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# Standing Committee on National Defence

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Chair: Charles Sousa





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• (1625)

[English]

**The Chair (Charles Sousa (Mississauga—Lakeshore, Lib.)):** Welcome to meeting number 23 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.

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 our interpreters.

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

For interpretation, please use your earpiece and select the appropriate channel: floor, English or French. All comments should be addressed through the chair.

I'd 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, military justice implementation, office of the judge advocate general, Canadian Armed Forces.

Folks, I think we have concurrence among the group that we'll try to expedite clause-by-clause matters rather efficiently today. I know that some have other commitments, so we'll proceed as quickly and respectfully as possible.

We will now resume the clause-by-clause consideration of Bill C-11.

(On clause 9)

**The Chair:** We are starting with the consideration of clause 9 and amendment CPC-9.

To proceed, Mr. Bezan, do you wish to move the amendment?

**James Bezan (Selkirk—Interlake—Eastman, CPC):** I wish to move CPC-9 as an amendment to clause 9. We're making sure we synchronize the numbers.

**The Chair:** Is there debate?

**James Bezan:** I will quickly touch on this.

This is about making sure that the victim's liaison officer who is appointed gives the victim the ability to request another one.

We heard over and over again that victims want a liaison officer they can trust, and they should have the right of refusal and to request that somebody else be put in their place. We heard that from Justice Deschamps and Diane Hill Rose.

I won't go into detail unless people want to know more, but it's something that empowers the victim through the process.

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

Is there any further debate?

Ms. Sherry Romanado.

**Sherry Romanado (Longueuil—Charles-LeMoine, Lib.):** I think this is happening through the new policy, but regardless, we support it.

**The Chair:** Shall CPC-9 carry?

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

**The Chair:** Next we have NDP-4. It's deemed moved because of the following ruling, Ms. Idlout.

Bill C-11 would amend the National Defence Act by providing that an individual acting on a victim's behalf can request that a victim's liaison officer be appointed. The amendment seeks to ensure, to the extent possible, that every person involved in the investigation or prosecution has training or experience in trauma-informed approaches.

As *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 requirement for trauma-informed training or experience is a new concept that is beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

Ms. Idlout.

• (1630)

**Lori Idlout (Nunavut, NDP):** I want to challenge your decision and hope that I have the support of the committee.

**The Chair:** Does anybody wish to move that challenge on her behalf?

**James Bezan:** I would like to move that challenge on her behalf.

**The Chair:** Okay. We'll put it to a vote.

[Translation]

**Simon-Pierre Savard-Tremblay (Saint-Hyacinthe—Bagot—Acton, BQ):** If we vote yes, does that mean we're in favour of sustaining or overturning?

**The Clerk of the Committee (Jean-Denis Kusion):** No. The question is: Shall the ruling of the chair be sustained?

If you vote yes, the amendment will be defeated; if you vote no, we continue.

[English]

**The Chair:** Is it understood? Okay, we'll proceed.

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

**The Chair:** NDP-4 is now up for debate.

Ms. Romanado.

**Sherry Romanado:** Thank you, Chair.

I have a quick question for the experts. I just want to verify, according to them, if there are any issues about the constitutionality of this amendment.

**Colonel Geneviève Lortie (Deputy Judge Advocate General, Military Justice Modernization, Canadian Armed Forces, Department of National Defence):** This amendment could raise some questions of constitutionality concerning the judicial independence of judges and the separation of powers. It's also likely not binding on most of the persons involved in the investigation and the prosecution of the offence captured by this provision, as many of them would be under civilian jurisdiction. It's written broadly. It could encompass persons who are not under the code of service discipline and over whom we don't have jurisdiction.

**Sherry Romanado:** Thank you.

**The Chair:** Is there further debate?

I'll go to Ms. Lapointe, and then Mr. Kibble afterwards.

**Viviane Lapointe (Sudbury, Lib.):** This is along the lines of what my colleague just asked. We're talking about adding this into legislation. Could you tell us what the practical issues are that come up when we add support roles in legislation, as is being suggested here?

**Col Geneviève Lortie:** When we're looking at some kind of training, it's often for things that are better addressed through policy, because things may evolve. You can figure out what the rules are and what needs to be done, and it can be fully described under national defence policy to really explain what is intended.

When you look at terms like "experience", in someone's mind, they can think they have experience, but it may not be the common understanding. Making sure that everyone has a common under-

standing is often best left out of legislation and addressed through policy.

**Viviane Lapointe:** Thank you.

**The Chair:** Mr. Anderson.

**Scott Anderson (Vernon—Lake Country—Monashee, CPC):** I just want to read a couple quotes. One is from General Carignan:

As we speak, the military police have been undergoing specialized training to interview victims and deal with sexual assault cases. They have been trained over the past few years, but the question would probably be better answered by the provost marshal. However, they have been undergoing training, and this is part of what they do as they tackle sexual assault cases.

Another quote I'd like to read is this:

We need to make sure that there are systems that are ready with people who are trauma-informed, with people who have appropriate training and with people who have safeguards in place to ensure that people can share their stories, know that they're going to be taken seriously and know that they'll be given whatever testimonial aids may be necessary for them to fully share their perspective.

That was Minister Sean Fraser.

• (1635)

**The Chair:** Ms. Lapointe.

**Viviane Lapointe:** I certainly support what those witnesses said. The question is whether this is best approached through legislation. They talked about systems. Is it best approached through legislation or policy?

Policy allows you to do regular updates and regular checkpoints. You can determine and measure the rigour of the resources, the programs and the training that is done in a much more regular way. Policy allows us to manage the recommendations that have been brought forward by witnesses, as opposed to doing that in legislation, which we know is not easy to change or update.

**The Chair:** Ms. Gallant.

**Cheryl Gallant (Algonquin—Renfrew—Pembroke, CPC):** I would be in favour of this amendment.

We had a private member's bill some years ago. It was put forth by Rona Ambrose. It was Bill C-337, known as the judicial accountability through sexual assault law training act. It took years to get it enacted and even more to get it implemented. If they have the training from the outset, it can be implemented sooner and can protect people who have already been victimized.

**The Chair:** Ms. Romanado.

**Sherry Romanado:** Isn't that the same legislation the Conservatives voted against?

**Cheryl Gallant:** Pardon me?

**Sherry Romanado:** Wasn't that the one you guys voted against?

**Cheryl Gallant:** We introduced it.

**Sherry Romanado:** I know Rona did, but I remember there was some problem with it.

Anyway, I'm supporting this. We're curious as to whether it should be in legislation versus in policy. That's it.

**The Chair:** Okay. If there's no further debate, we'll proceed to a vote.

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

(Clause 9 as amended agreed to on division)

**The Chair:** We're now on clause 9.1, and we have CPC-10.

Mr. Bezan, do you wish to move it?

**James Bezan:** I shall move CPC-10, creating new clause 9.1.

Can I speak to it?

**The Chair:** Since you've moved it, I have something to say, and then you can argue it.

Bill C-11 would amend the National Defence Act to provide that in the context of a service offence, an individual acting on behalf of a victim may request that a victim's liaison officer be appointed to assist them. The amendment seeks to extend this possibility to the accused.

As *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, this is a new concept that goes beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

**James Bezan:** I'd like to challenge the chair.

**The Chair:** I knew you would.

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

**The Chair:** That brings it to a vote.

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

• (1640)

**James Bezan:** Can I speak to this quickly?

**The Chair:** Yes, you may.

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

This was recommendation number seven from Afton David when she appeared at our 13th meeting. She said, "Seven, appoint an accused liaison officer, akin to a victim liaison officer, to coordinate between the accused, the chain of command and civilian processes." She went on to say, "I think it would be a good first step as a liaison officer to have some sort of kind of requirement for communication between the civilian authorities and the military authorities in the chain of command, at the very least." This is exactly

what we tried to accomplish with the amendment that was drafted up.

Again, it comes down to some of the testimony we heard. Hélène Le Scelleur said, "Mandate rigorous, standardized, trauma-informed training across the system and introduce clear, enforceable consequences for senior leadership misconduct."

It all ties together with supporting the victim and making sure that throughout the system, they have the freedom of choice on what system they're going into and that they're completely informed, as well as informing the chain of command back and forth by using liaison officers.

**The Chair:** Is there further debate?

Go ahead, Mr. Malette—

**James Bezan:** It's for the accused as well. It's on both sides. It's for the victim and the accused. It has to be fairly balanced.

**The Chair:** Mr. Malette.

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

Could I ask Colonel Lortie and Colonel MacMillan if any portion of this proposed section already resides in the National Defence Act? Is this not again covering ground that's already supported in the NDA?

**Col Geneviève Lortie:** An accused person, under the NDA, has defence counsel provided to them. They already provide that type of service, and already to a higher standard.

Where that motion is proposed to be added is under the Declaration of Victims Rights. The division explains that it's applied in respect of a victim of a service offence and their interaction within the military justice system.

That's the application of the division, the Declaration of Victims Rights, so I would suggest that adding an accused's rights under the Declaration of Victims Rights...could be placed somewhere else if it were to be introduced under the National Defence Act.

**Chris Malette:** Thank you.

**The Chair:** Go ahead, Mr. Bezan.

**James Bezan:** On that, when we had victims and survivors here, along with department officials and members from the JAG office, it was still unclear for cases that are being referred to a civilian court whether defence counsel services, as well as liaison officers for the accused, would be provided to them in the civilian system.

Although the National Defence Act may say that under the Victims Bill of Rights there will be the right to equal justice for both the accused and the victim, it was unclear in all the testimony. That's why I think Afton David made the suggestion to start with. We should be making sure there is a balance of justice for both the victim and the accused—

**The Chair:** Thank you—

**James Bezan:** —and that the right information is being shared up and down the chain of command.

[*Translation*]

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

**Simon-Pierre Savard-Tremblay:** I have a simple question for our legislative team. If we want to maintain the intent of the amendment—we just heard that it may not have been inserted in the right place—are there other places where it could be inserted to achieve the same result?

[*English*]

**The Chair:** It's a question for legislative counsel, and they are not here.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** I already asked you if, in the event of an inconsistency, the amendment would come back to us here. If there was a problem because the amendment was not inserted in the right place, would that also come back to us and could we resolve the issue, if necessary?

[*English*]

**The Chair:** It can be resolved at report stage.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** Lastly, if we were to adopt the amendment now, but it wasn't in the right place, it wouldn't be a big deal, because we could always make adjustments later.

Is that right?

[*English*]

**The Chair:** Yes.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** Can you say it into the microphone, please?

**Michelle Legault (Legislative Clerk):** In this case, when the report is prepared by the law clerk's office, there is some flexibility when small changes have to be made. If substantive changes had to be made, it would come back at report stage.

• (1645)

**Simon-Pierre Savard-Tremblay:** That's fine, thank you.

[*English*]

**The Chair:** Ms. Sherry Romanado.

**Sherry Romanado:** Would it not be easier, then, to put it in the right place, versus voting for something and then having to amend it? I don't know.

Before we agree to something that's in the wrong place, should we not put it in the right place, versus having to amend it?

**The Chair:** This is a question for the legislative clerk.

Go ahead.

**Michelle Legault:** At this point, because legislative drafters don't draft during the meeting, if it were a question of clarification with the drafters, an option for the committee would be, by unanimous consent, to stand the amendment and the rest of clause 9, es-

entially, until the end. Then, for example, if the committee doesn't make it that far today, there would be time between now and the next meeting to consult the drafters and come back to it before the bill is complete. That's an option.

**Sherry Romanado:** Okay.

**James Bezan:** Just for clarification, when we were talking with legislative counsel on how to draft this amendment, it was their advisement to place it where it is, as new clause 9.1. It wasn't our choice to put it there. We just wanted to make sure it happened and that we addressed it.

I still trust that if there is an issue around continuity, it'll be fixed for report stage. I don't think we need to be too concerned about it right now.

**The Chair:** Okay, then we're not going to stand this amendment. We're going to proceed.

Shall CPC-10 carry?

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

(Clause 10 agreed to)

(On clause 11)

**The Chair:** Shall clause 11 carry?

Mr. Bezan.

**James Bezan:** On clause 11, I have a question for our JAG officers, who are at the end of the table.

Has this been a problem? It says that what we're adding is this:

A military judge is not to be charged with having committed a service infraction.

Has there been a problem with judges getting charged for service infractions? Have commanding officers used service infractions against military judges to influence any of the decisions they are hearing in court?

**Lieutenant-Colonel Matt MacMillan (Director, Military Justice Implementation, Office of the Judge Advocate General, Canadian Armed Forces, Department of National Defence):** The short answer is no. There has not been an issue in the past.

Previously, prior to Bill C-77, military judges were not subject to summary trials. Bill C-77 removed the summary trial process and created a summary hearing process. The provision that was related to them—military judges not being subject to summary trials—was removed. The additional provision was not added in at that time. It's ensuring that the chain of command, for whatever reason, cannot take action against a military judge, given their independence, through a summary hearing process.

It hasn't been an issue. It's just ensuring that this is in law and that it's not going to be a problem in the future. We don't anticipate that it would be, but there's a different process for military judges, if there's such conduct, before the military judges complaints commission.

**James Bezan:** Colonel MacMillan, would you suggest, though, that someone reading this might think we're making sure that military judges are above the law?

**LCol Matt MacMillan:** I don't think so. Military judges are not above the law. They are subject to the code of service discipline and the Criminal Code, much like any other judge in the civilian context would be, absent the military specifics.

The summary hearing is administrative in nature. In that instance, it's to ensure that the chief military judge is the only one responsible for the actions of military judges. It ensures that somebody else in the chain of command would not be able to take action against them in relation to that. I wouldn't suspect there would be an issue in respect to that.

• (1650)

**James Bezan:** Okay.

**The Chair:** Shall clause 11 carry?

(Clause 11 agreed to on division)

(On clause 12)

**The Chair:** Shall clause 12 carry?

Mr. Bezan.

**James Bezan:** In clause 12, we are deleting paragraph 162.9(c) of the National Defence Act. It is part of part III, on the code of service discipline, in division 5, which covers summary hearings. Under “Objectives of sanctions”, this is why we do summary hearings:

The imposition of sanctions is intended to achieve one or more of the following objectives:

- (a) to promote a habit of obedience to lawful commands and orders;
- (b) to maintain public trust in the Canadian Forces as a disciplined armed force;
- (c) to denounce indiscipline conduct;
- (d) to deter persons from committing service infractions;
- (e) to assist in rehabilitating persons who have committed service infractions;
- (f) to promote a sense of responsibility in persons who have committed service infractions.

Indiscipline conduct refers to the failure to adhere to established rules, regulations and expected standards of behaviour, often characterized by a lack of self-control, disobedience or disruptive actions.

Why would we want to take that out when we're trying to maintain good order and conduct of our forces to work in a uniform manner, to respect each other and to uphold the warrior ethos?

**LCol Matt MacMillan:** It is not meant to go counter to everything that was just articulated.

The removal of denunciation from the administrative nature of a summary hearing is to ensure that denunciation is a principle that mostly aligns with the criminal process, which is a public accusation and moral blame. While a summary hearing is administrative and non-penal in nature, it's not about the public denunciation of that conduct. It's to address minor deficiencies in conduct of an administrative nature—so non-penal consequences.

When we speak of denunciation in the Canadian criminal justice system, we're really talking about the public denunciation of that

conduct. It's not that there's a question about whether the conduct is right or not right. It's about whether denunciation is the appropriate objective for something of an administrative nature. Administrative measures aim at regulation and the correction of conduct at a lower level, whereas denunciation, as I indicated, is about the public denunciation of conduct.

**James Bezan:** Was this in the original National Defence Act when we still had summary trials, or was this added when we changed the system back in...? Was it 2012 when we did Bill C-77, which brought in summary hearings? No, it was 2018.

Was this put in accidentally? If it was under summary trials, then....

**Col Geneviève Lortie:** We had different versions. Between Bill C-71 and Bill C-77, there were some Supreme Court decisions that clarified what true penal consequences were. There were some amendments brought in after Bill C-77. Some were clear, but that one was not caught at the time, and it stayed in Bill C-77. It passed in 2019 and came into force in 2022. Now this is to rectify that point.

**James Bezan:** It's housekeeping. It has nothing to do with sexual misconduct. This is fixing what was—

**Col Geneviève Lortie:** It's really to clarify the administrative nature versus the criminal nature and to differentiate the two systems.

**The Chair:** Mr. Bezan, is that good? Okay.

Shall clause 12 carry?

(Clause 12 agreed to on division)

(Clauses 13 and 14 agreed to on division)

(On clause 15)

**The Chair:** We're at clause 15 now.

Mr. Bezan, do you wish to move CPC-11?

• (1655)

**James Bezan:** I shall move, starting at line 17 on page 7, the amendment we're suggesting, CPC-11.

**The Chair:** Is there debate?

I'm sorry. Do you want to speak to it first, Mr. Bezan?

**James Bezan:** Yes.

This again comes down to the appointment timelines. We heard that we can't leave these positions sitting vacant for days, weeks, months and sometimes years on end, so we're suggesting that it be done in 90 days.

**The Chair:** Ms. Romanado.

**Sherry Romanado:** For CPC-2, we changed the appointment for a provost marshal general to 120 days. I'm wondering if we shouldn't, for the sake of consistency, make them all 120 days. I'm fine with the timeline, but because we've already moved one of them to 120 days, shouldn't we be doing it for all of them?

**James Bezan:** I'll just say why 90 days was set. We heard this from retired Colonel Bruce MacGregor, the former director of military prosecutions. He said, "An acting DMP requires more than 90 days, for various reasons—operational, health, etc.—so the power should be given to the minister to grant an extension" when they need it.

We also heard from Rory Fowler, who said, "you're making them political appointees who may or may not be appointed in time. That has been a recurring problem." We also heard that from Afton David and from Charlotte Duval-Lantoine.

We must have a timeline, so if you want to move a subamendment....

**Sherry Romanado:** I move the subamendment to change it from 90 days to 120 days.

**The Chair:** Are you all in agreement?

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

**The Chair:** That brings us back to amended amendment CPC-11. Shall it carry?

(Amendment as amended agreed to [*See Minutes of Proceedings*])

**The Chair:** We're on CPC-12.

**James Bezan:** I'll withdraw it.

**The Chair:** Next is CPC-13.

**James Bezan:** This follows Justice Fish's recommendation. As Colonel Kerr said:

I would propose that if there is any change to the language for what can be done in the case of misconduct—

I believe it was a recommendation of Justice Fish he's referring to.

—was to adopt the model that's found in the DPP act. The language in the DPP act is, "...but may be removed by the Governor in Council at any time for cause with the support of a resolution of the House of Commons to that effect."

All the other criteria in the act will become irrelevant, because you don't have to serve at the pleasure of the House through the Governor in Council. It maintains the power to remove somebody for misconduct or incompetence.

**The Chair:** Is there further debate?

Seeing none, shall CPC-13 carry?

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

(Clause 15 as amended agreed to)

(Clause 16 agreed to on division)

(On clause 17)

**The Chair:** That brings us to CPC-14.

Mr. Bezan, do you wish to move it?

**James Bezan:** I shall move CPC-14, as circulated.

Essentially, CPC-14 removes the Minister of National Defence from providing direction to the JAG...or away from the JAG, and puts the JAG back in charge of issuing guidelines to the military justice system.

**The Chair:** For debate, we'll go to Ms. Romanado and then Mr. Malette.

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

I'd like to know whether this amendment undoes Justice Fish's recommendation eight, which was that any "power to issue directives in respect of a particular prosecution" should reside at the ministerial level "at a minimum".

I want to verify whether that undoes his recommendation. Could you provide further explanation on that recommendation, please?

• (1700)

**Col Geneviève Lortie:** I can confirm that it's contrary to Fish's recommendation eight, which was to ensure accountability to Parliament. In the same way that the Attorney General can provide to the director of public prosecutions specific instructions, the amendment in Bill C-11 provides this by having the minister provide to the director of military prosecutions specific instructions related to prosecution.

Bill C-11 proposes to move it from the judge advocate general to the minister, who is accountable to Parliament. That would be the same as with the director of public prosecutions. Considering that the Minister of National Defence would be the mirror of the Attorney General in issuing those types of instructions and that the power of the Minister of National Defence related to prosecution has been a subject at the Supreme Court of Canada.... There were those same kinds of parallels about ensuring, considering they were accountable to Parliament, that they maintain that a political decision be made in those decisions.

The case was not exactly on point. It was concerning the appeal right, but we can certainly look at the same principles behind that.

**Sherry Romanado:** Okay. Thank you.

**The Chair:** Mr. Malette.

**Chris Malette:** My question is for Colonel Lortie again, I would imagine.

Do we know what Mr. Justice Fish was intending with the original recommendation eight? Is this amendment even remotely in line with that line of thinking, as it's been interpreted?

**Col Geneviève Lortie:** The way we understand it, it was to ensure accountability by someone to Parliament, with the minister being accountable to Parliament. The judge advocate general is not directly accountable to Parliament. It's only through the Minister of National Defence. It was to ensure direct accountability.

**Chris Malette:** Well, we're all looking for accountability.

Thank you very much.

**The Chair:** We'll go to Mr. Bezan and then Mr. Anderson.

**James Bezan:** As we're talking about how it works within public prosecutions, we heard this from Rory Fowler:

The difference is that the Attorney General is a law officer, the chief law officer of Canada. While the current Minister of National Defence is a lawyer and past ministers of national defence have been lawyers, and it's very easy to advise them when you're a military lawyer, that's not always the case, nor are they a law officer.

The reason why the JAG would give direction to the director of military prosecutions is that it's a lawyer giving another lawyer direction in a very public fashion. By making the director of military prosecutions responsible to the minister—appointed by the minister, accountable to the minister—the JAG is no longer superintending military justice when it comes to military justice before a court martial....

Minister McGinty himself was asked about this and said, "I would be hard pressed to believe that any minister of national defence would want to insert themselves into a prosecution of this kind."

If it's not going to get used, and the JAG is going to be the superintendent and you need lawyers talking to lawyers—I don't think it's always going to be the case that you'll have a lawyer serving as the Minister of National Defence—then I would suggest it is in line to return those powers back to the judge advocate general.

**The Chair:** Mr. Anderson, it's over to you.

**Scott Anderson:** I have nothing to say. This man here said it all perfectly.

**The Chair:** Ms. Lapointe.

**Viviane Lapointe:** How could changing the rules as they exist today affect how independence is perceived?

**Col Geneviève Lortie:** The director of military prosecutions holds office for good behaviour. We just amended that provision so that it now reads by "a resolution of the House". That's one of the highest levels of independence they can get in their appointment. They also get independence throughout the time of their mandate. It's non-renewable.

It's really about all the different aspects of their mandate, their appointment and how they can be removed. It's not just one element. It's when you have all those elements that maintain their independence.

• (1705)

**The Chair:** I see no further debate. Shall CPC-14 carry?

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

(Clause 17 as amended agreed to on division)

(On clause 18)

**The Chair:** That brings us to BQ-3.

Mr. Savard-Tremblay, do you wish to move it?

[*Translation*]

**Simon-Pierre Savard-Tremblay:** Yes.

The purpose of this proposed amendment is to clarify the fact that the government can appoint veterans. We are also adding that a military judge is released from the forces upon taking up his or her position.

These proposals come from the Barreau du Québec, and they were based on the Fish report.

[*English*]

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

I have to say that it's out of scope. Bill C-11 amends the National Defence Act by expanding the class of persons who are eligible to be appointed as a military judge. The amendment seeks to require that an officer or non-commissioned—

[*Translation*]

**Simon-Pierre Savard-Tremblay:** That's fine, Mr. Chair. I challenge your ruling. We can skip that step right away.

[*English*]

**The Chair:** I think I have to read it into the record, however.

**Michelle Legault:** You can just say that it's inadmissible due to the scope.

**The Chair:** That's fair enough.

In the opinion of the chair, the concept goes beyond the scope of the bill. Therefore, I rule the amendment inadmissible.

It's over to you, Clerk. Please proceed.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** I just wanted to save everyone's time, Mr. Chair, and prevent you from wasting your breath at the same time.

[*English*]

**Sherry Romanado:** I assume this is—

**The Chair:** This is a challenge to the chair.

**Sherry Romanado:** It would be nice if you read it out, but thank you.

**The Clerk:** Shall the decision of the chair be sustained?

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

**The Chair:** We're back to you, Mr. Savard-Tremblay. Do you wish to speak to it?

[*Translation*]

**Simon-Pierre Savard-Tremblay:** I've already said what I had to say.

[*English*]

**The Chair:** Okay. Is there further debate?

Mr. Malette.

**Chris Malette:** Colonel MacMillan or Colonel Lortie, what would the impact be of removing military judges from the Canadian Armed Forces?

**Col Geneviève Lortie:** In itself, the question could bring up a lot of constitutional questions around the establishment and independence of military judges. In the Fish report, one of his recommendations was to study that aspect of the act.

We have had a working group for the last two years, and the question was to determine the most effective framework for the creation of a permanent military court of Canada in co-operation with an independent authority, the Department of Justice and representatives of the military justice system. We're getting to the end of that report, and while looking at it, a lot of questions came up about concerning the deployability of civilian judges and their subjection to the code of service discipline, just to name those two.

The fact that the motion proposes to keep them as military judges—"military" is a defined term that says, "shall be construed as relating to all or any part of the Canadian Forces"—would be something to consider. Also, all the other provisions that establish military judges refer to them as being military members.

There's a lot of conflict with a lot of other provisions, like where it says that military judges cease to hold office when released from the CAF at their request and that a chief military judge must hold the rank of at least colonel. We're addressing a provision that concerns regular force military judges. We also have provisions concerning reserve force military judges that are not covered. They are a different type; they're nominated. They don't have the exact same appointment, but there are other provisions that address that. That's not covered here, but I would suggest that if something is done for one group, the other group should also be considered.

• (1710)

**Chris Malette:** I have a follow-up question for Colonel MacMillan. In your estimation, what would be the impact on the maintenance of discipline, efficiency and morale if this should come to pass?

**LCol Matt MacMillan:** Fundamentally, it would be a question of whether the court could function. If the court martial can't function because of questions of judicial independence and the constitutionality of removing military judges from the military, it raises questions about tenure, pay, who they report to and whether they are under the military or the broader federal judicial scheme.

If you can't function as a court, you can't maintain the discipline, efficiency and morale of the CAF.

**The Chair:** It's over to you, Mr. Bezan.

**James Bezan:** Although we didn't hear from Justice Fish because we had trouble with the video link, he did send in a written submission, and he said:

The first two recommendations in my report address the need to civilianize military judges, but these recommendations are not implemented at all by this Bill. [As I explained at par. 54 of my report, the appearance of justice is compromised by the fact that military judges remain members of the CAF while holding office.]

He went on to say:

The civilianization of military judges is not a novel proposition. England and New Zealand have long civilianized their military judges. In the course of my review, moreover, the appointment of civilian judges with the sufficient degree of military expertise was solidly supported by our Deputy Minister of National Defence, and by virtually all senior members of the military hierarchy (including the chief and then acting chief of the defence staff, the commanders of the Royal

Canadian Navy, and the Royal Canadian Air Force, and several other commanders).

That's right from the written submission we got from Justice Fish.

Afton David said we need to make sure that military judges are removed from the code of service discipline, in her testimony. The best way to get them outside of the code of service discipline is to make them civilians.

**The Chair:** Seeing no further debate, shall BQ-3 carry?

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

**The Chair:** We're now on new clause 19.1 and CPC-16.

Mr. Bezan, do you wish to move it?

**James Bezan:** I shall move it.

Again, this comes back to timelines and making sure we have people appointed in the proper amount of time. It's 90 days for the chief military judge.

**The Chair:** As the chair, I'm not going to read the whole thing again, but it's out of scope. The bill modifies the appointment process of specific positions, which do not include the chief military judge. Therefore, the amendment is beyond the scope of the bill, and it is the opinion of the chair that it is inadmissible.

• (1715)

**James Bezan:** I challenge your ruling.

**The Chair:** We'll go over to you, Clerk, for a vote.

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

**The Chair:** That brings us to CPC-16.

Is there further debate?

**James Bezan:** This was Afton David's third recommendation. She 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. This must be paired with meaningful consequences for prolonged vacancies."

Rory Fowler also made the same comment, especially about the chief military judge. He said, "I pointed out in my blog the length of time it took to appoint a chief military judge, and that undermines military justice."

Justice delayed is justice denied. We want to make sure we get these people appointed in a timely manner, so it's 90 days.

**Tim Watchorn (Les Pays-d'en-Haut, Lib.):** Can I make a subamendment?

**The Chair:** You may, Mr. Watchorn.

**Tim Watchorn:** I propose 120 days.

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

(Amendment as amended agreed to [*See Minutes of Proceedings*])

**The Chair:** There are no amendments proposed for clauses 20 to 39. Is there unanimous consent to group them for the vote?

**Some hon. members:** Agreed.

**The Chair:** Shall clauses 20 to 39 carry?

(Clauses 20 to 39 agreed to on division)

(On clause 40)

**The Chair:** That brings us to clause 40 and CPC-17.

Mr. Bezan, do you wish to move it?

**James Bezan:** I shall move it. You shall rule it out of order. I shall challenge it.

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

**The Chair:** I'll surprise you on this one, Mr. Bezan.

Mr. Bezan has moved CPC-17. Do you wish to speak to it?

**James Bezan:** Again, it's about putting in a timeline to make sure that these main positions are appointed in an appropriate amount of time. This is for the director of defence counsel services.

**The Chair:** For the debate, we have Mr. Malette.

**Chris Malette:** For the sake of continuity, we'll do 120 if it's agreeable, as with the previous amendment.

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

(Amendment as amended agreed to [*See Minutes of Proceedings*])

**The Chair:** This brings us to CPC-18.

**James Bezan:** I withdraw it.

**The Chair:** Now we're on CPC-19.

**James Bezan:** We're way back at clause 40. Is that right?

**The Chair:** Yes. Your reference number ends with "462".

**James Bezan:** You jumped so many there.

**The Chair:** We're trying to accommodate the pressures among the members who have other commitments from—

**James Bezan:** On clause 40, we are replacing lines 26 and 27 on page 29. Replacing them makes sure that the appointment of the director of defence counsel services has the same type of remedial action as what we would see with the director of military prosecutions, which is the same process that exists for the director of public prosecutions in the DPP Act. This would allow the Governor in Council, through the House of Commons, to remove them if they're not fulfilling their mandate.

• (1720)

**Chris Malette:** Just for clarification, does this include "with the support of a resolution of the House of Commons to that effect"?

**James Bezan:** Yes.

**The Chair:** Is there further debate?

Shall CPC-19 carry?

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

(Clause 40 agreed to)

**The Chair:** We have a new clause 40.1. It's CPC-20.

Shall it be moved?

**James Bezan:** I so move.

May I speak to it?

**The Chair:** Yes, you may.

**James Bezan:** This one is about making sure that people who are being tried in both the civilian and military systems are treated equitably. We wanted to ensure this was included.

Major-General Holman, the judge advocate general, said, "This is an issue that Justice Arbour recognized herself. What she also recognized is that concurrent jurisdiction, particularly over Criminal Code offences, has always existed in Canada, with the exception of murder, manslaughter and child abduction."

In the Arbour report, we see, "The CAF may want to examine whether it wishes to provide financial assistance for all its members facing charges outside the military system, not just those who will now be tried in civilian courts."

The director of defence counsel services, Colonel Ahmed, said, "from the point of view of the director of defence counsel services...[this is] not problematic, [but] it is the practical impact that is significant. CAF members who are charged would no longer be eligible for legal representation through our offices. They'll have to represent themselves or personally fund their defence, assuming they can afford it."

This is about making sure that there is the equitable treatment of the accused and services provided for the victim.

**The Chair:** Is there further debate?

Mr. Malette.

**Chris Malette:** I recall Major-General Holman's testimony. I'm not sure I interpreted it that way.

To the witnesses, would this create in some way a two-tiered system? In your estimation, how might that be, or could you give us an example?

**Col Geneviève Lortie:** For sexual offences under the Criminal Code that would be dealt with under the civilian justice system, if I understand correctly, the DDCS could provide services, subject to the regulations provided by the Governor in Council. That would create two tiers, considering that there are plenty of other Criminal Code offences for which a military member could be charged in the civilian system that they're not entitled....

It's already the way it's happening. There are already cases that proceed, even for the types of offences that are covered. A simple assault charge would not be covered, so there are some that would be covered and some that would not be covered.

**Chris Malette:** I have a question for Colonel MacMillan, if I may.

In CAF's view, what, in your estimation, would be the impact on the effectiveness of that form of discipline?

**LCol Matt MacMillan:** As Colonel Lortie said, it would create a two-tiered system. A member who was accused of having committed a sexual assault would be provided defence counsel, subject to regulations, through the DDCS.

As an example, a good Samaritan who defends someone in town and is subject to a charge of assault would say either, "I was acting in self-defence" or "I was protecting someone else". They would not...as an example. In that instance, you get into a morale issue within the forces: Why are we providing defence services to someone charged with a Criminal Code sexual offence and we're not providing anyone else that same service?

Effectively, whether or not the DDCS would provide counsel is a question, but it would be somebody who was called to the bar in whatever province the matter would be tried in. That may or may not be somebody in the DDCS.

**Chris Malette:** Okay. Thank you.

**The Chair:** Mr. Anderson.

**Scott Anderson:** I'd just like to point out that the intent of this bill originally was to move these cases into the civilian system. We've already established that there's going to be choice available, so what this would do is create a two-tiered system between the military and civilian systems, making everybody choose the military system, I would suspect, because there's coverage. Is that not correct?

• (1725)

**Col Geneviève Lortie:** There's a certain coverage. It's another provision of the NDA.

The one we're looking at right now is the mandate for the director of defence counsel services—what they can provide, subject to regulation, regarding the right to representation under the code of service discipline.

That's what the act allows. It's to determine, by regulation of the Governor in Council, what that representation can be. That's where you find those answers, and that's where accused persons under the code of service discipline are represented at court martial. That's covered. That's the representation.

I'm talking about section 249.17 of the National Defence Act. That's where the right of representation is covered, and it only covers things that are under the code of service discipline. It's the same thing for the mandate of the director of defence counsel services.

There are two aspects: representation and what services can be provided by the DDCS directly.

**The Chair:** Thank you.

Mr. Bezan.

**Sherry Romanado:** Lieutenant-Colonel MacMillan wants to add something.

**LCol Matt MacMillan:** May I, Chair?

**The Chair:** I apologize. Yes, proceed.

**LCol Matt MacMillan:** With regard to the bill as amended, the accused is not the person who will be making the choice. The accused will have no determination of where the matter is prosecuted. That would, again, rest with the prosecution. They have a number of factors they will determine in terms of how they will proceed.

**The Chair:** We'll go to Mr. Bezan and then Mr. Watchorn.

**James Bezan:** We heard from Dr. Karen Breeck. She said:

...accused members receive free legal counsel within the military system, but not if charged in the civilian system. This inequity risks unequal access to justice for the accused through forced self-representation or significant personal debt.

The Arbour report says:

The CAF may want to examine whether it wishes to provide financial assistance for all its members facing charges outside the military system, not just those who will now be tried in civilian courts for sexual offences.

We discussed here that members of the Canadian Armed Forces will not be entitled to legal aid. They are not going to meet the threshold. It's a different level in each jurisdiction, depending on which province they are tried in.

We also heard from Afton David in her recommendations:

Six, remember that both victims and accused are entitled to fundamental rights and safeguards. I recommend ensuring that access to justice is maintained for accused members by providing defence counsel for service members charged in civilian courts.

These are recommendations we heard.

Even Rory Fowler proposed the "creation of a legal aid regime for Canadian Forces (CF) personnel, and the funding thereof, in light of the deprivation of representation by Defence Counsel Services that would arise from these amendments" in Bill C-11 by going to the civilian system.

It's about making sure there's equal justice for the accused and the victims, whether they're in military court or civilian court.

**The Chair:** Thank you Mr. Bezan.

Mr. Watchorn.

**Tim Watchorn:** This is a question for the witnesses.

Just to be clear, this would create a system where someone gets legal aid in the civilian system for a sexual offence in the Criminal Code but would not get legal aid in the civilian system for a criminal offence that is not sexual by nature. It's two different treatments of military personnel.

**Col Geneviève Lortie:** That's what we understand from the text of the motion, and it would only be at the time when the charge is laid. We're talking about when the person is charged. It would not cover the investigation, and it would not cover someone who is arrested, detained or read their rights. That would not be covered.

It's really at a certain point. Everything that would be before that is not covered by this motion and the wording.

**Tim Watchorn:** Okay. Thank you.

**The Chair:** Is there further debate?

Seeing none, shall CPC-20 carry?

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

**The Chair:** All right, that brings us to CPC-21.

Mr. Bezan, do you wish to move it?

• (1730)

**James Bezan:** I shall move to repeal section 249.2 of the National Defence Act.

**The Chair:** Is there any debate?

**James Bezan:** I can read in what it says. It says:

249.2(1) The Director of Defence Counsel Services acts under the general supervision of the Judge Advocate General.

We heard from the director of defence counsel services, Colonel Ahmed, who said:

Relying on the goodwill of the JAG to respect the director's independence—or on the fortitude of the director to resist influence from the JAG, the minister or the chain of command—is not a meaningful safeguard.

This concern is compounded by the fact that the bill leaves unchanged subsection 249.2(1) of the National Defence Act, which currently states that the director “acts under the general supervision” of the JAG, and subsection 249.2(2), which states that the JAG “may issue general instructions or guidelines” to defence counsel services.

These provisions grant the JAG broad authority over the director. The proposed legislation does not meaningfully limit the potential for interference in the director's mandate. Without structural statutory independence, the perception and potentially the reality of independence remain at risk. On this point, I submit that consideration should be given to repealing section 249.2 of the National Defence Act.

Michel Drapeau, on the removal of authority from the JAG, said:

It sends an important message to the military justice system and to military leaders. They must understand that they don't have full control over the administration of justice in cases involving military members both in Canada and abroad.

**The Chair:** Is there any further debate? Are there any questions on CPC-21?

Ms. Romanado.

**Sherry Romanado:** I just want to get clarity on this. If this amendment passes, will it create accountability and independence issues?

**Col Geneviève Lortie:** It would certainly let a void into who DDCS would answer to. That raises many questions about reporting and oversight.

In the military, everyone answers to someone else. It wouldn't be replaced by anything else, so what's going to happen for the director of defence counsel services? I don't have that answer. It would certainly raise significant organizational and establishment implications, considering that every legal officer providing legal services to the Canadian Armed Forces is posted to the office of the judge advocate general under the command of the judge advocate general.

We understand that Justice Fish, in recommendation 12, recommended looking at some questions about independence and the structure, and how to report to the director of military prosecutions and the director of defence counsel services. This working group is at the point of looking at an independent authority. Within the next year, we're going to look at these types of questions, but right now, with this amendment, there would certainly be a void where the DDCS would sit.

I would also like to bring to your attention that the first amendment that Bill C-11 proposes in clause 2 would ensure that the judge advocate general, in the exercise of their duty as superintendent of the administration of military justice, respects the independence of military justice actors, and the director of defence counsel services is one who is listed in the provision that was in clause 2 of this bill.

**Sherry Romanado:** If there's ambiguity in the reporting or there's a gap in saying, “Who does this person report to?”, what would that do to the confidence in that role? If there's no clear indicator of who this position reports to, could that not lead to a lack of confidence?

**Col Geneviève Lortie:** It could certainly lead to a lot of questions about their accountability and independence, depending on who they would report to, because they cannot be alone anywhere. They need a budget, which will come from someone, but there are probably a lot of other people they could not be under. They certainly couldn't be under the Minister of National Defence or the chief of the defence staff, so where would that person report? I don't have that answer, unfortunately.

• (1735)

**Sherry Romanado:** Thank you.

**The Chair:** Is there further debate?

Shall CPC-21 carry?

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

**The Chair:** Sensing the time, we're going to wrap this up pretty soon. I think there were some calls for a suspension, but I think we can do this quickly, if everyone's okay with that.

Shall clause 41 carry?

(Clause 41 agreed to on division)

**The Chair:** Mr. Savard-Tremblay, go ahead.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** Mr. Chair, I'd like to know what the basis is for requesting a suspension of the meeting. We're still on schedule for the meeting.

[*English*]

**The Chair:** There's been a request for a body break, so I'm sensitive to that. I think we can wrap this up within the next 20 minutes.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** That's fine, but I'm just wondering why there were calls to suspend when we're still on time.

[*English*]

**The Chair:** There's been a request for a body break, Monsieur Savard-Tremblay. Someone needs to go.

[*Translation*]

**Simon-Pierre Savard-Tremblay:** I understand why the interpreters didn't know how to translate that.

[*English*]

**The Chair:** Folks, there are no amendments proposed for clauses 42 to 68. Is there unanimous consent to group them to vote?

**Some hon. members:** Agreed.

**The Chair:** Shall clauses 42 to 68 carry?

(Clauses 42 to 68 agreed to on division)

**The Chair:** We now have a new clause, clause 68.1.

**James Bezan:** I withdraw it.

**The Chair:** CPC-22 is withdrawn.

Shall clause 69 carry?

(Clause 69 agreed to)

**The Chair:** We're down to the short title.

Madame Romanado.

**Sherry Romanado:** Before we get to the short title, I would like to seek unanimous consent from the committee.

We had passed CPC-1 as a first amendment and it was for 90 days. I know that since that first amendment passed, we've asked that the period be 120 days for the other positions.

To keep it consistent throughout the bill, I'd like to seek unanimous consent to reconsider that and amend it to 120 days, if it's the will of the committee to consider that UC motion.

**Some hon. members:** Agreed.

**The Chair:** We have consent.

**Sherry Romanado:** I'd like to move that we change that to 120 days, to be consistent throughout.

**Some hon members:** Agreed.

**Sherry Romanado:** Thank you very much.

**The Chair:** Shall the short title carry?

**An hon. member:** Can you say it out loud?

**The Chair:** Clerk, can you say the short title?

We'll get it for you in a moment.

**The Clerk:** It's the military justice system modernization act.

**James Bezan:** That sounds good.

**The Chair:** Shall it carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the title carry?

**Some hon. members:** Agreed.

**The Chair:** Shall the bill as amended carry?

**Some hon. members:** Agreed.

**An hon. member:** On division.

**The Chair:** Shall the chair report the bill as amended to the House?

**Some hon. members:** Agreed.

**The Chair:** Ms. Romanado, go ahead.

• (1740)

**Sherry Romanado:** I'm sorry, Chair. I was just going to mention to you that the paper was rubbing on the microphone. It's for the interpreters.

**The Chair:** Thank you.

My apologies to the interpreters, who are remote, in fact.

Shall the committee order a reprint of the bill as amended for the use of the House at report stage?

**Some hon. members:** Agreed.

**The Chair:** We're going to have a meeting on Monday. The clerk will get out a notice shortly with respect to what's happening. We have a couple of options that we're trying to proceed with.

I'm asking the committee for agreement to adjourn this meeting.

**An hon. member:** It is so moved.

**The Chair:** The meeting is adjourned.

Thank you, everyone. Thank you to the witnesses.







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