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## **Standing Committee on National Defence**

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**EVIDENCE**

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**Chair**

**Mr. Stephen Fuhr**



## Standing Committee on National Defence

Tuesday, October 23, 2018

• (1130)

[English]

**The Chair (Mr. Stephen Fuhr (Kelowna—Lake Country, Lib.)):** I call the meeting to order.

Good morning to everyone, and welcome to the defence committee and the committee's first look at Bill C-77, an act to amend the National Defence Act and to make related and consequential amendments to other acts.

Appearing today is the Honourable Harjit Sajjan, Minister of National Defence, and Commodore Bernatchez, Judge Advocate General, Canadian Armed Forces. Thank you very much for appearing.

We have the minister only until the top of the hour, so I want to commence without delay.

Minister, you have the floor.

**Hon. Harjit S. Sajjan (Minister of National Defence):** Thank you, Mr. Chair.

Members of the—

**Mr. James Bezan (Selkirk—Interlake—Eastman, CPC):** I have a point of order, Mr. Chair. We had the minister slated in for an hour. I want to put on the record that the motion in the House to force a vote took away half an hour here. I think it was done on purpose by the department—

**Mr. Mark Gerretsen (Kingston and the Islands, Lib.):** This is not a point of order.

**Mr. James Bezan:** It is, because it is reducing the amount of time we have with the minister. I think the Liberals should have taken that into consideration before they moved that motion so that we could have the opportunity to have the minister for the entire hour, which had been promised to us.

**Mr. Mark Gerretsen:** What's your point?

**Mr. James Bezan:** I hope that the minister—

**The Chair:** We're just exacerbating the time that we do have.

Minister, you have the floor.

**Hon. Harjit S. Sajjan:** Thank you.

Mr. Chair, I can assure you there is no conspiracy here.

Members of the Standing Committee on National Defence, distinguished colleagues, it's great to be here alongside the Judge

Advocate General to discuss Bill C-77 and the important changes we are proposing to the National Defence Act. I look forward to answering your questions at the end of my remarks, as always.

As you know, Bill C-77 proposed a number of changes in the National Defence Act and at the heart of these changes it's about our people, the women and men of the Canadian Armed Forces who make the great sacrifices every single day in service to our great country. This includes the military justice system that ensures that victims receive the support they need and deserve and a system that promotes a culture of leadership, respect and honour.

The Canadian Armed Forces members are held to a high standard of conduct and they're expected to uphold and reflect Canadian values in everything that they do. Whether stationed in Canada or deployed around the world, we ask a lot of them every single day, so we have a responsibility to ensure that the rules that guide their conduct are transparent, equitable and fair. These rules must reflect the current times and must be aligned with the Canadian values and those of the Canada civilian criminal justice system.

Much of what is within Bill C-77 is an extension of work that our government is already doing to ensure that a more victim-centred approach to justice; to build on Bill C-65, our government's legislative against workplace harassment; to strengthen truth and reconciliation with indigenous peoples; and to change military culture through Operation Honour in order to ensure the Canadian Armed Forces is a respectful workplace of choice for every Canadian.

I'd like to take a moment to expand on the importance of Operation Honour. As many of you know in this room, Operation Honour aims to eliminate sexual misconduct in the Canadian Armed Forces. Both I and the chief of defence staff have been very clear that we have a zero tolerance for sexual misconduct of any kind in our Canadian Armed Forces.

Through Operation Honour, we have introduced a new victim response centre, better training for the Canadian Armed Forces personnel, and easier reporting. I would also like to note that the Canadian Armed Forces Provost Marshal recently released the result of a comprehensive review of previously unfounded sexual assault cases. Of the 179 cases examined, 23 cases have been reopened and identified for further investigation, and we commend the Canadian Forces National Investigation Service and the Provost Marshal for their work in ensuring victims are heard.

I would also like to acknowledge the important work of the Sexual Misconduct Response Centre, which recently released its annual report. We thank the SMRC for continuing to support Canadian Armed Forces members affected by sexual misconduct. I am also pleased to note that the SMRC is looking at providing case workers to victims of inappropriate sexual behaviour to ensure they have continuous support from when they first report an incident to when their case concludes.

The work of the SMRC has been exceptional, and I know that the victims are being well supported as a result of their efforts.

I would now like to turn to the legislation at hand and highlight Bill C-77, which will give victims a voice and change our National Defence Act in four important ways.

First, like the civilian criminal justice system, it will enshrine important rights for victims.

Second, it will seek harsher penalties for crimes motivated by bias, prejudice or hate based on gender identity or expression.

Third, it will ensure that the specific circumstances of indigenous offenders are taken into account in the sentencing process.

Fourth, it will reform the manner in which the chain of command administers summary trials.

Bill C-77 proposes the inclusion of the declaration of victims rights in the National Defence Act. This declaration mirrors the Canadian Victims Bill of Rights, which strengthens and guides how we support victims in the civilian criminal justice system.

Specifically, the bill would legislate four new victims' rights within the military justice system. They are: the right to information, the right to protection, the right to participation, and the right to restitution.

In order to ensure victims are able to exercise these rights, they will be entitled to the support of a victim liaison officer, should they request it. These liaison officers will be able to explain how service offences are charged, dealt with, and tried under the Code of Service Discipline.

They liaison officers will help victims access information to which they are entitled, and they will remain available to assist victims throughout their interaction with the military justice system. This ensures victims understand each stage of the process and how they can engage meaningfully throughout. The support they offer will be comprehensive and fair, and it will always be offered in the spirit of preserving victims' dignity.

Bill C-77 also specifically addresses issues of gender-based prejudice and hatred in military service offences and infractions. The bill proposes harsher sentences and sanctions for service offences and infractions motivated by bias, prejudice or hate based on the gender expression of identity. Our women and men in uniform, and those who work and live alongside them, must feel welcomed and respected at all times. The Canadian Armed Forces has zero tolerance for discrimination of any kind. This amendment will better align the military justice system with that principle.

On that note, the defence team has been working hard, through programs like the positive spaces initiative, to help create inclusive work environments for everyone regardless of sexual orientation, gender identity or gender expression. I commend them for their work on this initiative, which provides training to ambassadors in support of the lesbian, gay, bisexual, transgender, queer and two-spirited community members who work with us every day.

The next change I would like to focus on is how we propose updating the military justice system to better reflect the realities of historic injustices inflicted upon indigenous peoples. In the civilian criminal justice system, the Criminal Code mandates that judges must carefully consider circumstances during sentencing. Specifically, for all offenders, they must consider all available sanctions other than imprisonment that are reasonable under the circumstances and consistent with the harm done to victims or to the community. This principle is to be applied with particular attention to the circumstances of indigenous offenders. It is our shared responsibility to repair and renew our relationship with indigenous peoples. As our Prime Minister has said on many occasions, no relationship is more important to our government, and to Canada, than the one we have with indigenous peoples.

By incorporating these considerations into sentencing, this legislation will ensure that our Canadian Armed Forces and our government continue on the right path forward. This is one of the elements that distinguishes Bill C-77 from similar legislation introduced by the previous government in the dying days of the 41st Parliament. I believe this addition strengthens this bill, and I'm proud to have it included here. To that end, I trust that I can count on everyone's support to get this legislation passed in a timely manner.

The last significant area of change brought about by this legislation relates to the summary trial process. The JAG can speak to these changes in greater detail, but I want to quickly address the changes and their effects, as well. To date, minor breaches of military discipline have been handled through summary trials. Our proposed legislation would implement a non-penal, non-criminal summary hearing process to replace the summary trial system. This change would ensure that minor breaches of military discipline are dealt with efficiently, while maintaining the fairness of the overall system.

An example of a service infraction that could be caught up by these changes would be something like being absent without leave, or AWOL for short. It is these types of offences that we are looking to address with this legislation. It also demonstrates trust and confidence in military leaders who can address minor breaches of discipline at their level.

Taken together, these changes proposed through our new legislation are important in modernizing the military justice system and maintaining its responsiveness toward breaches of military discipline.

Our Prime Minister gave me a mandate to establish and maintain a workplace free from harassment and discrimination. Our defence policy—strong, secure, engaged—emphasizes the importance of looking after our women and men in uniform and ensuring that victims are supported through the military justice system. That is why I'm extremely proud to be speaking to Bill C-77 today. Not only will Bill C-77 ensure that our Canadian Armed Forces members are protected by a military justice system that keeps pace with Canadian concepts of justice, but it will make sure victims are supported and heard.

• (1135)

I look forward to the committee providing a full review analysis of this legislation, and I look forward to your questions.

[Translation]

Thank you very much.

[English]

**The Chair:** Thank you, Minister.

I'll just remind everyone in the room that if you have a cellphone or an iPad, it would be appreciated if you turn the ringer off.

To members, if you see this, wind down in 30 seconds or less. I will be very disciplined on passing the floor to the next speaker, because we have limited time.

Go ahead, Mr. Gerretsen.

• (1140)

**Mr. Mark Gerretsen (Kingston and the Islands, Lib.):** Thank you, Mr. Chair, and thank you, Minister, for coming today to appear before the committee to talk about this very significant piece of legislation.

We know that the former Conservative government introduced a similar bill just days before the House rose prior to an election, which I guess was at best just bad timing, as it would have been nearly impossible to get this through the House and the Senate in five or six days.

However, I do note that there are two major differences between that piece of legislation and the one that has been presented to the House and is now before committee. They actually differ on two points. One is the Gladue principle and the other is defender identity and gender expression components.

Can you comment on how these two were introduced? Was it done through the consultative process that you've been undertaking over the last few years? How important do you see these in the piece of legislation?

**Hon. Harjit S. Sajjan:** That's a great question.

We can all agree on the importance of this bill and the importance of moving it through as quickly as possible through our parliamentary process. When we conducted our defence policy review, while having these greater discussions, the JAG branch was also conducting a thorough review on what changes we needed to make.

We needed to make sure that when we're putting forward this legislation, it's in line not only with our government policy and the

direction that we're going with in the criminal justice system but also with our defence policy. These changes do just that.

**Mr. Mark Gerretsen:** Can you talk about the consultation that did occur over the last few years to get us to this point? What consultation was involved in the process? Can you share any of the outcomes or any other specific clauses of the bill that stem from those consultations?

**Hon. Harjit S. Sajjan:** I'll get the JAG to speak to the actual detailed consultations, but when it comes to the defence policy review and looking at the wider aspect, we're going to be looking at the Canadian Armed Forces, which guides how we need to manage almost everything that we do. As you know it was extremely thorough right across the country, and we made sure that we spoke with experts, community leaders and military, and we especially made sure that members of Parliament had the opportunity to weigh in.

Commodore Bernatchez, would you comment?.

**Commodore Geneviève Bernatchez (Judge Advocate General, Canadian Armed Forces, Department of National Defence):** When we are looking at the analysis of the bill and the legal policy considerations that need to come into play, we consult with all of the military justice system actors in order to ensure that the changes that are being proposed will also meet their requirements.

We consult with our colleagues from the Department of Justice, because one of the aims that we're trying to achieve with the military justice system is to ensure that it keeps pace with Canadian law, and that it keeps pace with Canadian values. That cannot be done in isolation. That needs to be done in consultation with all of the legal actors in Canada. Those would have been the consultations that would have occurred.

The other very important piece is consultation with the chain of command itself—actors who use the military justice system on a daily basis—to ensure that the military justice system continues to meet the needs of the Canadian Armed Forces every single day.

**Mr. Mark Gerretsen:** Can you comment on how the bill helps to discourage behaviour that motivated prejudice or hatred based on gender identity or gender expression in the military justice system?

**Hon. Harjit S. Sajjan:** With the changing of the system to a summary hearing process, it allows for a much quicker response. When you have minor infractions or things of discipline that need to be dealt with, it allows the chain of command to be far more responsive. That is very important. It allows the chain of command to deal with disciplinary issues very quickly, and that, in essence, also provides the ability at the lower level to make sure that issues can be dealt with at the early stages rather than letting them become a lot bigger over time.

**Mr. Mark Gerretsen:** Can you comment on how many, or what percentage, of the matters that were before the court prior were those smaller offences or the less significant offences?

**Hon. Harjit S. Sajjan:** I don't know if the JAG has the numbers for that.

Having gone through the system myself as a former CO, a lot of burden was put into it when it was a summary trial, a very legal mechanism. Commanding officers have a qualification for it, but there's no way for anybody to be...unless you're a lawyer.

What this does is put that complexity in the legal system where it needs to be, with the experts, and allows for the discipline piece to be kind of managed.

I don't have the exact numbers, but the point is that this will speed up the process and allow for even the bigger cases to move faster.

JAG, can you add to that?

• (1145)

**Cmdre Geneviève Bernatchez:** Yes, thank you.

I will refer here to the annual report that I am mandated by the National Defence Act to present to the minister on an annual basis and that was tabled in Parliament at the beginning of the month. We have statistics there that indicate 90% of matters that are dealt with by the military justice system are currently dealt with by summary trial. This is the vast, vast majority of it.

Bill C-77 would go to the heart of addressing the ability of the chain of command to maintain an ability to address disciplinary issues at the unit level.

**Mr. Mark Gerretsen:** Do you think going to the chain of command to deal with these less significant offences will be more effective?

**Hon. Harjit S. Sajjan:** Absolutely. This is something that the chain of command was very responsive to, because it's going to allow greater flexibility for commanding officers.

**Mr. Mark Gerretsen:** Thank you, Mr. Chair.

**The Chair:** Thank you.

MP Bezan is next.

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

I want to thank the minister and Madam JAG for being with us today.

Minister, it was just brought to my attention that there was a security forum in Victoria that you weren't able to attend. I haven't heard whether or not you are going to be at the Halifax security forum. Are you going to be able to make that this year?

**Hon. Harjit S. Sajjan:** Yes.

**Mr. James Bezan:** You've been at every one since you've been minister.

**Hon. Harjit S. Sajjan:** Yes, I have.

**Mr. James Bezan:** The 2015 one would have been your first one.

Between November 20 and 22, 2015, in your meeting with Irving, did you have Minister Brison there on the phone, or was he actually —

**Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.):** On a point of order—

**Mr. James Bezan:** This is relevant.

He just answered the question on the security forum, and this is part of the witness testimony that I now want to—

**The Chair:** There's a point of order on the floor.

Mr. Spengemann, you have the floor.

**Mr. Sven Spengemann:** Thank you, Mr. Chair.

I think the committee has invited the minister to testify about Bill C-77. I don't see, at all, how that is relevant to the topic that's at issue here today.

**The Chair:** As the point of order is to relevance in accordance to Bill C-77, an act to amend the National Defence Act and to make related and consequential amendments to other acts, I tend to agree.

The point of order is sustained.

**Mr. James Bezan:** In the testimony of the witness, the minister talked about the Halifax security forum. I want to ask a question about the Halifax security forum. It is on the record.

**The Chair:** I sustain the point of order.

**Mr. James Bezan:** I don't think the minister needs the protection of the chair. He's a veteran, a police officer. I think that he's more than able to answer my question.

**The Chair:** Do you have a relevant question, Mr. Bezan?

**Mr. James Bezan:** I would be interested to find out what happened at the meeting with Irving that was not publicly disclosed.

Let's look at this. According to the most recent report of the Auditor General on the administration of justice in the Canadian Forces, one of the major problems identified in the military justice system was a lack of timely disclosure of evidence for the accused so they could adequately address the charges against them.

Do you agree that it could harm the person's defence if the person is not given adequate disclosure in order to defend their case, yes or no?

**Hon. Harjit S. Sajjan:** I'm going to pass that on to the JAG.

In terms of this Bill C-77 and how important this is to looking after our people, let's remember that your government put this in during the dying days of the last Parliament. I think this is where we need to keep focused as all members of Parliament, and not allow other issues to take away from this very important work. This is about our women and men in the Canadian Forces.

**Mr. James Bezan:** Actually, it was directly linked, Mr. Chair.

Minister, this is directly related to the Auditor General's report from the spring. They were just at committee with Commodore Bernatchez. It was a fairly controversial meeting, because of the timeline and the failure on making sure that the principles of Jordan's decision are upheld within the Canadian Armed Forces. Everyone needs a timely legal process.

Why are we not getting that information to members so they can properly defend themselves before the JAG?

•(1150)

**Hon. Harjit S. Sajjan:** This bill will allow us to be more efficient to make sure that we can actually move cases a lot faster by hitting, as the JAG said, 90% of where the blockages are, making it easier for the chain of command to go through the hearing process.

**Mr. James Bezan:** It does stand to reason, then, that members should be given all information so they can properly defend themselves within any judicial process.

**Hon. Harjit S. Sajjan:** We want to make sure that legal process is followed.

**Mr. James Bezan:** The current Liberal government has chosen not to disclose critical information for the defence team of Vice-Admiral Norman. This failure to disclose critical information.... This is military justice.

**Mr. Mark Gerretsen:** I have a point of order. The normal—

**The Chair:** We don't even have to be talking about this—

**Mr. James Bezan:** You're pausing the time?

**The Chair:** No, we're not pausing the time. You're choosing to continue a line of questioning is not in relation to the order of reference.

**Mr. James Bezan:** [*Inaudible—Editor*]

**The Chair:** That is your choice.

I'm not stopping the clock, and I'd ask you for the second time to stay on track to what is in the order of reference, please, Mr. Bezan.

**Mr. James Bezan:** Okay. What time am I at?

**The Chair:** You have about three and a half minutes.

**Mr. James Bezan:** In 2007, two petty officers working at DND in Ottawa, Sylvia Reid and Janet Sinclair, who held top secret security clearance, were charged with sabotaging a classified military database, charged with conspiracy and mischief. This happened while we were at war with Afghanistan. These were highly unusual charges and very serious charges. These two individuals were accommodated. They were not sent home. They were reassigned to other tasks that did not involve classified materials pending the allegation being adjudicated in court.

Why is their treatment different under military law than what's currently happening in civil court with Vice-Admiral Norman?

**Hon. Harjit S. Sajjan:** What's very important here is that with Bill C-77, we're trying to make sure that we create greater efficiencies with the military justice system so that we can deliver greater justice for the victims, and that they're even better supported. We're trying to make sure that cases actually go through in a much more efficient manner, and that it's in line with the direction of our wider legislation. It's extremely important for us.

I'll just remind all parliamentarians that this is very important legislation that we need to get through. We should take this very seriously by making sure we have the right input from all of you so we can look at any improvements that need to be made.

**Mr. James Bezan:** For a Canadian Armed Forces member to be found guilty under military law, there first has to be an investigation by a member of the military unit, which the Auditor General said is taking far too long. There needs to be an investigator from the

Canadian Forces military police group or the national investigative service. Was there an investigation performed like that for Vice-Admiral Norman's case at all?

**Hon. Harjit S. Sajjan:** I can't discuss this, obviously, because this is before the courts. On any type of case within the military, our military police and national investigative service do phenomenal work on behalf of the Canadian Armed Forces.

**Mr. James Bezan:** Does Bill C-77 change the way an investigation happens under military law for commanding officers?

**Hon. Harjit S. Sajjan:** As you should be well aware, the changes to the system that we're providing take the summary trial system and put the serious offences into the court martial, and change where commanding officers will be dealing with a summary hearing process to deal with minor infractions, which will focus on unit cohesion and discipline.

JAG, do you have anything to add to that?

**Cmdre Geneviève Bernatchez:** No, I don't. Thank you.

**Mr. James Bezan:** Allow me to quote section 71 of the Military Rules of Evidence, specifically the section "Government Privilege on Disclosure". It says, "Except as provided in this Division or in an Act of the Parliament of Canada, there is no official or governmental privilege to withhold relevant evidence from a court martial."

If it's good that evidence should be turned over for a court martial, shouldn't Vice-Admiral Norman, who was—

**Mr. Mark Gerretsen:** I have a point of order.

Mr. Chair, the Norman case is being tried before a civil court. We're here to discuss Bill C-77, which has to do with the military justice system. I would argue this is completely irrelevant.

**Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC):** To that point of order—

**The Chair:** That's sustained. Mr. Bezan has been cautioned twice on this very same issue. He has seven seconds left, and I'm going to be moving over to Mr. Gerretsen.

You have a point of order—

**Mrs. Cheryl Gallant:** That point of order should not take from his time.

**The Chair:** It's a point of order.

**Mrs. Cheryl Gallant:** Mr. Gerretsen said that because this is not a court martial.... In any case, what I would like to know is with Bill C-77, to that point of order, does—

**The Chair:** It's been sustained. We're moving forward. Do you have a new point of order?

•(1155)

**Mrs. Cheryl Gallant:** I'm speaking to his point of order. He said this is different from a court martial. Why would Vice-Admiral Norman not be going through a court martial, which is supposedly more serious, and that is—

**Mr. Mark Gerretsen:** Again, there's absolutely no relevance there, Mr. Chair.

**The Chair:** You have seven seconds left, Mr. Bezan. Would you like to take your seven seconds?

**Mr. James Bezan:** Yes, I would. I would like to move that considering Bill C-77 clarifies that Canadian Armed Forces members are subject to the code of service discipline even while off duty, and considering that Vice-Admiral Norman is a serving member who is believed to have committed a service offence, that the committee call on the government to immediately table all documents relevant to Vice-Admiral Norman's court proceedings, including all relevant cabinet documents, and that the government waive cabinet confidence in order to provide Vice-Admiral Norman with the full disclosure he is seeking to conduct his defence.

That is notice of motion.

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

**Mr. Mark Gerretsen:** If Mr. Bezan is moving that motion, I think it's ironic that at the beginning of this meeting he started off by chastising the Liberal Party for having a motion on the floor of the House to interrupt the time that the minister had with us. Therefore, I would move that we adjourn debate on his motion.

**Mr. James Bezan:** Just to take note, I didn't—

**Mr. Mark Gerretsen:** You moved a motion.

**Mr. James Bezan:** It was to table a notice of motion.

**The Chair:** It was a notice of motion.

Mr. Garrison, you have the floor.

**Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP):** Thank you very much, Mr. Chair.

It's good to see the minister here today. I too was disappointed that he didn't make the Maritime Security Challenges conference in Victoria last week.

Let me say that there are two clear improvements over the previous legislation, and I want to acknowledge both of those. One is recognizing the special circumstances of aboriginal members who served in the forces and may come into conflict with the code of conduct. The second is adding to the section on crimes motivated by hatred, gender identity and expression. I do thank the minister for those two improvements.

It's a little ironic that the minister comes to us and asks for timely passage of the bill when it's taken three years to get here, but I don't want to be churlish, so I'll just set that aside at this point.

We've had a very long process to reform the military justice system. It's taken nearly 20 years to do. It took a bill in the last Parliament, and this bill completes a lot of that, especially when it comes to improving victims within the system. I want to acknowledge that this is a very important part of what the bill does.

There's one piece that I think both bills have missed in the overhaul of the military justice system and adjusting offences and penalties. This is particularly evident to me in light of the new suicide prevention strategy that was introduced a year ago. We still have members of the Canadian Forces dying by suicide at a rate of just over one a month. I appreciate that the chief of defence staff and the minister are both saying that zero is the goal. I acknowledge that.

The Canadian military has tried to remove barriers to getting help for those who are contemplating self-harm. The military ombudsman identified that there are a lot of obstacles to getting even the help that

exists. The families of those who died by suicide have identified one barrier, which is that self-harm remains a disciplinary offence under the military code of conduct.

I will, as I told the minister, be moving an amendment to delete paragraph 98(c), which makes self-harm a disciplinary offence. I've spoken with members of the Canadian military at all levels, and it passes the nod test with them, especially because the disciplinary sanction isn't really used. It's not seen as something effective at this point. The families point out that people are still trained to this code of conduct that identifies a possible disciplinary action as a result of self-harm. What I'm proposing does not remove the section on malingering or exaggerating illness to deliberately avoid service; it would simply remove self-harm as a disciplinary offence.

I asked the minister in the House, and he said he would consider it. I'm going to ask him again today if he will support the amendment to remove self-harm as a disciplinary offence from the military code of conduct.

**Hon. Harjit S. Sajjan:** I appreciate the thoroughness of how you brought this forward. I think it's very important for us in making sure that we look at any potential barrier that will prevent a member from seeking help, especially at their time of need. That's something that we are going to be looking at.

However, at the same time I do need to make sure that I take a look at all aspects when it comes to the reasons that some of these provisions were in there.

I remind members and Canadians that we have a tremendous Canadian Armed Forces, and that the military is also designed to serve at a time of outright conflict. Some of our military justice system is designed on that.

Absolutely, I take your point regarding making sure we remove any barriers, even perceived barriers. This is something we need to have a greater discussion on.

● (1200)

**The Chair:** I'm going to intervene for one second.

You have about three minutes left on the clock. We had an agreement to keep you only to the top of the hour. Minister, if you need to leave now, that's fine, or you could finish with this member for three minutes. I'll leave that to you, sir.

**Hon. Harjit S. Sajjan:** I want to finish with Mr. Garrison.

**Mr. Randall Garrison:** Thank you very much, Mr. Minister.

The concern you raise is precisely why I'm suggesting removing paragraph 98(c), which deals with self-harm, and not tampering with the other two sections, which deal with the things I think you're referring to: in the heat of combat, someone not doing their duty, malingering or exaggerating illness would place others at risk. I acknowledge that.

I believe if you consult the experts on this, the military commanders would still have full powers to sanction those deliberately avoiding service. It simply removes that reference to self-harm as being a disciplinary offence automatically.



**Hon. Harjit S. Sajjan:** If I had the full military advice and we felt this was the direction to go, we would do it right now, but at this time I need to have a much more thoughtful, thorough conversation within the military chain to make sure we go in the right direction and at the same time take into account your careful consideration of this issue.

**Mr. Randall Garrison:** With respect, Mr. Minister, if we don't do this as part of this bill, we risk.... This Parliament will die. This will not be removed legislatively in the foreseeable future. We're talking a three- or four-year delay if it's not part of this bill.

I would ask, Minister, to seek that advice in a timely manner and get back to us as soon as you can so we can consider this as part of this bill.

**Hon. Harjit S. Sajjan:** Thank you.

**Mr. Randall Garrison:** Thank you.

**The Chair:** That takes us past the time. Thank you for staying a few extra minutes.

I'm going to adjourn to see the minister off and to put new witnesses in the chairs so we can continue.

**Hon. Harjit S. Sajjan:** I want to say something for the record. We all know that this important bill is about our looking after our members. I try to take partisan politics out of the things we do. I just ask members, my colleagues here, to take this into account, to not use this as an opportunity to delay something that is very important and that, as you know, was placed at the end of the 41st Parliament. It is in all our interests to make sure we look after our people.

Thank you.

**The Chair:** We're suspended.

•(1200) \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1205)

**The Chair:** Welcome back.

I'd like to acknowledge Colonel Strickey, Deputy Judge Advocate General; and Lieutenant-Colonel Lortie, director of law, military justice and policy. Thank you for joining us.

We'll resume questioning. I'll yield the floor to Mr. Spengemann for a seven-minute question.

**Mr. Sven Spengemann:** Thank you very much.

My thanks to all three of you for your service and for being with us. It's good to have you back, Commodore.

First of all, I want to say that I'm excited about this bill. I think this bill solves some issues and closes some gaps, specifically regarding the fundamental premise that the Canadian Forces should be an employer of choice for all Canadians.

I am wondering what your thoughts are on this bill being ultimately used at the recruitment stage to engage young Canadians who are considering the armed forces, especially with military law not being something that's very visible or well known. With some fundamental support and provisions, especially on victims' rights, do you see this as being a door-opener, if you will, at the recruitment phase for Canadians to consider the armed forces as a safe

workspace in the sense that everybody is included and is being treated equally before military justice?

**Cmdre Geneviève Bernatchez:** I think it's been said, and it needs to be reinforced, that any inappropriate sexual behaviour is something that is not acceptable in the Canadian Armed Forces or in any military.

There are a variety of tools that we're currently using to eradicate such behaviour. Operation Honour is one of them, and it brings to bear the action of the chain of command, the Sexual Misconduct Response Centre, and the strategic response team regarding sexual misconduct.

Another of the tools being put at the disposition of the chain of command is the military justice system and what it does to ensure that such conduct is appropriately addressed.

With this bill, we are now keeping pace with the rest of society. This bill would provide us with an opportunity to give victims of inappropriate sexual behaviour the type of support that they want and that they deserve within the military justice system.

I think that needs to be communicated, not only internally in the Canadian Armed Forces, but also outside to all Canadians. What we are doing today is very much a part of that process: We're talking publicly about the system and what it does, not only for the Canadian Armed Forces but also in meeting the expectations of Canadian society as a whole.

•(1210)

**Mr. Sven Spengemann:** And how it connects with Canadian values as well.

**Cmdre Geneviève Bernatchez:** Absolutely.

**Mr. Sven Spengemann:** Thank you very much for that.

The minister, in his opening remarks, stated that the bill seeks harsher penalties for crimes motivated by bias, prejudice or hate, based on gender identity or expression. To the extent that you are able to ascertain and maybe even put some numbers on it, prior to this bill's having been introduced, how much of a problem were those kinds of crimes—bias, prejudice or hate—either leading to full offences or even below that threshold as misconduct incidents?

**Cmdre Geneviève Bernatchez:** I will pass this on to one of my two expert colleagues. I do not believe that we have specific data on how many of these offences have been dealt with within the military justice system.

What that section of the bill would do, however, is align the military justice system with the rest of the civil and criminal justice systems, and it's a reflection of section 718.2 of the Criminal Code of Canada.

**Mr. Sven Spengemann:** Thank you.

**Colonel Stephen Strickey (Colonel, Deputy Judge Advocate General, Military Justice, Department of National Defence):** To add to what the Judge Advocate General has mentioned, the aggravating factors do mirror section 718.2 of the Criminal Code.

I would add as well that traditionally we have done research in the JAG annual reports on breaking down various offences, so as the JAG alluded to, we're not clear if this has had a significant effect. Those are certainly things we will look at now that the provision is in place.

As a little bit of history on the provision, I can tell you that the addition of sexual expression as an aggravating factor in section 718.2 was part of Bill C-16, which, at that point, did not take into account Bill C-77. What this does in effect is, as the JAG mentioned, mirror section 718.2 to track the current language in Bill C-16.

**Mr. Sven Spengemann:** Thank you very much. That's helpful.

**Cmdre Geneviève Bernatchez:** If I may add, I think this is very much in keeping, from a legal policy perspective, with our efforts to ensure that we have a force that is free of these types of behaviours, one that is based on honour, honesty and integrity, so this is very much aligned with the military ethos as well.

**Mr. Sven Spengemann:** Are you in a position to comment on where Bill C-77 places us with respect to our trusted coalition partners when we go overseas and do peace operations, for example—the U.K., France, the United States? How do their legal frameworks compare to ours? What does Bill C-77 accomplish with respect to how we stand up with our allies on these issues?

**Col Stephen Strickey:** Thank you for that question.

If I could draw a spectrum across our western allies, with the U.S. at one end and France at the other, we and Australia are somewhere in the middle. The United States has maintained the commanding officer in such a way that they can convene courts martial and things like that. They very much remain an actor in terms of processing courts martial for more serious offences.

That being said, with the changes in 1999 that Bill C-25 brought forth, essentially taking the commanding officer out of the court martial system, we have maintained that type of independence. Through a series of European Court of Human Rights judgments in the 1990s, the UK has sought to further civilianize their system.

To answer your question, the summary hearing system in Bill C-77 would roughly mirror what they call non-judicial punishment in the United States, where the commanding officer can mete out very minor punishments for very minor offences. The U.K. has a similar system, as do the Australians.

• (1215)

**Mr. Sven Spengemann:** Thank you very much.

Thank you, Mr. Chair.

**The Chair:** We'll go to five-minute questions now.

The first one will go to MP Fisher.

**Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.):** Thank you very much, Mr. Chair. Thank you so much for being here for this very important bill.

The Auditor General's spring report recommended that the Government of Canada ensure that cases move expeditiously through the military justice system. How will Bill C-77 specifically ensure that this actually happens?

**Cmdre Geneviève Bernatchez:** Thank you.

First, I would like to inform the committee that the Department of National Defence completely accepted and agreed with all of the OAG findings and recommendations, and developed a sound management action plan that is currently being implemented. It is not something that we're looking at over the horizon, item-by-item. We're already doing a lot about this.

As you noted, one of the issues raised by the Auditor General was ensuring that matters proceed in a timely manner within the military justice system.

Bill C-77, by introducing summary hearings and leaving minor disciplinary breaches at the unit disciplinary level, would ensure that only more serious issues are retained at the court martial level. We anticipate that keeping minor disciplinary matters at the unit level and serious ones for court martial would de-clog and streamline the system, cutting delays in a very significant fashion.

**Mr. Darren Fisher:** Thank you.

Bill C-77 has an indigenous sentencing provision to ensure extenuating circumstances are considered during sentencing and, more specifically, incarceration. Does this provision address the systemic racism and discrimination often found in criminal justice systems? Can you elaborate on why this specific provision will ensure fairness for indigenous CAF members?

**Cmdre Geneviève Bernatchez:** Sentencing considerations as they pertain to indigenous people are very much in keeping with current practice, which has been implemented for years by courts martial. By enshrining these considerations in statute, the current practice of the court martial is very much guided by the 1999 decision in Gladue, from the Supreme Court of Canada. It gives formal recognition to the importance of ensuring that specific considerations pertaining to indigenous people are taken at the sentencing stage.

As with any offender, judges will have to consider the mitigating, aggravating factors that go into sentencing. In the case of indigenous offenders, they will have to take into consideration their specific circumstances.

**Mr. Darren Fisher:** For those of us around the table who have not served in the military, can you explain to us how service offences differ from offences committed outside the service? What's the greater impact?

**Cmdre Geneviève Bernatchez:** To put it bluntly, Canadians have an expectation that they will have a very disciplined force. This is at the heart of democracy. It is a force that can be controlled because it is a force that may be called upon to use up to lethal force in order to achieve governmental objectives. The military justice system ensures that there's a disciplined force and that these higher expectations on serving members can be effectively implemented. It ensures the discipline and the operational efficiency of that force, and also the morale, because a functioning force needs to be cohesive and needs to have high morale.

**Mr. Darren Fisher:** Thank you, Mr. Chair.

**The Chair:** MP Martel is next.

[Translation]

**Mr. Richard Martel (Chicoutimi—Le Fjord, CPC):** Thank you, Mr. Chair.

I thank the witnesses for being here today.

In the Canadian Armed Forces and in most of the armed forces of the western world, there is this concept of feigning disease or injury in order to escape one's duty.

Could you tell the committee how many members of the military were convicted under section 98 of the National Defence Act since the Second World War?

• (1220)

**Cmdre Geneviève Bernatchez:** The information I have does not go back to the Second World War, but to January 2000. We noted that four charges were referred to court martial under section 98 of the National Defence Act. However, those four accusations were withdrawn when the court martial proceeded.

As for summary trials, 13 charges were laid under section 98. Nine of those people were convicted. In three other cases, procedures were simply stayed. As for the last case, it did not go any further. So, that is a rather small number of cases since 2000.

As for the other statistics, we would have to see what it is possible to obtain.

**Mr. Richard Martel:** Could you possibly tell me how many of these accused persons had mental health issues?

**Cmdre Geneviève Bernatchez:** I don't have that information.

**Mr. Richard Martel:** If a military person has a recognized mental health problem before committing an offence under section 98, do the Canadian Armed Forces have the discretionary power to forego laying charges, and to instead direct the person toward the appropriate service so that they may be treated? Do you know how often that happens?

**Cmdre Geneviève Bernatchez:** I want to repeat to the committee, as Honourable Minister Sajjan said, that the issue of mental health is very important to the Canadian Armed Forces. For several years now, we have been particularly sensitive and aware of this.

The topic of section 98, paragraph (c) of the National Defence Act particularly, is indeed the intention of causing harm to oneself or feigning injury in order to escape service, as you indicated. To our mind, obviously an individual who suffers from mental health issues does not intend to escape the forces. It's a disease. It's just like having an injury to an arm or leg. It is a recognized illness that is diagnosed by military physicians or by physicians who are called upon for a diagnosis.

To answer your question, I would say that the prosecutor has discretionary power when deciding whether the charges will proceed. The chain of command also has discretionary power. An intelligent analysis must be made to determine an individual's particular circumstances. We have to make sure that all of the elements required for that offence are present.

**Mr. Richard Martel:** Would the Judge Advocate General of the Canadian Armed Forces accept changes to section 98 that would protect the ability of the Canadian Armed Forces to manage cases of malingering, while protecting members suffering from real mental health issues?

**Cmdre Geneviève Bernatchez:** In my capacity as legal counsel to the minister and the National Defence Department, as well as to

the Canadian Armed Forces, I heard the exchanges that took place during the past hour. We will certainly support the committee when it does the necessary analysis before making decisions.

**Mr. Richard Martel:** Thank you very much.

[*English*]

**The Chair:** Thank you.

Go ahead, MP Dzerowicz.

**Ms. Julie Dzerowicz (Davenport, Lib.):** Thank you so much, Mr. Chair.

Thank you so much for being here. I'm glad that we finally have Bill C-77 on the table.

I was very much impacted—and I'm sure many across this country were—by the Deschamps report that talked about the rampant sexual abuse within the Canadian Armed Forces. I know that we have Operation Honour in place. I know that we have Bill C-65. I know that this bill will also be part of helping to address some of the findings in that report.

Could you outline to me how Bill C-77 will help female victims of sexual assault? What improvements in here actually help female victims of sexual assault?

• (1225)

**Cmdre Geneviève Bernatchez:** Obviously, the bill aims at introducing victims' rights within the military justice system, victims being men, women or members of different sexual identification. This bill would provide victims with a right to information: a right to be informed of every single step of the process, a right to be informed about the general information, the status of the investigation, and about the offender as well while in or released from a service prison. There would be a right to protection, so the security and privacy of the victims would be considered by the military authorities.

There would be reasonable necessary measures put in place to protect from intimidation and retaliation. There would also be identity protection and testimonial aids, on request, at courts martial. The victims would have a right to participation, so it would be formally enshrined in legislation that they would be able to convey their views regarding the decisions that are made. They would have the right to present victim impact statements at courts martial. Finally, there would be a right to restitution.

**Ms. Julie Dzerowicz:** I know we talked about consultation and who was consulted in creating this bill. As part of this process, did we actually consult with those who are former victims of sexual assault?

**Col Stephen Strickey:** Certainly, as you are well aware, Bill C-71 was introduced into Parliament as a previous iteration.

**Ms. Julie Dzerowicz:** Did we consult with former female victims of sexual assault within the Canadian Armed Forces? Did we consult this time around? Did they look at the bill and say, "yes", or at the draft aspects of it and say whether or not they were comfortable, whether it needed to be strengthened, and what they did or didn't like?

Have we actually gone to those victims and consulted with them?

**Cmdre Geneviève Bernatchez:** I'm not able to answer whether we have specifically consulted about the disposition of the bill. However, I can say that the director of military prosecutions has already in place a lot of these practices that we're currently looking at in the bill that would be enshrined in this legislation. The director of military prosecutions has been very much engaged with victims groups to explain the different processes and seek their views on how they could be improved and on what they agreed or disagreed with, so that has occurred. However, with regard to how it pertains specifically to the bill, we benefited from the overall consultation that the Canadian criminal justice system benefited from when it enshrined a victims bill of rights in Canadian legislation.

**Ms. Julie Dzerowicz:** Is there a time limit to bring a case forward? For example, if a sexual assault happened 10 or 20 or 30 years ago, is that something that could be brought forward under this current bill? Is there a time limit around that?

**Col Stephen Strickey:** There's no statute of limitations, if you will, currently enshrined in the law, in the National Defence Act, in any case, other than for some matters that are proceeded with before summary trial. I think, ma'am, in particular your question dealt with sexual assault offences, and as it stands currently, the state of the law post-1999 is such that there is no limitation period vis-à-vis serious service offences.

**Ms. Julie Dzerowicz:** How long do I have?

**The Chair:** You don't have any time left.

**Ms. Julie Dzerowicz:** Thank you so much.

**The Chair:** Go ahead, MP Gallant.

**Mrs. Cheryl Gallant:** It has been reported that due to the Beaudry decision, 42 courts martial are being affected. What number of the 42 are related to sexual assault?

**Cmdre Geneviève Bernatchez:** I don't have this information at my fingertips. I would have to get back to the committee with that information.

**Mrs. Cheryl Gallant:** Do you know whether or not any of the victims in these cases have been advised that the charges have been dropped?

• (1230)

**Cmdre Geneviève Bernatchez:** I do know that there are sexual assault cases that are impacted by the situation. The director of military prosecutions takes very seriously ensuring that victims' interests are taken into consideration. He has kept an open line of communication with the victims.

The charges are not dropped. I want to make sure that this is on the record and understood. At this time what is happening is that we are not proceeding. The director of military prosecutions is not proceeding with these charges. The ones that were before the court martial have been adjourned until such time as we get an indication from the Supreme Court of Canada as to whether it will grant the application for the stay of the decision of Beaudry.

**Mrs. Cheryl Gallant:** If charges have been dropped even though the perpetrator has admitted that he sexually assaulted—in fact, raped—the victim, and she was subsequently told the charges are going to be dropped, it's not in relation to the Beaudry decision?

**Cmdre Geneviève Bernatchez:** I'm not sure I understand the question and I apologize for that, but what I want to make clear is that as a result of the decision of the Court Martial Appeal Court of Canada in Beaudry, charges have not been dropped. At this point the matters are still before the court martial but have been adjourned until we have a better understanding of the decision of the Supreme Court of Canada.

**Mrs. Cheryl Gallant:** In cases in which charges are dropped and then brought to civilian court, will the victims be penalized in any way? Will their careers be affected if they do indeed take the charges that have been dropped by the military, even though the perpetrator of the crime admitted that he did it, to a civilian court? Will the victim be penalized in any way career-wise should she decide to take it to a civilian court?

**Cmdre Geneviève Bernatchez:** I'm sorry if I don't understand the question, but no charges have been dropped.

**Mrs. Cheryl Gallant:** Is there any chance the delays caused by appealing the Beaudry decision could make any of the 42 cases violate the Jordan decision for timely access to trials?

**Cmdre Geneviève Bernatchez:** For sure this is something that the director of military prosecutions has in mind. There's an 18-month time period that is afforded for a case to proceed. As we're monitoring the situation, the director of military prosecutions has already started to engage in a dialogue with his colleagues involved in civilian prosecution to see what the alternatives and the options will be moving forward.

**Mrs. Cheryl Gallant:** If the charges are dropped in a military court with Bill C-77, is there the option for the victim to take them to civilian court, or once it has been tried in a military court or not tried, is it not able to go forth to civilian court?

**Cmdre Geneviève Bernatchez:** To answer the question, once a charge is laid in front of the military justice system, it needs to proceed within that system. Whether charges are laid in the military justice system or civilian court is a matter that is being discussed with the victims and with the prosecutor on file, because we have the best interests of the victim at heart. We of course balance those interests with the accused's rights.

It's so hypothetical at this point that I feel very uneasy providing an answer on that, because we still don't know what the Supreme Court of Canada will say.

**Mrs. Cheryl Gallant:** Does Bill C-77 encompass the ramifications of the Jordan decision?

**Cmdre Geneviève Bernatchez:** Bill C-77 does not specifically address the Jordan decision because it is a matter of law in Canada that there is an 18-month time period that is afforded for a matter to proceed.

**Mrs. Cheryl Gallant:** Okay. Which—

**The Chair:** That's time.

[Translation]

I now give the floor to Mr. Robillard.

**Mr. Yves Robillard (Marc-Aurèle-Fortin, Lib.):** Thank you, Mr. Chair.

Welcome, witnesses.

How does the Judge Advocate General work with the Sexual Misconduct Resource Centre to ensure that victims are supported?

**Cmdre Geneviève Bernatchez:** Thank you very much for the question.

Dr. Preston and myself have collaborated very closely since my appointment to harmonize the services provided by her centre and those provided by the military justice system.

As to the support given to victims by the Canadian Armed Forces, the military justice system is...

• (1235)

[English]

**The Chair:** Excuse me. Please hold it there for a second. We have an interpretation problem.

Please continue, Commodore.

[Translation]

**Cmdre Geneviève Bernatchez:** To summarize, there is a great deal of collaboration between the Sexual Misconduct Resource Centre and the office of the Judge Advocate General.

Regarding services for victims, we also must reflect on the nature of those services and the whole range of services that can be provided to victims. We have to see whether it is well-founded to provide legal representation to the victims during the proceedings they face, which are just as difficult in the military justice system as in the civilian one. We also wonder whether process or mechanisms derived from reparatory justice or other systems could be incorporated into the military justice system.

Dr. Preston's team and myself are in constant contact to improve the situation and ensure that the services provided to the victims make up a coherent whole.

**Mr. Yves Robillard:** We know that the military justice system can be hard to understand. In what way will the designation of a liaison officer, as set out in Bill C-77 to help victims navigate the military justice system, help to guarantee that those victims' rights will be respected?

**Cmdre Geneviève Bernatchez:** I think that the whole military justice system can be very intimidating to a victim, not only because of the legal formalism, but also because of the procedures themselves. People who are not familiar with it will probably not be comfortable. The liaison officer will thus ensure that the victim understands all of the ins and outs of the military justice system, as well as the different steps to be followed; he will ensure that the person receives the necessary support all through this process.

I'd like to add that the Sexual Misconduct Resource Centre also stated in its annual report that it would soon be putting in place case managers to support every victim, not only in the context of military justice proceedings, but as long as the person's file is open. Case managers will be there from the time when the victim experiences sexual misconduct that must be disclosed, right up to the resolution.

The liaison officers and case managers will thus co-operate and complement each other.

**Mr. Yves Robillard:** How will Bill C-77 improve the speed and fairness of the summary trial system for minor infractions to military

discipline? Will this have an impact on the delays mentioned by the Auditor General in his spring report?

**Cmdre Geneviève Bernatchez:** Bill C-77 is attempting to put in place a summary proceeding system where the units would maintain their responsibility for settling the most minor breaches to the Code of Service Discipline. This means arriving late for work or not wearing an appropriate uniform, for example; the list of these infractions has not yet been drawn up. As these infractions would be handled by unit commanders or their delegated officers, the procedure would be simplified. Only the most serious cases would be referred to court martial, which would simplify the process and reduce delays. This would be a direct response to one of the concerns of the Auditor General.

**Mr. Yves Robillard:** Thank you very much.

[English]

**The Chair:** Thank you.

MP Garrison is next.

**Mr. Randall Garrison:** Thank you, Mr. Chair.

Given that we have limited time today, I want to make one remark on your testimony, on the section considering the circumstances of indigenous people. It is that I had some questions and concerns, but your testimony has already reassured me on those grounds.

I want to return to section 98 and ask two different things.

Given that Bill C-77 is about reforming the justice system, that changes some infractions and adds some penalties. Would you think that removing proposed paragraph 98(c) would be within the general purposes of this bill? In other words, would it fit in this bill in reforming military justice, or not?

• (1240)

**Cmdre Geneviève Bernatchez:** You will be hearing from a lot of expert witnesses throughout the analysis of this bill. I think it is for this committee to arrive at a determination of the legal policies that should be taken into consideration.

For sure, a bill like C-77 presents an opportunity to address Parliament's preoccupation and considerations to ensure that the military justice system remains on pace with Canadian laws and values.

**Mr. Randall Garrison:** Thank you very much.

There are three paragraphs in section 98. There's paragraph 98(a), which says simply "every person who malingers or feigns or produces disease or infirmity", and then it goes on to paragraph (b), making that an offence; paragraph 98(b) talks about aggravating or avoiding cures. Only paragraph 98(c) talks about willful self-harm.

Maybe you can't answer it today; it may be you're giving us advice. What I see and what families see is that singling out willful self-harm becomes a barrier to treatment. The aim of this legislation is to prevent avoidance of service, and that would be covered under paragraph (a) "...malingering, feigning, or producing disease or infirmity". In other words, there's still adequate power there for commanders if someone is deliberately avoiding service. Taking out self-harm simply removes that perceived barrier to treatment. It wouldn't leave a legal gap.

I wonder if you have an opinion on that at this point.

**Cmdre Geneviève Bernatchez:** My Deputy Judge Advocate General for military justice may want to add a few things.

We have a paucity of information right now as to the past usage of section 98 and whether it affected those who clearly suffered from mental illnesses and prevented them from seeking appropriate treatment. We would have to look at this for sure.

**Col Stephen Strickey:** Just to add very briefly to what the JAG mentioned, as you know, sir, having looked at the provision, it is a specific-intent provision. Legally speaking, the bar of paragraph 98 (c) would be somewhat higher than that found in paragraphs (a) and (b).

That's from a legal perspective.

However as the JAG and the minister mentioned, if the JAG asks her experts to look at this section—and I'm sure she will—we'll certainly do so in consultation with our other subject matter experts to get back to this committee as soon as we can.

**Mr. Randall Garrison:** Thanks very much.

On the question of evidence, what I heard from families of members who died by suicide is that they clearly believed this section was a barrier. In particular, a family in my riding whose son twice attempted suicide believed he did not seek help because of this section, believing that he would automatically disqualify himself from service if he admitted to self-harm or an intention to self-harm.

Quite apart from the legal intent—and I understand what you're saying by creating a high bar—this may have been put in there for positive reasons. In the anecdotal evidence I'm hearing, the effect it seems to be having is exactly the opposite. In the perception of members of the forces, it creates a lower bar—that if they do confess to having these kinds of thoughts, they will automatically be sanctioned. That's what families are telling me they hear is the barrier. People don't want to seek any help because of this section.

**The Chair:** I'm going to have to leave that with the member and end the formal questioning, as per our agreed upon time.

We do have time on the clock, though. At least two members indicated they wanted to question.

I'll give Mr. Bezan the floor for five minutes, and then Mr. Spengemann. There will still be a little time left, so if someone wants more time, get my attention, please.

Go ahead, Mr. Bezan.

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

Commodore Bernatchez, in your comments back and forth with Mr. Martel, you mentioned that you were going to provide information on how many people have been charged under section 98. Could you also provide greater clarification, if it's possible, of how many were under paragraphs 98(a), 98(b) and 98(c)—malingering, feigning and so forth—just so we have that picture? Also, it would be useful for the committee if you could give us information on paragraph 98(c), as to whether or not those individuals were offered treatment for mental health challenges they may have been dealing with.

We talked a little bit about the impact of Beaudry, and I did ask you this question yesterday with regard to the Auditor General's report. It was a very critical analysis of how military justice has been carried out. Under Jordan, justice delayed is justice denied. Now that we are, as Ms. Gallant said, sitting in limbo until we find out what we're doing with Beaudry, my concern is with how we are going to determine whether or not the principles of Jordan are being respected under military justice.

I thought you gave a good explanation yesterday about how Bill C-77 will help streamline processes and reduce the backlog that has caused problems during the time frame that the Auditor General did his analysis.

•(1245)

**Cmdre Geneviève Bernatchez:** What I want to repeat here, as I said yesterday, is that I've given my personal commitment to see through the implementation of the management action plan, because it is extraordinarily important for me that the military justice system remain a system that is not only in fact legitimate, in fact answering the requirements of the Canadian Armed Forces, but is also seen as extremely important.

Regarding how Bill C-77 would address the issue of timeliness and the issue of delays, what I want to say again is that keeping at the unit level the minor disciplinary breaches removes the penal, criminal consequences that are currently attached to the summary trial process, which triggers a series of rights for the accused in accordance with Canadian law and with the Canadian charter in order for the summary trial to be the legally sound system that it is. To simplify the process, we remove the penal and criminal consequences from these types of infractions. We ensure that there is no criminal record associated with them. They are simple, basic disciplinary issues addressed at the unit level.

What does that mean? It means that we do not have to offer the right to election to the accused person. It means that we can streamline the process and decide at the outset that it will be one forum or the other. As a result, it cuts the time that it takes for a matter to get resolved, so we answer directly the Auditor General's preoccupation about the overall timeliness of the military justice system.

If it gets addressed by a summary hearing quickly or goes to court martial to start with, you remove all the delays that are associated with election, referral of charges from one level to the other, review of charges by legal officers and the legal advice that needs to be provided in that process. You remove the time taken for that, streamline the process and reduce delays.

**Mr. James Bezan:** Is there any potential criticism around the summary hearing that could possibly border on whether it has fairness in it for the accused?

**Cmdre Geneviève Bernatchez:** It is a system that has been thoughtfully and carefully analyzed in order to ensure that it complies with all of an accused's rights. It would remove the penal and the criminal consequences and ensure that presiding officers continue to receive the appropriate training for determining that there are limits of procedural fairness and that it requires going in with a view that the person in front of you is innocent until proven otherwise on a balance of probability. All these procedural safeguards will remain there for that specific process.

• (1250)

**Mr. James Bezan:** Would—

**The Chair:** You're well over, Mr. Bezan.

Go ahead, MP Spengemann.

**Mr. Sven Spengemann:** Thank you, Mr. Chair.

All of my questions have been touched on. In fact, witnesses, on the first one, Mr. Bezan just engaged with you. I wanted to follow up for the perception of the committee and of Canadians.

When you push disciplinary dispute resolution to the unit level, there is a risk that there are different cultures of discipline emerging across units and branches of the armed forces. In your last answer, you commented on the fact that there are procedural safeguards that would prevent that.

Can I just zoom in a bit more and ask you what potential for discretion there is in the treatment of offences that from the systems perspective may be considered to be minor, but from the perspective of the person involved may not be so minor—especially if it's repeat offences—to prevent the disparate cultures of discipline within the armed forces?

**Col Stephen Strickey:** Certainly the bill is designed to.... As some of the members may recall, Chief Justice Dickson, when he reviewed the military justice system, stated that the commanding officer is “at the heart of...discipline”. Certainly, the *esprit*—the spirit, if you will—of the summary hearing system is that the commanding officer indeed remains that.

Of course, with any new system there will be training given and regulations drafted through our Queen's Regulations and Orders that will outline specific details relating to the summary hearing system. Much like the current summary trial system, there is a back-and-forth in terms of the legal officers who provide advice to the commanding officers. That could in fact be the case with the summary hearing system.

When the JAG testified yesterday before the public accounts committee, she gave the analogy to the summary hearing system as the RCMP disciplinary system or a disciplinary system within the public service. I think that is a very good analogy to reinforce to this committee—that in fact the summary hearing process will very much look like that, with the particularities that we require to maintain good order, discipline and morale in the Canadian Armed Forces.

**Mr. Sven Spengemann:** I think that's very helpful to the committee. Thank you for that.

Commodore, you mentioned the sexual misconduct resource centre in an exchange with, I believe, my colleague Monsieur

Robillard. For the benefit of the committee, could you elaborate on what that unit is all about, how it's structured and how it operates?

**Cmdre Geneviève Bernatchez:** I would feel a lot more comfortable if you were to have Dr. Preston testify before committee. She explains it so much better than I do.

**Mr. Sven Spengemann:** We will take note of that. Maybe there will be a chance to circle back to her. Thank you.

Finally, Mr. Chair, I wanted to ask a question on the importance of restitution under the current military justice system and as it's transformed by Bill C-77. When does restitution come into play, how significant is it to a victim to be able to ask for restitution, and under what circumstances would restitution even be a factor?

**Col Stephen Strickey:** With Bill C-77, as the JAG alluded to earlier in her testimony, certainly one of the rights that will be given in the declaration of victims rights is restitution, in which the court will and must consider a restitution order and as well have that restitution ordered as a civil court judgment if not paid. Certainly it is one of the four primary rights given in the declaration of victims rights, which mirrors, of course, the Canadian Victims Bill of Rights in the civilian system. It certainly emphasizes the points that these quasi-constitutional rights are important to victims.

**Mr. Sven Spengemann:** Do we have some numbers on past incidents? Is it correct, first of all, to assume that under the previous system there was no ability to ask for restitution?

**Col Stephen Strickey:** Not at all, and I'll pass that along to my colleague Lieutenant-Colonel Lortie.

**Lieutenant-Colonel Geneviève Lortie (Director of Law, Military Justice, Policy, Department of National Defence):** Thank you.

I want to highlight that this right is already in force in the National Defence Act. It's something that was brought into force on September 1, 2018, as part of the Strengthening Military Justice in the Defence of Canada Act, which was known before as Bill C-15. Bill C-77 is adding provisions to that. It's giving more bones to it, but the right is already there in the act and can be used by courts martial.

**Mr. Sven Spengemann:** Would you be able to provide to the committee the number of restitution orders generated by the military justice system over the last three years, let's say, to give the committee an appreciation of how significant a mechanism this is?

• (1255)

**Col Stephen Strickey:** Yes, absolutely.

**Mr. Sven Spengemann:** Thank you.

Mr. Chair, that's all I have. Thank you.

**The Chair:** I'd to thank all three of you for appearing today on this very important matter of Bill C-77.

To summarize, I believe there was an undertaking from you to provide the committee with some information under section 98 and then the information on the number of restitution orders, as cited by my colleague. We would appreciate that in a timely fashion, as this is our highest priority and we are aiming to get this back no later than the 30th of November. Of course, we will need time to see this information, so time is of the essence.

I would like to thank the three of you for your service to Canada.

**Mr. Randall Garrison:** I have a point of order.

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

**Mr. Randall Garrison:** I believe that in another meeting we discussed that the committee may finish its deliberations on evidence by November 22. Perhaps we'd like to advise the witnesses that this is our timetable to allow us time to deal with the bill.

**The Chair:** That's fair enough. More specifically, it's the 22nd, and as soon as possible would be greatly appreciated so that we can consider it and work on any recommendations we may have for the Government of Canada.

The meeting is adjourned.

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