunal for sexual offences, as an example. I think Quebec society has determined that handling cases of this kind requires specialized training.

I've asked other witnesses the following question, and so I'll ask you.

Do you think a system like the one in Quebec would be better for victims of sexual crimes?

Hon. Marie Deschamps: I think it's quite appropriate for courts to create specialized sections for sexual assault, along the same lines as what's done in family law cases. However, it's also important to consider practicalities.

Take family cases, for comparative purposes. In the regions, most legal cases come under family law. The regions don't necessarily have the same expertise as the large urban centres. Case volume is what allows this kind of expertise to develop.

[*English*]

The Chair: Thank you, Mr. Watchorn.

[*Translation*]

Tim Watchorn: Thank you, Mr. Chair.

[*English*]

The Chair: Monsieur Savard-Tremblay, you have up to six minutes.

[*Translation*]

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

Justice Deschamps, thank you for joining us and thank you for your testimony.

I'm going to continue along the same lines. I clearly understood the distinction you made between what you'd like to see dealt with in civilian courts and what can stay in military courts. However, a number of witnesses have suggested making it a matter of choice.

Do you think that could be the way forward?

Hon. Marie Deschamps: I support a system that gives victims a voice, so my answer is yes.

Simon-Pierre Savard-Tremblay: You say that your report dates back a few years, but much of it is still very timely. In it, you raised the issue of culture in general.

Since culture consists of a set of practices that are somewhat difficult to describe and hard to evaluate with measurement criteria, I immediately had to wonder how culture change is measured. You could answer that part later.

Lastly, even if a bill leads to technical changes, what real purpose does it serve without these culture changes?

Is this an exercise in futility? In other words, are we putting the cart before the horse?

Hon. Marie Deschamps: No, I think that amending the bill can help change practices simply because legislation that has some teeth and that gets enforced will punish some behaviours. That way, it becomes one of a number of tools that can be used to gradually change culture.

Simon-Pierre Savard-Tremblay: That said, how can changes in culture be measured?

Hon. Marie Deschamps: Culture isn't something that can be cut with a knife.

Simon-Pierre Savard-Tremblay: Hence my question.

Hon. Marie Deschamps: Data has to be properly collected. I recall reviewing questionnaires for surveys conducted among CAF members. Some of the feedback I received mentioned that the questions were not very clearly worded. That was one aspect.

Another point that came up was that misconduct and inappropriate behaviour are not always recorded in the same way. Sometimes, misconduct is hidden under different labels. Additionally, data-banks were not interconnected. Even the data needed to evaluate the number of formal complaints or the impact on CAF members was missing.

The work begins with data collection. This could be data on discriminatory behaviour, which was not in my report. It could also be questions on discrimination or inappropriate behaviour. When it comes to discrimination, there's a whole series of facts, including promotions and deployments, that could reveal signs of discrimination.

In my opinion, data collection is essential for an idea of behavioural progression or evolution within the CAF.

• (1615)

Simon-Pierre Savard-Tremblay: As I understand it, these were the challenges you identified when you tabled your report 10 years ago.

To your knowledge, do we have better data now?

Hon. Marie Deschamps: I have no idea. I heard the witnesses say that better data collection is needed.

In my opening remarks, I called this a point of tension, because I wouldn't say that it rises to the level of a problem. Other people with more recent knowledge than me have talked about it.

Simon-Pierre Savard-Tremblay: I sense that you're being a little cautious with some of your answers. I won't ask you what needs to be changed today, since you're probably not familiar with current data collection.

You said that the main obstacles at the time you conducted your investigation were the lack of communication and precise information.

Was this because of the way that the questions were formulated? Was it because the sample was insufficient?

Hon. Marie Deschamps: First of all, the chief of the defence staff, General Carignan, would have to issue clear instructions because that has to come from the leadership. Clear instructions have to be given for the information to be collected.

Secondly, each individual may have different concerns, but there has to be consistency when it comes to labels and categories to ensure that the systems capture the greatest number of items of information possible. Next, systems must be interconnected to make an inventory possible.

Simon-Pierre Savard-Tremblay: I don't have much time left. I'm going to ask you one last question of a more technical nature.

It was suggested, or mentioned, that eliminating military jurisdiction could deny some accused persons access to defence counsel services. That's been said.

Based on your expertise, do you think this is a real risk?

Hon. Marie Deschamps: The ability to receive defence counsel assistance is an advantage for CAF members. Obviously, the civilian justice system uses different mechanisms.

The Chair: Thank you, Justice Deschamps.

[*English*]

Mr. Kibble, you have up to five minutes.

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

Justice Deschamps, thank you for being here and for your opening statement. More importantly, thank you for your dedication to and excellent work on this very challenging topic.

We've heard from many witnesses and many victims. The vast majority have advocated for freedom of choice between a civilian

and military justice system. Some got into levels of severity of crimes, as you alluded to.

Do you agree with their statements?

Hon. Marie Deschamps: You just mentioned that there were a variety of statements. I'm very comfortable with the most severe conduct being dealt with in the civilian justice system. However, as I mentioned in my opening statement, I think there are important risks in transferring low-severity conduct.

• (1620)

Jeff Kibble: It's fair to say that, in your opinion, they should have freedom of choice in selecting that.

Hon. Marie Deschamps: Yes, that is correct.

Jeff Kibble: Thank you very much.

I have a slightly more technical question.

Clause 12 of Bill C-11 would repeal a paragraph of the National Defence Act that speaks to a guiding principle for judges when making decisions. I'm sure you know the importance of denunciation as a guiding principle.

My question is, do you agree that denunciation is an important guiding principle? Can you think of any reason why Bill C-11 would want to strike out denunciation as a principle not just specifically from these cases but also from the entirety of the National Defence Act?

Hon. Marie Deschamps: If I understand your question, you're referring to the duty to report.

Jeff Kibble: No. One of the guiding principles for military judges when making a decision is denunciation. Bill C-11 would strike it from the National Defence Act, taking it out as a guiding principle when judges make decisions.

Hon. Marie Deschamps: I would have to reread this provision and see it in context. I don't feel comfortable answering your question.

Jeff Kibble: Perhaps you would consider providing a written statement, if you feel that is appropriate. Thank you.

There's nothing in Bill C-11 to compel civilian police to communicate and share evidence with...or to compel the Canadian Armed Forces to communicate with civilian police. Do you feel this is an oversight?

Hon. Marie Deschamps: During my review, I noted that there was a system by which military police at the time—if I remember correctly—kept a shadow file in order to follow the file in the civilian justice system. I don't think this relied on an obligation to share. If the system worked before, I don't see any reason it would not continue to work properly.

Certainly, adding a provision whereby they have access to the information as a right is probably prudent.

Jeff Kibble: Do you believe civilian prosecutors and judges would need additional training to account for the differences in culture and for some of the different rules when taking these cases on?

Hon. Marie Deschamps: I think it is better when a judge or prosecutor knows about a topic. The fact that they might not know more or are not experienced in military life is just one of the factors. I don't think we would need special training for prosecutors or judges to prosecute and adjudicate when it's a military person.

Jeff Kibble: Is there anything you uncovered in your report that you would like to have seen in Bill C-11 or anything you feel was overlooked in Bill C-11?

Hon. Marie Deschamps: Bill C-11 talks about military justice. My report encompassed much more than military justice. It had many aspects that dealt with the administrative law aspect, such as administrative processes, so I don't think it had its place, in any event, in....

Jeff Kibble: That's fair enough.

After reviewing Bill C-11, is there anything you would like to see added to it or that has been missed?

Hon. Marie Deschamps: I have no comment on this.

Jeff Kibble: That's fair enough.

We heard a question—

The Chair: I'm sorry, Mr. Kibble—

Jeff Kibble: Is it six minutes?

The Chair: It's five.

Jeff Kibble: I'm sorry. Thank you.

The Chair: We'll get back to you, Mr. Kibble.

Mr. Chris Malette, you have five minutes.

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

Thank you, Madame Deschamps.

Further to my companion's question on specialized courts, similar to what's in place in Quebec, you began to explain—and please stop me if I'm incorrect in my interpretation of your response—that this was more suitable to a more heavily urbanized area or populated area.

In your estimation, then, is there a practical application for a specialized court for military or sexual assault cases across Canada? Never mind the military aspect—just a specialized court.

• (1625)

Hon. Marie Deschamps: I think, yes, there is room, and it would benefit victims and accused persons if there was a specialized court in every province.

Chris Malette: Is it a practical...?

Hon. Marie Deschamps: That is it. In practice, it won't happen because there are no resources. You cannot dedicate resources. In many districts, you will have judges visiting, so you cannot all the time, on every sitting day, have a judge who can receive evidence on a sexual assault, for example.

Chris Malette: Circling back to the matters at hand, in some of your deliberations you stated that victims who brought their complaints forward to a supervisor were not taken seriously and victims often feared taking a confrontational stance with harassers of a higher rank.

Does this indicate a culture issue created through the constant abuse of the asymmetrical distribution of power in the CAF?

Hon. Marie Deschamps: I think my point was more directed towards the fact that victims need a third party. I had an issue with forcing victims to meet directly with the harasser or the aggressor, and because of the rule of attempting to resolve a matter at the lowest possible level, this tended to be one of the solutions considered or contemplated. I don't think meeting the aggressor is something you can impose on a victim.

Chris Malette: In some of my previous questioning of some of the previous witnesses, I mentioned that as a former journalist, I covered, on more than one occasion, courts martial involving sexual assaults. I believe I had about three of them in the course of the years I did.

In every one, it was striking, coming from the civilian world, to watch a woman—in all cases they were women—accuse a male who, in a lot of cases—in two of the three cases at least—was a superior officer wearing the same uniform. They were sitting before a tribunal of men and women wearing the same uniform, with all of the participants in the hearing wearing the same uniform that these women were wearing. It was striking: How would you come to have fairness and, more importantly, trust in that scenario?

Is this central to what you found in your deliberations?

Hon. Marie Deschamps: I have not witnessed a court martial as you did, so you have more experience than me in that.

Chris Malette: In that scenario....

Hon. Marie Deschamps: I mostly heard in testimony from victims that they were not comfortable.

Chris Malette: Would that go to trust, then, Madame?

Hon. Marie Deschamps: That's part of trust. They seem to be facing someone who is fundamentally promoting the family, because by making a denunciation, the victim would be stepping out of the family, so the victim became seen as the traitor.

• (1630)

The Chair: We're done on that one. Thank you.

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

[*Translation*]

Simon-Pierre Savard-Tremblay: Let us return to the freedom to choose question.

You said that you support the freedom to choose between a civilian or military court. However, civilian police are currently turning away some of the cases referred to them by the CAF.

Will completely eliminating the jurisdiction of the military justice system lead victims to a dead-end?

Hon. Marie Deschamps: When we speak of cases ignored by the civilian justice system, we're referring to low-severity cases. When it comes to serious cases, however, I wouldn't say that the civilian justice system ignores them. The fact that they're processed according to the same timelines as other cases is inherent in the procedure.

I noticed that the military justice system ran into a lot of case processing delays. As I said earlier, witnesses and people generally don't stay on the same military base for long. Things change. That said, delays in processing cases occur on the military justice side as well.

Simon-Pierre Savard-Tremblay: In your 2015 report, you recommended creating an independent centre of accountability. A centre has now been created, but it doesn't tick all the boxes on your request list.

It seems that you'd like to discuss that with us a little more.

Should we amend Bill C-11 to create an independent body?

Hon. Marie Deschamps: I've had no contact with the centre for a long time. I can't remember its French acronym even though I wrote it down so I wouldn't forget. I remember the English acronym.

Simon-Pierre Savard-Tremblay: The name is the sexual misconduct support and resource centre, or CSRIS in French.

Hon. Marie Deschamps: We've grown accustomed to using the English acronym, SMSRC.

In the first few years, I kept in touch with people at the centre and watched their mandate change. Back then, I thought they were too close to military personnel for my liking.

For instance, I suggested that the centre be responsible for all data collection. I'm coming back to that because it's vitally important. However, the centre was not given that responsibility. I also suggested that complaints be made directly to the centre to ensure that more victims received support. I also proposed waiting until victims felt ready to open up to the justice system.

Lastly, a host of functions could be put in place and assigned to this centre. However, they're still the responsibility of the CAF.

[English]

The Chair: Thank you.

Ms. Gallant, you have up to five minutes.

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

As our last speaker was saying, one of the witnesses suggested a system separate and independent from the chain of command. The tribunal would not have commanding officers sitting on it. She envisioned something like DND, so not right in the military, but still part of defence.

Do you see how anything like that would be appropriate? It wouldn't be a civilian court and it wouldn't be a court martial, but it would be something in between. It would be a hybrid.

Hon. Marie Deschamps: You may have a feature that looks like it in the civilian complaint process for the RCMP. It's not unheard of. It might be something to explore, but it would take, again, another structure.

• (1635)

Cheryl Gallant: Okay. That's most helpful.

To what extent did victims complain of fraternization between the assisting officers and members of the defence counsel when you were doing your interviews with assault victims?

Hon. Marie Deschamps: That was part of the JAG's supervision aspect that I was not able to look at, so I had very little exposure to the military justice system.

Cheryl Gallant: The justice minister refuses to come to this committee and provide input on Bill C-11. Do you see the transfer of cases to the civilian courts as immaterial to ministerial oversight...the functionality of the civilian court system? If the transfer does happen, as Bill C-11 suggests, would the justice minister have any oversight? Does he have any responsibility for this?

Hon. Marie Deschamps: The way the jurisdictions for the justice system are divided, the administration of the courts belongs to provinces. Building courthouses and hiring all the clerks and all the employees belong to the provinces. The appointment of judges does not belong to the justice minister as such; it belongs to the Governor in Council, and the courts are independent.

In terms of ministerial oversight, I don't see that the impact on this provision is important.

Cheryl Gallant: This is almost like *Back to the Future*. We saw you 11 years ago and then again in 2021.

What do you see as the major roadblocks that prevent this government from fully implementing even the recommendations you gave? I hope that in 10 years, it's not going to be a matter of *Back to the Future*, and we have you here again because we've gone nowhere.

Hon. Marie Deschamps: My report was mostly addressed to the forces themselves, more than to the government. Justice Fish's report and Justice Arbour's report addressed recommendations to the government as such. Mine is more under the purview of the Minister of National Defence and the chief of the defence staff.

Cheryl Gallant: In your comments, you mentioned that there may be a contamination with regard to transferring evidence in the military system from the military police to the civilian police. The inference was made. Did you observe that? In any of the testimony given to you by the defendants, was there a concern over something changing between the time the evidence was collected and the time it went over to civilian courts?

Hon. Marie Deschamps: First of all, I don't know whether it was in English or French, but it may have been lost in translation. I don't think I said there was always contamination. There is a possibility that evidence is excluded because of contamination, but that's standard before the court. If the evidence is not well kept or well collected, it will be excluded.

I have had witnesses tell me that they were part of a process where some evidence had not been preserved the way it had to be. Unfortunately, this was an instance where the case had been transferred to the civilian system.

• (1640)

The Chair: Thank you.

Ms. Viviane Lapointe, you have up to five minutes.

[*Translation*]

Viviane Lapointe (Sudbury, Lib.): Justice Deschamps, as you know, a number of witnesses have said that the Canadian Armed Forces have undergone a significant culture change in recent years, suggesting that previous reports, including your report and Justice Arbour's report, no longer reflect the institution's reality.

Based on the facts available to you, the consistency between your findings and those reaffirmed by Justice Fish and Justice Arbour, do you think that some aspects of the issues you raised are still relevant today?

There's a second part to my question.

What concrete indicator would you need to find that a significant change in culture has indeed occurred?

Hon. Marie Deschamps: As I said in my opening remarks, I didn't have enough information to comment on culture change. I spoke about Dr. Breeck, who very firmly said that the culture is no longer the same, that the CAF is no longer the same. Personally, I can't say that. I can't offer an opinion on this aspect of her comments because I can't speak to that.

Some aspects are certainly still relevant. I spoke about the data issue. Earlier, I mentioned the independence of the sexual misconduct support and resource centre and its responsibilities. I didn't witness the evolution of various aspects. I don't know if this was due to a lack of information or because the CAF decided not to follow my recommendations. I can't say.

Viviane Lapointe: Bill C-11 addresses the justice system's jurisdiction, independence and support for victims, but it doesn't fully cover the aspects you identified, such as clearer definitions of prohibited behaviour, imbalance of power considerations and consistent policies.

In your opinion, are any improvements or additional measures needed to ensure that the bill fully complies with the culture-related and structural issues highlighted by your review?

Hon. Marie Deschamps: I didn't study the definitions exhaustively this time because it was not the focus of my participation.

For some of the definitions, I know that amendments were made to the defence administrative orders and directives, or DAOD in military jargon. I looked at them at the time, back in 2021, and realized that the definitions were not as specific as I would have liked.

For instance, fraternization was an issue at the time. There are likely still more areas where the CAF could make improvements, but not in relation to Bill C-11 because such internal issues really come under CAF jurisdiction.

Viviane Lapointe: Bill C-11 proposes greater independence when it comes to appointments, police structures and the elimination of CAF jurisdiction over sexual offences.

In your opinion, do these reforms sufficiently address the independence shortfalls that you observed in connection with military police, prosecutors, counsel, defence and judges, or are additional measures still needed to maintain public trust in the system over the long term?

Hon. Marie Deschamps: The more independent the stakeholders involved become, the more likely that their integrity and independence will be trusted. If the appointment system is well designed and properly implemented, it will strengthen trust in the new processes among the public and victims.

• (1645)

Viviane Lapointe: Thank you.

[*English*]

The Chair: Mr. Bezan, you have five minutes.

James Bezan: Thank you, Mr. Chair.

Again, Justice Deschamps, I really appreciate all of your work on this.

I want to get some clarification on one of the previous questions. As you know, section 718 of the Criminal Code of Canada states:

The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;

Do you agree with that?

Hon. Marie Deschamps: Yes, denunciation is one of the goals of a sanction, and I agree with the purpose of denouncing.

James Bezan: In 2019, this committee dealt with Bill C-77 to infuse a victims' bill of rights into the military justice system. In division 5 on summary hearings, in section 162.9 on the objectives of sanctions, a reduction in the rank or pay of those being charged is included. In there, as part of the imposition of sanctions, it states that sanctions are "intended to achieve one or more of the following objectives", including in paragraph 162.9(c), "to denounce indisciplined conduct".

When we look at what indisciplined conduct means, its characteristics include disobedience, misbehaviour, lack of control and disorder—all things we don't want in the Canadian Armed Forces. However, Bill C-11 would delete that paragraph. Why?

Hon. Marie Deschamps: I cannot explain, and—

James Bezan: It undermines the very principles of justice.

Hon. Marie Deschamps: —I have not reflected on it. I'm sure you have asked this question of other witnesses who were probably more informed on the topic.

James Bezan: Doesn't it sound kind of ridiculous, if we're going to be talking about sexual misconduct, especially in the context of Bill C-11, that we would delete from the National Defence Act the paragraph that denounces indisciplined conduct?

Hon. Marie Deschamps: I don't know the intricacies of the reasons it was removed. It may be because part of the disciplinary system has shifted, so there may have been some consistency—

James Bezan: We'll be asking—

Hon. Marie Deschamps: You would have to ask the legislative drafter why it was removed.

James Bezan: We'll probably be inviting back—

Hon. Marie Deschamps: There must have been some reason.

James Bezan: —some members of the Canadian Armed Forces, the JAG in particular, to see why they would do that, because it makes no sense. It actually contradicts everything we're trying to do in Bill C-11. It contradicts the effort to maintain good order and discipline through the QR and Os within the Canadian Armed Forces. To me, it undermines all of that.

I appreciate that—

Hon. Marie Deschamps: Mr. Holman was here, at some of the hearings.

James Bezan: Pardon me.

Hon. Marie Deschamps: The JAG was here. I forget his rank. Please excuse me. At the time I met him, it was, I think, lieutenant or colonel. Actually, not lieutenant, because there are so many ranks in between—

James Bezan: But it's the judge advocate general.

Hon. Marie Deschamps: Yes.

James Bezan: You mentioned bringing in a sunset clause. I don't disagree with you on that. Just for clarification, how frequently would you suggest it happen, or do you suggest that instead of doing a legislative review, this bill should actually sunset and die after a set number of years?

Hon. Marie Deschamps: I don't mean to exclude from the National Defence Act the mandatory legislative review, but I suggest that you have a sunset clause for this part of Bill C-11.

• (1650)

James Bezan: Was it after three years, you said?

Hon. Marie Deschamps: On the number of years, I hesitate to give you a fixed term because two years is very short for collecting the data. Three years might be a better number, but I hesitate to say three years because I think the mandatory review of the National Defence Act is three years.

James Bezan: Every piece of legislation is different. I know that with the Species at Risk Act, for example, it's every five years that they do—

Hon. Marie Deschamps: That's a long time, if harm is done.

James Bezan: That's true. I agree. I thank you for that frankness.

Hon. Marie Deschamps: I'm sorry, but I have not reflected on the length of time. I don't want to ramble in front of you, but certainly two seems short. Three seems to be appropriate.

James Bezan: Okay. I appreciate that.

The Chair: Thank you, all.

Ms. Sherry Romanado, you have up to five minutes.

[*Translation*]

Sherry Romanado (Longueuil—Charles-LeMoine, Lib.): Thank you very much, Mr. Chair.

Justice Deschamps, thank you for joining us today and for your work on behalf of the Canadian Armed Forces, or CAF.

I have two sons and a daughter-in-law currently serving in the CAF, so this issue is deeply personal for me.

In your report, specifically in the section describing the context of the review, you speak of articles about sexual assaults appearing in the media in 2014. You said that it wasn't the first time the media had covered this issue. The first time was back in 1998, the year when reports on the matter were made.

In 1998, the investigation and prosecution of criminal cases involving two civilians were transferred to the Canadian Armed Forces. You published your report in 2015. The report by Justice Morris Fish was released in 2021.

At the time, in 2021, the CAF was going through some rough times. There was talk that a number of cases weren't being processed. There was talk that a number of victims didn't want to submit their cases. Families feared for loved ones serving in the CAF. People declined to seek employment with the CAF. Recruitment and retention were a problem.

Justice Louise Arbour released her report in 2022.

I just want to place the events of the last 10 years in context, that's since your 2015 review.

In 2021, a directive was issued to temporarily transfer cases to the civilian system. The incumbent of the chief of the defence staff position also changed several times. A number of measures were proposed to eliminate sexual abuse within the CAF and bring about a culture change.

Would you agree that these various factors had a positive impact on improving trust in the process among members of the CAF?

Did this reassure them that if anything happened, they would receive understanding and support?

What could you tell us in that regard?

Hon. Marie Deschamps: I can't answer that question because I didn't have any contact with people at the grassroots level. The only contact I had was with officers, and with people working for the armed forces indirectly. So I can't tell you whether the changes made affected the atmosphere or affected trust by the public and CAF members in the way that inappropriate conduct was being managed.

I don't have enough information to give you an answer that would contribute important information to the committee.

Sherry Romanado: Bill C-11 creates a liaison officer position available to victims throughout the transfer of their case, regardless of the province or territory.

Do you think that's a good idea?

• (1655)

Hon. Marie Deschamps: A liaison officer position already existed. The devil is in the details. It all depends on how internal military police policies are implemented. Since the military provost position was not excluded from my review, I examined these policies. They already provided for a liaison officer, but the liaison officer role was subordinate to other duties.

Yes, I fully support the idea of having a liaison officer help monitor cases, and the idea that military personnel be able to monitor cases in the civilian justice system. Implementing these ideas, however, demands careful execution.

At the time, this wasn't done consistently with victims. They would be summoned without notice. I don't want to generalize, but a number of people said that they'd been called to appear before they had time to prepare their testimony because the liaison officer was too busy with other duties. So, execution is everything.

The Chair: Thank you.

[*English*]

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

[*Translation*]

Simon-Pierre Savard-Tremblay: Mr. Chair, can you tell me if this is my last turn to speak?

[*English*]

The Chair: We may have some more time.

[*Translation*]

Simon-Pierre Savard-Tremblay: I'd like to use one of my turns to speak to introduce a motion that I've moved. You told me that I'd have time later, but you don't seem sure. I'm therefore going to move it now and hope things move fairly quickly and smoothly.

[*English*]

James Bezan: I have a point of order before we go to that, Mr. Chair.

The Chair: Yes, go ahead.

James Bezan: We started 15 minutes late. Instead of adjourning at 5:30, I think we should be adjourning at a quarter to six.

The Chair: That's understood.

You'll have some more time, Mr. Savard-Tremblay.

[*Translation*]

Simon-Pierre Savard-Tremblay: So I won't move it now. We'll come back to that later.

[*English*]

The Chair: We'll give you another chance.

[*Translation*]

Simon-Pierre Savard-Tremblay: Okay.

Justice Deschamps, in your report, you also widely documented the fact that most victims were choosing not to report these incidents.

Do you think Bill C-11 will provide the means to take action on the reporting issue?

Hon. Marie Deschamps: It's certainly part of the solution, but reporting starts at the bottom.

In my opinion, reporting starts with the victim's comfort level. Does the victim feel comfortable talking to someone, to a single person? Does the victim trust that this person will take charge of the case and provide support?

Bill C-11 is therefore part of the answer.

Simon-Pierre Savard-Tremblay: Your report also spoke about a number of investigation shortfalls, including delays, a poor understanding of consent, evidence-related issues and failures to follow up with witnesses.

Once again, will the bill address these shortfalls?

Is there anything else that we should add to the bill?

Hon. Marie Deschamps: From what I understood, the bill is a transfer to the civilian justice system.

Of course, not every one of the provisions I had hoped for could be included in the National Defence Act, like the creation of a victim support and empowerment centre. I was in favour of a victim support centre. Bill C-11 doesn't provide for such a centre.

Simon-Pierre Savard-Tremblay: How much time do I have left, Mr. Chair?

[*English*]

The Chair: You have another minute.

[*Translation*]

Simon-Pierre Savard-Tremblay: That's great.

Is there anything else that could help restore trust, that could actually fight the culture of sexualization, the culture of silence?

Other than that, what else is missing, apart from the centre? It's quite clear that so far, things have not entirely lived up to your wishes.

• (1700)

Hon. Marie Deschamps: I don't have any concrete suggestions to share with you today.

Simon-Pierre Savard-Tremblay: Thank you.

[English]

The Chair: Thank you.

Mr. Bezan, you have the floor.

James Bezan: Thank you.

Your Honour, I want to drill down a bit on the sexual misconduct support and resource centre that currently exists.

Do you feel that it's giving the services required to help victims and survivors deal with their situation? Now that it's providing legal advice as well, is it providing the proper advice on how they should best proceed in addressing criminal charges against their aggressor, whether it's in military court or civilian court?

Hon. Marie Deschamps: I think the centre should be completely independent. That's my first—

James Bezan: You don't think it's independent enough now.

Hon. Marie Deschamps: I don't have enough information to say whether it is completely independent.

What I've seen in the years following my review was not a completely independent centre. There were still people from the military working on site. There were many features that disturbed me at the time, but it was post-report, so I could not say so.

A completely independent centre would go a long way.

James Bezan: Having more independence is more of a policy shift, and that's something we can't really do in Bill C-11, but it's something we need to work on, so I appreciate that. Thank you.

When we look at Bill C-11, we see it would make the key players within military justice completely independent from the chain of command, moving them to Governor in Council appointments. Do you support making the director of military prosecutions, the director of defence counsel services and the provost marshal Governor in Council appointments and independent from the chain of command?

Hon. Marie Deschamps: I have not reflected enough, but as I mentioned earlier, the more independent that segment of the military police and the military justice system is, the more chance there is that they will inspire trust.

James Bezan: When you were doing your interviews with the survivors of military sexual misconduct, did you have the feeling that the military police and the national investigation service were not doing the job to the best of their ability or lacked the capability and capacity to do it?

Hon. Marie Deschamps: I don't like making generalizations. I remember meeting with the investigators. There was a special unit that dealt with sexual assault, and those I met were very experienced and very dedicated. I don't want to make a big generalization, but I have seen enough issues and problems to say that they needed to correct many of their practices.

James Bezan: Thank you for that.

When we look at that, we see they have adjusted and they're getting better at it. They actually have a unit within the national investigation service that specializes in sexual misconduct.

Are you at all concerned, with Bill C-11, that they would still have a mandate for military sexual misconduct and sexual offences when they occur outside of Canada on deployments versus not having that responsibility and jurisdiction within Canada when sexual offences occur? Would that atrophy the skills of those who are doing sexual offence investigations, just because of a lack of repetition?

Hon. Marie Deschamps: The people I met were part of a very small team who would be carried across Canada. I must say that at the time, it didn't take long for them to react, so obviously they were more experienced. They had a lot of experience because they were—

James Bezan: There's no shortage of work, unfortunately.

Hon. Marie Deschamps: Yes, and they were acting across Canada. For deployments, it would be very difficult to have this kind of unit.

• (1705)

James Bezan: Under Bill C-11, they would not have that responsibility in Canada anymore, so those skills would atrophy. Would you not agree?

Hon. Marie Deschamps: Yes, but it would be shifted. As far as the justice system is concerned, this responsibility would be in the justice system.

The Chair: Thank you.

Mr. Watchorn, you have five minutes.

[Translation]

Tim Watchorn: Thank you, Mr. Chair.

I'd like to get back to the matter of free choice. I'll read a brief excerpt from Charlotte Duval Lantoin's testimony:

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 asking themselves, "Did I make the wrong choice here?" That creates severe psychological distress to a victim.

Earlier, you said that the civilian system might be appropriate for higher-severity sexual offences.

Would you agree with Justice Arbour on that?

Hon. Marie Deschamps: I think her comments primarily concern very serious cases of misconduct, because minor misconduct cases cause less anxiety, if only because they occur so often. If our goal is to encourage victims to file reports, they shouldn't be forced to use the civilian justice system.

However, I agree that victims may find themselves in a difficult position, or second-guess their choice if they can choose one system or the other. I also want to point out that I wasn't in a position to offer an opinion, even on these matters, because the military justice system wasn't included in the mandate of my review.

Tim Watchorn: You mentioned data collection several times. In your opinion, what data should be collected and by whom?

Hon. Marie Deschamps: I spoke about health care services and by that I don't strictly mean services provided by physicians. I also mean services provided by chaplains and services provided primarily by nurses, who are really first responders.

These people can't ensure that the information they collect can be matched to an individual. That raises privacy concerns. However, health care systems can find ways to collect information without disclosing that it pertains to Ms. X, Y, or Z, and can record that the information was entered in a database on a given date.

The health care system therefore needs to find a way to capture as much information as possible because this information is in the system. It requires a registry, and a consensus regarding the words used. That's an example.

Tim Watchorn: That's interesting.

This might be outside your area of expertise, but do you foresee any issues in transferring data from the military system to the civilian system?

Hon. Marie Deschamps: We're talking about different things. We're talking about collecting data within the Canadian Armed Forces so it knows what's going on within its organization. Now you're talking about the transfer of confidential information that could be used as evidence. That's not what I was talking about.

Tim Watchorn: You would like the data to be accessible in order to determine whether the system's culture has significantly improved.

Is that right?

Hon. Marie Deschamps: Yes.

Tim Watchorn: Okay, that's good.

What kind of data can be collected?

Would it be data on low-severity offences, major offences, or trends?

What data would you like to collect?

Hon. Marie Deschamps: You can imagine all sorts of systems. It might be possible to enter inappropriate behaviour in a database. For example, a person could enter that they were called a whore.

It takes some creativity. There might be a way to collect this information to keep each base commander informed about what's going on in his or her outfit. The process could be anonymous.

I'm therefore calling for some creative thinking on data gathering. My message to the committee is that it's very important to set up a mechanism.

● (1710)

Tim Watchorn: A number of witnesses have said the same thing as you, that it's important.

Hon. Marie Deschamps: Absolutely.

Tim Watchorn: I'm an engineer by training and I know that improving practices requires data.

Hon. Marie Deschamps: It takes evidence-based data. Of course, some people might say that creating a database for the military serves no purpose unless it's controlled. However, there may be ways to verify the data. For example, to track the time when the data was entered, or flag an unusual number of data entries.

You're the engineer, so I'll leave it to you to suggest possible data collection methods.

The Chair: Thank you.

[English]

Mr. Anderson, you have up to five minutes.

Scott Anderson: Thank you very much.

Madam Justice, if a young recruit joins the forces and is walking around and a superior pats her on the bum, should she go to the civilian police? More appropriately, would they actually initiate charges?

Hon. Marie Deschamps: I already mentioned that for a pat on the bum, I don't think civilian justice would do anything.

Scott Anderson: What if it happened three times, and, say, the second time, she asked them to stop and it continued? Would she then report it to the police, and would the police act on it?

Hon. Marie Deschamps: You mean the civilian police.

Scott Anderson: Yes.

Hon. Marie Deschamps: I don't think they would take it seriously.

Scott Anderson: Do you think they should? Do you think this behaviour should be addressed?

Hon. Marie Deschamps: The problem with the load they are facing—

Scott Anderson: No, I'm not saying the civilian—

Hon. Marie Deschamps: Oh, you mean the military police.

Scott Anderson: Do you think it should be addressed by somebody?

Hon. Marie Deschamps: Absolutely.

Scott Anderson: Why?

Hon. Marie Deschamps: Why? It's because if you don't address this low-severity conduct, members who see it and the member who is the author of this conduct will feel invulnerable, and it will continue.

Scott Anderson: Under Bill C-11, the military isn't allowed to take any action. What should that young recruit do if we're trying to change the culture?

Hon. Marie Deschamps: In my view, the young recruit should find a way to disclose this kind of conduct, and the administrative process, the internal process, should be in a position to impose some kind of administrative action—which would not be disciplinary because they would not have the authority.

Scott Anderson: Exactly.

Hon. Marie Deschamps: As I mentioned at the outset, I don't favour this kind of transfer for low-severity conduct.

Scott Anderson: Where is the line between low-severity and high-severity conduct? Who would draw that line, and where would you be comfortable putting it?

Hon. Marie Deschamps: I would be comfortable putting it.... Sexual assault is on a spectrum, obviously, and I cannot define it. I refrained from providing a definition in my report. I think it's up to the military to provide definitions.

Scott Anderson: The military won't be able to, though.

Hon. Marie Deschamps: As far as categories for the conduct go, they can issue directives on what they consider appropriate and inappropriate.

Scott Anderson: Okay, but if you're being inappropriate, you're still there.

I have one last question.

Because it's so hard to find that line, because of the problems and because of the position of the young recruit, would it be a better idea to simply give people a choice?

I'll address the paternalistic argument that if there's a choice and they make the wrong choice, it may come back to traumatize them and so on. That would be true if they have no choice as well, I would argue.

Hon. Marie Deschamps: If they have no choice at all, then.... Madame Arbour was concerned with the victim questioning herself over a bad choice. If there is no choice, there will be no room for the victims to question themselves.

• (1715)

Scott Anderson: Do you think there should be choice?

Hon. Marie Deschamps: For the low-severity conduct, yes.

Scott Anderson: Okay. Thank you.

I'll give my remaining time to my colleague.

Jeff Kibble: Thank you.

Earlier, we heard a question asked about a summary trial that was witnessed many years ago for deployed personnel. It's worth noting that Bill C-11 does not address or offer any solutions for trials for deployed personnel. Furthermore, victims would no longer

be required to report offences to their immediate chain of command.

Earlier, Justice Deschamps, you mentioned that victims were not taken seriously and had hesitation in reporting, which I understand, when they reported to their supervisor—which is not at arm's length.

In your experience, do you think victims would be taken seriously and would have less hesitation—or would not hesitate at all—in reporting to the military police, which are completely independent of their chain of command, or to the new sexual misconduct support and resource centre? It would give them that freedom from their immediate supervisor.

Hon. Marie Deschamps: If the SMSRC is completely independent, I don't see why they would be concerned. The premise to my answer is that it needs to not only be independent but also be perceived to be independent. They should not have any issue.

In my view, it will take much more time for the military police to build that trust.

Jeff Kibble: Thank you for your insight, and I agree.

I guess Mr. Anderson's time is done.

The Chair: Yes.

Mr. Kibble and Mr. Anderson, thank you both.

Chris Malette, you have five minutes.

Chris Malette: Thank you.

Thank you, Madame, for hanging in there. Normally, we have more witnesses to spread out the fun.

I'm going to lead off by reading a portion of your report:

Finally, perhaps one of the most significant deterrents to reporting sexual assault is the actual experience of other victims with the military justice system. Those who make a formal complaint are likely to be required to repeat their statements on numerous occasions, are given little or no guidance or information about how the investigation or discipline process works, and receive no emotional support. As a result, re-victimization and frustration appear to be the standard consequences of reporting. Even more damaging are the stories that circulate of complaints of sexual assault that result in little or no repercussion for the aggressor. Faced with the potentially serious career-ending consequences of reporting a sexual assault, and the likelihood that the aggressor will not ultimately receive a meaningful sanction, many victims reasonably decide that a complaint is simply not a worthwhile avenue.

It's a pretty sad statement. It goes on:

Underlying all of these reasons is a clear lack of trust in the chain of command, deep scepticism that the system will be responsive to complaints of sexual harassment, and a lack of confidence that leaders will do anything to prevent the negative impact of harassment on members.

I'm sorry. You're going, "I know. I wrote those words." My point is this: How could one find that having a choice in these cases is helpful to a victim, given all of what you outlined so poignantly here in your remarks?

Hon. Marie Deschamps: I'm talking about the choice for low severity, not for the other one. For low severity, if they had an SM-SRC that was independent and properly functioning—and I heard that the duty to report has been excluded and is no longer the case—they would have the chance to go to someone they can confide in and then decide what is the best avenue.

There should be a liaison agent who can intercede so they are not faced with the obligation to report to a commander...or where it's likely that the whole unit will be made aware of it. The fact that they can speak to an independent person in whom they will have confidence is key to the system.

• (1720)

Chris Malette: Madame Deschamps, this is in no way a condemnation, because I have worked with and know some members of the military police, but did you find in your investigations and deliberations that there seems to be a systemic shortfall or a lack of training? It's hard to put a finger on the exact nature of it, but I perceived a shortcoming of the military police in the manner in which they investigated. Do you think that in itself is a hindrance to trust among some of the members and in their ability or desire to report?

Hon. Marie Deschamps: Much of the training, experience or skills come with the fact of being faced with a type of conduct. If the military police on each base are not systematically faced with the type of conduct—mostly in the case of a sexual assault in which the victim will be traumatized—that makes it difficult for the police to interrelate with the person, then I have seen shortcomings, but these shortcomings should be less of an issue if a case goes to the civilian system, where there are more experienced investigators.

Chris Malette: Thank you.

How much—

The Chair: Mr. Malette, you're done. I'm sorry.

Monsieur Savard-Tremblay, it's your time.

[Translation]

Simon-Pierre Savard-Tremblay: Thank you, Mr. Chair.

Hon. Marie Deschamps: You may read your motion.

Simon-Pierre Savard-Tremblay: Yes, I'm going to read my motion. It's my deepest wish that it will meet with a consensus and that, we can constructively and promptly send it to the House for a good debate on these issues in the medium to long-term.

Here is the motion:

That the committee consider it important that, in matters of sexual misconduct within the Armed Forces, victims have access to a specialized tribunal, and deplore that Bill C-11 does not provide for the establishment of such a tribunal; and that the committee report this to the House at the earliest opportunity once this motion is adopted.

You received it yesterday evening by email.

[English]

The Chair: Thank you, Monsieur Savard-Tremblay.

A motion has been moved. It's up for debate.

Sherry Romanado, you have the floor.

[Translation]

Sherry Romanado: Thank you, Mr. Chair.

Before I speak to the motion, I'm wondering whether it would be appropriate to excuse Justice Deschamps. She has been here for two hours.

[English]

Hon. Marie Deschamps: I'm not sure I can contribute to the debate, because the debate is among you.

[Translation]

Sherry Romanado: That's right.

[English]

The Chair: Madame Deschamps, thank you very much for your testimony, your participation and all the work you've done over the past. I appreciate it.

Hon. Marie Deschamps: It's always a pleasure to come before you.

[Translation]

The Chair: Thank you very much.

Hon. Marie Deschamps: Thank you, and all the best with your debate.

[English]

The Chair: Ms. Romanado, the floor is back to you.

[Translation]

Sherry Romanado: Thank you very much, Mr. Chair.

I'm not very familiar with the workings of the Quebec tribunal, and I'd like more information.

I don't think the matter of a specialized tribunal was addressed when Bill C-11 was drafted. I object to the words “deplore that Bill C-11 does not provide for the establishment of such a tribunal” considering that we've had no opportunity yet to discuss what the tribunal will look like.

Today, we've heard testimony from several witnesses about how it might work, but we still have a few questions concerning practical matters.

For instance, is it feasible in remote rural communities?

I don't know if it's possible to obtain a study on what Quebec uses and whether that's something we might recommend in another report to the House.

I don't have enough information on that. I need more information on how the tribunal works before we vote on a motion.

• (1725)

[English]

There is also the question of how it would apply. I don't know enough about it, to be honest, to make a decision on whether or not this is something we should recommend, because it's new to me.

The Chair: Thank you.

Let me see if I understand correctly. I know a lot of discussion has been had by all sides in regard to some of the Quebec model discussions and some of the specializations that were brought up.

I'm sorry. We have a motion before us now. Are you amending the motion to request it to be postponed based on a study in regard to this?

Sherry Romanado: I don't know enough about what this tribunal in Quebec does differently. I don't know how it would apply to sexual assault cases in the military. I don't have a briefing from the analysts to say that this is what's being used in Quebec.

I'm a Quebec MP, and I'm going to be honest that I don't know enough. I really want to learn a lot more about it, because if it's something we want to put forward, I think we should be educated on it before we do.

It's not an amendment, but I'm debating this because I really, truly, don't know enough about it. I wouldn't want us to make a recommendation or put a report to the House on something that in practical application can't be done.

That's why I'm asking if there's any way we can get more information before we decide if this is something we want to go forward with.

The Chair: Mr. Savard-Tremblay, do you want to respond?

[Translation]

Simon-Pierre Savard-Tremblay: I think Mr. Bezan wanted to say something and then I'll respond to all members at the same time.

[English]

James Bezan: I'm okay with supporting this motion. It's broad in nature, but at the same time, we have heard from witnesses that there should be an independent system for dealing with sexual offences.

We're hearing from witnesses that they would not be happy with not having choice, if Bill C-11 goes forward unamended. We're hearing from witnesses that they are also concerned about chain of command interference. Having a special tribunal that's outside of that chain of command is something we should look at.

I think reporting this back to the House may provide us with direction from the House on how we deal with this within Bill C-11. We could make it part of the scope of the study of the current bill, which I don't believe is possible currently. Maybe we need direction from the House.

The Chair: I have a speaking order now. I have Mr. Malette and Mr. Watchorn, and then it's back to Mr. Savard-Tremblay.

Chris Malette: Mr. Chair, does Monsieur Savard-Tremblay want to go last? Is that the way I'm to understand the speaking order?

The Chair: I'm just going by people's hands.

Chris Malette: That's fine.

I share my colleague's concern. This seems to be, in Mr. Bezan's words, broad in nature. I would suggest that's an understatement. I would call it more of a red herring, if you will.

All of a sudden, when we're in the midst of debating some very detailed recommendations, we're going to stand up a countrywide, national system within our military to specifically investigate sexual crimes. It's from out of nowhere. It's out of left field and we don't have enough detail. We simply don't have enough information to make an educated decision to vote on this motion.

I can't support it as is. I could support it if we, as Ms. Romanado said, had more study of it and put a little more flesh on the bones, if you will, but this bare motion to simply stand this up and throw it out there is not enough for me.

• (1730)

The Chair: Go ahead, Mr. Watchorn.

[Translation]

Tim Watchorn: Thank you, Mr. Chair.

Actually, I was the one who brought this issue to the committee's attention. I think it's an interesting model, but we don't have a lot of information on how it works, the statistics associated with it, victim satisfaction with the process, the effectiveness of the training for prosecutors, judges and all personnel concerned by the system, or resource-related costs.

Right now, the model applies only in Quebec. Quebec is a trailblazer. We're trailblazers in many areas and we try to keep a step ahead on lots of things. However, I think the model needs further study. This can be done effectively by inviting witnesses from the Quebec tribunal, who are well versed in its operation. I think they could appear for two hours. We could have a debate or ask questions to ensure that the motion we propose or introduce makes sense. That's the crux of the matter.

In Quebec, everything is new and still in the early stages. The Quebec justice minister introduced the model two years ago, so I think we really need more information. I think the model is working. Witnesses have advised us that it's best to offer training for prosecutors, judges and other individuals. I think those are positive things.

However, I really think a study would be much more appropriate than sending the matter to the House right away. As well, the committee is fairly informed on how this may work. I think a study would be more appropriate.

[English]

The Chair: Thank you, Mr. Watchorn.

Go ahead, Monsieur Savard-Tremblay, and then we'll go to Ms. Gallant.

[Translation]

Simon-Pierre Savard-Tremblay: I understand the positions set out, but if we start saying that, we'll never get to a clause-by-clause examination. Every proposal, like inviting the inspector general, people from the centre and so on, could become the focus of a two-hour study. If we do that, we'll never finish.

There's a model that has proven its worth and that works. We know all the shortcomings of the civilian model and statistics show that perpetrators are almost never convicted under the conventional approach. This is something that was requested. Unfortunately, if I proposed amendments for a clause-by-clause study leading to the proposal of a specialized tribunal, they would be out of order. We've checked.

I think this motion lets us take a solid position. We can have a good debate on the issue in the mid to long-term. In my opinion, taking a position is the right way to go.

That said, if it would make Mrs. Romanado feel more comfortable, the portion of the sentence containing the word “deplore” can be withdrawn. I can live with that, as long as we leave today with a position in support of the motion.

[English]

The Chair: Thank you.

Go ahead, Ms. Gallant.

Cheryl Gallant: In response, this has not come completely out of left field. This came from a witness. This emanated from testimony we heard on this bill. As Justice Deschamps reminded us, there was an article in the Globe and Mail stating that, due to the Jordan decision, people are getting off scot-free. They're just completely out of the system—no consequences whatsoever.

At the beginning and at the end of the day, we want justice for the victims and for them to have a sense that justice was served. We should look further into this model to see if it may serve that purpose, and it should be done before this bill comes before the House again to be passed. It's more important that we get this right than we get it fast.

The Chair: Thank you.

I have Ms. Romanado and then Ms. Lapointe.

Sherry Romanado: On that note, I would like to propose an amendment. I know that my colleague across the way already knows what one of the words will be. We'd keep the first part as is: “That the committee consider it important that, in matters of sexual misconduct within the Armed Forces, victims have access to a specialized tribunal”. Then it's “and that the committee study this possible model as soon as possible”.

I would like to learn more about it. I don't know if it's possible for the analysts to prepare something quickly about how this model works, because I really don't know. I understand from Ms. Gallant that it might delay... I don't know if Justice Fish is going to be submitting documentation as well, as per the invitation from the clerk, but I really would like to know a bit more about the *pratico-pratique*. As Justice Deschamps mentioned today, it's all in the applica-

tion. I'd like to know more about how this system would work, and then we can decide how we want to move forward.

My amendment is that we remove “and deplore” and so on, and that after the words “specialized tribunal”, we say “and that the committee study this possible model as soon as possible”.

• (1735)

The Chair: Just for clarity, Ms. Romanado, you're basically removing “and deplore that Bill C-11 does not provide for the establishment” and so on. You're removing those last two parts and replacing them with “and that the committee study this possible model as soon as possible”.

Sherry Romanado: Yes. I don't know if we should provide this establishment with such a tribunal because I don't know enough about it. I want to know more about it before we decide whether we want to—

The Chair: The last point has also been removed: “and that the committee report this to the House at the earliest opportunity once this motion is adopted.” We're just providing clarity.

Ms. Lapointe, it's over to you.

Viviane Lapointe: I support the amendment that has just been presented, and I want to thank my colleague Monsieur Savard-Tremblay for presenting this motion. It comes from, I think, a desire to strengthen our work here at the committee.

I'm not opposed to giving survivors specialized support. What concerns me is the idea in this motion of creating a military-based process, when survivors have told us and three judicial reviews have said that it's a process they don't trust. Survivors have told us that independence matters more than internal specialization. The majority of survivors have testified that they don't trust the chain of command or the military police with these cases, and reviews have all confirmed this. Again, I respect the intent behind the motion, but we have clear, overwhelming evidence that a military-based tribunal is not what survivors or experts recommend.

I would certainly be open to doing a study on this. There must be careful consideration and thought around it, and the amendment proposed about us undertaking a study on it is something I could support.

I want to make it clear that I absolutely support specialized services for survivors, but specialization created within an internal system is something I have reservations about.

The Chair: Thank you.

We have Mr. Watchorn, Mr. Savard-Tremblay and Mr. Malette.

[Translation]

Tim Watchorn: Thank you, Mr. Chair.

I also support the amendment.

Our colleague, Ms. Lapointe, just said something important: She said that the victims didn't ask for a military tribunal system. They want something completely independent of the military system. Quebec obviously knows that. However, what resources would be necessary to implement that kind of system?

I think Justice Deschamps said the same thing, that the Quebec system is centralized. Victims move from base to base. They serve across the country and even abroad. I think this might create more challenges than the civilian model. It's important to look at that too. If we're recommending something, it has to be viable, independent and nonmilitary. It also has to address the needs of victims.

Again, I'd like officials from the Quebec department of justice to testify before the committee and explain how they implemented their system. I'd like them to tell us about the pros and cons and share their own experience with the system. All of this would allow us an opportunity to decide what's better or worse for the victims—I don't think it'll be worse for the victims.

We also need to know what can be done to improve the system. That's why I really think a study would at least clarify these questions.

I support Mrs. Romanado's amendment. I think we should head in that direction.

• (1740)

[English]

The Chair: Go ahead, Monsieur Savard-Tremblay.

[Translation]

Simon-Pierre Savard-Tremblay: I would ask that we proceed to a vote on the amendment and the motion.

[English]

The Chair: We're still in debate.

Go ahead, Monsieur Malette.

Chris Malette: Further to the discussion from my colleagues on either side of me, it's unclear.... Perhaps I will apologize for characterizing it as a red herring or coming out of left field. I understand where it came from, and—

[Translation]

Simon-Pierre Savard-Tremblay: I certainly hope so.

Thank you.

[English]

Chris Malette: We also heard the witness today specifically say that in her estimation, it wouldn't be workable, but that's beside the point.

An hon. member: She didn't say that.

Chris Malette: On a national scale, I believe that was her interpretation. She said perhaps in large urban areas....

Further to my concern, the motion says, "That the committee consider it important that, in matters of sexual misconduct within the Armed Forces, victims have access to a specialized tribunal",

etc. Nowhere does it stipulate whether this would be a military-based tribunal or established in civilian systems.

To my friend Mr. Savard-Tremblay, is this supposed to be a unit or tribunal inside the military justice system, or is he suggesting that this somehow be part of the civilian court system?

[Translation]

Simon-Pierre Savard-Tremblay: I'm reminded of the expression, "as subtle as a bull in a china shop". What the member is trying to do is quite clear. I have no further response. I ask that we proceed with the vote.

[English]

The Chair: We're still in debate, Monsieur Savard-Tremblay.

Viviane, you're up.

[Translation]

Simon-Pierre Savard-Tremblay: You can plainly see that they're looking for reasons to speak to have us run over our time, Mr. Chair.

[English]

Viviane Lapointe: Do I have the floor, Chair?

The Chair: We'll respect the member's time.

Viviane Lapointe: Thank you.

There is no question that everyone around this table wants justice. We want safety. We want dignity for survivors of sexual misconduct in the Canadian Armed Forces. All of us have been working diligently towards that.

Again, I have concerns with creating a new military-based tribunal. I think it moves us in the opposite direction noted by the experts we've had before us, by every major report, by the majority of survivors who testified and by the 14,000 people Justice Arbour spoke to when she was producing her report. It behooves us to regard the testimony we've had and the reports that have been done in the past and to really listen to these experts.

I think about some of the things we've heard from Justice Marie Deschamps. She said she found a sexualized culture, systemic under-reporting and profound mistrust of the chain of command. She recommended solutions outside of the Canadian Armed Forces chain of command and not a new tribunal inside of it.

Justice Fish confirmed Deschamps' findings, which still existed in 2021. Justice Fish concluded that the military system lacked sufficient independence, transparency and victim protections.

Justice Arbour, in her report, called for exclusive civilian jurisdiction for Criminal Code sexual offences. She rejected hybrid or specialized military tribunals, as they're insufficiently independent.

We've had an overwhelming number of experts, reports, survivors and testimony. They have told us about the importance of taking things out of the system and of independence, and this motion seems to be counter to all of the evidence that has been presented before this committee.

For that reason, I support the amendment by my colleague for this committee to undertake the task of studying this suggestion further. To simply pass a motion now is something I have grave concerns with.

• (1745)

The Chair: Go ahead, Mr. Watchorn.

[*Translation*]

Tim Watchorn: Mr. Chair, I think there's a real disconnect between what members of the Conservative Party are proposing and what our Bloc Québécois colleague Mr. Savard-Tremblay proposed.

In my opinion, the tribunal that they're talking about exists outside the chain of command. It would still be administered by the military justice system. What we've heard every witness say from the outset is that trust in the military justice system is lacking. I think that the Quebec model offers something outside the military justice system. It's a civilian system that actually supports victims from the start to the end of the process. It provides victims with the support of a liaison officer, like the military system does.

We've also heard a lot about military liaison officers. These liaison officers are a very important factor. It's not yet clear how that was incorporated into the Quebec justice system. It's very important to take this factor into account in any justice system proposal brought forward in committee.

I'm going to return to the Quebec system, which is currently a truly unique provincial system. It is unlike anything ever put forward in any other province or set of circumstances.

In my opinion, it would be somewhat presumptuous of us to force other provinces to adopt a model before we know exactly how or whether it works, even in Quebec.

[*English*]

The Chair: Thank you.

I know we have a few more speakers, and I know, Ms. Romano, you have put an amendment before us, but we are out of resources.

I am adjourning this meeting.

James Bezan: No, we didn't start until—

The Chair: The meeting is adjourned.

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