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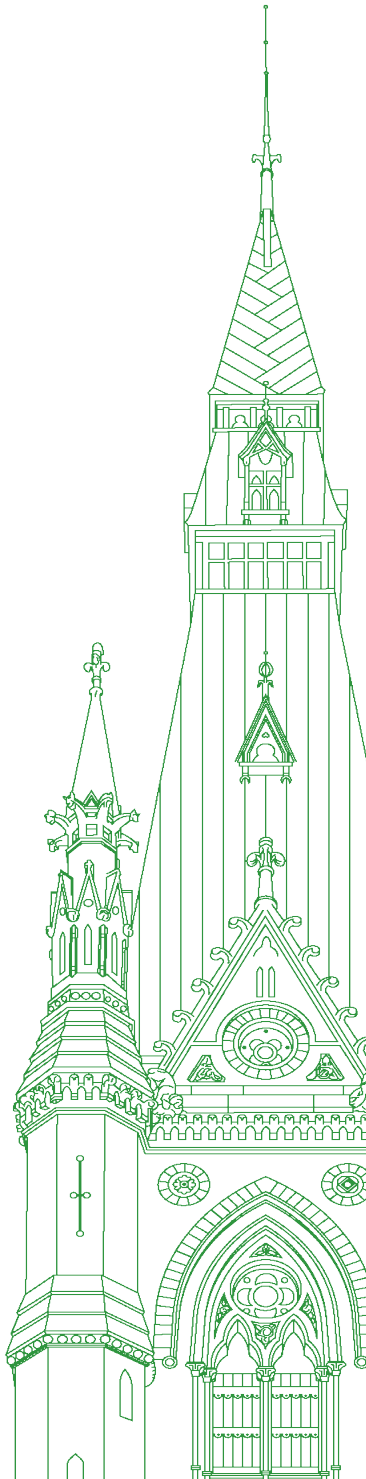

Chair: Charles Sousa

Standing Committee on National Defence

Wednesday, January 28, 2026

● (1600)

[*English*]

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

We're going to have a hard stop, folks, at six o'clock. I know a few of you have to leave; we're going to try to expedite things as much as we can so that we proceed only until six. If we need to continue thereafter, we will.

I welcome you to meeting number 21 of the House of Commons Standing Committee on National Defence.

Pursuant to the order of reference of Friday, October 10, 2025, and the motion adopted by the committee on Thursday, 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.

Members are attending in person. No one is on Zoom.

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

Members and witnesses, I'd like to remind you to please wait until you're recognized 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.

For interpretation, use the earpiece and select the appropriate channel for the floor, English or French.

All comments should be addressed through the chair.

I would now like to welcome our witnesses. We have Colonel Geneviève Lortie, deputy judge advocate general, military justice modernization, Canadian Armed Forces; and Lieutenant-Colonel Matt MacMillan, director of military justice implementation, office of the judge advocate general, Canadian Armed Forces.

Welcome to you both.

I'd now like to provide members of the committee with a few comments on how the committee will proceed today regarding the clause-by-clause consideration of this bill.

As the name indicates, this is an examination of all the clauses in the order in which they appear in the bill. I will call each clause successively, and each clause is then subject to debate and a vote. If there are amendments to the clause in question, I will recognize the member proposing the amendment, who may explain it. The amendment will then be open for debate. When no further members wish to intervene, the amendment will be voted on. Amendments will be considered in the order in which they appear in the package that each member has received from the clerk.

In addition to having to be properly drafted in a legal sense, the amendments must be procedurally admissible. The chair may be called upon to rule amendments inadmissible if they go against the principle of the bill or beyond the scope of the bill, both of which were adopted by the House when it agreed to the bill at second reading, or if they offend the financial prerogative of the Crown.

During debate on an amendment, members are permitted to move subamendments. Only one subamendment may be considered at a time, and that subamendment cannot be amended.

Once every clause has been voted on, the committee will vote on the title and the bill itself. An order to reprint the bill may be required, if amendments are adopted, so that the House has a proper copy for use at the report stage.

I thank members for their attention, and I wish everyone a very productive clause-by-clause as we consider Bill C-11.

I know that many of you have all the clauses and the amendments to them, so I'll proceed if you're all ready.

Pursuant to Standing Order 75(1), consideration of clause 1, the short title, is postponed.

The chair now calls clause 2. Shall clause 2 carry?

(Clause 2 agreed to)

The Chair: I will now proceed to proposed new clause 2.1, which is a Conservative amendment.

Do you wish to move this amendment?

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

I'd like to move CPC-1, which is that Bill C-11 be amended by adding, after line 14 on page 1, the following new clause:

> 2.1 Section 10 of the Act is replaced by the following:
>
> 10 The powers of the Judge Advocate General may be exercised, and the duties and functions of the Judge Advocate General may be performed, by any other officer who has the qualifications set out in subsection 9(1) that the Minister may authorize to act for the Judge Advocate General for that purpose, but that officer may act as the Judge Advocate General for a period of more than 90 days only with the approval of the Governor in Council.

● (1605)

The Chair: Before we proceed, I'd like to note that the amendment seeks to amend section 10 of the National Defence Act. As *House of Commons Procedure and Practice*, fourth edition, states in section 16.75, "an amendment is generally inadmissible if it proposes to amend a statute that is not before the committee or a section of the parent act, unless the latter is specifically amended by a clause of the bill."

Section 10 of the act is not being amended by Bill C-11. Furthermore, the bill does not seek to modify the appointment process for the judge advocate general, which is therefore beyond the scope of the bill. It is the opinion of the chair that the amendment is inadmissible.

James Bezan: I challenge that ruling by the chair.

The Chair: That's fair.

[*Translation*]

Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot—Acton, BQ): Could my colleague repeat that? It wasn't recorded because the microphone was turned off.

[*English*]

The Chair: Can you repeat that, please? I'm sorry.

[*Translation*]

Simon-Pierre Savard-Tremblay: No, you just had to use your earpiece, Mr. Chair.

[*English*]

The Chair: It's not working. It didn't come through.

James Bezan: It's very quiet, Mr. Chair. Turn off your microphone and then....

[*Translation*]

Simon-Pierre Savard-Tremblay: I wanted to know if my colleague could repeat his request, because his microphone was turned off.

[*English*]

James Bezan: We need the interpreter to crank up the.... I can't hear you.

An hon. member: We're having a hard time hearing.

The Chair: The request is for you to repeat the amendment so that he can understand what you're putting forward.

James Bezan: I am challenging the chair's ruling that amendment CPC-1 is out of scope.

It's not up for debate.

The Chair: Okay. Go ahead.

James Bezan: You have to call the question yourself.

The Chair: A challenge has been put forward to...acknowledge my decision on this matter.

The Clerk of the Committee (Jean-Denis Kusion): Is the ruling of the chair sustained?

Is the ruling of the chair sustained? If you vote yea, the ruling will be sustained. If you vote nay, the amendment will proceed.

(Ruling of the chair overturned: nays 5; yeas 4)

The Chair: All right. The amendment is now back and open for debate.

James Bezan: Thank you, Mr. Chair. I appreciate that. I understand the reasoning on why it was out of scope, but it's also important that we have a chance to make amendments to legislation and to the positions of individuals who are serving, who are named in Bill C-11 and who are going to be responsible for the administration of justice.

In the past, the judge advocate general was absent for 18 months and we were functioning without a JAG, other than an acting JAG. We find that problematic. We know that Justice Fish, in his original report, suggested that these positions be filled within three months.

Also, we'll note that in Bill C-11, the positions of the provost marshal, for example, and the director of defence counsel services would be filled within a three-month time frame—90 days.

We think it's important that we expand this to include other positions as well, including the JAG; for that reason, we are making this amendment.

● (1610)

The Chair: Is there any debate?

Tim Watchorn.

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

I have a question for the experts here. What's the usual time frame for this type of nomination?

Colonel Geneviève Lortie (Deputy Judge Advocate General, Military Justice Modernization, Canadian Armed Forces, Department of National Defence): It can take a certain amount of time with the process, verification, qualification, security and everything. With the National Defence Act, there are other appointments that are made by the GIC in which the minister can make an acting appointment. For this one, it's not proposing to amend the appointment of the JAG when the position is vacant. It's really about the acting JAG: The minister could have someone for a certain amount of time, but after 90 days, they need to be confirmed by the GIC.

You will have other provisions in the National Defence Act for other systems with the same types of appointments, in which the minister can appoint someone as acting for a period of time and there's no such time frame, but in this one, it aligns with the provost marshal general, which is the same for the acting one, with the director of military prosecutions and with the director of defence counsel services, the three amendments in this bill.

Tim Watchorn: Thank you.

The Chair: Is there further debate?

(Amendment agreed to: yeas 5; nays 4)

(Clause 3 agreed to on division)

(On clause 4)

The Chair: We have an amendment.

Do you wish to move it?

James Bezan: I move that Bill C-11, in clause 4, be amended by adding, after line 8 on page 2:

> (1.1) The appointment must be made within 90 days of the day on which the office of Provost Marshal General becomes vacant.

The Chair: Is there further debate?

Ms. Romanado, go ahead.

Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.): Similar to the previous question that my colleague asked, I want to know what the normal time frame would be for the appointment of a provost marshal general.

Col Geneviève Lortie: This type of timeline, because it's imposing on the Governor in Council, is effectively unenforceable because we cannot force the GIC to make an appointment. We cannot force a person who appoints an authority to do it.

To have 90 days to make the appointment brings legal risk and uncertainties if it's not done within those 90 days. You could end up not knowing, either for a person or the acting position, what their authorities at play are.

It further causes confusion between two provisions. One is that you must appoint someone within 90 days, and you have another place where it says that the acting position, after 90 days, can be authorized by the GIC. The act covers the fact that if there's no one and the position remains vacant after 90 days, you need to go to the GIC. You may have uncertainties between positions.

If it ends up that the person who is the owner of the position doesn't get appointed.... It was mentioned before that it has happened previously with a former JAG. They got to the end of their mandate, but the person was not appointed because all the authority of the members who were acting under the JAG was really based on someone being in the position. We would end up with no legal adviser being able to advise the Canadian Forces until a new JAG was appointed.

You can really end up in a place in which you have uncertainties about whether you have a person at the head of the organization.

● (1615)

Sherry Romanado: In terms of an application if this were to pass, in the example of someone who has been acting and doesn't get appointed by the GIC, could this delay any cases before the JAG? What could be the ramifications if this were to be put in place?

Col Geneviève Lortie: Depending on the position we're talking about—this one is about the provost marshal general—and depending on which power we're looking at, there may be no one else who could exercise it other than the person who occupies that office.

An appointment may not be made within 90 days for a bunch of reasons. You could be in an election period; the person who applies may not meet the requirements, or you could have questions of security clearances. You could also have a situation in which the person is not available to start within that number of days because they need to leave a previous job, and they cannot be forced to be appointed.

Those are all questions that arise when imposing 90 days on the GIC to appoint.

Sherry Romanado: On that note, as you just mentioned, should that situation happen—we've heard about security clearances not clearing quickly—would the GIC have to name a person within 90 days? If they didn't, what would happen?

Col Geneviève Lortie: If it's not done, there's no enforcement, so a court would not be in a position to force the GIC to appoint someone. There's no mechanism. If it's not done by the Governor in Council, you cannot force the hand of the Governor in Council to appoint someone.

Sherry Romanado: Essentially, it's not enforceable at all. I don't want to say “enforceable”, but it's moot whether it gets applied or not, because even if it were not to be applied, there's no way to enforce it being applied. Is that correct?

Col Geneviève Lortie: You're right. It's effectively unenforceable.

Sherry Romanado: Thank you.

The Chair: Mr. Bezan.

James Bezan: We heard from witnesses that we need to put time limitations on these appointments. We heard from Charlotte Duval-Lantoine at the 12th meeting of this committee. She said, “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...ombudsman. This needs to change.”

We heard from Rory Fowler, who said, “As a perfect example, there need to be time limits and limitation periods for people to take action to appoint key personnel”, and “Now you're making them political appointees who may or may not be appointed in time.” This requires political leadership. This is a political decision, not a military decision.

Afton David said, “I agree with my fellow witnesses that there should be a limit on the time taken to fill Governor in Council appointments for key military justice roles.”

We heard from witnesses on this. We need to put in a time frame. It's not unreasonable to get this done in 90 days.

The Chair: Mr. Malette.

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

Having just heard the testimony from Colonel Lortie on the ability to meet such a time frame, to the extent that this amendment is supported, is it not more prudent to apply a modification to the time frame to, say, 120 days? That could be an amendment to the amendment.

The Chair: It's your call.

Chris Malette: I'll so move if this is going to carry, but I don't support it at all, simply because of the fact that a delay in approving an acting JAG can create legal risk and, at minimum, generate confusion regarding authorities. However, should it pass, I guess the amendment would be....

The Chair: If I may, Mr. Malette, I think what I'm hearing is that you want to propose a subamendment. If so, state your subamendment and then we'll debate it.

● (1620)

Chris Malette: I would propose that the amendment be amended to 120 days.

The Chair: Is what's being proposed understood by all? Is there any debate on the subamendment?

(Subamendment agreed to [*See Minutes of Proceedings*])

The Chair: We're back to the amendment.

Simon, did you...?

[*Translation*]

Simon-Pierre Savard-Tremblay: No, it's fine, I'll vote when the time comes.

[*English*]

The Chair: We are now voting on the amendment that's been amended.

Shall that amendment carry? Let's vote. I think we want a recorded vote on CPC-2.

(Amendment as amended agreed to: yeas 9; nays 0)

(Clause 4 as amended agreed to)

(Clauses 5 and 6 agreed to on division)

(On clause 7)

The Chair: Now we're on clause 7.

NDP-1 is deemed to be moved, pursuant to the routine motion adopted by the committee on June 17, 2025. Oh, wait. I apologize. I have an amendment to that.

Okay. If CPC-3 is moved, NDP-1 cannot be moved, because it is identical. The new one is CPC-3, and it's similar to NDP-1. Shall someone move CPC-3?

James Bezan: Yes, I'll move CPC-3. Do I need to read all the details? Okay.

I move that we amend clause 7 in Bill C-11 as circulated. As was pointed out, CPC-3 is identical to NDP-1.

Do you wish me to speak to it?

The Chair: Yes, by all means, go ahead.

James Bezan: We heard throughout testimony that victims were definitely asking for choice in Bill C-11 on whether they stay within the military justice system or are transferred out to the civilian justice system. Probably the strongest testimony we heard on that came from Hélène Le Scelleur in our 15th meeting:

> For me, this is why choice is really, really important at all levels. Even if we say now that it was always there, and that the choice was possible, some of them never reported, like me, because they were scared and knew the consequences. I would say that choice is offered maybe on paper, but is it the case in reality? From most stories I've heard, it's not the case.

Justice Deschamps said in her testimony, "I support a system that gives victims a choice, so my answer is yes."

We heard from numerous witnesses—and I'll leave others to speak to that—who wanted the choice.

If we're going to put justice back into the hands of the victims, we have to give them the choice as to which system they want handling their court cases, whether in military justice, with courts martial or summary hearings, or in the civilian system.

Thank you.

● (1625)

The Chair: Thank you, Mr. Bezan.

Is there any debate?

Ms. Romanado.

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

I have some questions for our experts who are here with us today. I have a few questions, so I'll go one at a time.

Could you tell us if this amendment is a trauma-informed approach for the victim, in your opinion?

Lieutenant-Colonel Matt MacMillan (Director, Military Justice Implementation, Office of the Judge Advocate General, Canadian Armed Forces, Department of National Defence): Thank you for the question.

In relation to victim choice, we've heard a lot about that at the committee...participation of victims. What it does in relation to this kind of piece.... Madam Justice Arbour indicated that there should be no choice that puts an unfair burden on victims, so it is contrary to Justice Arbour's recommendation five.

In essence, it's something of a false choice in relation to a victim. The way the motion is drafted, it says the victim "may choose" where the matter is prosecuted. Ultimately, where something is prosecuted is the prosecutor's determination. It's prosecutorial discretion. They have the fundamental aspect, as a principle of fundamental justice, to make an ultimate determination on where and whether a matter is prosecuted.

Even if a victim chose to have a matter proceed at court martial in relation to this matter, ultimately it would be the director of military prosecutions who would have to determine whether that is the proper venue, based on a number of considerations, including what the victim contemplated or what the victim may wish. That's only one aspect of many public interest factors that would have to be determined in relation to where a matter should be prosecuted.

Sherry Romanado: Based on what you just mentioned—I mean, it's very clear that this is against recommendation five of Justice Arbour—would you agree that this is not a trauma-informed choice, that this is not a trauma-informed approach and that this would be left to a victim to decide when they don't actually have the ability to decide, because it is the prosecutor who decides whether to lay charges? Is that correct? Am I understanding that correctly?

Lcol Matt MacMillan: It would be difficult to determine, at the end of the day. The victim may make a choice that they want to go one way or the other, but the choice is not ultimately theirs, because the prosecutor will make the determination. They may choose or say that they want it to go to the court martial system, but once the matter is brought to the director of military prosecutions, ultimately, the director will determine whether it will go to court martial.

At the end of the day, while a victim might assume to choose, their decision can't fetter the discretion of the prosecutor. They'll be left with the burden that they've made this choice and now it's not proceeding to the actual court martial itself because of the determination of the director of military prosecutions.

Sherry Romanado: On that note, in the example you gave of the victim saying they'd like it to go to court martial and the prosecutor, after reviewing the case, deciding they're not going to pursue it, I can imagine what that would do to the victim. It would almost revictimize them: “I made the wrong choice; if I had gone the civilian way, maybe the prosecutor would have pursued it.”

Could that happen?

Lcol Matt MacMillan: For certain, it could happen. One of the issues with the motion as it's before me is that one of the determinations that needs to be made is the jurisdiction at the outset. This is dealing with section 70, so clause 7. You still have clause 8, which removes the jurisdiction of the military police to investigate. In essence, what will happen in this situation is that the civilian police will investigate the matter. If they're investigating the matter, they are going to pursue charges in the civilian system if they deem it to be reasonable in the circumstances and want to proceed with charges.

The civilian police do not have the authority to lay charges within the court martial system. In this instance, the civilian police would investigate. If the victim doesn't want the matter to proceed in the civilian system, they would have to look for an avenue to bring it back to the military justice system. In that instance, the civilian police would not be able to lay those charges. A charge-laying authority within the military justice system would have to proceed. In this instance, it's going to be either the military police or a member of the chain of command who has the authority to lay charges. They may or may not have access to the investigation of the civilian police, and they themselves have to make the determination that they are going to proceed with laying charges.

Not to put words into the mouth of the police, but I would suspect that, ultimately, they are going to look to interview the victim again in that instance. With the lack of clarity on where it's going, it puts on a burden, and it is potentially a situation in which the victim will be questioned on multiple occasions from multiple different organizations that have an interest in the matter: First, the civilian police have jurisdiction to investigate, and there will potentially be another mechanism, once the determination is made—after the person is charged—to try the matter in the military justice system.

On that front, based on how proposed subsection 70(2) is drafted, it speaks about the person who is charged...of those offences. The civilian police, as I said, would lay charges under the Criminal Code. The court martial does not have jurisdiction to try matters under the Criminal Code—only under the code of service discipline. Those charges would be withdrawn by the police or prosecutor and then re-laid under the code of service discipline, pursuant to the Criminal Code.

That's very technical in this sense, but court martial deals with code of service discipline offences. Civilian court deals with Criminal Code offences. There is an overlap based on how the code of service discipline is drafted. That's how all Criminal Code offences and any other offence under any other law are brought within the code of service discipline, but it's not as simple as just charges being tried in one place or the other. A mechanism and a framework have to be followed in order to advance the prosecution.

● (1630)

Sherry Romanado: You also mentioned something about the principle of prosecutorial discretion. The way this amendment is drafted, would this be constitutional?

Lcol Matt MacMillan: There would ultimately be a question as to whether it's constitutional. It purports to say that the victim may choose whether the person charged with the offence is to be tried by a court martial or a civil court. That purports to fetter the discretion of a prosecutor. In that sense, there are questions about whether it would be constitutional. At the end, even if they choose one or the other, the prosecutor would make that decision, which then potentially gets into some challenges for the victim in relation to the decision they made in the first instance. Really, the jurisdiction should be determined at the earliest onset to avoid these challenges.

Sherry Romanado: Thank you.

The Chair: Thank you, Ms. Romanado.

I have Mr. Anderson, then Mr. Savard-Tremblay and Mr. Kibble.

We'll proceed.

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

In the civilian system, the prosecutor ultimately decides whether to go forward. Is that correct?

Col Geneviève Lortie: Yes, it is.

Scott Anderson: It's the same in the military: The prosecutor in either the military or the civilian system could decline to prosecute. Is that correct?

Col Geneviève Lortie: The prosecutor will decide if it will proceed to court martial. You're right that in the military, we have the same system. It's really for the court martial.

Scott Anderson: That has no real bearing on it. Whether it's the civilian system or the military system—either one—the prosecutor has the discretion to do that.

Col Geneviève Lortie: You're right. Both systems have the discretion.

Here, we're looking at the time when choosing is proposed. Charges have already been laid. It means that the decision has already been made, and you're going to encounter challenges under the Jordan delays. We know this is applicable to both courts—the civilian court and the military court. You have 18 months to get to the end of the trial. The time starts from the laying of the charge.

That provision starts from the beginning. When the charge is already laid in one system, in the civilian court, but they want to go under the military justice system, to do that, all the steps that were described by my colleagues need to happen. This process takes time—to review the file, to get the legal advice that is required, to the point of the referral of charges to court martial. One of the first challenges you could get is with Jordan delays, because you start in one and you need to get out of one and get into the other one.

● (1635)

Scott Anderson: With regard to the Jordan decision, we've heard from military prosecutors, military defence and the chief of police of Victoria. The military says it has the capacity and the capability. The civilian system essentially says, through the chief of police of Victoria, that it has the ability but not the capability. It simply can't take on this sort of work. I would suggest to you that the Jordan decision would have an impact much more frequently in the civilian system.

I want to point out.... I can read the list of witnesses, but we've all heard them. Everybody except for one asked for choice, including the experts and the victims.

I'd like to point out something that Dr. Karen Breeck said:

> First, the military of 2025 is not the military of 2015.

That's when all of these reports were done. She continued:

> Many problems identified in the Deschamps and Arbour reports no longer exist. Today the chain of command has extensive awareness and training. The sexual misconduct support and resource centre is fully operational. Victims' rights legislation is in force. Independent legal and victim supports exist. The duty to report has been removed. What evidence still shows that recommendation five remains the best way forward?

I would suggest that things have changed dramatically. Right now, people are still asking for choice. Victims are still asking for choice. Frankly, I find it paternalistic to hear Minister McGuinty sit here and say it's a false choice, when it is an obvious choice. It is civilian versus military. It's not a false choice; it's a choice that the victim deserves to have and should have.

Thank you.

The Chair: Thank you.

Mr. Savard-Tremblay.

[*Translation*]

Simon-Pierre Savard-Tremblay: Indeed, in light of the testimony that has been heard, many have suggested free choice and recourse to military courts, but that was not the case for everyone.

In light of what we are hearing now, I think that amendment BQ-1, which I will propose later, will be a better compromise. Therefore, I am against this proposal. Mine is in line with the objective and the idea, while being more realistic.

[*English*]

The Chair: Mr. Kibble, you're up.

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

I have a couple of questions and comments that I'd like to share.

Lieutenant-Colonel MacMillan, you referred to the Constitution. Are you a constitutional law expert?

Lcol Matt MacMillan: I'm not.

Jeff Kibble: You also mentioned trauma-informed training. Have you taken a trauma-informed training course?

Lcol Matt MacMillan: I have.

Jeff Kibble: You have. That's excellent. I have as well. I'm glad to hear that. It's very wonderful.

One thing they talk about is choice—freedom or being constrained. This would be a legal restriction, and it would certainly feed trauma by taking away choice from a victim or survivor. Would you agree with that?

Lcol Matt MacMillan: In relation to this aspect, it's a question of whether a victim can participate in making the determination. Ultimately, when we're speaking about this motion, it purports to make a choice—the sole choice—for the victim. That's a concern with the motion because it's not how the system functions, as we spoke about earlier, in relation to prosecutorial discretion.

Jeff Kibble: Thank you.

I find that interesting. In relation to what you said, we know that the Canadian Association of Chiefs of Police provided a written submission to us. It read:

> The proposed provisions in Bill C-11 would deny victims and survivors the ability to express a preference as to how their complaint might be investigated. This approach departs from the victim-centered and trauma-informed principles that underpin best practices in policing.

This sounds very contrary to that, and it certainly speaks to choice.

I think it's worth repeating, as well, that as my colleague Mr. Anderson stated, the overwhelming majority of survivors we've spoken to, as well as the witnesses we've spoken to.... Of course, Justice Arbour, in her report from many years ago—10-plus years ago, at a different time—stated otherwise, but the survivors and the witnesses we heard, who gave up-to-date information and testimony in this very room, spoke to choice. I think that's the way forward in our time.

You said multiple times that it's about telling the stories. They'd have to tell it once in a military format, and then if they switched, they would have to tell it twice. From what I've heard from an overwhelming number of survivors, and from personal experience, I can say that a victim or survivor would be telling their story multiple times just within the military justice system, at each level, as they progress and as they report.

There are these claims that they're going to suffer more because they have to say the story twice. They tell their story over and over. They want to get their voice out and told—so much so that they come to committee and share their story here or write about it in a book. They tell their story over and over, so I think it's a false flag argument to say they're going to have to tell it twice. They're survivors who want to make change and see improvement, and they come forward and tell their story over and over. As heartbreaking as it is for them, they feel compelled to do that, so I don't think it is an undue burden.

I'd like to conclude with a quote from Heather Vanderveer, who also gave a written submission after speaking to us here. She said, "Survivor autonomy is one of the strongest predictors of recovery after institutional betrayal and sexual trauma. Bill C-11 risks creating a system where survivors feel processed through the system rather than empowered within it." It's that empowerment, that choice, that speaks to trauma-informed theory, and that comes from trauma-informed training, as we've heard from the Canadian Association of Chiefs of Police, so while you state that, I think the overwhelming testimony clearly indicates this.

Thank you, Mr. Chair.

● (1640)

The Chair: Thank you.

MP Idlout has her hand up at this point. I think we require consent from the committee to allow her to speak. Is that correct? Do we have consent to allow Ms. Idlout to have her say?

Some hon. members: Agreed.

The Chair: It's over to you.

Lori Idlout (Nunavut, NDP): *Qujannamiik.*

Thank you to the committee.

I would have spoken to these issues, given that CPC-3 is exactly the same as NDP-1, so I appreciate the opportunity to speak and ask questions regarding CPC-3.

Specifically, we share the criticism that this bill didn't have enough direct consultation with victims, so I'm glad we heard testimony from several victims—and from veterans regarding procedural matters. I want to make sure that I recognize the testimony we heard from veteran and Ph.D. candidate Hélène Le Scelleur and from Christine Wood, who both spoke to the importance of making sure that victims can have a choice as to which court hears them. I wanted to mention those two during this committee as we consider the amendment.

I also want to ask the witnesses, if that's okay...because we've now seen the Liberals table Bill C-16. Bill C-16 looks to make an important amendment to the Criminal Code regarding how some procedures happen, especially those with regard to criminal harassment. The current bill has the potential to be impacted by Bill C-16 if that bill passes, given that Bill C-16 would amend the Criminal Code with regard to harassment provisions. We know that the current harassment provision, section 264 of the Criminal Code, has both a subjective and an objective requirement.

Bill C-16 would make a change to that so that when it's obvious that a victim has been harassed criminally, she herself doesn't need to prove in criminal proceedings that she feared for her safety. I wonder if you have had a chance to look at Bill C-16 with regard to criminal harassment, at whether Bill C-16 would have an impact on this bill and at how victims could use Bill C-16 as a way to protect themselves.

Qujannamiik.

● (1645)

Col Geneviève Lortie: With regard to Bill C-16, the Department of National Defence has been implicated in the drafting and the work until the tabling of the bill. There's a specific amendment under the National Defence Act, and we are fully aware of what Bill C-11 is bringing to the table for amendment under the National Defence Act, so that's been considered.

When we're talking about an amendment for an offence or the way to prove the offence under the Criminal Code, those things only get incorporated under the military justice system under one of the provisions that incorporate all the offences under the Criminal Code and the ways to commit offences. Not every provision needs to be amended. We don't have a copy of everything under the National Defence Act, but we were fully aware of and completely participated in the work and the amendments being proposed for the National Defence Act that are incorporated under Bill C-16.

The Chair: Ms. Lapointe, you're up next.

James Bezan: Do you have my name?

The Chair: I have you on the list, yes.

I have Ms. Lapointe and then Mr. Bezan and Ms. Gallant.

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

I wonder if you could tell us how important it is for investigators to know, right from the outset, which system has jurisdiction in the case they're about to investigate.

Col Geneviève Lortie: At the first step, when the investigation starts, they may not necessarily know which evidence will be able to prove which offences. It's really a two-step system. Depending on what they're looking at, they will consider who has jurisdiction. In that case, what's proposed is to have an investigation under the civilian justice system.

Viviane Lapointe: Can you tell us what kinds of issues can arise in an investigation if the jurisdiction isn't clear from the outset?

Col Geneviève Lortie: They need to know if they have jurisdiction to maintain. This is because, as soon as they start an investigation, they need to know if the evidence will be maintained, if it will be admissible and that all the actions they take can be justified. They need to have jurisdiction to get to the next step. This needs to be determined early on, as the first step.

Viviane Lapointe: Okay, thank you.

The Chair: Thank you.

Mr. Bezan, go ahead.

James Bezan: We talked about the prosecutor having control over the direction in which a charge is laid, whether it's civilian or in the military court.

We heard from the director of military prosecutions, Colonel Kerr, who said, “If it wasn't for the tabling of Bill C-11, I would already have rescinded my direction to stop exercising jurisdiction in these cases, and I'm fully prepared to resume accepting appropriate cases in the military justice system now.”

He went on to say, “I believe victims in the CAF are better served by retaining a concurrent jurisdiction over these offences. Victims deserve a say in where their cases are heard, and I am concerned that some cases will not be heard if jurisdiction is removed.”

That's from your own director of military prosecutions.

We also had Brigadier-General Hanrahan, who is the provost marshal general, and she said:

> At any point in the process with concurrent jurisdiction, there's an ability to have a choice change. A victim, for example, in the beginning may ask for a military police investigation or, vice versa, a civilian police investigation, and during the course of that investigation they may change their mind and ask for something different. Concurrent jurisdiction allows us, from an investigative perspective and a prosecutorial perspective, to work with the victim to help them work through those choices at any point along that process.

There you have the provost marshal general and the director of military prosecutions saying that we need to have choice and that there need to be concurrent roles in both. If they want to go civilian, let them go civilian, but if they want to stay within the military justice system, let them stay there. That's what we heard from victims: They want this choice.

The best place—rather than going with the Bloc motion, which is in clause 8—is clause 7, which is a place where you can give choice early on, right off the bat, with the investigation with direction to military police, defence counsel services and the director of military prosecutions to ensure that choice is available right from the get-go. Clause 7 is the best place for this to take place.

We heard from multiple witnesses, both in writing and in testimony. We even heard from the CDS, General Carignan, who said, “It's ensuring that victims are enabled and that they keep agency over their own process and how they want to go about their own complaint.”

Even the CDS said that when she appeared on Bill C-11, at the very first meeting we had on this. This is reading right out of her quotations from.... The staff are shaking their heads, but I'm reading out of the minutes from the meeting. We can circulate them to you, because it's right there.

If you want to make sure that we are providing choice, if we're standing up for victims or if we're going to make sure the military justice system works.... Are we going to keep jurisdiction when they're out of Canada but then wash our hands of it? It doesn't make any sense.

I think, as we heard from witnesses as well, they believe this is the department, the Canadian Armed Forces and those in leadership wanting to pass the buck rather than actually having a system that works for them.

I encourage everyone...if we're going to do the right thing and if we're going to stand up for witnesses and for what they said here as victims of military sexual trauma, then we had better pass this amendment and give them the choice.

● (1650)

The Chair: Thank you, Mr. Bezan.

Ms. Gallant, over to you.

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

If a charge is laid but the prosecutor decides there is not enough evidence to go forward—even if it's evident that something happened, but they can't get a decision from the judge in the civilian courts—does that mean the perpetrator is off the hook, or is there a fallback whereby the military would investigate, take the evidence and still make some type of charge militarily?

Col Geneviève Lortie: For some offences, as a prosecutor, you may lay a charge of sexual assault, but you can prove—

Cheryl Gallant: I can't hear you; I'm sorry.

Col Geneviève Lortie: If there's a charge laid of sexual assault, the lesser and included charge could be that someone is found guilty of assault. When there's one element that is not proven in court, that's one of the possibilities.

If a prosecutor decides not to go further because they don't have a reasonable prospect of conviction and the charge is withdrawn, then yes, it's possible that other types of offences could be looked at.

Cheryl Gallant: Is this through the military system?

Col Geneviève Lortie: In the military system, we have the inclusion of all Criminal Code offences, but there are other typical military offences that are only of a military type that, depending on the facts that are proven, could be laid.

The names are escaping me right now.

Lcol Matt MacMillan: There's disgraceful conduct and a slew of offences in the code of service discipline that would be available. If a matter were investigated by the military police and they determined that there was a reasonable basis for laying the charge, yes, they could do that. Whether they investigate it is a question mark, based on their jurisdiction to investigate. It would really depend on the facts of the case.

Cheryl Gallant: If the victim was definitely assaulted, and there's evidence of assault, but because it's a sexual assault and the prosecutor cannot find reasonable chance of conviction of a sexual assault.... Are you saying, then, that it would go through the military system and the individual would be court-martialled and go through for assault?

Col Geneviève Lortie: The prosecutor could look at it as assault, and the military system would maintain jurisdiction for pure assault charges under the Criminal Code. It's not one that is proposed to be excluded here, so yes, if it's what is discovered in the evidence, the investigation body can discuss it. That's when a file could make its way back into the military, when we're talking about investigations, to complete the investigation and lay charges on something for which the military has jurisdiction.

Cheryl Gallant: Thank you.

● (1655)

The Chair: Ms. Romanado.

Sherry Romanado: Thank you very much, Chair.

I have two questions. I know that Justice Arbour met with hundreds of victims and spoke to them. In the previous Parliament, the Standing Committee on Veterans Affairs also did a study with respect to military sexual trauma among veterans and issued a report to the House of Commons entitled “Invisible No More”. In that report, which was voted on in the ACVA committee and tabled in the House, it said very clearly in recommendation 40 that jurisdiction for military sexual assault investigations and prosecutions should be moved to the civilian system, which is part of the reason this bill came about.

One issue you mentioned in terms of the concurrent systems is the Jordan principle. You mentioned that, should a victim go forward in one system, start the process and then decide to move to the other system, the victim would have to start over. Is that correct? This could cause problems vis-à-vis the Jordan principle in that, every time there is a change in venue, there is an additional length added to this process.

Is there a risk at any point that, should this happen, a perpetrator could walk free under the Jordan principle?

Col Geneviève Lortie: There's a clear potential for a breach of the Jordan delay, considering that the way the motion is drafted, it starts with a charge that has already been laid. It means that the jurisdiction has already been decided. The way it's being proposed now, it starts in the civilian system.

As soon as a charge is laid in one of the systems, if you have already entered a plea, you need authorization, or leave of the court, to withdraw a charge. It's on the prosecutor to do that. When you get it—let's say leave is given by the court—you transfer the file to a military police member. They now need to completely understand the file to have a reasonable belief that an offence has been committed. It's not necessarily a question of an hour or two; it may take time. At that point, they don't have the jurisdiction to continue the investigation further, so they have the file that they have.

If they lay a charge—because civilian authorities don't have jurisdiction to lay a charge in the military justice system—it goes to the director of military prosecutions. Before they lay the charge, they need to get legal advice, because the nature of the offence will require them to. When they believe an offence has been committed, they lay the charge and transfer it to the director of military prosecutions, who needs to review the file, do the referral and get it to the court martial. That system takes time.

I've been a prosecutor. I've faced unreasonable delay charter applications. That's certainly a case where, because the timing starts from the laying of the charge.... It doesn't start from the laying of the charge within the military; it would start way back under the civilian justice system. In 18 months, you can certainly get there, and that could be challenged. If we end up with an unreasonable delay, the court martial could declare a stay of proceedings on those charges.

Sherry Romanado: Thank you for clarifying that.

The Chair: Mr. Anderson.

Scott Anderson: We've talked about theoreticals and potentials for delay. I want to read a quote from retired Colonel Michel Drapeau, who said, “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.” We can talk about hypotheticals, but in fact, that's it.

I'd like to go on and read some quotes from Minister McGuinty himself. He said, “This is about a suite of targeted amendments to help bolster confidence in the military justice system.” That is a statement by the minister. He also said, “one of the reasons we're here is that we're very open to hearing more from all members about how to improve this bill.”

We've heard from a lot of people. All the victims, save one, say they would like a choice. All the experts say they are in accordance with choice, and that choice furthers the independence of the victim and the feeling of.... I can read those quotes as well, if you wish.

The point is, if we're trying to make it better for victims and make a fairer system, we don't want to off-load on to the civilian system, when the civilian system is saying it doesn't want it and can't deal with it. This is simply downloading problems on to them so that we, at the federal level, don't have to deal with them anymore. That is not good for the victims; that's good for us. I would argue that the victims have spoken very loudly and the experts have spoken loudly.

I don't think there's even a choice. I don't think there's even a debate to be had. We can go into technicalities, which we've been doing, and hypotheticals, but that's as far as the case can go on the other side. I think choice is imperative here.

Thank you.

● (1700)

The Chair: Mr. Bezan, it's up to you. We can probably go into a vote after that, folks.

Mr. Bezan.

James Bezan: First of all, I want to say again that we heard multiple witnesses.

A written submission by Jessica Miller says:

> [The] approach [of Bill C-11] does not recognize the unique nature of military sexual trauma (MST) or the institutional structure of the CAF.
>
> Jurisdictional transfer risks reducing accountability, weakening discipline, lowering conviction rates, and failing to deliver justice to survivors—while removing responsibility from the CAF chain of command.

Christine Wood says:

> Limiting survivors to a single pathway to justice weakens our agency rather than strengthening it....
>
> To be clear, I'm not defending the status quo. The military justice system also failed me. However, replacing one system that's broken with another system that completely and consistently fails victims of sexual offences does not create justice. It simply relocates the problem, and it removes the responsibility of the CAF for fixing it.

As we heard from other witnesses, the problem here is that CAF needs to provide leadership on this issue and not just pass the buck, and that's what we were looking at with this.

I wouldn't mind first getting a quick interpretation, because the Bloc mentioned that they believe their BQ-1 provides a better balance than CPC-3. If that's in order, I'd like to get your interpretation of BQ-1—since they overlap—in order to have a comparison on whether BQ-1 actually does provide it.

In this situation, my understanding is that if we're already in the civilian system, the military police has already not done the investigation, and it's going to be the civilian court that will have to send it back to CAF or a court martial under the amendment in clause 8. There's that privilege in BQ-1.

Col Geneviève Lortie: If we look at BQ-1, some of the same issues would come back. When we discuss the possibility of an unreasonable delay under the Jordan principle, we could end up in the same place, considering that it's starting under the civilian justice system.

It also goes against a principle in which the civilian system and the court martial system have been recognized as being separate but equal in nature. That motion would propose to have the civilian system decide for the military. I think it's certainly something that could be challenged. We'll look at it, but there are issues that had been identified about the authority—

The Chair: I have a point of order from Sherry Romanado.

Sherry Romanado: I believe that we're not supposed to be discussing an amendment until it has been moved. BQ-1 has not been moved. I think it's a little premature to have that conversation. I don't know if they're going to move it.

The Chair: Yes. We are talking about the amendment put forward by Mr. Bezan.

Mr. Bezan.

James Bezan: On that point of order, I'll just refer everybody to chapter 16 of our brand new *House of Commons Procedure and Practice*. I encourage everyone to read it. It's riveting, especially chapters 16 and 20.

On page 645, it says, “the Chair may permit debate to range over several other amendments which are interconnected or which raise different aspects of the amendment under consideration.”

These are definitely connected, and I see that the law clerk is also nodding yes, so I would like to have this debate.

Sherry Romanado: It's confidential until it's moved.

The Chair: Well, CPC-3 is identical to NDP-1. The Bloc's amendment is slightly different, but—

● (1705)

James Bezan: They are interconnected. It all deals with choice.

The Chair: That's understood.

I will proceed to complete Mr. Bezan's discussion, and then we'll move on to Mr. Kibble.

James Bezan: Are you going to let them continue?

The Chair: Yes, please, by all means.

James Bezan: On the comparison....

Col Geneviève Lortie: Thank you.

If we continue further, what I was mentioning is the doubt that we could have about civilian authorities deciding for another system. We're clearly within the division of powers. Also, even if the civilian court were to decide that the court martial would have jurisdiction, it doesn't mean that the court martial would take jurisdiction in a case. You could still end up in the same place: Even if the civilian system decides—and we're at the court at this point—that it should be addressed under the military justice system, at court martial, the court martial could reach a different decision.

It's all the same principle. We're talking about the charges already having been laid, so all the delay and the implications of going from one system to another one would be similar to what we explained previously.

James Bezan: You're making the argument, then, that we keep it all in the military justice system so that we don't have those delays and the Jordan framework doesn't come into play.

Mr. Chair, we've had a lengthy debate on this, and I know there are more questions than answers. I don't think we're in a position to make a decision on this, so I would move that clause 7, clause 8 and the associated amendments be stood.

The Chair: We have a few more speakers on this very amendment. I believe Ms. Normandin wants to speak to it as well—

James Bezan: I think I have a motion on the table.

The Chair: There's a motion before the table. We need unanimous consent in order to proceed with that motion. Do we have unanimous consent?

Some hon. members: No.

The Chair: Mr. Kibble, you're up.

Jeff Kibble: Thank you, Mr. Chair.

My question is for both our experts who are supporting us today. Thank you for being here.

Was either of you involved in the drafting of Bill C-11? Do you have that connection to it?

Col Geneviève Lortie: We participated in the work for the development of the bill, yes.

Jeff Kibble: Okay, that's fair enough.

In the denial of choice—I would like to refer to my previous comments that it would be a trauma-uninformed denial—what would happen in a minor or a grey zone case, as was brought up in the testimony cases?

We've heard from numerous survivors who supported choice but said they would not necessarily want to go to the civilian system—they would want to keep it within the military—and others who said the opposite. We also heard in multiple police testimonies—I can certainly bring up the quotes later—that many of the cases, especially in the minor or grey zone areas, would not even go to civilian prosecution. What would happen in those cases? What would be the justice for those victims?

As stated earlier, the minister testified that this was to restore justice within the military and the image of that. For the more minor cases that the civilian police will not take, are they not going to be prosecuted?

Col Geneviève Lortie: There's always prosecutorial discretion, so every case they face will be based on the circumstances of the case.

Sometimes, if a more major offence is not proven, there can be other offences for which a charge could be laid and prosecuted. In every case, in both systems, you will have discretion with the file. They each have public interest factors they need to consider, and those would be different in the military than they would be in the civilian system.

Jeff Kibble: Bluntly put, the testimony we heard was about a groping example that, clearly, the civilian courts would not prosecute, yet in the military system, it would be prosecuted, and discipline, order and punishment for that type of behaviour would be established.

Would there be a free pass for people to do that? The minister's goal was to restore justice and trust in the military justice system. What happens in those minor cases?

Col Geneviève Lortie: Each time, you have prosecutorial discretion. We don't know in advance. It's when they have the file and they review the different circumstances of the file that they can decide.

In the military, we still have administrative measures that can be taken against a member, so this is always another option that remains.

● (1710)

Jeff Kibble: The military, for those minor cases of groping or.... I don't like to get into the actual levels of detail, but I think we can all agree about these minor or grey zone cases that are absolutely unacceptable within the military culture. We've all identified them here and have agreed that change is needed. For them to be dealt with administratively doesn't make sense. It's like a free pass for those people who are not going to be prosecuted within the military justice system. We know that the civilian justice system is not going to prosecute. This seems like a failure. If we implement the trauma-uninformed denial of choice in Bill C-11, you get administrative choices—and I'm well aware of what those administrative choices are—that are very minor in comparison with the military justice system.

I think this would be a travesty. It would be an open, complete free pass for these perpetrators, and it should not be. We heard multiple examples from victims and from police that this exact scenario would happen. This is opening a can of worms. As my colleague said earlier, this shouldn't even really be up for debate. This amendment is really a no-brainer after hearing all that testimony from the police.

I mean, we heard from the police chief in Victoria, where the second-largest base is. This speaks to the comments we heard on the Jordan decision earlier, which is being used as a defence by our experts here for this bill. Under the Jordan decision, Fiona Wilson, the police chief, said they just don't have the capacity in the civilian system to even deal with major cases that would come out of CFB Esquimalt, which would cause all these cases not to be prosecuted, let alone all the minor cases. We don't have an answer on how the military is going to deal with these minor and grey cases.

I contend that, really, this is an absolute no-brainer. We have the testimony—overwhelming from the survivors, overwhelming from the experts—that this is the best way to proceed. It's trauma-informed, and it will support the minister's guidance on where he wants to see the military justice system restored and people to have trust in it. Allowing a free pass doesn't achieve that in any way, shape or form.

I contend that this amendment needs to be dealt with. It will bring the justice that we need into the military system and restore that, and it will not let people get away with things in the very culture we're trying to change.

Thank you.

The Chair: Thank you.

I have Ms. Gallant next and then Ms. Normandin.

Cheryl Gallant: Given your response to my last question, I would just recall that we had a witness, Elvira Jaszberenyi, who had been forced into a broom closet and raped. Her career ended. The perpetrator's went on. He admitted to the sexual assault. There were no courts martial. There were no consequences at that time, and he went on.

He had raped other people. The military police knew about it. Nothing was done. I'm concerned that even though there are other avenues through the military system, it might not happen if there's not a reasonable chance of prosecution in the civilian system.

You said that the amendment as written would not permit the timing for the victim to have a choice once charges were laid. Is there another way to word this so that there would be a choice on the part of the victim, having to do with when charges were actually laid?

Col Geneviève Lortie: The jurisdiction needs to be established before the point of laying of a charge. That's when the timing of the Jordan delay starts. It's the charges laid. Any time before a charge is laid would not be considered unreasonable or adding to the time.

Cheryl Gallant: Before a charge is laid, they can't make a determination on whether it's civilian or military.

Col Geneviève Lortie: It depends on how the provisions are drafted. Bill C-11 proposes, without the amendment, that it's really in one system, so you don't have delays from transferring from one side to the other. That's in line with Justice Arbour's recommendation five to completely remove the jurisdiction. There are two steps. There's the investigation, which is clause 8. We're still on clause 7, which is the prosecution with the link to the court martial.

● (1715)

Cheryl Gallant: There's nothing compelling the military to enact consequences for the perpetrator should a trial not proceed because there's no reasonable expectation of conviction.

Col Geneviève Lortie: I'm sorry, but I'm not sure I completely understand your question.

Cheryl Gallant: There is no opportunity to ensure that something is going to happen through the military justice system if the civilian system decides not to proceed with the prosecution. It's just dropped.

Col Geneviève Lortie: There's no certainty. There's a possibility of something, but it always goes back to the discretion of the prosecution. They need to look at the file, the circumstances and the reasonable prospect of conviction. This means establishing every element of the offence and the public interest factor to prefer a charge to get to court martial. It needs to happen in every case.

The Chair: Thank you.

Welcome back, Ms. Christine Normandin, to the national defence committee. It's over to you.

[*Translation*]

Christine Normandin (Saint-Jean, BQ): Thank you very much, Mr. Chair.

Thank you to the witnesses.

Colonel Lortie, I have a couple of questions for you, particularly regarding what you mentioned about the two courts, martial and military, which are of equal quality and level and have no jurisdiction over each other.

If the victim's choice to proceed with either one is upheld, could the court-martial refuse jurisdiction in the same way that the civil court could say that it considers that the case should go to a court-martial, while taking the victim's opinion into consideration?

Col Geneviève Lortie: The way the provisions are worded, questions of jurisdiction really depend on the text of a statute. Currently, the National Defence Act does not contain any provisions dealing with a victim's preference for one system or the other. It is really a matter of competing jurisdictions, meaning that both courts have jurisdiction. It is a question of who will exercise it depending on the circumstances.

Christine Normandin: For example, if the victim initially chooses to go to a civil court, then changes their mind and ultimately wants to go to a military court, could the latter refuse?

Col Geneviève Lortie: I don't think it would be refused as such. It really needs to be clearly established in the law how to proceed if there is a choice or not.

If we take things to the extreme and say that the victim can choose, that would mean that we are not respecting independence. If we consider that the victim chooses one or the other court and that prosecutors have no choice but to go to the corresponding system, that would not respect the basic principles of independence and discretion of the prosecution. This aspect could certainly be challenged in court within the system. If we consider that victims have a choice, but that this choice is imposed and we have no choice but to go to the system chosen by the victim, there is no longer any analysis to determine whether we have all the evidence we need to proceed. If we skip this step, it is an argument that could be used.

Christine Normandin: I understand that, in a way, it is not possible to choose one's forum. Is that what I should take away from your answer?

Col Geneviève Lortie: Without getting into technical vocabulary details, there is a difference between choice and preference. If we exercise a choice, we prevent other authorities from exercising their discretion. However, we must still consider the principles of fundamental justice relating to prosecutorial discretion, which have even been recognized by the Supreme Court of Canada.

Christine Normandin: I have another question that may seem very hypothetical. We don't want it to happen, but it could happen in the future.

If the same event resulted in multiple victims and those victims had the option of choosing their forum, what would happen if hearings were held in parallel in civil court and court-martial? Could the two hearings proceed concurrently, against the same person, with victims in both courts and similar facts, without a person being tried twice for the same facts?

● (1720)

Col Geneviève Lortie: In this case, there could be no competing jurisdiction. It would not be possible to say that the trial is taking place for both civil and military offences, since these are two completely separate systems.

Within the same system, it is possible to have joint trials if there are several defendants linked to the same event; several charges can be brought against the same person if there are several victims. However, when there are two different systems, each proceeding should take place separately.

[*English*]

The Chair: Thank you, Christine.

I have Mr. Kibble, and then we can go to a vote.

Jeff Kibble: Thank you, Mr. Chair.

I will save this address for the room in general and the members opposite here.

To our experts, I appreciate the answers to our questions. Although they are here as experts to answer some technical questions, I feel that it was a lot more like testimony in support of a bill they helped to draft and in defence of that. I just wanted to put that on the record for you, Mr. Chair.

The goal of Bill C-11 is very well intentioned, and I think we all agree with that. We've seen that culture changes need to happen. We're all very passionate about this. I truly think that everyone in this room is focused on getting something right for the survivors, although we have differences of opinion. The goal is to restore trust in the military justice system and provide justice for victims and how we achieve that, but it's also to improve the culture.

I have seen improvements to the safety and the culture in the Canadian Forces, although there's more room to grow. I know that when I joined many years ago, 25 years, some of this type of culture was terrible. Okay, it has been longer than that, but I don't want to say how long ago it was. There has been improvement in recent years, but it still has farther to go, and I think that if done right, Bill C-11 can help us achieve that.

It's also to provide trauma-informed safety and choice for the survivors while restoring military justice and improving the culture but still respecting those needs. Bill C-11, without the choice that we are presenting in our CPC-3 amendment, doesn't provide a solution for the survivors in terms of minor and grey cases. It's opening a Pandora's box that could destroy the good progress the CF has made and worked very hard for in the last several years. It would reverse that.

As we've heard today, it would be forced to resort to using administrative measures versus military justice measures for dealing with minor cases that would not be prosecuted at the civilian level. We've heard much testimony about those middle, lower and grey area cases that would just be left now, as we've heard, to administrative measures, and this is not a way. It is not trauma-informed. It is not going to improve the military culture, and it certainly will not restore trust in the military justice system. These are the stated goals.

We've also heard from the civilian police that they're beyond capable. I have full trust in Fiona Wilson, the chief of the Victoria Police Department, and their capability. She stated that they have the capability to deal with major cases, but they do not have the capacity.

Her question, which I brought forward to the minister, I believe, was about how much funding would be made available for the extra police officers required. This was specific to Victoria, but I thought that was a good example, because CFB Esquimalt is in there and that's a large base.

There was no answer. This bill as it is right now, without the amendment, doesn't provide the extra funding and training that are going to be needed. A lot of money is going to be needed. We heard examples of how long these cases can take, both the investigations and the prosecutions. There would also be a lot of training. There is no plan for the training. Our amendment solves that issue. Our amendment doesn't require a solution for the minor and the grey cases because there's already a system in place that will deal with those.

I contend—and I look everyone straight in the eye when I say seriously—that the military administrative system is not designed to do this and will not be able to deliver that justice. I understand how the administrative rules and steps take.... I've applied them myself for administrative issues, not serious issues like sexual misconduct. Whether they're minor or grey, that simply doesn't suffice. Without the amendment, that is not solved.

It's not trauma-informed. I don't want to beat that one too much or bang that drum. We've discussed that. It takes away freedom. This is also one of the goals of Bill C-11 that's not achieved. I think giving that choice is going to make it trauma-informed.

I'll conclude that Bill C-11, without our amendment, CPC-3.... I'm imploring everybody to consider, vote for and support it so that we can deal with restoring military justice, like the minister wants; improve the culture and continue improving the culture, as has been going on over time; and provide compassionate, trauma-informed choice and support for the victims, as we've heard overwhelmingly.

● (1725)

I would love to do the math on this. Maybe for the next time we sit down, I'll do the percentages in terms of comments we heard from experts, from victims and survivors and from people who deal with victims and survivors. Overwhelmingly, that's what we heard.

In my riding, on Vancouver Island, there are many veterans, because we're adjacent to CFB Esquimalt and have CFB Comox to the north. I know that from all the people I've met, whether in this job or before. On behalf of all my constituents and the many survivors I personally know and the many survivors I've met through this job, through advocacy work with Wounded Warriors Canada and through all types of advocacy work for veterans—and I know them well—I will be voting to support our amendment, CPC-3. I would ask everyone to consider it for the reasons I gave.

Thank you very much.

The Chair: Mr. Bezan, your hand is up.

James Bezan: I think the idea of transferring all cases into the civilian system is a bit of a hope and a prayer. We heard from the Canadian Association of Chiefs of Police, in their written submission, that they strongly recommend maintaining concurrent jurisdiction. The proposed provisions of Bill C-11 would significantly hinder collaboration between civilian police agencies and the Canadian Armed Forces military police.

We just witnessed the government come in with their gun grab. In that, there were several provinces and municipal and provincial police forces saying they would not participate. If they are saying no to the federal government on gun confiscation, why would they want to take the time and the extra resources to handle stuff that has traditionally been done through the military justice system?

We have, now and through Bill C-11, this duplicity in which, if it's going to happen within Canada, we're going to hand it over to the civilian courts. They are overrun and have their own problems with the Jordan framework, and lower levels of sexual misconduct aren't going to be handled. We don't know if information is going to be properly shared—the reports to civilian agencies, to the chain of command and to the military justice system—or if summary hearings can take place at the same time as civilian court cases are being heard. What happens to the administrative penalties for the accused?

We don't know how this is all going to play out, so it's a bit of a hope and a prayer. You hope the civilian system has the capacity to deal with it. You hope the provinces are going to want to participate. You hope it's going to bring justice for victims.

A comeback we've heard from the majority of our witnesses who are victims of military sexual trauma is that this isn't going to work. Donna Van Leusden said, “It's about having the choice, having some agency and recognizing there are some crimes that would be prosecuted within the military system that would not be prosecuted in the civilian system. I firmly believe it's a mixed thing, but I do think it's progress that we're looking at it.”

Christine Wood said:

> I originally completely opposed the transfer of all cases to civilian court, and that was for three reasons: number one, it's broken; number two, it offers victims no choice; and number three, I believe the CAF has to maintain control over its jurisdiction and demonstrate it can be responsible for fixing its own harms.

I really think that we need to pass CPC-3. The NDP, the Bloc and the Conservatives all want to make sure that the victims' right to have a choice in how their cases are heard, investigated and tried is maintained. CPC-3 and NDP-1 are identical. CPC-4, CPC-5, NDP-2 and BQ-1 all work together, and I don't believe that any one of them passing would cause the other ones to be out of order. I think so in all cases. I've asked the legislative clerk if there are any amendments made here, with connectivity between amendments, that would force any of these to be out of order and then not deemed admissible.

● (1730)

The Chair: A question has been posed to the legislative clerks here to determine....

Sherry Romanado: I have a point of order, while they're conferring.

Given the hour, maybe we could check with the clerk to see if there's any possibility of our getting additional resources past six. It would be helpful to continue this conversation.

James Bezan: We have a hard stop.

Sherry Romanado: I just want to know if it's possible for us to get additional resources.

James Bezan: I have to fly, guys.

The Chair: Let's go to a vote.

James Bezan: I'm prepared to stand it, and we can come back to this. I don't mind moving through the rest of our legislation. This is an important piece of legislation. This is about standing up for victims.

Sherry Romanado: Are you saying we're not?

James Bezan: No, I'm just saying that we need to make sure we get this right.

Sherry Romanado: Let's stay later. I'm happy to do it.

James Bezan: I have a flight to catch.

The Chair: Let's put this through the chair, please, for decorum.

Do we have a response for Mr. Bezan?

Procedurally, it's fine. If there's any content....

Should we go to the next speaker? Mr. Bezan, are you done?

James Bezan: I think we should pass these amendments as we proposed. I think that we can build in really strong choice if these amendments all carry, right through to what's been proposed, up to BQ-1.

The Chair: We have MP Idlout. She has her hand up, and I believe Ms. Normandin has her hand up as well.

If we could move to a vote before this deadline.... I don't really want to extend this beyond six o'clock.

We'll go over to you, Ms. Idlout.

Lori Idlout: *Qujannamiik.*

I wanted to reiterate how important it is to listen to the victims. It's also a rarity when the Conservatives and the NDP agree on an issue. It's quite rare. Both of our parties submitted the same amendments—CPC-3 and NDP-1. This goes to show how important the victims' choice is, especially as, in their circumstances, they would have lost so much, having been victimized by such horrible acts against their integrity and especially in the military—in a male-dominated industry.

We have to do what we can to make sure we're showing our support for victims, especially the veterans who shared with us. I'll say their names again—Hélène Le Scelleur and Christine Wood.

I will remind this committee, as an example, of what Hélène said. I'll quote a portion of what she said to the committee. She said:

> The third issue is choice. Survivors must have the right to choose between civilian and military systems at all times, regardless of location or rank. Choice is not procedural. It is freedom: freedom from our aggressors and freedom from the silence that institutions have imposed upon us.
>
> I want to be clear that even with this choice, neither system is sufficient on its own. The military system understands the operational context. The civilian system provides independence and oversight. This is why I believe the real reform must move toward a joint, hybrid investigative system that is culturally informed, trauma-informed, independent and capable of protecting survivors everywhere—in Canada and in deployment environments.

Finally, I'll read what Christine Wood shared with us. She's also a veteran. She said:

> I'm absolutely opposed to the transfer of military sexual offences to the civilian justice system. I support the creation of an independent system of justice for sexual crimes within the military. I support it because the CAF must uphold their own good order and discipline. That responsibility is essential for transparency and accountability. Limiting survivors to a single pathway to justice weakens our agency rather than strengthening it. We want choices.

Qujannamiik, Chair.

● (1735)

The Chair: Thank you.

Ms. Normandin, you're the last one, I hope, so that we can proceed to a vote.

Thank you.

[*Translation*]

Christine Normandin: Thank you, Mr. Chair. Unfortunately, I am going to have to disappoint you with regard to part of your request.

I am very sensitive to the arguments put forward by Mr. Bezan, who says that everyone here shares the same desire to do a good job and respect the victims. The fact that we are rushing certain things is unfortunately at odds with that wish.

Mr. Bezan's question to the legislative clerk was interesting, and I am glad to know that, procedurally, there is no incompatibility between amendment CPC-3 and a possible amendment BQ-1. I am still concerned about potential legislative incompatibilities. These are questions that our colleagues—and I am perhaps addressing Colonel Lortie more specifically—could answer.

In this context, I feel uncomfortable moving directly to a vote on amendment CPC-3 without having had a minimum amount of time to understand the potential legislative incompatibility that could exist.

Is it possible to suspend the meeting for a few minutes so that we can at least discuss this with our colleagues? This is a very specific legislative issue, much more so than a procedural one. If we end up with a poorly drafted bill for at least the next five years, I do not think we will be doing victims any favours. We can take a few minutes to ensure that the job is done properly.

That is my request to you at this time.

[*English*]

The Chair: There's a request to suspend just to determine the legalities and the legislative and procedural aspects of this.

I am sensitive to time, and we may have to continue this if we suspend. If the committee is of that opinion, to satisfy Ms. Normandin's request for clarity on those issues, is three or four minutes good enough? That will take us to a quarter to six.

The meeting is suspended.

● (1735)

_____(Pause)_____

● (1750)

The Chair: The meeting is resumed.

I have Mr. Kibble and then Mr. Malette.

Mr. Kibble, you're up first.

Jeff Kibble: Thank you, Mr. Chair.

I want to review two quotes, one by Jessica Miller, who gave a written submission. I think this is important to consider:

> Recent reforms have prioritized moving sexual misconduct and sexual assault cases involving CAF members into the civilian justice system. This approach does not recognize the unique nature of military sexual trauma (MST) or the institutional structure of the CAF.
>
> Jurisdictional transfer risks reducing accountability, weakening discipline, lowering conviction rates, and failing to deliver justice to survivors—while removing responsibility from the CAF chain of command.

That really speaks to the point I made about the grey zone cases. Of all the previous words that I gave, I think that is the biggest part. The biggest concern I have is that those grey ones will revert to, as we've heard, justice through administration, not justice through justice. I think this is a huge mistake.

The second quote is from Justice Deschamps herself, at our 16th meeting. These are really important words to hear. She said:

> 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.

I would contend that, although she testified that it would involve significant risk, it would in fact completely remove the prosecution of it—and justice for it—and it would only be dealt with administratively.

The CF's positive culture changes, I contend, would simply reverse without this amendment. That would be tragic and the exact opposite of what we are all trying to achieve together. I'm so passionate about this because, as a veteran, I think the CF does some truly amazing work, but this is an area that needs to be fixed. I want to see it fixed, and I don't want to see that reversing. Without our amendment to Bill C-11, it will be on all of us as a failure if we're not able to bring that choice in.

I will certainly vote for this amendment, and my conscience will be clean, knowing that I did everything I could to provide a trauma-informed, justice-building, culture-improving change. As it stands, the bill will not have this, which I think it will bring very tragic consequences.

I think that's about all for now. Thank you, Mr. Chair. Give me a couple of minutes and I'll put something else together.

The Chair: Mr. Malette, you're up.

Chris Malette: Thank you, Chair.

I have some questions for our witnesses—particularly for Colonel Lortie—on jurisdiction and this provision.

There has been some suggestion that the provision does not explain what happens if a victim refuses to exercise their discretion in choosing a forum. Can I get your take on that, please, Colonel?

Col Geneviève Lortie: There's a possibility, if there's no choice expressed...because, really, it's between one and the other. We could be in limbo and have no clarity about what could happen.

Chris Malette: As well, without related motions amending clause 8, as they pertain to investigations, this provision provides victims with the choice concerning only the forum of the proceedings, but not choice as to which police authorities should investigate. Would you agree?

● (1755)

Col Geneviève Lortie: Yes. The way the bill is drafted, under clause 7, we're talking about the prosecution jurisdiction, and under clause 8 it's all the investigation. Really, there are two different levels of discretion that they have. The way they're written, they go as a pair, certainly.

The way the provision is drafted, it's renumbering it. It would require many more amendments for each time the provisions are listed when we refer to them, so another handful of amendments would probably be required to refer to those provisions each time.

Chris Malette: In some of the legal advice, it has been expressed that any amendment to the bill that raises possible challenges to the system, in fact—and this may be a little extreme—risks the military justice system actually grinding to a halt. The military justice system, in this assessment, is vital to the maintenance of discipline, as we've heard in testimony, and the efficiency and morale of the CAF. The result of any of these could possibly have an impact on the operational effectiveness of the CAF itself. As I said, it's a pretty dark view. Do you have any opinion on that, either you or Colonel MacMillan?

Col Geneviève Lortie: It's clear that each time the system brings uncertainty, it could certainly erode the confidence in the military justice system. We need to have a system that is clear and predictable on jurisdiction for everyone. That is essential.

It can create friction in the system if there's uncertainty on where not to go. It also may not be used at that point, and it can weaken the Canadian Armed Forces' discipline and efficiency, which are essential to maintaining the operational effectiveness of the Canadian Armed Forces.

Chris Malette: Okay. Thank you.

The Chair: Mr. Watchorn.

[*Translation*]

Tim Watchorn: Thank you, Mr. Chair.

I would like to offer the committee some slightly different opinions on the choice.

My colleagues in the opposition have mentioned that several witnesses said that the choice is a better option. I would like to counter that with quotes that contradict that opinion. I want to talk about two cases.

The first case is that of Ms. Charlotte Duval-Lantoine, who said:

> …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 for a victim.

I would like to ask the two experts here if they agree with this?

Col Geneviève Lortie: I am not an expert in law enforcement or working with victims. I will leave that question to others.

Tim Watchorn: I’ll move on to the next quote. Professor Megan MacKenzie said:

> 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.

I think that this choice or this idea of giving—

● (1800)

[*English*]

The Chair: Mr. Watchorn, thank you for your time.

I am sensitive to the time, mind you.

Before I ask for concurrence to adjourn, I want to thank you, Colonel and Lieutenant-Colonel, for your service to Canada and for your experience, your dedication and your expertise in these matters. I know that you care about the victims, you care about the armed forces and you care about the judicial system and the proper way to proceed, and your process and your enablement today are ones of care for your service, not for any political party, as may have been insinuated.

Sir and madam, thank you for your service to Canada.

With concurrence from the committee, I'm going to adjourn. We'll proceed on Monday.

The meeting is adjourned.