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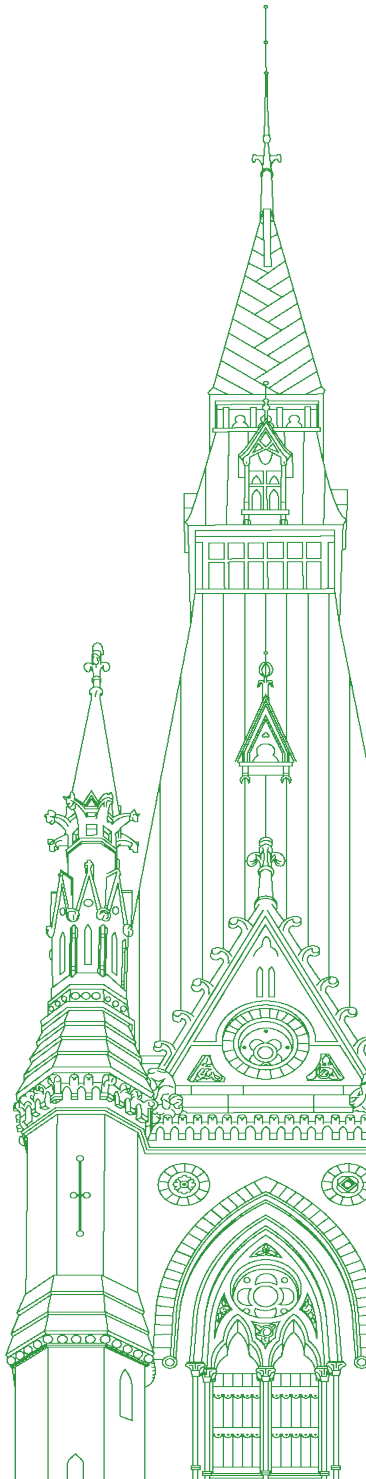

Chair: Charles Sousa

Standing Committee on National Defence

Monday, February 2, 2026

● (1100)

[*English*]

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

Welcome to meeting number 22 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.

Today's meeting is taking place in hybrid format pursuant to the Standing Orders. Members are attending in person and remotely using the Zoom application. Before we continue, 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 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. For members on Zoom, use the “raise hand” function. The clerk and I will manage the speaking order as best we can.

For interpretation, use your earpiece and select the appropriate channel: floor, English or French. These are also available on Zoom. All comments should be addressed through the chair.

I would like to welcome our witnesses again: 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.

Folks, we will now resume clause-by-clause consideration of Bill C-11. We were debating amendment CPC-3 to clause 7.

(On clause 7)

The Chair: The two names I have on the list from last time are Tim Watchorn and Viviane Lapointe, to be followed by Monsieur Savard-Tremblay.

Mr. Watchorn, it's over to you.

Tim Watchorn (Les Pays-d'en-Haut, Lib.): Thank you, Mr. Chair, for letting me intervene on clause 7.

Gentlemen, I just want to put something on the record. We've been talking about choice versus non-choice. For the last hour or so, that has been the debate. I want to bring up an observation I made by listening to the witnesses we've heard over the past few weeks and bring something to a head, because I think it's very important. I'm going to do this in both languages to make sure my message is heard.

We've talked about this. We've seen changes in military culture. There has been progress made since 2021, but there's a reason for that. The reason is we ended concurrent jurisdiction in 2021, so all cases were sent to civilian court. Undoing a system that works and reinstating concurrent jurisdiction would be a step backward in my opinion and would not do justice to all the survivors.

We heard from several witnesses that a proposed choice is actually a false choice and that by giving the civilian system exclusive jurisdiction over sexual offences under the Criminal Code, what we're doing is providing legal clarity and certainty to everyone. I think we should remember that.

[*Translation*]

I will repeat myself for our Quebec friends.

We have seen an improvement in military culture over the past four years. There has indeed been one. Some victims and witnesses have told us so. This is due to the adoption in 2021 of the interim directive that ended concurrent jurisdiction.

Undoing a system that is currently working and re-establishing concurrent jurisdiction would be a step backwards and would not do justice to survivors.

Several witnesses told us that the proposed choice is actually a false choice. By giving the civil system exclusive jurisdiction over sexual offences under the Criminal Code, we will provide all stakeholders with legal clarity and certainty. I would like us to remember that.

[*English*]

The Chair: Thank you.

Ms. Lapointe, it's over to you.

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

As a committee member, I want to commend the witnesses who came forward to us, arguably to talk about something that they felt put them at their most vulnerable. I think it's important that we listen to all of the voices of the people who've come forward, and that includes the members who met with Justice Arbour.

I'm reminded of the report and the recommendations in the Arbour report, which was tabled only in 2022. We had some debate last week at our committee meeting that it was a 10-year-old report. Actually, it was tabled in 2022. We know that the fundamental cultural shift we need to see in the Canadian Armed Forces can't happen over a 36-month period.

To me, the recommendation about moving away from the military system is about removing pressure and not necessarily the survivor's voice. As we heard in the Arbour report from the people she met with, survivors said they often felt subtle and sometimes explicit pressure to remain within the military system. To me, a default jurisdiction, a civilian jurisdiction system, protects the survivor and not the institution. I think that's very important.

I want to reflect on some of the discussion we had at our last meeting. To me, choice requires real equivalency, and despite some measures of progress, full equivalency doesn't exist today. We need to ensure we're not going backwards. All of the voices that came forward, both at committee and from those who met with Justice Arbour, need to be listened to and weighted in the decision we make.

Thank you, Chair.

● (1105)

The Chair: Thank you, Ms. Lapointe.

Mr. Savard-Tremblay.

[*Translation*]

Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot—Acton, BQ): I would like to ask a rather technical question.

If amendment proposals were adopted and were found to be incompatible following subsequent analysis, should we discuss them again here and make a decision?

Michelle Legault (Legislative Clerk): I can answer that question.

If the committee has adopted an amendment and, subsequently, there are inconsistencies or other issues raised when the bill is returned to the House, normally there are amendments at the report stage to make corrections.

For example, if the committee has not completed its clause-by-clause consideration and wants to go back to correct inconsistencies, it can do so to reconsider decisions already made, if there is unanimous consent.

Simon-Pierre Savard-Tremblay: If something were to come up, we would not be condemned forever because of the decisions we make today.

Is that correct?

The Clerk: That’s right.

[*English*]

The Chair: Are there any more speakers on this issue?

Yes, Mr. Bezan.

James Bezan (Selkirk—Interlake—Eastman, CPC): Quickly going back to the technical side, there is nothing like we have right now.... I know there are probably a few amendments that might be called redundant or not necessary because of previous amendments that have been passed. We'd deal with that as we're going through this, with the advice of the technical expertise brought forward by the legislative clerks. The government still has the power, or anyone.... Well, I guess none of the members would be able to bring forward amendments at report stage in the House. It would have to be the government itself.

Michelle Legault: Normally, that is what we see, but any member has the opportunity to submit amendments at report stage.

James Bezan: Okay. I thought an agreement had been made and the Standing Orders were adjusted to ensure this, because I know that used to happen frequently. Then, in 2012 or 2013, we decided to allow members who weren't participating as permanent members of a committee to make amendments at committee, as we're doing right now with the NDP. That's how we've been able to get around that.

Michelle Legault: Yes, you're right. That is per the routine motions the committee adopted. That being said, in the case of any amendments, report stage is a further opportunity to submit amendments. However, the principle we go by is that anything that could not have been submitted at committee can then be submitted at report stage, but not necessarily selected by the Speaker.

James Bezan: Okay. Thank you.

● (1110)

The Chair: All right. We're dealing with CPC-3. We've debated it extensively. Should we put it to a vote?

Some hon. members: Agreed.

The Chair: Okay, we'll have a recorded vote.

(Amendment agreed to: yeas 5; nays 4 [*See Minutes of Proceedings*])

The Chair: Given that CPC-3 is moved, NDP-1 cannot be moved, as it is identical.

Now we're back to clause 7 as amended. Should we vote on that?

An hon. member: Yes.

The Chair: Please put forward the vote.

(Clause 7 as amended agreed to: yeas 5; nays 4)

(On clause 8)

The Chair: Now we're on CPC-4.

Would the member like to move CPC-4?

James Bezan: I will not be moving CPC-4.

The Chair: You will not.

James Bezan: I'll move CPC-5.

The Chair: Okay, by all means do so.

James Bezan: I'll move CPC-5 as circulated. I won't bother reading it. It's there for everyone to see. I'm sure everybody has had a chance to study it. I'll just speak to it.

CPC-5 again comes down to making sure we have choice in the system, especially when it comes to the investigative side. This provides the Canadian Forces National Investigative Service with the ability to give the choice, at the direction of the victim, of pursuing a military prosecution rather than a civilian prosecution.

We've read a lot into the record, but Tanya Couch said:

> Removing the CAF's authority to investigate sexual offences would do a disservice to serving members. A more balanced approach is to establish concurrent jurisdiction between the military and civilian systems for reports of sexual assault.
>
> This model would preserve:
>
> Choice: allowing victims to decide whether their case proceeds through military or civilian channels; and
>
> Agency: the ability to make that decision freely, with informed support and respect for victims' autonomy.

The Chair: Thank you, Mr. Bezan.

Folks, if CPC-5 is adopted, NDP-2 and CPC-6 cannot be moved due to a line conflict. As *House of Commons Procedure and Practice*, fourth edition, states in section 16.71, amendments must be proposed following the order of the text to be amended. “Once a line of a clause has been amended by the committee, it cannot be further amended by a subsequent amendment as a given line may be amended only once.”

It's open for debate.

Ms. Lapointe.

● (1115)

Viviane Lapointe: Thank you, Chair.

I'd like to ask our witnesses what the impact of this amendment would be in practice within the military justice system and on the operational effectiveness of the Canadian Armed Forces.

Colonel Geneviève Lortie (Deputy Judge Advocate General, Military Justice Modernization, Canadian Armed Forces, Department of National Defence): On that one, there's an issue, as we discussed previously. With this one, we're addressing investigative jurisdiction. With all due respect, it's difficult for us to understand the wording and the way it's adding together.

The purpose of the clause was to remove investigative jurisdiction. What we understand is that this part of the provision would be repealed and we would keep the other two, but with the way Bill C-11 was drafted, proposed section 70.1 was removing it, and the two provisions that followed were there to explain in which circumstances: in cases of emergency to preserve evidence or to make sure someone was not running away and nothing could be done by a Canadian Armed Forces member. The three were really written together.

Now we are not removing jurisdiction. That's what I understand from a reading of the provision, but the rest still continues to read as if someone can do something until the civilian police or the civilian authority arrives. It seems unclear where it's going to go. If they don't come, does it mean it's going to stay in the military? With all due respect, it's a bit unclear.

Viviane Lapointe: Can we talk more about that last point you just made? It's my understanding that the bill, the way it is currently written or drafted, keeps the military and civilian roles very clear. Can you confirm that for us? Then I have a follow-up question: What problems could arise should those roles start to overlap?

Col Geneviève Lortie: You're right that the way bill was drafted was to implement Justice Arbour's recommendation five, that is, to remove jurisdiction at the investigation and prosecution stage. Such an amendment would maintain it, so that would be contrary to the recommendation of Madame Arbour.

Every time there's a lack of clarity in this system.... The military justice system is there to maintain the discipline, efficiency and morale of the Canadian forces and its operational effectiveness. When you enter an area that may be a grey zone and may not be clear, there's always a risk that the system will not be used or understood properly. When it's not clear on jurisdiction, someone could always exercise that, but the conclusion could be that someone may not have had jurisdiction. That could always be a challenge.

Viviane Lapointe: In your response, you said that this proposed amendment goes against Arbour's recommendation five. Can you speak to the importance of that recommendation within the CAF system?

Col Geneviève Lortie: The argument behind the recommendation of Madame Arbour is to clarify the system—between one system or the other—to give clarity to a victim as to where they are going so they know what is expected and what is clear, instead of them going from one system to the other, with things that may be uncertain for them and may bring about further stress considering the challenges they are already living through.

Viviane Lapointe: Thank you.

The Chair: Thank you.

MP Idlout is online and her hand is up.

Lori Idlout (Nunavut, NDP): *Ulaakut*. Good morning.

I realize that we can't discuss a later amendment, but given that NDP-2 would be impacted if CPC-5 passes, I'm just wondering if we could ask for clarification on—

● (1120)

[*Translation*]

Simon-Pierre Savard-Tremblay: There is no interpretation, Mr. Chair.

[*English*]

The Chair: I believe NDP-2 is similar, so we won't be able to move it, depending on what happens with CPC-5. It would be dependent on that.

Lori Idlout: That's right. The part where NDP-2 is separate from CPC-5 is regarding the approval of what we did for CPC-3, which was exactly the same as NDP-1. NDP-2 is different in that it would make an amendment to the act that would allow the victim to choose the system for their case, something that was approved in CPC-3. That's where it's different.

I wonder if the witnesses can respond to that.

The Chair: I mean, you can speak to CPC-5. I think there's a question for the witnesses regarding the similarity to NDP-2. There will be a line conflict, should that one be adopted.

Are you asking the witnesses, or are you asking the legislative clerks?

Lori Idlout: I don't know which ones are the experts. In the case that there is a topical difference, I would like to submit a subamendment, if the Conservatives agree, to CPC-5.

The Chair: The issue with CPC-5 is that we're dealing with the same line, so we can't move NDP-2 due to the line conflict, but you can do a subamendment to CPC-5.

Lori Idlout: I want to propose a subamendment to CPC-5 using the same language the NDP submitted in NDP-2—"(b) by replacing line 35 on page 5 with the following"—and then continuing that language. I don't know if I should continue that language, because I haven't had the chance to submit the amendment.

The Chair: Ms. Idlout, we need that in writing in order to proceed.

Lori Idlout: Okay. I didn't know this was going to happen, with NDP-2 being at risk. I want to send a quick email in writing. It is related to language that's already in the package; it's not new information, necessarily.

The Chair: Can you do it quickly? We'll need to suspend for about a minute or so.

Lori Idlout: Yes.

James Bezan: While we're suspended, I'd just ask the legislative clerks if they could clarify something.

If CPC-5 passes, why would NDP-2 be ruled out of order? What is the legal reason? It's because line 37 disappears after line 36 disappears. Is that right? I just want to make sure.

The Chair: We've not suspended yet.

Ms. Idlout, if you could, get this in writing as we speak.

[*Translation*]

Simon-Pierre Savard-Tremblay: We also want the subamendment in both official languages, obviously.

[*English*]

The Chair: Yes, let's have it in both languages, Ms. Idlout, please.

Lori Idlout: My staff person, Christine Ackermann, will be sending it to your clerk ASAP.

● (1125)

The Chair: Mr. Bezan, we're trying to get clarity here for you.

James Bezan: If I can get an answer....

The Chair: Ms. Idlout, we're just reviewing it in response to Mr. Bezan's question for clarity.

Replacing line 37 eliminates what you have in your amendment. If you wish to then submit a subamendment to highlight the wording you put in paragraph (b), that would suffice. Then we can move forward with your subamendment to determine if the will is there to adopt it and go forward with the amendment CPC-5.

Lori Idlout: Thank you, and I do understand.

The Chair: Monsieur Savard-Tremblay, it's in both languages already. I think we can probably proceed without a suspension.

[*Translation*]

Simon-Pierre Savard-Tremblay: Where is it?

[*English*]

The Chair: I'm going to suspend for a moment so we can get this clarified.

● (1125)

_____(Pause)_____

● (1125)

The Chair: We're back in our meeting.

Ms. Idlout, unfortunately, you're not a member of the committee, so you can't move subamendments in this case.

Lori Idlout: Okay, thank you.

The Chair: I'm going to proceed with the ongoing debate with regard to CPC-5.

Mr. Malette, it's over to you—

[*Translation*]

Simon-Pierre Savard-Tremblay: Mr. Chair, I understand that we had a written version. However, it would be nice if we could also receive one for subamendments.

In this specific case, we needed to know that the first part had to be deleted and that only the second part applied. What we had been given in advance is not exactly what we have before us now.

When there are subamendments, or anything else, I request that you suspend the meeting so that the text can be provided to us separately.

[*English*]

The Chair: That's well noted.

Mr. Bezan, is it in regard to this very issue?

James Bezan: Yes. I'm prepared to move the subamendment on behalf of Ms. Idlout.

The Chair: Mr. Malette is first.

James Bezan: Let him speak, and then I'll move the subamendment.

Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.): You can't. It's your amendment.

The Chair: You can't amend your amendment.

James Bezan: That's right, but one of my team can.

The Chair: Go ahead, Mr. Malette.

Chris Malette (Bay of Quinte, Lib.): I just have questions for the witnesses. Procedurally, are we going to allow that to go first, or my questions?

The Chair: He can't move a subamendment, and now they're debating it. I'll pass it over to you, Mr. Malette.

Chris Malette: Thank you, Mr. Chair.

My question is for both Colonel Lortie and Lieutenant-Colonel MacMillan.

As I read this amendment, it would delete the removal of the CAF's jurisdiction to investigate CCSOs contemplated under Bill C-11. Therefore, military police would retain investigative jurisdiction. The follow-on amendments would appear to limit investigative jurisdiction, given the possible obligation to transfer evidence, etc.

Quite simply, at the end of the day, does CPC-5 as proposed, deleting line 36 and replacing it “with the following”, revert the investigative and prosecutorial system to basically where we had it prior to 2021?

● (1130)

Col Geneviève Lortie: The provision, as we read it, maintains the Canadian Armed Forces' jurisdiction to investigate. That provision is not related to prosecution. It seems to be related to the investigation, but the doubt it keeps is that it allows a Canadian Armed Forces member to exercise jurisdiction. If I read one of the provisions, it says:

> before the arrival of the civilian authority having jurisdiction in the matter

It seems to portray that a transfer could be done, but we don't have a provision that states exclusive jurisdiction on one side or the other. Who has primacy one way or the other? It doesn't appear clear when we're reading it, with all due respect to the provision that is presented.

Chris Malette: Lieutenant-Colonel MacMillan, do you have anything further on that?

Lieutenant-Colonel Matt MacMillan (Director, Military Justice Implementation, Office of the Judge Advocate General, Canadian Armed Forces, Department of National Defence): If you look at proposed subsection 70.2(1), in addition to what Colonel Lortie said, the first portion indicates that the military police may exercise their jurisdiction “before the arrival”, and after that, it says, “to the extent necessary to prevent the commission, continuation or repetition of an offence referred to” in clause 7.

The concurrent jurisdiction piece is only for a little piece in time. That goes to the lack of clarity in the overall provision, as we read it.

Chris Malette: I have one further question. What are the other Criminal Code offences military police can investigate and prosecute at this point?

Col Geneviève Lortie: They have jurisdiction on every offence. That's the only clause that purports to remove some type of jurisdiction. Even before the situation in 1999, when the court martial gained back the jurisdiction to try sexual assault, the military police and Canadian Armed Forces kept the jurisdiction to investigate. It had never been removed in that time frame. At that time, it was only a question of prosecution that could change.

Here, it would be only those offences. Military police and Canadian Armed Forces members have jurisdiction to investigate all the other offences. There's no limitation anywhere else under the National Defence Act.

Chris Malette: Thank you, Mr. Chair.

The Chair: Mr. Savard-Tremblay.

[*Translation*]

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

I would like to point out that this is not amendment NDP-2 in its entirety, but rather the second half of the subamendment that was proposed, namely point (b). Since Ms. Idlout cannot move it, I will move it as a subamendment to amendment CPC-5.

[*English*]

The Chair: Okay. Do we all understand the subamendment? Is there any further debate on the subamendment?

(Subamendment agreed to: yeas 5; nays 4 [*See Minutes of Proceedings*])

● (1135)

The Chair: After that subamendment from the Bloc, we are now back to the amended amendment.

Is there any further debate?

Ms. Gallant is first, and then it's Mr. Watchorn.

Cheryl Gallant (Algonquin—Renfrew—Pembroke, CPC): That's fine. It's okay.

The Chair: Mr. Watchorn.

[*Translation*]

Tim Watchorn: Thank you, Mr. Chair.

I would like a little clarification.

In the case of section 7, we were talking about the choice of court. Now we are talking about the choice of who will conduct the investigations.

If a person decides that their case will be dealt with under the military justice system, will military investigators automatically be responsible for the investigation under this amendment?

Similarly, if the person decides to go to civil court, is it clear in your mind that the investigators will be from the civil justice system, or could it be either one?

Col Geneviève Lortie: When it comes to jurisdiction, the decision always rests with the person in authority. It is always the person with authority over the investigation, whether civil or military, who will decide. There are other aspects related to jurisdiction that may come into play, and for certain reasons, the case may end up on one side or the other.

If I understand the latest amendment that has been proposed with regard to the victim's request, it says: "…the victim requested under subsection 70(2) that the person be tried by court-martial".

What must be understood is that, at this point, we are at the beginning of an investigation. We do not necessarily know what the evidence will be. Nor do we know whether charges will be laid and, if so, what kind. So we do not necessarily know which provision will be involved.

We are very early in the process, at the very beginning of the investigation, but we are talking about a court-martial. We say "that the person be tried by a court-martial". At that point, we may not have all the facts because it is the beginning of the investigation. It may be a long time before we are able to determine whether we have all the essential elements of an offence to bring a charge under a section of the Criminal Code or the National Defence Act. We are linking two events that may be very far apart in time.

Tim Watchorn: If we pass this amendment, the victim will not know, at the time of filing their complaint, whether military or civilian investigators will be handling their case.

Is that not so?

Col Geneviève Lortie: Indeed, discretion is always a factor when choosing the system that will be responsible for the investigation.

Tim Watchorn: In my opinion, this adds to the confusion for victims, once again.

Col Geneviève Lortie: To tie in with what was mentioned earlier, this creates a false impression for the victim, who believes that it will be one system or the other, when in fact subsequent changes could occur. Indeed, that could be the choice, and it is disconcerting for a victim.

Tim Watchorn: Thank you.

[*English*]

The Chair: Mr. Bezan, go ahead.

James Bezan: On that, I think what we're doing here is putting back in concurrent jurisdiction. It has been removed. For anything that happens in Canada on a base with the Canadian Forces, or even off base for that matter, the Canadian Forces would lose the ability to investigate. All evidence would have to be turned over to civilian authorities. As we heard over and over again, victims want choice. Survivors told us clearly at committee that they want a choice. Overwhelmingly, they were asking for choice.

In a written submission, the Barreau du Québec said it "considers that it would be appropriate to resolve these challenges by amending the bill so as to give victims the choice to decide which system would be best for them, given the circumstances of their situation."

I'll quote Brigadier-General Hanrahan, who is the provost marshal:

> 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.

If we don't amend this section of the act, then that choice will be removed. Everything will be put in the hands of civilian authorities, and the military police and the national investigative service will be unable to carry forward any investigation because it is being removed.

I ask everyone to support this amendment as amended by the Bloc and the NDP.

● (1140)

The Chair: Ms. Romanado.

Sherry Romanado: Thank you, Chair.

I'd like to thank the experts for being here again today.

I just want to make sure I'm understanding this correctly. This amendment would have the effect of concurrent jurisdiction. In the example you gave, an event has happened. Immediately after the event, the victim goes to whoever is in the vicinity and says, "This is what happened." Because this would allow for the military to investigate while waiting for the civilian police to arrive—if they were to arrive—there's some confusion about the chain of evidence in terms of who has jurisdiction. That's if I'm understanding this correctly. I am not a police officer. I want to make sure I am understanding it correctly.

I also understand the confusion over who will be taking the lead on the investigation. It can move back and forth. I recall that on November 20, witness Paula MacDonald came forward here and said the following:

> When I went to the civilian police, I was told more than once to go back to the military system that failed me. At the same time, my leaders reframed my complaints. Instead of naming sexual harassment and abuse of power that led to sexual assault, they called me emotional, hypersensitive and a mental health problem....
>
> In my case, the Canadian Armed Forces didn't simply mishandle a file; it used the machinery of the military justice and grievance system to protect its membership, who violated the National Defence Act and silenced me. The misuse of state power that the charter is meant to guard against is what they did.
>
> It is exactly why the reforms like Bill C-11 and a real shift to independent civilian jurisdiction over sexual offences is so urgently needed to maintain the rule of law within the Canadian Armed Forces....
>
> If a Canadian solution is to move it to the civilian system—and it seems that this is our Canadian solution—where our three Supreme Court justices, who are experts in the delivery of justice, say it should be, then this is what we need to do.

We've heard that the confusion about who is actually investigating and who is prosecuting, even with this amendment, can add to a victim's confusion: “Am I making the right choice choosing this system or another?” Also, if they start with the military jurisdiction, for instance, and then the civilian police arrive and they ask the civilian police to take over the investigation, could that not lead to confusion...and also in terms of the ability to get a prosecution, because of the movement of bouncing from one jurisdiction to another?

I just want to make sure I'm understanding what the impact of this amendment is.

Col Geneviève Lortie: There's some uncertainty when reading the text itself. Proposed sections 70.2 and 70.3 were written into Bill C-11 because one provision was removing jurisdiction and the other two were a safety net to ensure that nothing was falling through the cracks. The evidence could be transferred and there were no issues. If someone was in danger or something was happening, a Canadian Armed Forces member could act and not just be there and do nothing. That's really the way proposed sections 70.2 and 70.3 of Bill C-11 were drafted.

In removing the exclusion of jurisdiction—meaning, the way I understand it, that it proposes concurrent jurisdiction—the wording still refers to until “the arrival of the civilian authority having jurisdiction in the matter”, but it's really limited to the topic of preventing the “commission, continuation or repetition” and not the full investigation. That's limited wording.

The only time we get to where the victim requests something, it's at the point where the transfer is to happen. Initially it was written that it's going to the civilian side. Here, it's unclear who has the first jurisdiction—the civilian side or the military. As I mentioned previously, if you have a request that a person be tried by court martial, we're early on. It can be the first event that just happened. Someone claimed that something just happened. The CAF member is there, and they run after someone.

I want to be careful. I understand that it can be difficult for people to hear this. Let's say someone somewhere says they've been raped, and someone is running away. You want to get someone behind them. You don't know who it is. You want a CAF member to be able to act and get to the person.

The way it was written was that you would get to the person, wait, call the civilian police and transfer. Now when you get to that point, to be tried by a court martial you need to know for which offence. You don't necessarily know all the other circumstances of the case. What will be the offence? You need to establish all the elements of the offence to lay a charge. You're early on. You may not know at that point who will have jurisdiction on whichever offence will be laid. You're really at two separate steps of the process.

● (1145)

Sherry Romanado: In the example you just used, a Canadian Armed Forces member chases after the assailant and stops the assailant. What do they do? Do they call the civilian police? What would happen, and what would be the impact?

Col Geneviève Lortie: The provision as amended says that they can stay there and keep the person to stop the continuation of the offence. It relates to waiting for the civilian authorities to arrive. There still seems to be a perception that civilian authorities should be called in, but later on, before the transfer of that person could be done...that's where we now have it that the victim could request that the person be tried by a court martial; we don't know about which offence.

Sherry Romanado: If members here are confused about the application of this as amended, you can imagine what it would be like for someone who has just been assaulted. An assailant is running away and the CAF member is chasing after the person: “Am I supposed to chase after him? Am I supposed to call the police? Am I supposed to take care of it?”

There's a lot of confusion here. I think this amendment actually adds to that confusion. Would you say that's correct?

Col Geneviève Lortie: Yes.

Sherry Romanado: Thank you.

The Chair: Monsieur Malette, it's over to you. Then we will go to Monsieur Savard-Tremblay.

Chris Malette: Thank you, Chair.

Further to my colleague's observations and comments, I'd like to draw our attention to some of the witness testimony from November 6, when Charlotte Duval-Lantoine made the following observation. These are her comments:

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

Here's my question for our witnesses today. It seems that the underlying theme is to minimize the trauma on the complainant or the victim in these cases. Ms. Duval-Lantoine's testimony, further to Madam Arbour's recommendations, is to minimize that and make a clear delineation of where the case would go. Is my interpretation...?

LCol Matt MacMillan: It was made clear by Madam Justice Arbour at the outset that the purpose in going with solely one jurisdiction was for clarity. That was the understanding.

When we look at the clause as it would be amended, given the purpose of proposed sections 70.2 and 70.3, they're not required if you don't have proposed section 70.1. Proposed section 70.1 removes the jurisdiction of military police. Proposed sections 70.2 and 70.3 create exceptions to that lack of jurisdiction *in extremis* at the very outset, until the arrival of civilian police. If you remove proposed section 70.1 from clause 8 and leave proposed sections 70.2 and 70.3 with the language that's in the bill, irrespective of the subamendment, it creates a lack of clarity. Where there is a lack of clarity, that could possibly result in the military justice system not functioning.

We talked about choice, at the outset, of the victim choosing who would investigate. The language in proposed subsections 70.1(1) and (2) right now—so what was proposed section 70.2—doesn't speak to choice. It speaks to the military police, in theory, operating up until the point of civilian police arriving.

If you look at subsection 70.1(2) as proposed, it would state:

> Despite any other provision of this Act and any other law, an officer or non-commissioned member may secure or preserve any evidence of or relating to the offence referred to in subsection (1) before the arrival of the civilian authority having jurisdiction in the matter.

● (1150)

[*Translation*]

In French, it says:

> *avant l'arrivée des autorités civiles compétentes*

[*English*]

In that instance, it says the military police are acting up until the point that the civilian police arrive, so it creates a question. You remove the clear clause, proposed section 70.1, which says you don't have jurisdiction, and leave the proposed sections in the bill that were intended to provide clarity to what was in proposed section 70.1 in certain circumstances. If you remove proposed sections 70.1, 70.2 and 70.3, you create a situation that's unclear.

Where there's a lack of clarity, there's the challenge that the system will not function, and there will be questions about who has primacy of jurisdiction in a matter.

Chris Malette: That, I would suggest, goes to Madame Duval-Lantoine's observation that this lack of clarity in the process would almost in another way retraumatize the victim. As we know, the victims in almost all of these cases are traumatized to the point that the confusion is massive. They need clarity. They need to see a clear path to righting a wrong. Am I reading that correctly?

Col Geneviève Lortie: It was the rationale behind Madame Arbour's recommendation to bring clarity and remove the burden of choice when someone could not necessarily understand both systems and the impacts of going a certain way or the other. Not knowing what decisions would be taken and what the impacts would be at each step could lead, unfortunately, to a victim being retraumatized later on. That was, really, the underlying purpose of Madame Arbour's recommendation.

Chris Malette: Thank you.

The Chair: Mr. Savard-Tremblay.

[*Translation*]

Simon-Pierre Savard-Tremblay: The points that have been raised are entirely relevant, but I believe that my next amendment, amendment BQ-1, will dispel the areas of uncertainty that have been raised, particularly by Mrs. Romanado.

[*English*]

The Chair: Is there any further debate?

We are now at CPC-5 as amended.

(Amendment as amended agreed to: yeas 5; nays 4 [*See Minutes of Proceedings*])

The Chair: That renders NDP-2 and CPC-6 irrelevant.

We'll move on to BQ-1.

Mr. Savard-Tremblay, it's over to you. Do you wish to move it?

● (1155)

[*Translation*]

Simon-Pierre Savard-Tremblay: Yes. I believe you all have it, and I assume it is fairly clear, but if there are any questions, of course, I will answer them.

I believe this resolves most of the questions and objections that were raised regarding the previous amendment.

[*English*]

The Chair: As CPC-5 has been adopted and, as I already discussed, an issue of coherence had arisen, I will advise that we shall proceed to a debate on BQ-1.

Ms. Romanado.

[*Translation*]

Sherry Romanado: Thank you, Mr. Chair.

Can you tell us whether this amendment is likely to cause delays—I am thinking of the principles set out in the Jordan decision—and, if so, why?

Col Geneviève Lortie: As mentioned earlier, when you start the process in one system and then have to transfer the file to another system, there is certainly a risk of delays and therefore of unreasonable time limits being exceeded. This can lead to requests under the charter to determine whether the 18-month time limit applicable to the military justice system has been exceeded. In the case of the civil justice system, cases must be heard within 18 or 24 months, depending on the type of procedure used.

When a case must first go through the civil system and a certain procedure and the decision is made to transfer it to the other system, the case must be withdrawn. If it is before the court at that time and the pleadings stage has already been completed, permission must be obtained from the court. It therefore depends on the stage at which the issue arises.

The prosecuting attorney must therefore withdraw the case and the charge from the civil system, as envisaged in the amendment. The investigation must then be transferred to the military justice system, where the case file must be reviewed to determine whether there is sufficient evidence to lay charges, because in the military justice system, only certain authorities can do so. The civilian police do not have the authority to lay charges.

The military police must obtain the necessary legal advice and decide whether to lay charges. They must then forward the file to the Director of Military Prosecutions, in the case of a charge falling under the jurisdiction of a court-martial, and the latter must decide whether to lay charges and send the file to court-martial.

Of course, when a decision has already been made in one system and the file in question is removed and transferred to another system, this is bound to cause delays.

Sherry Romanado: In this example, when does the time limit start?

Is it from the time the charges are laid?

Col Geneviève Lortie: With regard to the right to be tried within a reasonable time, certain periods prior to the laying of charges may be counted, but the time limit is generally calculated from the laying of charges, both in the civil and military systems. I exclude situations where the accused is in custody or is subject to significant conditions of release, for example.

In such cases, it is clear that the time limit may begin before the charge is laid. Otherwise, the time limit really begins when the charges are laid. Here, we are talking about the civil system. Even if a case were transferred to the military system, the date of the first laying of charges would be used as the starting point for determining whether the 18-month time limit established by the Jordan decision has been exceeded.

Sherry Romanado: It may well be that transferring a file from one system to another could result in the 18-month time limit established by the Jordan decision not being met.

Isn't that right?

Col Geneviève Lortie: Indeed, this is a possibility when there are two systems, different actors and many steps to take between the two. This can also be the case when issues of jurisdiction have not been resolved previously. This is indeed one of the risks associated with the system, depending on how it is presented.

● (1200)

Sherry Romanado: If a defendant were not tried within 18 months, in accordance with the Jordan decision, what would be the result?

Col Geneviève Lortie: Currently, when a delay is deemed unreasonable, the court orders a stay of proceedings.

Sherry Romanado: If the victim initiates proceedings in the civil system, then decides to transfer their case to the military system and the delay exceeds 18 months, the accused may be released.

Is that correct?

Col Geneviève Lortie: The stay of proceedings has the effect of terminating them. There is no longer any decision to be made on the guilt of the accused. The proceedings are over, and therefore go no further.

Allow me to add one thing.

When we talk about transferring a case from one system to another, it is important to note that the court-martial has its own jurisdiction. It is the court-martial that will decide whether it has jurisdiction to try a person.

I would therefore express some reservations about the possibility of a provincial court determining that a case falls within the jurisdiction of a court-martial, which is established by the National Defence Act. It has no authority over the court-martial. The court-martial may therefore decide otherwise and determine that it does not have jurisdiction to rule on the case.

The investigator may, in the course of the investigation, upon reading the file or legal opinions received, or for other reasons, decide not to lay charges. The Director of Military Prosecutions may decide not to proceed with the indictment, taking into account the various factors relating to the public interest that he considers in his analysis.

Sherry Romanado: If the victim requests that their case be transferred and it is removed from the civil system, but the military system decides not to prosecute, can they return to the civil system?

Col Geneviève Lortie: I'm not sure. At that point, a new charge would probably have to be laid, but I didn't look into that aspect when I reviewed the provision. Of course, if the charge is withdrawn, it will have to be postponed, and there will therefore be additional delays.

Sherry Romanado: Thank you.

The Chair: Mr. Savard-Tremblay, you have the floor.

Simon-Pierre Savard-Tremblay: Unfortunately, there is no ideal world or perfect scenario when it comes to a bill like this. However, I still believe that it is the least bad option to give civil authorities some leeway to decide whether a case should be transferred. We will also have to find a way to relieve the backlog in the civil courts. Otherwise, it will result in a massive transfer of cases there.

If, for example, a victim were intimidated by the chain of command to have their case transferred to the military system, which can happen, the civil court in question would, of course, have to be able to refuse the transfer.

That is somewhat the idea behind this proposal, namely to give civil courts some leeway and also to avoid the drawbacks that were raised just before regarding the amendment we have just dealt with.

[*English*]

The Chair: Thank you, Mr. Savard-Tremblay.

We'll go to Mr. Watchorn and then Mr. Bezan.

[*Translation*]

Tim Watchorn: Thank you, Mr. Chair.

As we can see, what is happening here is crystal clear. It is very confusing.

For my part, I would say that amendment BQ-1 runs counter to the spirit of amendment CPC-5, which we adopted earlier. We based our decision on the argument that it should be possible for either the military or the civilian system to conduct an investigation.

If I understand the proposed amendment correctly, the intention is to remove the possibility that the military justice system could conduct the investigation.

Simon-Pierre Savard-Tremblay: I would say that guidelines are needed.

Tim Watchorn: Very well, with a few guidelines, but in the first line, it says:

[*English*]

All investigations will be conducted by civilian police, with no exception.

[*Translation*]

We could also consider certain special cases, although I have a hard time seeing how we could find evidence for them.

That said, I would like to come back to something that was said.

Today, we are talking about clarity. I think that, even within the committee, it is not clear how this will move forward.

In June 2024, the Standing Committee on Veterans Affairs tabled a report containing recommendations, one of which, in particular, was accepted by all parties. That is recommendation 40, which I will read.

● (1205)

[*English*]

Recommendation 40 says:

> That the Department of National Defence, in accordance with the many recommendations made in the wake of the Deschamps, Fish and Arbour reports, establish a reporting mechanism outside of the military chain of command, provide victims of military sexual trauma with safe and confidential legal resources, and transfer the jurisdiction to investigate sexual misconduct and prosecute its perpetrators to civilian authorities.

[*Translation*]

I can tell you today that, in my opinion, it would have been simpler to follow recommendation 5 in Ms. Arbour's report and simply transfer criminal cases of sexual assault to the civil authorities.

Do you agree with this statement?

Col Geneviève Lortie: Bill C-11 was drafted to highlight Justice Arbour's recommendation, including the method of implementation and the elimination of the possibility of recourse to both jurisdictions, both in terms of investigation and prosecution.

Section 7 has been amended, and there is some possibility of prosecution in court. Section 8 has been amended by the amendment proposed earlier, which opens up the possibility of waiting for the civilian police to arrive.

The provision currently being proposed is located—I am trying to see if it comes before or after the other provision—at the investigation stage. We wait for the civilian police, and at some point, at the end of the process, the victim can request that the case be handled by the military.

So we still have that option, in terms of choosing the court of justice. However, at the investigation stage, we are really at the stage where charges have been laid, we are in a system, jurisdiction has already been established, we are before a civil court and the victim is making a request. In that case, I don't know who would make the request. I imagine that, through some mechanism, it is the victim who makes the request, since it is not at the request of the prosecution, and not on behalf of someone else. According to the wording, it is a request. The manner in which this is done remains to be determined, but it requires a civil court that has the jurisdiction to hear civil charges but does not have the jurisdiction of a court-martial to determine the jurisdiction of another court.

There are often questions of jurisdiction on appeal as to whether a court has the necessary jurisdiction or not, and this is reviewed by an appellate court. In the case of a court-martial, it will be an appeals court within the military justice system, whereas in the present situation, it will actually be a civil court that decides. We are therefore talking about one jurisdiction transferring a case to another. This raises questions, such as how it would be perceived.

Tim Watchorn: It's non-functional.

Col Geneviève Lortie: That raises doubts, and every time we have doubts about how the system can move forward, the first case, or one of the first ones, will often lead to a challenge. Then, depending on the decision, it is appealed. We'll be here for a number of years. You can challenge a court decision in the civilian appellate court. It is up to the government to decide.

On the military side, there are some as well. It's not the same court of appeal. The court martial hears only appeal court cases. To be able to clarify everything, we really have to know how to read the provisions as a whole, which can take time.

However, there is a risk that the system will not be used. Some could use other means to ensure that the Canadian Armed Forces knows where we're headed. We also want the discipline, efficiency and morale of the forces to be preserved and the operational side of the forces to be maintained. It's very important. So that's always a risk, at that point.

Tim Watchorn: Thank you very much.

[*English*]

The Chair: Thank you.

We have Mr. Bezan and Mr. Malette, and then hopefully we can go to a vote at that point.

Mr. Bezan, you have the floor.

James Bezan: We've been hearing from witnesses, and at the 15th meeting of this committee, 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". We talked about the Jordan framework. That's one of the reasons not to put it into civilian court. She also said, "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."

We also heard over and over again that...and I think this is what BQ-1 does. It deals with the issue around the minor offences that the civilian court isn't even going to want to pursue. Even if we hadn't been amending this bill and putting choice back in for survivors of military sexual trauma, the lower-level cases—as we heard from Justice Deschamps when she was here—probably won't even be heard in civilian court. They're going to be thrown out, and then there is no recourse within the court martial system to deal with these other cases.

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."

We have to give choice back to the victims, and they should have it at every stage of an investigation and during prosecution. In this case, if the civilian court is looking at a case—and this is what the BQ-1 amendment will do—and saying there's no chance it's going to have the ability to deal with it because it's a low-level sexual offence, they can make that decision and fire it back into the court martial system. I think it is the appropriate process to take.

● (1210)

The Chair: I believe, Mr. MacMillan, you have your hand up. Then we will go to Mr. Malette and Mr. Savard-Tremblay.

LCol Matt MacMillan: Mr. Chair, I want to provide some clarity.

The civilian court would only have jurisdiction over a matter if charges have been laid in the civilian system. There would have already been a determination from the prosecutor that they were going to proceed and lay charges. They would have made a determination at that point that they have a reasonable prospect of conviction and there is public interest in proceeding. They would lay charges, and the matter would go before the civilian court. That is one clarity in relation to that piece.

There is, as Colonel Lortie said, the question of who would bring the matter before the court. The prosecutors themselves are responsible for the societal interests of pursuing a matter in front of a court. The victim does not in and of themselves have standing before a court. If there were a question about the victim not wanting to proceed in civilian court, ultimately what would likely happen is they would request that of the prosecutor and say they don't want to proceed. It goes back to prosecutorial discretion: Given the new information, do they want to proceed down that path?

If there were an application before the court, there's a question of how that would happen. Ultimately, the defence counsel at that time and the accused would be able to make representations on their own behalf as to whether they want to make that happen. There's a lack of clarity in exactly how that process would unfold, but at the outset, the charges would be laid in the civilian system. Otherwise, there's no determination in relation to that for the court to make, based on how it is drafted.

The Chair: Thank you, Lieutenant-Colonel.

Mr. Malette.

Chris Malette: Thank you, Mr. Chair.

I'll withhold my comments.

[*Translation*]

The Chair: Mr. Savard-Tremblay, you have the floor.

Simon-Pierre Savard-Tremblay: I'm going to touch very briefly on timelines.

First of all, I don't think it would be common sense per se if a civil court transferred a case with the impression that the deadlines would not be met.

Personally, I don't think it will happen, but in any case, it's provided for in amendment BQ-1. The last sentence of subsection 70.11(1) provides that a civil court may "determine that a court martial should have jurisdiction to try the person charged if it is of the opinion that it would not interfere with the proper administration of justice".

So the amendment already provides that the civil court could not do that if there were a time limit that would cause the proceedings to fail.

[*English*]

The Chair: Seeing no more hands, I put the matter back to the committee to determine if it shall be carried.

(Amendment agreed to: yeas 5; nays 4 [*See Minutes of Proceedings*])

The Chair: Mr. Bezan, do you wish to move CPC-7?

● (1215)

James Bezan: I'll move CPC-7, and if you want, I can start speaking to it.

The Chair: Yes, please.

James Bezan: Thank you, Mr. Chair.

The one concern we heard is that if we are going to be moving these investigations into civilian courts and handing them over to civilian police and other authorities, we need to make sure there isn't wilful neglect and negligence on behalf of those who are doing those investigations, possibly slowing down the secured evidence in the transfer of the information, testimonies and other evidence to civilian authorities.

We heard that from a number of different people. Heather Vanderveer, in her written submission, said, "Transfers between CAF, military police, civilian police, and civilian Crown prosecutors must occur within clearly defined timelines and not weeks, months, or years." She also said, "We've seen within the military system that things move at a glacial speed sometimes when handing over documents, and there are always delays." If we're concerned about the Jordan principle—that framework—and getting things done within the 18-month time frame, we can't allow the military police, other investigative services and the CAF to drag their feet.

Rory Fowler said, in talking about one particular case, that the prosecution was stayed for delay and that the delay was directly attributable to repeated delays by the military police in providing portions of the investigation file to the civilian prosecutor. We have to put a timeline on that, and that's what we're doing with CPC-7.

The Chair: Is there any debate?

Ms. Lapointe.

Viviane Lapointe: Thank you, Mr. Chair.

I think the intent of this is appropriate and speaks to what we heard, but I'm going to seek clarity from our witnesses.

Can you tell us if a provision already exists that addresses this?

Col Geneviève Lortie: Yes, there's already a provision under the National Defence Act that creates the offence of negligence in the performance of duties. It says:

> Every person who negligently performs a military duty imposed on that person is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

It's an offence that talks about “negligently”. Here we're making the link to this provision by naming section 124—that's the offence—and it's adding an element about “wilfully” that is not covered by the offence itself. It's suggesting to change the way the offence is committed under section 124. That one is a negligence offence, and here we're talking about wilfully doing something.

Also, when we talk about the military duty imposed on someone in court, it's the prosecution that has the duty to transfer the evidence—to give the evidence to defence counsel or to the accused if the accused is not represented. Here the amendment seems to suggest that it's on the military police member, when really the duty imposed in the system is on the prosecution. You cannot lay a charge when there's no duty on someone to do something—that's not an offence—so you need to initially have a military duty to do something for it to become something to be considered under section 124. In this system, it's the prosecution that has it.

If I can add a third element to that, we're talking about disclosing evidence to the counsel representing the accused, and that does not propose to cover a case where the person is not represented. The contrary would be that it seems okay if the disclosure is not given to the accused themselves.

Viviane Lapointe: All right, so there's a provision in place already. We have a system in place, certainly.

In terms of checks and balances within that, can you describe to us what checks are already in place to make sure evidence is handled properly in an investigation?

● (1220)

Col Geneviève Lortie: It's when you come to court. When charges have been referred to the military system or a charge has only been laid in a civilian court, it will be on the prosecution to give to the accused person or their lawyer all related evidence they have that proves the offence or proves they have not committed it—to disclose the tape, the statements and everything. A listing is done and everything will be given over. If the defence feels they have not received everything, they can also go to the judge and request more disclosure.

Viviane Lapointe: Thank you.

The Chair: Ms. Romanado.

Sherry Romanado: Based on that, I just want to make sure I'm understanding this. The amendment is to ensure that there's no unreasonable or unwilling delay on behalf of a CAF member handing over evidence to the defence, obviously recognizing the Jordan principle that time is of the essence. We have only 18 months to prosecute a case. However, from what you just said, it's not actually the CAF member who would be sharing evidence with defence counsel. It's the prosecutor who has the duty to share evidence. Is that correct?

Col Geneviève Lortie: Yes, you're correct.

Sherry Romanado: I don't want to say that this doesn't make sense, but procedurally, it would never be a CAF member handing off evidence to a defence attorney. Is that correct?

Col Geneviève Lortie: You're right. In this system, the prosecution will get from the military police the file, or the unit of the CAF member that has done the investigation will package everything. It will be listed and passed. Disclosure will be sent to defence counsel if the person is represented, or to the accused, with a listing of evidence to make sure that everything has been given.

Sherry Romanado: Thank you.

The Chair: Mr. Bezan.

James Bezan: Just so there's clarity on this, the first two-thirds of the amendment refers to “subsections (1) to (3)”, which is a transfer of evidence from military police or another investigative body within the CAF to civilian authorities. It's all the stuff that's going on with collaboration and concurrent jurisdiction that we now have. We're returning back through the choice process, but if it's going to be pursued by civilian police agencies, then military police and those on base who have that evidence have to turn it over.

If you want to really remove the chain of command, let's say a local colonel on a base may make a decision and say, “This is a friend. We want to protect them. Let's make sure we slow down this process.” That is wilful, and wilful needs to be punished. It's more than just negligence. That's why the wording is stronger.

The last part is about the transfer of information to those who are victims and turning evidence over to counsel. We have heard over the years that people can't even get access to their files. We heard that from witnesses as well. Elvira Jaszberenyi, when she was here, said that in her file, “a lot of things have disappeared”. She wasn't even getting all information from the military prosecution or the military police.

We want to make sure that if that is done wilfully, there are extra penalties for that. That's the purpose behind new proposed subsection 70.2(5).

The Chair: Mr. Malette.

LCol Matt MacMillan: I'll be fairly brief.

As my colleague Madame Lapointe mentioned, portions of this are somewhat laudable, but after hearing witness testimony and seeing that some of these cases already exist under section 124 of the National Defence Act, I think it's redundant. We're duplicating existing provisions. There are already provisions in the act that punish anyone for not properly delivering custody of evidence or investigative materials. In the case of Ms. Jaszberenyi, she already has recourse under section 124 of the NDA.

I can't, unfortunately, support this.

● (1225)

The Chair: Ms. Idlout, your hand is up. It's over to you.

Lori Idlout: Thank you so much, Chair, for recognizing me.

I'm feeling compelled to ask a question of the witnesses, who are experts in this system, as I understand it, about these types of cases. I've heard Mr. Bezan's reasoning for CPC-7. It sounds quite important from the perspective of victims—making sure that victims get the justice they deserve and making sure that there are many avenues for them in order to have a sense of justice without closing doors.

I'm wondering if the witnesses can share with us what training they've taken to be trauma-informed or to understand what the victims' lens is like in undergoing their work. Perhaps they could describe, really, what kind of training they take to make sure that the victims' lens is understood within this system.

The Chair: It's over to you, Colonel.

LCol Matt MacMillan: One of the big aspects in relation to the office of the judge advocate general is that it took steps to ensure.... It's been a couple of years now, but we had a practitioner come in whose role was to teach trauma-informed lawyering to lawyers. That training was presented by an individual whose name escapes me. The vast majority of personnel in our office took the training at the time, which was about trauma-informed lawyering specifically in the context of criminal matters. That's one major aspect.

Beyond that, we have obligations to take professional training yearly and to continue legal education. Part of that is ethics-related in terms of how you deal with people you support.

Those are the two big aspects in recent times.

The Chair: I'm seeing no further hands. Shall CPC-7 carry?

(Amendment agreed to: yeas 5; nays 4 [*See Minutes of Proceedings*])

The Chair: Monsieur Savard-Tremblay, do you wish to move BQ-2?

[*Translation*]

Simon-Pierre Savard-Tremblay: Yes, Mr. Chair.

[*English*]

The Chair: Now that you've moved it, I have to state that Bill C-11 amends the National Defence Act by removing the Canadian Armed Forces' authority to investigate an offence under the Criminal Code that is alleged to have been committed in Canada and that is of a sexual nature or committed for a sexual purpose. The amendment seeks to establish a plan to create an office of the inspector general for sexual misconduct in the Canadian Forces. *House of Commons Procedure and Practice*, fourth edition, states in section 16.74, “An amendment to a bill that was referred to a committee after second reading is out of order if it is beyond the scope and principle of the bill.”

In the opinion of the chair, the office of the inspector general for sexual misconduct in the Canadian Forces is a new concept that is beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

[*Translation*]

Simon-Pierre Savard-Tremblay: Mr. Chair, I'm happy to challenge your ruling.

● (1230)

[*English*]

The Chair: Okay. It's over to you, Clerk.

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

The Chair: BQ-2 is up for debate.

Mr. Savard-Tremblay, do you wish to speak to it, or should we proceed?

[*Translation*]

Simon-Pierre Savard-Tremblay: I'll be brief. The intent of this amendment is to force the government to create “a plan for the establishment of an office of the inspector general for sexual misconduct in the Canadian Forces”.

[*English*]

The Chair: Mr. Bezan.

James Bezan: I support this. I know that you ruled it out of scope, but I think it is relevant.

We have heard over the years, including from the national defence ombudsman, that there needs to be greater independence of the ombudsman's office, and that could be done by having this new office created and by having an inspector general. Most of our allied nations have inspectors general to deal with these types of issues, including sexual misconduct within their forces.

Having this request for a plan to be tabled within six months of the adoption of Bill C-11 is very much relevant. It doesn't create any cost to the Department of National Defence or to the government.

This is a very clear and simple way to deal with the issue of creating an inspector general specifically targeted towards sexual misconduct within the forces. We'll be supportive.

The Chair: Is there further debate?

Ms. Romanado.

Sherry Romanado: I would just like to get clarity on whether something is already in place that does this. Is this creating something new to do something that is already being done?

Col Geneviève Lortie: It seems that it would bring in duplication with an existing mechanism that already looks.... That was asked by Madame Justice Arbour, and that's something she recommended against in saying that there were already enough existing mechanisms, that it could be a waste of resources and that it would create an inconsistent mandate considering that some aspects are under the Canadian Armed Forces and other aspects, if we're talking about investigations, are under the RCMP and outside prosecutions.

There's already the ombudsman, who has a large mandate. There's the Military Police Complaints Commission, which could look at those aspects, and there's also a mandated review that exists under the National Defence Act of the provisions under the code of service discipline and other parts. Every seven years, there's a mandatory review of the provisions, their application and how to deal with that, so it seems to be the same type of mandate that is already looked at by other aspects of the institution.

Sherry Romanado: Is there some element that does not already have a mechanism for oversight and this would fill in that gap? This sounds like a very good provision. If it's already being done 100% by other elements, I can understand that, but is there something missing? I ask because the member opposite put forward something that.... We heard that an element of oversight was missing, so are there any gaps that would be picked up by this new administrative body that are currently not addressed in our other mechanisms?

● (1235)

Col Geneviève Lortie: Not to my knowledge.

When systems were created previously, like the victim's liaison officer, it was felt that something was required because of some absurdity of the system. I can add another organization that we have in the Canadian Armed Forces. The chief professional conduct and culture, known as the CPCC, was responsible for addressing systemic misconduct and driving culture change in the Department of National Defence and the Canadian Armed Forces, so I would suggest that it's something they also looked at.

The Chair: Mr. Bezan.

James Bezan: Just to go back to the testimony we heard on this, I think we all remember Colonel Drapeau, also a professor of law, and he said, “As a first step, I recommend creating an inspector general position.” He then went on to say that the Somali inquiry report recommended the creation of an inspector general for the armed forces. Instead, Bill C-25 created the Military Police Complaints Commission and the Military Grievance External Review Committee, and they provided civilian, non-judicial oversight over the Canadian military. Then he said the ombudsman was separately created by the Minister of National Defence.

All of the above organizations report to the Minister of National Defence and not to Parliament. The inspector general would be totally independent of the CAF, appointed by the Governor in Council and made accountable to Parliament, with broad authority to inspect, investigate and report on all aspects of sexual misconduct in the military.

Rory Fowler said, “While the inspector general wouldn't deal with discipline, per se, the inspector general would deal with systemic issues arising from complaints that were brought by members of the Canadian Forces, or even members of the public.” Mr. Fowler also said, “The vice-chief of the defence staff has studied this on several occasions, and it dates back 20 years, looking at the possibility of an inspector general.” He said there had been a lot of study already and that we just have to do it.

I think this is very relevant. This is testimony that supports BQ-2, so let's have the vote.

The Chair: Seeing no further debate, shall BQ-2 carry?

(Amendment agreed to: yeas 9; nays 0 [*See Minutes of Proceedings*])

The Chair: Now we're on, I believe, CPC-8.

Mr. Bezan, do you wish to move it?

James Bezan: I so move.

The Chair: If CPC-8 is adopted, note that NDP-3 cannot be moved as it would create an incoherence. An incoherence would also arise if CPC-5 were adopted, which is the case.

It's over to you.

James Bezan: I'd just like to point out that NDP-3 is identical in wording to CPC-8, with the exception of the number of years for the sunset clause, from three years to five years.

As we heard in testimony throughout the study of Bill C-11, there was a request that this be set in time but only for a limited amount of time.

Justice Deschamps, in referring to a sunset clause, said:

> 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.

She went on to say, “That's a long time, if harm is done.”

We also heard from Christine Wood, who said, “I support adding a two- to five-year sunset clause.” At the same committee, Diane Hill Rose said, “I also support the two- to five-year sunset clause on the bill.”

Rory Fowler said this in a written submission:

> As an alternative, I recommend a “sunset clause” on these changes. This will empower/oblige Parliament to revisit this policy change and examine its impact. A sunset clause will require collection of reliable and relevant data. But it will permit a future Parliament to evaluate the impact of the jurisdictional changes.

There was also Afton David, who said in her written submission, “I strongly advise this Committee have external counsel perform this review and provide a legal opinion regarding which clauses to attach to the ‘sunset clause’”. She recommended that the sunset clause apply to sections 7, 8 and 12.

We have lots of testimony to say that we should put in place the sunset clause. We know, after hearing from the director of military prosecutions, that Colonel Kerr is prepared to take back complete jurisdiction over investigations. We also heard from the provost marshal that the prosecution and investigation should be left in the control of the military police. This way, we would have a window in place to allow for a transition and to collect the data to determine whether this is going to work or not.

We may find out that when we start having more cases go into the civilian system, either the Jordan framework is going to have an impact and we're going to have a lot of cases thrown out, or we're going to see a lot of cases that the civilian system will not want to get bogged down with because that system is already overloaded, as we heard in testimony...and will not think there's a high probability of success in the prosecutions, so they're not going to recommend proceeding in the civilian system.

For that reason, I believe the sunset clause is important.

● (1240)

The Chair: Thank you, Mr. Bezan.

Ms. Romanado.

Sherry Romanado: Thank you, Chair.

It's very rare that I'll say this, but I actually agree with my colleague. I don't think three years is sufficient for collecting data and seeing whether or not the application of this is working. I believe the National Defence Act is reviewed every seven years, but I'm going to check with the experts to hear what they would recommend.

If the National Defence Act is reviewed every seven years, is a five-year provision long enough to get the data we need to verify whether or not this is working? I want to get their opinion on this.

Col Geneviève Lortie: In the National Defence Act, the provision that already exists is seven years. What we have seen is that depending on the time...because there's a reset clause when provisions are not amended in the meantime or have just been amended. That gives another period of time that we call the reset clause. If an amendment is made and passed to royal assent, there would be seven more years to look at the provision.

It has happened in the past that amendments were made and the period of time did not necessarily allow enough time to look at the usefulness, the change or the application to have enough data to know how the system worked if it gave a certain period of time.

Sherry Romanado: Would seven or five be an ideal number for you?

I agree with my colleague that three would not give us the information we need. I believe the interim directive was put in in 2021. We're starting to see some data now, but I'm just curious: From your perspective, is five enough? We're talking about CPC-8, which has three.

Col Geneviève Lortie: What I understand from the provision is that at the end.... There's a period of time to look...and there's the possibility to have a resolution to extend it for the same period of time. Anyhow, at the end, if there's a resolution and the addition of these two periods, we're back to how the NDA reads today, and all the amendments that have been proposed for consideration on victims and all of that are not going to be applicable anymore.

We're going to be back to concurrent jurisdiction, the way the National Defence Act is written today. With the different amendments that have been passed previously, for sure there is some misalignment in the provision that we read right now in front of us, considering the changes that were made under clause 7 and the changes that are made under clause 8. There's a misalignment, in the reading of the provision itself, with the other proposed amendment we just went through.

Sherry Romanado: As I mentioned, I know that we put in the interim directive in 2021. We're now in 2026, so that's about five years now. We're starting to see the data. I know that I would be comfortable with a five-year versus a three-year. If you think about how long it takes to process a case, and if we have the question of concurrent jurisdictions and the moving around that could happen, I don't think three years is sufficient, in my opinion.

I will leave it at that. Thanks.

● (1245)

The Chair: Is there any further debate?

LCol Matt MacMillan: Section 273.601 of the National Defence Act will already look at provisions 7 and 8. It's a mandated review that's done independently. That was the review Justice Fish did. There will already be a review of these provisions at the end of seven years. That's one point.

The other thing for consideration is that because a resolution of the House is required to carry on so it doesn't sunset, if there were an election period or a prorogation under the caretaker convention and there's no resolution possible, this would just go away at the end of that period of time. It's something to consider in relation to what's going on at the time.

The Chair: Mr. Bezan.

James Bezan: Just in response to that, when does the seven-year review take place? Is it seven years after Bill C-11 has passed or seven years since the previous bill passed when we brought in the Victims Bill of Rights?

LCol Matt MacMillan: The way section 273.601 is written is that the next mandated independent review is required to be tabled in the House seven years after the previous one. It was 2021 for Justice Fish, so it would be 2028. However, there's a reset clause. If an amendment flows from one of those independent reviews, it resets to seven years from the date of royal assent in order to provide the time for the system to function and to see what the outcomes of those amendments are. It would be seven years post-Bill C-11 receiving royal assent that the next iteration would be due.

James Bezan: I'll continue on that line, because we did hear from witnesses that we should limit that. Seven years is a long time, especially if it's not working and especially if it's creating more harm to the victims of military sexual trauma.

Justice Deschamps, contrary to Justice Fish, said at committee that five years or seven years is a long time if harm is done. Less is more in this case, and I recommend that we go ahead with a three-year sunset.

The Chair: I'm sorry. What do you recommend?

James Bezan: I recommend that we go ahead with a three-year sunset, as in CPC-8.

The Chair: That's as opposed to the five.

James Bezan: Well, seven.... We're saying three in CPC-8. Justice Deschamps felt that five years is too long, especially if it's not working, so this requires that a mandatory review happen within three years.

If it's not working, we just let them expire.

The Chair: Ms. Romanado.

Sherry Romanado: Based on what Lieutenant-Colonel MacMillan mentioned, three years after royal assent we might be in an election. If the House is in an election period, the motion cannot be put forward for the House to continue. I'm just thinking about the timeline. I was just going to check to see if the colleague—

James Bezan: When are we having an election?

Sherry Romanado: I know the NDP put forward a separate amendment that's very similar, but given that there will very likely be an election in the next three years—the next scheduled election is in October 2029—I think three years might be too tight. I'm just asking whether the colleague across the way would consider five years. I agree that seven is too long, but would he agree to five years?

James Bezan: We can split the difference and go with four.

An hon. member: Four and a quarter.

Some hon. members: Oh, oh!

The Chair: I think what our colleagues are saying is that, before we move a subamendment to the amendment, which is pretty much the NDP's amendment.... Do we want to proceed that way, or are we going to just spin our wheels?

Mrs. Romanado.

Sherry Romanado: Didn't the witnesses recommend five?

A voice: Is this on the sunset?

Sherry Romanado: It's the sunset, yes.

James Bezan: On the sunset, Christine Wood said two to five, Diane Hill Rose said two to five and Justice Deschamps said three, because five is a long time if harm had been done. If you're willing, then I'll go with four. That's based on Justice Deschamps saying that five was too long.

Plus, I'll just say this—

● (1250)

[*Translation*]

Simon-Pierre Savard-Tremblay: Mr. Chair, I'll move the subamendment.

Let's say four years.

[*English*]

James Bezan: Did he propose four?

The Chair: Give me a moment. I want to check on a particular item.

I will ask the witnesses a question, for clarity. We already have something that says seven years in regard to the National Defence Act. By making this amendment of three, four or five years, is there a conflict thereafter?

Geneviève Lortie: It's not a question of conflict. What is proposed is a review of these provisions so that the two reviews would happen. If, after the first period, there's a resolution proposed and passed, that could extend for another period. I'm not sure of the number, but it's the addition of the same period twice. In the end, we're back to the way the National Defence Act reads today.

There's no way to protect, come back or maintain those provisions after that period of time. If that's the intent of the committee, at that point a bill would have to be proposed and reintroduced, and you would have to redo all of the amendments your committee is doing right now.

James Bezan: If they expire, then they'd expire after three years.

Col Geneviève Lortie: They will expire. The way it's listed—

James Bezan: They will, yes. That's fine.

Col Geneviève Lortie: —it's the addition of the two, and at the end, there's no way.... With the way we understand how it's proposed and written, that's the end of it; there's no way to keep them. If this works—and our recommendation would be to keep them—another bill would have to be tabled, and you'd go through all the steps up to royal assent to maintain those provisions.

The Chair: Thank you.

I have Mr. Bezan.

I am sensitive to the time.

James Bezan: I'll try to be quick, because I think, at this point—

[*Translation*]

Simon-Pierre Savard-Tremblay: Mr. Chair, are we discussing my subamendment?

I told you that I wanted to move a subamendment, but it's as if it has been ignored.

[*English*]

The Chair: I didn't hear it. I'm sorry, Monsieur Savard-Tremblay.

We have Mr. Bezan, and then I'll go over to you at that point.

[*Translation*]

Simon-Pierre Savard-Tremblay: I had moved my subamendment before you put your questions to the witnesses. I think it's the least we can do to address it.

[*English*]

The Chair: Monsieur Savard-Tremblay, we're asking for clarification that you're touching on all the touchpoints for the matter at hand. Is that correct?

[*Translation*]

Andrew Wilson (Legislative Clerk): Mr. Savard-Tremblay, I wanted to confirm something with you. In proposed subsection 70.4(1), in French, in CPC-8, where it says, "*d'avoir effet à la fin du troisième anniversaire*", you want the wording to instead read, "*quatrième anniversaire*". Is that correct?

Also, in proposed subsection 70.4(4) of amendment CPC-8, where it says, "*et précisant la durée de la prorogation, à concurrence d'un maximum de trois ans*", you also want to change "*trois ans*" to "*quatre ans*". Is that correct?

Simon-Pierre Savard-Tremblay: Yes.

[*English*]

Andrew Wilson: In English, it would be as follows:

> 70.4(1) Paragraphs 70(d) to (h) and sections 70.1 to 70.3 cease to have effect at the end of the third anniversary of the day on which the Military Justice System Modernization Act receives royal assent unless, before the end of that third anniversary....

Both of those would change to "fourth anniversary".

In paragraph 70.4(4), where it reads, "specifies the period of the extension, which may not exceed three years", that would change to "four years".

The Chair: We have a subamendment by the BQ, as clarified.

Is there any debate?

Mr. Bezan, do you want to speak to that?

● (1255)

James Bezan: No, I'm good with it.

The Chair: Is there anyone else?

Should the subamendment by the Bloc carry?

(Subamendment agreed to: yeas 9; nays 0 [*See Minutes of Proceedings*])

The Chair: We're back to CPC-8 and the amendment as amended.

Is there further debate on that matter, or shall we go to a vote?

James Bezan: Let's vote.

The Chair: Let's go to a vote.

(Amendment as amended agreed to: yeas 9; nays 0 [*See Minutes of Proceedings*])

The Chair: That makes clause 8 carried. No other submissions that have been made can qualify because of the coherence matter.

Actually, before we wrap up today, let's wrap up clause 8.

(Clause 8 as amended agreed to)

The Chair: I'm just trying to see where we're going to be by tomorrow, because as you know, time is coming to an end. We have until one o'clock.

I'm asking the committee for agreement to adjourn, or do you want to—

James Bezan: We'll start on Wednesday.

Sherry Romanado: Do you want to start now or Wednesday on this one?

James Bezan: There's one minute left. That's unless you guys are supporting it.

Sherry Romanado: Maybe.

[*Translation*]

Since there is only one minute left to the meeting, I was wondering if we should wait until Wednesday to begin discussing the next amendment.

[*English*]

James Bezan: We don't really have time.

The Chair: With the committee's agreement, I adjourn the meeting.

We'll see you on Wednesday.

The meeting is adjourned.