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Chair

The Honourable Maxime Bernier

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•(1105)

[English]

The Vice-Chair (Hon. Bryon Wilfert (Richmond Hill, Lib.)): I call the meeting to order.

Ladies and gentlemen, please take your seats. This is meeting number 20 of the Standing Committee on National Defence. Pursuant to Standing Orders 110 and 111, we are considering the order in council appointment of Bernard Blaise Cathcart to the position of Judge Advocate General of the Canadian Forces, referred to the committee on Wednesday, May 5, 2010.

For your edification, Standing Order 111(2) states that: "The committee, if it should call an appointee or nominee to appear pursuant to section (1) of this Standing Order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated." That's just so you know the parameters we're dealing with.

Colleagues, in the spirit of summer, although we couldn't get a barbecue, all the food is outside. It's a venue that's a little different. I'm a new chairman and I thought I'd try something different.

The chairman apologizes. He is unable to attend, due to his daughter's graduation.

I want to welcome members of the committee. We are pleased to have with us Brigadier-General Bernard Cathcart, Judge Advocate General of the Canadian Forces.

General, you have seven to 10 minutes for whatever you want to say. Then we will go to the official opposition for the first question.

Welcome.

BGen Bernard Blaise Cathcart (Judge Advocate General, Canadian Forces, Department of National Defence): Thank you, Mr. Chairman and members of the committee.

Good morning. I would like to thank the committee for inviting me to appear today. I was appointed as a Judge Advocate General effective April 14, 2010, so it is truly a pleasure to have this opportunity to meet with you so early into my appointment.

As you are aware, pursuant to section 9 of the National Defence Act, the NDA, the Governor in Council may appoint an officer of the Canadian Forces who is a barrister or advocate with at least ten years standing at the bar of a province to be the Judge Advocate General of the Canadian Forces. According to section 9.4 of the NDA, the minimum rank for the Judge Advocate General is brigadier-general.

I am truly pleased and deeply honoured to have been named to the position of Judge Advocate General, an appointment that was the culmination of a competitive selection process involving those who met the statutorily required qualifications I have just described.

I understand that you have all been provided a copy of my biography, so my intention is to briefly identify the role and function of the JAG and then provide you with an overview of my background and experience.

As JAG, I am the legal adviser to the Governor General, the Minister of National Defence, the Department of National Defence, and the Canadian Forces in matters relating to military law. In addition to this, I am statutorily responsible for superintending the administration of military justice in the CF and am required to report annually to the Minister of National Defence on this subject.

This superintendence function, which includes monitoring, reporting, and policy development, helps ensure that the military justice system meets the needs of Canadians, including the men and women of the CF who have volunteered to serve their country.

Military law is not specifically defined in legislation; however, it is evident both from the breadth of authorities to whom the JAG is responsible to provide advice and from the unique role of the office of the JAG since its inception in 1911, that "military law" captures all international and domestic law relating to the Canadian Forces, including its governance, administration, and activities. This includes operational law, which is the domestic and international law applicable to the conduct of CF operations both at home and abroad.

My military career and formal education have provided me with exposure and experience across this broad spectrum of law. I have been a member in good standing of the Nova Scotia Barristers' Society since 1989. Prior to joining the CF, I obtained a Bachelor of Arts with honours from Saint Mary's University in Halifax, a Master of Arts from the University of Ottawa in English Literature, and a Bachelor of Law from Dalhousie Law School.

Later in my career, I attained a Master of Laws, an LL.M., from the London School of Economics in the U.K., where I graduated with distinction from the Master of Laws program in public international law. I was also awarded prizes for top student in the international law program, best dissertation, and for the overall top performance at the final examinations for the LL.M. programs of all the law schools comprising the University of London.

Since joining the CF in 1990, I have served in a number of positions within the Office of the JAG at National Defence headquarters in Ottawa, have been deployed on various operations, and have held a number of positions as a unit and regional legal adviser on bases from coast to coast in Canada. These positions include: Deputy Judge Advocate, Atlantic Region, in Halifax, from 1990 to 1991; Deputy Judge Advocate, Pacific Region, in Victoria, B.C., from 1993 to 1996; and Deputy Judge Advocate, Prairie Region, in Calgary, from 1996 to 1997. In this capacity as a unit and regional legal adviser, I advised daily on all aspects of military law and also fulfilled the role of a prosecutor within the military justice system.

In Ottawa, I advised within the Directorate of Law/Claims from 1991 to 1992 and the Directorate of Law/Human Rights and Information from 1992 to 1993. This was a busy period of time of evolving charter jurisprudence in the human rights area, which had a direct impact on CF personnel policies and practices. I was also the legal adviser to Joint Task Force Two, the Canadian Forces counterterrorism special operations unit from 1997-2000.

I deployed as a legal adviser to the commander of the Canadian contingent, United Nations Protection Force, UNPROFOR, and the United Nations Peace Forces, UNPF, in the former Yugoslavia in 1994 and 1995. I then deployed again as the senior legal adviser to the commander of Canadian Task Force Bosnia-Herzegovina, SFOR, from February to September 2000.

In 2000 I was promoted to lieutenant-colonel and held the position of director of operational law from 2000 until 2003. After the completion of my LL.M. studies, I assumed the duties of director of international law from 2005 until 2006.

After being promoted to the rank of colonel in June 2006, I had the pleasure of serving as the deputy legal adviser and general counsel, military, in the Office of the Legal Advisor to the Department of National Defence and the Canadian Forces. That was from 2006 to 2007. This was a position that permitted me to work very closely with lawyers and colleagues within the Department of Justice.

From 2008 to 2009 I had the pleasure of holding the position of deputy judge advocate general in military justice and administrative law. There, I was responsible for providing DND and CF authorities with legal support in relation to military justice, military administrative law, compensation and benefits, and a number of other military personnel matters.

From 2009 until my appointment as JAG, I served as the deputy judge advocate for operations. In this position, I was responsible for the provision of all military legal advice relating to international and domestic operations.

I have always been very proud to be both a member of the CF and a member of the office of the JAG. I am even prouder today to have been extended the honour and privilege to serve in this capacity as the Judge Advocate General for the Canadian Forces.

As JAG, I exercise command over all legal officers working in the office of the JAG, including those deployed on operations worldwide, whether that be in Afghanistan, on warships, in Africa, or elsewhere around the world. These deployed legal officers work in

difficult and challenging environments, providing advice to Canadian commanders across the full spectrum of military law. I can tell you that they do an excellent job under demanding circumstances.

As of June 1, 2010, there are 158 regular force and 53 reserve force legal officers serving across Canada and abroad. While most of these serve in the office of the JAG, this number also includes legal officers on post-graduate and other academic training, as well as those legal officers serving at the Canadian Forces Military Law Centre in Kingston on exchange.

Permanent legal offices are located in Ottawa at National Defence headquarters and at the four operational command headquarters, at regional assistant judge advocate general offices, and at separate deputy judge advocate offices in Canada, Europe, and the United States.

Mr. Chair, that concludes my opening remarks. Again, it is a true pleasure to be invited here today. I look forward to answering your questions.

•(1110)

The Vice-Chair (Hon. Bryon Wilfert): Thank you very much, Brigadier-General. We appreciate your attendance. We also want to acknowledge the work that you and all of your colleagues do on behalf of the Canadian Forces.

We will go to the first round of seven minutes with Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

Welcome, sir. Your credentials are impressive, and obviously you do a great job for Canadians.

I may have just a couple of questions, because what can one ask a brand new Judge Advocate General about the past?

I'm assuming you're familiar with the question of solicitor-client privilege and parliamentary rights of members of Parliament or Parliament as a whole. I don't know whether you had the opportunity to read the testimony of your predecessor when he came here. When we asked him questions, he raised solicitor-client privilege as essentially a complete shield from answering any questions.

I'm wondering if you have a view as to whether or not your office enjoys solicitor-client privilege or the shield of solicitor-client privilege vis-à-vis Parliament.

•(1115)

BGen Bernard Blaise Cathcart: Thank you, Mr. Chair, for that question.

I am familiar with my predecessor's appearance here. It was a very lively debate, as we all recall. That whole issue obviously is a very challenging one for government lawyers before parliamentary committees. I'm certainly bound by solicitor-client privilege. That obviously comes from my professional responsibilities as a member of the bar—in this case, the Nova Scotia bar association or bar society—and to that extent, when answering questions before any body, including this body and parliamentary committees, I have to be very conscious of that.

I will undertake always to do my very best to answer all questions that I'm able to, but at the end of the day, I hope folks will understand, Mr. Chair in particular, that as a government adviser I am in a difficult and challenging position and I hope that the committee would take cognizance of that when posing questions.

Hon. Ujjal Dosanjh: If one looks at the Speaker's ruling, it's quite clear that the government really has no privilege, can't really hide behind solicitor-client privilege, so if your client has no privilege, how are you bound by solicitor-client privilege?

BGen Bernard Blaise Cathcart: Mr. Chair, this is not the forum in which I would want to debate—

Hon. Ujjal Dosanjh: I'm really asking for my own information, because if you come before us in the next few months on a more important issue where we might have to ask you serious questions, I'm trying to get a sense of where we might go.

BGen Bernard Blaise Cathcart: Understood, Mr. Chair, and it's obviously a very logical approach. It can be a frustrating issue to deal with for all sides.

Having said that, the current state, as you'd indicated, Mr. Chair, is that the privilege issue is with the client, not with me. I don't waive it. Currently, and until the law and/or my directions change, I would be bound in my responses by that privilege. Having said that, I reiterate that I will do my utmost to be able to answer every and all questions put to me.

Hon. Ujjal Dosanjh: Thank you. Because of your impressive credentials, those are the only questions I have. My colleague might want to raise some.

The Vice-Chair (Hon. Bryon Wilfert): Mr. Martin.

Hon. Keith Martin (Esquimalt—Juan de Fuca, Lib.): Thank you, Chair.

General Cathcart, thank you for being here. When you were originally appointed, I read your resumé. It's wonderful to have someone with your history in this position, so thank you very much, and congratulations.

What do you see as your biggest challenges as a JAG?

BGen Bernard Blaise Cathcart: That's a very good question. My biggest challenges are twofold. One is to continue the history and the legacy built before me by my predecessors, by the folks who had come before me, to provide my clients—the minister, the CF, the department—with operationally relevant and timely legal solutions to their legal issues.

The second and most important aspect is the welfare and care of the folks in my command. As you can draw from my comments, we are a small office, the office of the JAG, and if anybody in this room is familiar with our colleagues to the south, they know that they're an extremely large organization militarily. That includes their individual legal shops, so when we compare ourselves in terms of numbers, we pale in comparison, to use a phrase.

However, I use the phrase often and with accuracy that we're a low-density high-demand asset within the Canadian Forces and the Government of Canada, and we punch well above our weight. My folks, who I've worked with as colleagues and now as their leader, continue to do that on a daily basis, so when we're providing that

operationally timely and relevant legal advice, because we do so under very extremely stressful circumstances...

Many of you have just returned from a trip to Afghanistan. We have seven legal advisers deployed to Afghanistan currently, and they're at the right hand of the commander for every decision the commander is making that requires legal advice, and that's not in a comfortable office at 10 o'clock in the morning over a coffee.

Those are extremely demanding circumstances, so when we're providing that advice, whether it's here in Ottawa, which can equally be stressful at times, or across the country, or on deployments, I have to make sure that my people are taken care of and that they're not burned out as well.

Those are my two biggest challenges, Mr. Chair.

The Vice-Chair (Hon. Bryon Wilfert): Mr. Martin, you have about 50 seconds.

Hon. Keith Martin: So what you're saying is that the JAG office is very efficient, which is great to hear.

• (1120)

BGen Bernard Blaise Cathcart: It is.

Hon. Keith Martin: I'm not a lawyer, so forgive me for questions that might seem simple. When there's an allegation that one of our personnel is contravening international humanitarian law, in trying to adjudicate that issue, where do you come in?

BGen Bernard Blaise Cathcart: Again, that's a very good question, Mr. Chair.

There are different avenues in which I may play a role. You used the term "adjudicate". That's a broad term.

Obviously, as command, and command over my folks, I have to make sure that my own folks are properly trained, equipped, and educated to be able to deal with those issues, because they provide legal advice, as I've said many times, which I think is commonplace knowledge now. They provide advice primarily to CF, but to the department as well, so we have a constant process of providing advice in a solicitor-client privilege scenario. During that interaction, whether at the lowest levels or at my high levels in Ottawa, we're always very cognizant about the rule of law, the importance of the rule of law, and ensuring that all CF operations, domestic and international, comply with the rule of law.

So we come in on a daily basis in terms of advice. As a superintendent of the military justice system, I play a superintendent's role, so that if there are cases that end up involving a Canadian Forces member for violations of the law of armed conflict—also known as international humanitarian law—I may play a role. That's largely with the independent prosecution service and defence and judge, but again, if there's a particular aspect that looks like it's going off the rails, to put it in basic terms, I may have to play a public role to intervene at that point.

The Vice-Chair (Hon. Bryon Wilfert): Thank you very much.

Monsieur Bachand, vous disposez de sept minutes pour vos questions.

[Translation]

Mr. Claude Bachand (Saint-Jean, BQ): Thank you, Mr. Chair.

Welcome, Mr. Cathcart.

I want to discuss the issue of solicitor-client privilege. Your predecessor, Mr. Watkin, made it clear that he could not answer some of our questions because he had to protect his client.

Nevertheless, I am trying to find an approach that would allow Parliament to exercise its authority to determine whether the government has been effective and efficient. Unless I am mistaken, it even says in the Constitution that the entire opposition, not just the official opposition, must ensure that the government is administering and spending tax dollars appropriately.

But, sooner or later, we seem to hit a brick wall. I would like to know what kind of agreement we can reach to break through that wall. I will explain.

You said that, as things stand now, you can tell the committee that you cannot answer certain questions. In your opinion, what needs to be different in order to change the way “things stand now”? Would it take an amendment to the National Defence Act, a constitutional amendment, a regulatory amendment? What would compel you to answer the committee's questions today in full?

[English]

BGen Bernard Blaise Cathcart: *Merci, monsieur le président. C'est une bonne question.*

Again, I'm here to speak to my qualifications. Your question invites me to speculate on possibilities of making what are essentially legal changes to the current state of the law.

With respect, Mr. Chair, that's not my role. Even if that were the object of this particular inquiry, which it's not, I could not address that specifically.

There are many complicating factors. There are policy decisions and, more importantly, from my perspective, legal precedents. As you may be familiar with, Mr. Chair, much of this issue of solicitor-client privilege has been dealt with and is constantly dealt with in the courts across Canada, and the Supreme Court of Canada has spoken on it frequently.

I think the most recent significant case, called the Blood Tribe case, clearly outlined that from the court's perspective the existence of the solicitor-client privilege is alive and well both in the private and the public practice of law and that it is something to be truly protected.

Perhaps we can debate the policy reasons behind that in a fair and open way, Mr. Chair, but again, that is not my role today. Frankly, I doubt the government would give me that honour to do that debate in the future either.

The Vice-Chair (Hon. Bryon Wilfert): Mr. Bachand, I read this out at the beginning, and the chair is giving some latitude here. Just to remind members, under Standing Order 111(2), the call for the witness is based on the following: “The committee, if it should call an appointee or nominee to appear pursuant to section (1) of this Standing Order, shall examine the qualifications and competence of the appointee or nominee to perform the duties of the post to which he or she has been appointed or nominated”.

I am allowing some latitude here, but again, the purpose is that the individual in question was appointed and we are here to review or comment on that. You may pursue some angles, obviously, in terms of his role, but again, we don't want to go too far outside the purpose of this invitation.

I won't take that off your time, Mr. Bachand.

• (1125)

[Translation]

Mr. Claude Bachand: Thank you very much. I must admit that out of all the qualifications required to become Judge Advocate General, meeting regularly with the members of a parliamentary committee is, in my opinion, a qualification that also needs to be examined. I do not have much to say about the competencies of the Judge Advocate General. But if there was a conflict between him and the members of Parliament, if he lacked diplomacy, it would raise questions in my mind.

I must reassure you, Mr. Cathcart, that that is not the case so far. I thought it important to ask that question.

Furthermore, you said you had legal officers on duty in overseas contingents. You mentioned that seven legal advisors, I believe, were in Afghanistan. Are those advisors in charge of court martials, for example? Does that take place in the theatre of operations when it is necessary?

[English]

BGen Bernard Blaise Cathcart: That's another very good question, Mr. Chair.

No, the officers who work for the office of the JAG don't control the courts-martial process. They provide advice to the chain of command within the process.

As you're familiar with—and I know the chair is as well—the military justice system has two main components, one called the summary trial system, which largely deals with disciplinary matters and charges before commanding officers and chain of command, and then a more formal court martial, where we have a military judge, defence counsel, and a prosecutor.

My folks advise the chain of command as incidents occur. Either there are charges laid, or charges are contemplated during the investigatory stage and during the process are laid, but once this enters formally into the courts-martial process and it's handed over to the director of military prosecutions, that office is essentially an independent actor and makes its own decisions in terms of whether charges proceed or not.

Likewise for the accused, defence counsel, when they're appointed, could be from our defence counsel services, which are uniformed legal officers. They could also be civilian if they accused so chooses. I don't control it. It's an independent office. I can have aspects of personnel issues, but as far as their decisions and actions vis-à-vis their client, the accused, are concerned, I have no role in terms of providing advice on that. Similarly, of course, the judges are independent.

[*Translation*]

Mr. Claude Bachand: Is there a specific procedure for generals? As you know, General Ménard was accused of accidentally discharging his gun, and the entire investigation was conducted in Canada.

Is that the usual procedure, or is that exclusive to generals? Is there a different procedure for the other soldiers? I would like you to explain that, please.

[*English*]

BGen Bernard Blaise Cathcart: That is again a good question. No, there are not two different systems. In fact, for those who at least follow it in the press, those who actually attended General Menard's court martial at Asticou in Gatineau saw that it was exactly the same process that a private would have gone through if he or she was in the same circumstances.

I think what you're referring to is whether the system is transferrable or deployable. The short answer to that is yes: our system is designed so that we can hold courts martial in theatre. We already hold summary trials in theatre. In fact, currently you may be aware that in the court martial of Captain Semrau, which is ongoing, the court is actually in Afghanistan—if not right now, next week—and they will be interviewing witnesses and looking at various aspects of that case.

[*Translation*]

Mr. Claude Bachand: Mr. Cathcart, why was General Ménard brought back to Canada for the investigation and court martial proceedings? Was there a reason for that?

• (1130)

[*English*]

BGen Bernard Blaise Cathcart: Yes, Mr. Chair. When the court martial is scheduled, the scheduling is done by an officer within the judge's office who is called the court martial administrator. They work with all the players—the judge, the defence counsel, and the prosecutor—to determine when and where a court martial can take place.

My understanding of this was that all those parties were consulted in the process. Of course, what we're trying to achieve is a fair trial, but an expedient and quick one. Especially when you're dealing with a commander, it has to be dealt with swiftly in terms of the individual and the impact on discipline. Because he is at the top of the discipline chain, we have to move quickly.

If there was consideration that the trial could have been done more quickly in theatre...I'm sure that was considered and could have been done; I don't know the reasons. It's not for my questioning at this point, but it wasn't a question of the status of the individual, of him being a general, that the court martial was back in Canada.

The Vice-Chair (Hon. Bryon Wilfert): Thank you very much, General.

We'll now go to Mr. Harris for seven minutes.

Mr. Jack Harris (St. John's East, NDP): Thank you, Chair.

Thank you, General, for your remarks and for your appearance here this morning. I will say as well that your credentials are extremely positive.

I'm also very proud to see that our forces have such capable, experienced, and clearly top-of-the-line people in this type of position. I want to congratulate you on your resumé. I will say, as a fellow graduate of the London School of Economics LL.M. program, that your distinction in receiving these awards that are listed here, not only for LSE, but for all of the University of London students, is indeed a great distinction, and I want to congratulate you on that. The people who were in this program are not your average lawyers, so your distinction there is indeed a mark of your ability.

On that line, I'm impressed by the topic of your dissertation. I wonder if you could make available a copy of it to our committee for our perusal. This is certainly very topical in view of the events of the last couple of years and certainly of the last six months in the House.

I don't want to dwell overly on the issue of solicitor-client privilege, but it has obviously been an issue in this committee this morning and before. I will say that I've researched this issue extensively from a parliamentary privilege point of view in the recent while.

I understand that parliamentary committees would not willy-nilly seek to have solicitor's advice before a committee, and I think the principles that are at work here is that parliamentarians should act with great restraint. I appreciate the diplomacy of your answer to the first rounds of questions.

I take it, though, and assume that at the end of the day you would recognize, after the proper process with the kinds of procedural protections that may be required, the supremacy of parliamentary privilege in these matters, in accordance with the rulings, history, and the place of parliamentarians in our legal system. Would you not?

BGen Bernard Blaise Cathcart: Mr. Chair, yes, of course, I recognize the supremacy of parliament. It's clearly stated in the opening of our constitution. However, to make the analysis from the supremacy of parliament down to the various specific issues at a specific given moment in time, I think there's a causal link that certainly as lawyers we have to analyze and see how far...and what impact that supremacy concept actually has.

Because you know very well, Mr. Chair, that as legal counsel and lawyers who are active members and current members of any bar in Canada, we are bound by that. I'm not sure of a more fundamental precedent or concept within the practice of law than the solicitor-client privilege.

Again, we can debate the policies over many, many years as to why lawmakers and courts have interpreted it that way, but again, given that my role here is largely to talk about my qualifications, that would probably be left for another day.

Mr. Jack Harris: Well, I guess the question is not a simplistic question of Parliament versus a particular obligation that you may have to your client. The issue is the interpretation of parliamentary privilege, which is also part of the law. I guess we can leave it for another day, but I take it that you, as a public servant, would abide by rulings of the Speaker or the chair in dealing with issues of that nature at the end of the day.

• (1135)

BGen Bernard Blaise Cathcart: Mr. Chair, I will abide by the rule of law and all the law that bounds me.

Mr. Jack Harris: That'll do it, because it is a part of the law. That's fine.

Tell me, maybe just as a background for some of us here, you as the Judge Advocate General, do you have...? The judges within the court marshal system, are they lawyers who are not necessarily under your direction, but under your team—the judges, the defence counsel, the prosecutors...?

How do you manage to keep your distance, as it were, from the process of an independent judge in a court martial, an independent office of prosecutors who make decisions about prosecutions and the charges, and on the other side, the defence? You did say that defence counsel is appointed. What role is in the appointment process versus a choice of a soldier who may be subject to a court martial?

Within your bailiwick, how do you manage all of these Chinese walls, if you will, between the judges, the defence counsel, and the prosecution? Can you explain that a little bit?

The Vice-Chair (Hon. Bryon Wilfert): General, you have about a minute and a half to do so.

BGen Bernard Blaise Cathcart: Thank you, Mr. Chair.

Thank you for that question. It's another very good one for me to talk about the military justice system, which I believe is an outstanding and reputable system. One of my goals will be to educate the public much more, because there is not a lot of common knowledge in the Canadian public about the Canadian military justice system, and it is an extremely sound and competent one.

Mr. Chair, in a word, it is certainly a challenge as a super-intendent, because you are playing with independent actors. The Office of the Chief Military Judge is a separate independent unit within the Canadian Forces, and it's led essentially by the chief military judge. Similarly, the director of military prosecutions and the director of defence counsel services are independent actors and their offices are independent actors.

I manage it by trying to have open lines of communication. We have informal and formal meetings. As for my staff, for example, I have a deputy judge advocate general in charge of military justice and administrative law, and they have staff, and regularly, when they're developing policies, when they're looking for ways to improve the system, they do so in consultation with those various independent actors. But at no point are we imposing our will or our desires to have them act in a certain way other than in accordance with the rule of law in a general sense.

It's a two-way consultative process. If they have issues or difficulties, particularly on process, they'll bring it to my folks and we'll address it.

The Vice-Chair (Hon. Bryon Wilfert): Thank you.

Mr. Hawn.

Mr. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair.

Thank you, General, for being with us.

Through you, Mr. Chair, I'd like to talk a little bit about the more specific side of legal advice to operations. Can you comment on the level of on-the-spot legal advice and oversight in the planning process for specific missions, whether it's a bombing mission in the Kosovo campaign or a specific operation in Afghanistan? For example, what level of legal oversight and advice and what kinds of considerations would be injected at that point?

BGen Bernard Blaise Cathcart: Thank you. Again, that is another very good question that allows me to speak to this area that we refer to as operational law.

If I may, I'll give some context for just a moment, because it is important for context to understand that the term "operational law" applies to all the legal issues arising from CF operations, international and domestic. It really started... In fact, when I joined the branch in 1990 as a young lawyer, a captain, I asked operational law when I would get deployed and the answer was pretty much that they didn't do that, that their deployable operation was a posting to Germany, and it was in Lahr at that time.

For those who knew it at the time, it was a demanding job at times, but it was a pretty nice spot to be posted to. Coincidentally, perhaps, in terms of the historical peace, we had incidents, both domestic and not, like the Oka crisis, and then the first Gulf War, which really focused a number of legal issues that perhaps in the past Canadian Forces commanders didn't understand in the same way that they would in a more modern approach. But it certainly required legal advice to be given almost immediately, not from an office sitting in a chair in Ottawa, but on the ground beside the commander.

So it has really been since that point in 1990, when we began to develop the deployment concept of having lawyers deployed with commanders. We usually tried it at the command level, whichever command level that was, whether it was the whole task force, or battle group, or brigade, or even lower levels, and similarly with the air force. If you are targeting, as we did in the Kosovo campaign in 1998, we had lawyers in the targeting process as the target files came through who were providing advice to our Canadian Forces commander and the pilots who did the bombing missions in Kosovo.

Similarly on ships, we send lawyers. We just had a lawyer come back with HMCS *Fredericton* from its deployment off the Horn of Africa, working on counterterrorism and counter-piracy missions. We have a lawyer who advises the commander directly.

In that role, the chain of command over the years has evolved and has understood very much the importance of having that immediacy, that sense of legal advice on the spot, in the moment, rather than trying to reach a place like Ottawa over several time zones.

They have willingly opened up to our folks coming into the operational planning process so that we're not literally at the moment of things like targeting; we're far before that, as the operation is being planned, at all levels, in Ottawa, at operational headquarters out on Star Top Road, and in the field, as in Afghanistan, onboard vessels, or in targeting cells with the air force.

We very much have that immediate legal advice on the spot. From my perspective, it has worked extremely well, and the chain of command has been well served by it.

• (1140)

Mr. Laurie Hawn: This is a subjective question, but have you or your folks in the field found that the operators in the field, whether they be pilots, ops officers on ships, or army platoon-level, company-level commanders, have been receptive to that kind of interaction and advice?

BGen Bernard Blaise Cathcart: Yes, Mr. Chair. Overall, they've been very receptive. Of course, we're not immune... In the Canadian Forces, we're recruited from the same gene pool as the rest of Canada, and we have the usual sense of lawyer jokes and a certain skepticism about lawyers getting involved in issues. But at the end of the day, there is very much an open, welcoming approach by commanders, and they very much, as I've said, across the board appreciate the legal advice that they're able to get, again often under very demanding and trying circumstances.

Mr. Laurie Hawn: Thank you.

And to you, through the chair, you mentioned that we have 158 reg force and 53 reserve force lawyers. It may be an obvious question—and obvious answer—because everybody wants more, but is that enough, given the microscope that is on ops these days at the time and given the political naval-gazing that can follow years later? Is that enough? How are we served there?

BGen Bernard Blaise Cathcart: Mr. Chair, we're well served. Yes, of course, like any organization, you'd always like to have more, because that gives you more capability and more flexibility. Any operator will tell you that. As an operational lawyer, I'll tell you the same thing.

Having said that, as I said, our low-density high-demand group is stepping up to the plate each and every time, in every circumstance. And I'll add, because it wasn't highlighted perhaps enough when I talked about missions at other places, like the Sudan, we have an officer there, and we have officers in the Congo. They are working on what we call “rule of law projects” for the United Nations. So they're actually now in the field in the Congo, working with the Congolese forces to help them develop their military justice system. From that perspective, more bodies allows us to have more flexibility and be more agile in our response, but on a daily basis, we are certainly answering the mail.

Mr. Laurie Hawn: Thank you.

This will be probably a difficult question to answer, and I totally understand that, but we've been talking about parliamentary privilege

and solicitor-client privilege and so on. I'll ask you your view, and you may not be able to answer it, but I'll just say that in my view—and I'm not a lawyer, obviously—I don't think one of the privileges of Parliament is to break the laws of Canada. That's a pretty general statement and you can comment on that or not.

BGen Bernard Blaise Cathcart: Mr. Chair, I'll simply say from my perspective that I don't see or would expect any member of Parliament, or Parliament as an institution, to be breaking any laws. It's often a matter of interpretation and debate. As I've said several times, that's best left for another forum.

The Vice-Chair (Hon. Bryon Wilfert): You have about 30 seconds.

Mr. Laurie Hawn: On forthcoming changes to the military justice system as a result of what we've learned over the last years, whether it's Afghanistan or the application of the charter, and so on, are there any forecast changes of import that you see?

The Vice-Chair (Hon. Bryon Wilfert): Twenty seconds.

• (1145)

BGen Bernard Blaise Cathcart: Mr. Chair, a short answer is yes. We're always evolving. We're always looking for changes, not only to keep pace with changes in the civilian system, which is important, but also within our unique military justice system, because there is a reason to have a separate system of military justice.

So yes, we're always evolving. Whether it's legislative changes, regulatory changes, or policy changes, they're always evolving and taking place.

The Vice-Chair (Hon. Bryon Wilfert): Thank you. I'm relieved, General, to hear that lawyers have a sense of humour. That's the most enlightening thing I've heard today—no offence to the other lawyers in the room.

Before we go to the second round, I just want to point out two things.

Depending on when we finish with this witness, we have a number of options that we can do and we can go in camera with regard to any recommendations. Keep in mind that the government can be guided by recommendations of a standing committee on the appointment of a nominee, but obviously it doesn't have to abide by the committee's recommendations, as advocated by the Speaker in 2005.

I'll also point out to members of the committee that afterwards we will go into committee business as we have a number of items with regard to committee business.

With the second round now, we'll begin with Mr. Braid.

Mr. Peter Braid (Kitchener—Waterloo, CPC): Thank you very much, Mr. Chair.

General, thank you very much for—

The Vice-Chair (Hon. Bryon Wilfert): Excuse me. You have five minutes in this round.

Mr. Peter Braid: Thank you.

Thank you very much, General, for being here this morning, and congratulations on your success through what I'm sure was a very rigorous, competitive process.

If I may, I'll just perhaps start quickly with the issue of solicitor-client privilege as well, as was touched on briefly this morning. Perhaps this question may take you back to your law school days, but could you just briefly describe what solicitor-client privilege is, why it exists, why it's a principle of our legal system, and what it serves to do?

BGen Bernard Blaise Cathcart: Thank you for that question. It will take me back to my law school days, to great days at Dalhousie law school.

Essentially, to put it into perspective, in order to have confidence between clients and solicitors or barristers with regard to seeking legal advice and the ability of the particular solicitor or barrister involved to properly defend their client across a spectrum of issues—civil or criminal issues—in the case of defence counsel for the accused, you need to have what I will call that sacred area. You need to have that zone where the communications between the two are protected from being made public immediately or at least being made public in all but very narrow and controlled circumstances.

Without that, I think, in very basic terms, you'll end up with a chilling effect, whereby clients, whether they're government clients or private clients—and I worked in private practice in Halifax-Dartmouth—will simply not come and seek legal advice. I think that would be a major blow and a major disservice to the rule of law, particularly in Canada, and, I guess perhaps on a lighter note, would quickly dry up the profession of law and the business of making money through legal practice.

Hon. Ujjal Dosanjh: And that's more important.

Voices: Oh, oh!

Mr. Peter Braid: That would be a shame.

Thank you very much, General.

Turning now to the presentation you provided us, you mentioned that part of the responsibilities of your office and of your specific role, sir, is to report annually to the Minister of National Defence on the issue of the administration of military justice. I'm not familiar with that report. Is that report a public report or not?

BGen Bernard Blaise Cathcart: Thank you for the opportunity to talk about the report.

As a new JAG, I have yet to file the report, but I believe there was one filed this week, tabled by our minister. I have a copy here. It's available on the JAG website as well and from other sources. This is the report from 2008-09. We were a bit delayed because we had a challenge in the court-martial system a year and a half ago that we had to deal with, and that caused the delay of this particular report.

But yes, annually, my predecessors and I will continue that process of providing a written report to our minister, the Minister of

National Defence, who will then table that report publicly with Parliament.

Mr. Peter Braid: What are some of the elements of that report, then?

BGen Bernard Blaise Cathcart: The report is largely focused on the military justice system. You'll see an overview of the military justice system for that particular reporting year. It'll include a lot of statistics about the numbers of summary trials and numbers of courts martial. If, in a particular year, specific issues arise—and they always do—in terms of military justice, that will be highlighted in the report. You will also see a quick overview, as I explained in my opening remarks, of the Office of the JAG, how we work, how we function, and where we're deployed in that given year.

• (1150)

Mr. Peter Braid: Good.

Do I have time for one more?

The Vice-Chair (Hon. Bryon Wilfert): You have 50 seconds.

Mr. Peter Braid: General, you've dropped in on us while we are studying the role of the Canadian Forces post-2011, specifically as it relates to the peacekeeping operations or peace operations generally. I note that you have some experience in that area. I threw you a bit of a curveball at the beginning. Perhaps I'll end with one as well.

Could you just provide us with any insight or advice on issues that we should consider as we study the role of Canadian Forces in peace operations post-2011?

BGen Bernard Blaise Cathcart: Thanks again, Mr. Chair, for the question. It's starting to feel like a Toronto Blue Jays game here, but that's okay—they're winning these days. In any event, that's a good question.

I'll give you a short answer. That would be a lovely session, I think, for a future debate, because there's a lot of good, fertile ground on future missions and the types of missions. But certainly from a legal perspective, I think a point to remember is that whether we're engaged in what we call combat operations, as in Afghanistan, or peace enforcement operations, as we did in Bosnia, or more like the traditional peacekeeping mission—and I think the closest one we last did was Eritrea-Ethiopia—you're going to have a number of the same legal challenges and operational challenges. One that the committee is obviously very well aware of is detainees. Use of force is another issue in terms of the international law aspects.

So I would encourage parliamentarians and committees and, ultimately, I guess, Mr. Chair, your researchers to look into those areas, because Canada will continue to be called upon by the world community to go to places where, frankly, the rule of law is broken down, if not broken. As for how we are able to assist not only in terms of a physical combat role or military roles on the ground, but in rebuilding and helping states rebuild, as I said, as we're currently doing in the Congo with the rule of law mission there....

I think the main message would be that it may be a different mission—you may wear a blue beret—but a lot of the legal issues will remain the same.

The Vice-Chair (Hon. Bryon Wilfert): Thank you.

[Translation]

Mr. Bachand, you have five minutes for your questions.

Mr. Claude Bachand: Thank you, Mr. Chair.

Mr. Cathcart, I am not sure whether you followed the discussions regarding the appointments of the Supreme Court of Canada judges and the importance of their knowledge of French. You are appointed by the Governor in Council. I would like to know whether that is a criterion that those who promote you to the position of Judge Advocate General examine.

[English]

BGen Bernard Blaise Cathcart: Thank you, Mr. Chair, for the question.

I honestly don't know what the decision-makers looked at specifically. Certainly as a member of the Canadian Forces, as you folks may be aware, there are requirements for members of the Canadian Forces and, certainly, general officers, to attain what we call a profile in the second language. For general officers, it's a public service test to the CBC level, and that is what I have and had to obtain in order to fulfill all the other qualifications.

As for the depth and nature of that competency, Mr. Chair, I am not aware to what extent the decision-makers looked at that.

[Translation]

Mr. Claude Bachand: One of the arguments put forward by those in favour of the French-knowledge requirement is the notion of French mentality. Those opposed to it argue that a person's competence cannot be assessed based on their knowledge of a language. We, as defence critics for the Bloc Québécois, believe the requirement is important. What is your skill level? I know it is based on an A, B or C system. What is your competency level in French?

[English]

BGen Bernard Blaise Cathcart: Thank you, Mr. Chair. My letters are CBC.

[Translation]

Mr. Claude Bachand: C, B, C.

[English]

Is that high, low, middle, or below?

BGen Bernard Blaise Cathcart: I believe the highest you can get is "exempt", which is EEE. It's the opposite, so A would be the lowest, B is the middle, and C is the highest, next to exemption.

[Translation]

Mr. Claude Bachand: Could we have a conversation where I addressed you in French and you responded in French?

• (1155)

BGen Bernard Blaise Cathcart: Yes, we could, but, to be honest, it is a matter of confidence, especially when it comes to legal matters. As you know, it is extremely difficult, even in one's first language, to understand all the nuances involved in legal arguments and issues. In my case, it is a matter of practising with my colleagues on a daily basis, but, to be honest, the majority of discussions revolve around law, hockey and so forth.

Mr. Claude Bachand: Oh, oh!

BGen Bernard Blaise Cathcart: So a setting such as this gives me another opportunity to practise my French.

Mr. Claude Bachand: Very well.

[English]

Usually when I speak in English, I can say stupidities because I always pretend that it's not my mother tongue, so...bonn

Voices: Oh, oh!

[Translation]

Mr. Claude Bachand: Now I would like to discuss the procedure for grievances. Not only is justice important, both to you and to everyone else, but so is the appearance of justice. You probably advise the chief of staff when the grievance reaches his level, which is the final step in the grievance process.

In your opinion, should the current grievance system within the Canadian Forces undergo changes? It seems odd to me that when a soldier files a grievance against his superior, the first step in the procedure requires him to try to solve the problem with that superior. I have a hard time seeing the justice in that. The appearance of justice seems to be lacking, as well. Do you think that we, the members, should try to amend the National Defence Act to make the grievance process more fair?

[English]

The Vice-Chair (Hon. Bryon Wilfert): General, you have about 30 seconds.

BGen Bernard Blaise Cathcart: Again, that's a very good question, Mr. Chair.

In very short order, of course, I leave it to the wisdom and the discretion of parliamentarians to look at all our systems and the grievance system in particular to determine if the latter actually operates in a fair and equitable fashion or appears to be operating in such a way.

From my perspective, like any system, it's a system that has to be constantly reviewed and updated to keep up with the law and policy changes. But one thing I would ask all parliamentarians to keep focused on when you're thinking about things in the military—not only military justice, but grievances as well—is that there always has to be a balancing.

It can never be exactly the same in all circumstances, as might exist on a civilian side. The chain of command has to be involved. If you take all of the responsibilities from the chain of command, even though it may have looked like an injustice... Because the grievance involves a chain of command, if you take it out of there and give it to outside individuals, the grievance might be settled in a certain way, but you've then eroded significantly, in my opinion, the impact and the role of the chain of command.

The Vice-Chair (Hon. Bryon Wilfert): You're finished...? Okay.

Mr. Boughen.

Mr. Ray Boughen (Palliser, CPC): Thank you, Chair.

General, to you and your staff, we appreciate your being with us this afternoon and taking time out of your busy schedule to share a thought or two with us.

Speaking of sharing, could you share with us what the difference is between military and civilian law? My background is not in law. I know that is the background of some of the members, but it seems to me that there are some differences in there and it would be very nice to hear what they are.

BGen Bernard Blaise Cathcart: Thank you.

How much time would I have for that, Mr. Chair?

The Vice-Chair (Hon. Bryon Wilfert): You have about four minutes.

BGen Bernard Blaise Cathcart: Thank you very much for that question.

Again, as I've said, it's part of my mandate for the next four years to try to assist everybody within and outside the Canadian Forces in better understanding military law and military justice.

The military justice system is a stand-alone system of justice, separate from the civilian system. It's recognized constitutionally, like any justice system. You'll note that the Canadian Charter of Rights and Freedoms highlights that jury trials don't apply to the military justice system. The real heart of it, at the end of the day is about discipline. The CF is different from the civilian population because of that important aspect. Without discipline, you don't really have a functioning, efficient, and agile operational force.

In order to give the tools to the chain of command to maintain discipline, there are many tools, and one of them is a separate system of military justice. Within that military justice system, as has been recognized by the Supreme Court of Canada in a case called *R. v. Généreux*, discipline is the heart of the system.

Therefore, the reason, the rationale, for having a separate system in which you have players who are also members of the military is extremely important. It helps to bring a context to people so they understand the proper context. Not that civilian judges don't understand the law, of course, but do they really understand the context?

As members of this panel who have gone to Afghanistan recently, I'm sure you perhaps saw a different context from your understanding of it just sitting here in Ottawa... It's the same with military justice. You have to understand the rules, the regulations, and the

context in which soldiers, sailors, and air-persons operate to bring that difference to it.

So when you focus on it and you want to look at it, really, the heart of it is discipline. That separates us from the civilian justice system.

• (1200)

Mr. Ray Boughen: I have just one other question, Chair.

How do you balance your workload? You have a very small staff in comparison to the number of people you're dealing with. There are, I'm sure, internal as well as external pressures. How do you manage to get it all done?

BGen Bernard Blaise Cathcart: Thank you for that question, Mr. Chair.

Of course, it's a challenge. Like many folks, you equally are very busy in terms of balancing, and I'm blessed, frankly, with two great support systems.

My people are number one. We have outstanding lawyers, not only regular force lawyers, but reserve force lawyers who are essentially private practitioners and who step up to the plate and provide services. Not only do they provide services in terms of, say, backfilling for regular force lawyers in Canada when they deploy, but we also have reservists who deploy to places like Afghanistan. We currently have a lieutenant-colonel in the reserve deployed to Afghanistan. So we have a number of great people, including my civilian staff. Nationwide, we have about 100 civilian support staff, some of whom are paralegals.

So all of those folks, as I said, answer the bell each and every time they step up to the plate. I do have to watch it, because many of them, frankly, will burn themselves out; they're so dedicated to the cause in supporting the Canadian Forces and the Government of Canada that they will do that.

My second main support system is my lovely spouse. She puts the reality check on my time and space at the end of the day.

The Vice-Chair (Hon. Bryon Wilfert): Thank you.

Now, as we enter the ninth inning, Mr. Dosanjh.

Hon. Ujjal Dosanjh: Well, I thought I might make a contribution as well, as others continue to ask questions.

I want to put this question purely for its logic on the solicitor-client privilege, so that you can get yourself on the record. I'll only ask two questions and this is my second. According to how you describe the solicitor-client privilege, the essence of that is that it is the client's privilege. Therefore, you are able to maintain that privilege if the client is, in the first place, able to assert it legally.

The Speaker's ruling in parliamentary law would tell us that no one in Canada has the capacity and the power, including the government, to assert solicitor-client privilege as a shield before Parliament. Therefore, your privilege, your right to assert that privilege, doesn't arise when you're before Parliament.

I would just like you to comment on that.

BGen Bernard Blaise Cathcart: Thank you, Chair.

Again, there is a lot to debate on that issue, without question. I simply can't engage in that debate at this moment. I am bound by the privilege, the solicitor-client privilege. When I say that, I mean I will honestly do my best to answer every question that parliamentarians or other folks put to me, but if part of that answer requires the invocation of solicitor-client privilege, until I get direction from the client, I have to respect that.

It's not only within my role as a government lawyer, but it's also my role as a member in good standing of a bar association. I have to be concerned. Members of the committee who are members of bar societies and law societies have to know that any breach or perception of a breach of the solicitor-client privilege will be challenged by the bar society.

Hon. Ujjal Dosanjh: Would you say, then, that if you answered the question the way I would like it answered by you, implicit in that answer would be a potential perception of the breach of that privilege on your part if the circumstances ever occurred or arose? Is that why you're hesitant about answering?

• (1205)

BGen Bernard Blaise Cathcart: Of course, Mr. Chair. I have to guard any actual breaches...and the perception, because it's my bar society that will be asking me, "Is this true or is this not true?"

The Vice-Chair (Hon. Bryon Wilfert): Thank you, General.

Ms. Gallant, I believe you have a question.

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

I'm very pleased that you've had a chance to put your statements on the record. Most Canadians have no idea of the complexity and the planning that goes into a military operation. Despite this being some type of fishing trip, your presence here has been very helpful.

My first interaction with a JAG was in Bosnia, in 2001. Every little operation, even getting armaments from hidden caches, had a lawyer from the JAG there to ensure that all the rules of law were followed.

Earlier you described the role of the Office of the JAG: that prior to an actual charge or court martial, the change of command is advised by people in your department, but also that defendants may be represented by defence lawyers from the JAG. What mechanisms are in place to ensure there is no influence by the advisers to the chain of command over the defence attorneys in uniform?

BGen Bernard Blaise Cathcart: Again, thank you for that question.

As I said, the structure of the defence counsel services is such that they are independent. The appointments in terms of the people are made by the minister, not by me. There's constant consultation

between the director, who currently has a rank of lieutenant-colonel, a commander in the navy rank... They often have majors and captains working for them. I leave the consultation process in terms of the skill sets and what training they need with the director. I support it when they need resources and money.

If it came to an issue that I would have to give direction on, such as, say, personnel issues that might affect the people working in DDCCS, defence counsel services, I would have to make that a very public statement so the director could talk about it publicly and, if required, challenge the JAG and his function openly.

I think the Canadian Forces, parliamentarians, and Canadians writ large can be very well assured that there are many mechanisms and processes in place that allow the defence counsel services, and indeed all the players—prosecutors, and importantly, the judges—to act fully independently of my thinking and my decision-making.

Mrs. Cheryl Gallant: Thank you.

Thank you also for explaining why it is more important that the person in the position of judgeship or legal counsel has the best understanding of the law at the forefront as opposed to the linguistic ability. That's really important in other work we're doing here in the House of Commons as well.

What role does the JAG fill, if any, in determining which rules of engagement are to be used in a given operation or mission?

BGen Bernard Blaise Cathcart: Thank you. Again, that's another very good question in the operational law area and my sense is that most Canadians would not understand it. One of the reasons, in fairness, is that a lot of issues surrounding rules of engagement are classified. Specific rules of engagement are classified.

But I can tell you that the process is one in which the rules of engagement are ultimately approved by the Chief of the Defence Staff, so it's always an operational issue to do the rules of engagement. Despite what people may have heard, or television shows, it's not the lawyer who says "this will be the rule of engagement for the mission". We just provide advice.

Again, from the planning process, no matter what type of mission it is, an international mission, a domestic mission in support of law enforcement, as we did recently in Vancouver at Op Podium... By the way, in dealing with that, I'll take the opportunity to remind folks that we had 13 legal officers providing advice, largely on the ground in Vancouver, but back here in Ottawa and with NORAD as well.

So right from the very beginning, it's just like any other aspect of those familiar with what we call the operational planning process: when the chief is tasked with a mission, we immediately start looking at all the legal issues involved, including the rules of engagement. And if you were to go online on the operational side... I haven't checked it this week, but often they have the unclassified part, the front part of what we call our use of force manual, and that lays out the guiding principles and definitions that the Canadian Forces uses for creating rules of engagement in use of force. In that, it describes the rule of engagement creation project or process, which involves operators, intelligence officers, policy officers, all the people you would expect to be involved, including legal advisers, who create the legal framework in which the operators can then say, "We need to use this level of force, so can we use it from a legal perspective, yes or no?"

It's a very detailed process and is one that is followed each and every time rules of engagement are created, for each and every operation.

•(1210)

The Vice-Chair (Hon. Bryon Wilfert): Thank you, Ms. Gallant. Thank you, General.

That concludes the second round. I want to remind members that we have a number of items in camera, so I'm seeking your cooperation. If there are no further questions, I would suggest that we recess.

Mr. Harris?

Mr. Jack Harris: Yes.

You mentioned the distinction between the chain of command discipline action and a court martial. Is that an alternative method? I'm just thinking of General Menard, where we're talking about what might be a fairly regular occurrence, some sort of accidental discharge of a weapon or something like that. I don't know whether one considers that minor or major. Maybe it depends on the circumstances. But the misuse of a firearm may be something fairly common within the military from time to time.

Are there certain types of actions that are dealt with simply by a commanding officer disciplinary hearing and others that go to a court martial? And how is that decision made?

BGen Bernard Blaise Cathcart: Thank you for another good question.

I'll just start by making a quick statement about discipline. As I alluded to earlier, it involves not just the military justice piece, which, as I described, is summary trial and courts martial. It involves other tools, administrative tools like removal from command, for example. So the term "discipline"...I just think it's important for people to understand it doesn't just end itself within the military justice system. It applies to all the tools available to the chain of command.

Regarding the specific question, yes, in terms of the system under the code of service discipline, which is a part of the National Defence Act and lays out the process and the offences to be charged under the code of service discipline, it breaks it down as you break it down through the NDA and through the Queen's Regulations and

Orders to a number of charges that are only triable by summary trial by the chain of command. Those are often considered to be less serious charges.

Then you have a set of charges that are tried only by court martial. Those often would be considered the more serious charges. Then there are some that may appear to be not so serious in terms of the act itself, but depending on the circumstances, the chain of command may feel that the punishment that might be contemplated might be in the level that's higher. In those cases and for other reasons, they offer an election to the accused to go either to summary trial or to court martial.

So once you're into that zone—and there are a number of charges that fall into that category of electable charges—it's by that choice. We've had recent changes to the NDA from the case I mentioned earlier, *R. v. Trépanier*, from the Court Martial Appeal Court, that now make it much clearer that the accused makes the choice in certain circumstances in terms of what offence they made. Or the chain of command may simply say that it is going to be too serious a matter. As you know, members of the chain of command are not legally trained as lawyers and judges, so they don't have the competency, for example, to deal with—nor should they and nor do they want to, frankly—charter arguments. That's left for the courts martial.

Mr. Jack Harris: Thank you very much.

The only other comment I would add on the issue of solicitor-client privilege is that parliamentary privilege is also part of the law of Canada and that I appreciate you're not able to answer that question.

You may in fact need to do some research on that very issue, because it's not a question of violating one law or another. It's a question of finding out what the actual state of the law is, and that parliamentary privilege itself is recognized as part of the law of Canada and that there must be some decision made ultimately. But it's a very new issue that we've only been dealing with in this Parliament in recent months, so we're not all there yet.

BGen Bernard Blaise Cathcart: Thank you, Mr. Chair. I do appreciate that it is the law of Canada, but I also appreciate there are differing views.

There are many laws of Canada, and sometimes there is at least a perception of them conflicting with one another. That's why we have the luxury of debating in a law-making fashion here at Parliament and, of course, we have our court system to help us in clarifying and interpreting the laws as well.

•(1215)

The Vice-Chair (Hon. Bryon Wilfert): Thank you, gentlemen.

Seeing no other questions, I want to thank you and your colleagues for attending today. I want to offer my best wishes. There's no doubt that it's going to be an interesting time for you.

Colleagues, we will recess for three or four minutes and then go in camera.

[Proceedings continue in camera]

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