HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on National Defence

NDDN • NUMBER 114 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, November 1, 2018

Chair

Mr. Stephen Fuhr

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● (1130)

[*English*]

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

Good morning, everyone. Welcome to the defence committee. My apologies for being a little bit late. We had votes and they went the usual 15 minutes for a stand-up vote, and then we had to travel over here. I appreciate your patience with us.

We welcome your comments on our review of Bill C-77.

Today we have with us Ms. Haddadi, from the Barreau du Quebec, secretariat of the order and legal affairs. We also have with us Mr. Lévesque, president, criminal law committee. As individuals, we have Sheila Fynes and Lieutenant-Colonel (Retired) Jean-Guy Perron.

Thank you all for coming.

Before I begin, I would like to acknowledge and formally recognize the death of Corporal Langridge, thank him for his service and acknowledge your grief.

I'm going to turn the floor over to Ms. Haddadi for opening remarks.

[*Translation*]

Ms. Siham Haddadi (Lawyer, Secretariat of the Order and Legal Affairs, Barreau du Québec): Mr. Chair and members of the committee, first, we would like to thank you for inviting us here this morning to discuss Bill C-77. We are very pleased to be here.

My name is Siham Haddadi, and I am a lawyer with the Barreau du Québec. I am also the secretary of its Criminal Law Committee. I am here with M^{e} Pascal Lévesque, who is president of the Criminal Law Committee.

The Barreau du Québec's mission as a professional association is to protect the public and the rule of law. The protection of victims and the principles of procedural fairness are part of the Barreau's mission.

Given the time allotted to us this morning, we'll get right into the topic at hand.

First of all, we would like to say that the Barreau du Québec supports this legislative initiative, Bill C-77. In our view, this reform was needed to ensure that victims rights and Canadian values are respected. This bill was necessary to ensure that what are deemed minor infractions are handled as efficiently and fairly as possible.

However, we feel that some aspects of the bill are problematic and that it is important for us to point them out to you this morning.

Now I'll turn the floor over to M^{e} Lévesque, who will continue our testimony. Thank you.

Mr. Pascal Lévesque (President, Criminal Law Committee, Barreau du Québec): First of all, we welcome the fact that the Canadian Charter of Rights and Freedoms is being integrated into the act. The charter grants a right to information, protection, participation and restitution. However, the Barreau du Québec questions the scope of a victim's right to information in the context of paragraph (b) of the new section 71.04 introduced by the bill. Does this mean that the victim would have a right to personal information concerning the offender?

We are also in favour of creating the role of the victim's liaison officer, but we feel it might perhaps be desirable to require that the officer have a minimum level of training and the professional skills to occupy that position.

We also note and welcome the fact that new powers would be granted to military judges to facilitate the testimony of victims and witnesses. Victims may fear reprisals or pressures. These powers will therefore help ensure their safety. However, we wonder why the regime of protections and rights conferred on victims is limited to military offences and does not include service infractions. In our view, the act should protect victims from one type of offence and an infraction.

The second major feature of this bill is the paradigm shift with regard to the summary procedure. We note the will of Parliament to move away from a criminal justice system toward something resembling a system of disciplinary law. We are in favour of this initiative, which is designed to reduce military stigmatization and to make the trial process more efficient and fair, but we would remind you that this paradigm shift should not come at the cost of reducing the rights of military members.

By eliminating detention, the bill removes from a commander's sentencing options the authority to impose a sentence of detention of up to 30 days at a military detention facility. It seems desirable, at first glance, that military personnel should be less exposed to penal consequences, but the fact remains that serious questions arise over the effects of this removal.

With the detention option ruled out, it could be more difficult to address the types of misconduct committed in a theatre of operations. It is a more complicated proposition to conduct a court martial outside Canada. Would it not be more useful, in certain circumstances, to provide for detention, which would definitely be a harsher sentence, but one of shorter duration, in situations in which quick action is required? In our view, the problem is not detention, but rather its usefulness. The real challenge is to guarantee that the fundamental rights of military personnel are respected when they are faced with it.

Another effect of this reform of the summary procedure is a lowering of the evidentiary standard of beyond a reasonable doubt to that of a preponderance of probabilities. This seems consistent with the desire to depenalize the process. Despite this change in the burden of proof, however, military members still be exposed to serious consequences such as demotion and suspension of allowances and pay. This last sanction can have a significant financial impact on a service member.

If Parliament decided to abandon the burden of proof beyond a reasonable doubt, the path we feel should be favoured, there could be a compromise suggestion, along the lines of disciplinary law. To this meet the burden of proof, the evidence would have to be clear and convincing, and thus somewhere between "beyond a reasonable doubt" and a "preponderance of probabilities". We nevertheless prefer proof "beyond a reasonable doubt" for as long as service members are exposed to penal consequences. I'll come back to this later.

Now I'm going to discuss undefined expressions. The expressions "service infractions" and "minor sanctions" are not defined in the bill, but they will be in future regulations. This aspect raises concerns since we think there must be greater transparency and assurances that the bill's provisions are, from the outset, consistent with the Canadian Charter of Rights and Freedoms. Moreover, the spectre of what a minor sanction may be looms large.

Consider, for example, confinement to quarters or to ship, a penalty that can amount to deprivation of liberty similar to a conditional sentence as provided for under section 742.1 of the Criminal Code. In our opinion, minor sanctions must be defined in the act, and confinement to quarters or to ship must be considered as a serious sanction eliciting protections.

Now I will discuss procedural protections for service members. We repeat that it is necessary to provide better protection for service members, despite the removal of certain penal attributes of the military justice system's summary procedure. The reform neglects to provide certain procedural fairness protections, even as it moves closer to an administrative disciplinary law model applicable to professional associations.

The bill doesn't alter the fact that it's the commanders who determine whether service personnel have committed infractions and who impose sanctions, if need be. We understand that, by removing certain penal aspects from the present system, the bill makes the requirement of an independent decision-maker, within the meaning of paragraph 11(d) of the Canadian Charter of Rights and Freedoms, less necessary. The fact remains, however, that, when you compare this regime to the disciplinary regime applicable to police officers of the Sûreté du Québec or the Royal Canadian Mounted Police, military decision-makers are less independent. In our view, offsetting measures should be adopted to ensure that commanders perform their duties as impartially as possible.

There is another situation that we consider problematic, and that is the removal of the option to elect a court martial. We feel that, to the extent service members are still exposed to serious consequences for infractions that remain to be defined, it is desirable that this option be retained.

The bill is also silent on the representation of service members facing infraction allegations. For the moment, only lawyers of the Director of Defence Counsel Services are authorized to provide legal counsel and legal information—that's the term used in the regulations—but that information must be general in nature and pertain to the issues involved in the accused's summary trial, and counsel providing that information must distinguish between a court-martial and a summary trial. That does not seem to include the option of providing comprehensive legal advice or representing the accused. We find this problematic, since, by comparison, RCMP and Sûreté du Québec officers receive either real legal assistance or full representation.

We recommend that the legal services offered to service personnel be expanded to include at least an offer of full legal advice, at no cost, in preparation for trial and that they be given the option of electing a court martial.

The bill is also silent on the possibility of recording hearings and on the way decision-makers must provide reasons for their decisions. In our view, summary hearings must be recorded where possible, and, out of a concern for transparency, fairness and accountability, decisions should be accompanied by written reasons.

The bill provides that the decision or sanction imposed by a summary authority may be reviewed automatically or at the request of the person concerned in accordance with regulations made by the Governor in Council. In the circumstances, we wonder whether the review upon request or the automatic review under the present regime will be continued. Will decisions from summary hearings and review authorities be excluded from the field of application of the military grievance procedure because they are made in accordance with the code of discipline? In our view, once again having regard to the penal consequences to which service members are exposed, provision should be made for a right of appeal from summary hearing decisions. This appeal could be made following the review process and be possible only where the service member has suffered a penal consequence.

In short, having regard to the various points mentioned that we find problematic in this reform of the summary procedure, we think it may be better to defer it in order to give all necessary consideration to the protection of service members' rights.

Lastly, several amendments are designed to harmonize military and civilian justice, such as the addition, in clause 16 of the bill, of the option for a victim to seek an order to abstain from communicating him or her. We are very much in favour of this amendment, which will enable military judges to provide more effectively for victims's safety. However, we question the use of the term "victim", which we find restrictive. In our view, the term should be "person", as is the case in the Criminal Code.

● (1135)

In addition, the bill contains significant amendments pertaining to sentences. In particular, it requires that special attention be paid to the situation of aboriginal offenders at sentencing. Provision is made for sentences to be served intermittently. The bill also provides for the possibility of ordering suspension of a sentence and, lastly, the option of directing an absolute discharge.

Although the Barreau du Québec is in favour of these significant amendments, it questions, first, the reason why Parliament has limited the option of directing an intermittent sentence for periods of imprisonment or detention of up to 14 days, whereas this type of order can be made under the Criminal Code for sentences of up to 90 days. Second, we question the reason why a suspension may be directed only where incarceration or detention is required, the opposite of what is required under the Criminal Code. Lastly, we welcome the power of a military judge to direct absolute discharges, but we wonder why this power has not been extended to include conditional discharges.

In closing, the Barreau du Québec has noted the change in the essential sentencing objective, which is no longer to contribute "to respect for the law and the maintenance of a just, peaceful and safe society", but merely to the maintain discipline, efficiency and morale of the Canadian Forces. The Barreau du Québec feels that the previous wording was more consistent with the dual nature of military justice, which is both similar to a system of civil justice and unique.

That completes the review of the major issues that the Barreau du Québec wanted to address with you, Mr. Chair and members of the committee, as part of this consultation on Bill C-77. More detailed explanations of the various issues that we have just presented are provided in a brief that may be found on the Barreau du Québec's website, in French only, although you will have a bilingual copy as of November 16.

We hope our presentation has contributed to your study of this matter. We are now available to answer your questions.

Thank you.

● (1140)

[*English*]

The Chair: Thank you very much.

Ms. Fynes.

Ms. Sheila Fynes (As an Individual): Good morning, Mr. Chairman and committee members. I begin by thanking you for this opportunity to address the proposed revisions to the National Defence Act, specifically paragraph 98(c).

My son, Corporal Stuart Langridge, was a recce soldier who, following deployments to Bosnia and Afghanistan, took his own life at CFB Edmonton in 2008. He was a son, a brother, a grandson and above all, someone who loved the military. He was posthumously awarded the Sacrifice Medal and his death attributed to service to Canada.

Since then, given the growing awareness of suicides of service members and veterans, our military has made great advances in recognizing the reality of operational stress injury and post-traumatic stress disorder. The chain of command has implemented programs aimed at mitigating suicides through training and messaging that medical help and support is available. There is a desired culture change from formerly held stigmatizations our servicemen and women endured.

We are part of an informal military fraternity and have heard the old mantras of, “Suck it up, buttercup”, or “We don't get PTSD; we give it”, but thankfully, they are no longer deemed appropriate. When Stu was struggling and seeking help, he commented unhappily that he too had become one of those losers. A proud solider, he felt ostracized and humiliated.

Past understandings of operational stress injury victims justified formal and informal punishments as appropriate responses. Perhaps the most tragic example of that was when, a century ago, the blunt exercise of discipline resulted in the execution of 23 Canadian soldiers. They have all since been pardoned posthumously on moral grounds, because of a realization that they too may have been suffering with OSIs.

In that context, it is disturbing that even today, under paragraph 98 (c), a service member could face life imprisonment for an attempted suicide. It would be more appropriate to consider self-harm under such circumstances as being symptomatic of a serious and urgent mental health concern, and signalling the need for appropriate and immediate medical intervention. I would also note that if a forces member reaches a state of dysphoria where suicide presents as their best option, then the threat of some future discipline holds little deterrence and becomes utterly moot if they succeed.

More specifically, I believe punishment of a service member who may be suffering with OSI or other brain injury is potentially de facto abuse of a subordinate, which is contrary to the spirit of the code of service discipline. Such exercise of discipline becomes especially abhorrent if used to punish for an injury that has resulted from service to Canada.

Having said that, I clearly understand that you need to weigh that proper discipline is essential in our armed forces and provides a vital tool in guaranteeing cohesion and adherence to high standards. I would ask, however, that you please measure twice and cut once, to ensure that the results of your efforts do not provide an unintended consequence.

If attempted suicide is considered a form of punishable errant conduct, then the underlying message to victims of debilitating operational stress injuries is not that they should seek help, but rather to continue in attempting self-management to avoid legal jeopardy. It is contrary to the very programs now addressing the problems of OSI and suicide. For someone suffering with a stress injury to be punished instead of helped is like throwing a drowning man an anchor.

In the civilian world, there is no comparable legal sanction for attempted suicide, and provincial laws instead allow for emergency medical treatment. It is a mental health issue, not a crime. In our home province of British Columbia, workers' compensation has already accepted some cases of post-traumatic stress disorder as workplace injuries, and the resulting suicides have been adjudicated as fully compensable.

In the military too, I believe we should also start from a place of acceptance of an injury as bona fide until and unless there is evidence to the contrary. Any threat of being subject to prescribed discipline will deter the early seeking of medical help and will harm not only the member, but by extension, negatively impact operational readiness.

● (1145)

Our son Stuart struggled for a year under medical care before succumbing to his injury. At the time of his death, he had been removed from a psychiatric hospital where he sought help and was being subjected to ordered restrictions akin to defaulters discipline. We feel strongly that this quasi-discipline was a factor in his death. He was humiliated and without hope when he wrote in his farewell note that he needed to end the pain.

My husband I are now part of this informal military fraternity, and I can honestly say that of all the servicemen and women we have met, many who have injuries, I know of none who truly wants to die. They are proud of their service, and most would like to step up and continue to serve their country again.

Our sincere hope is that some good will come from Stuart's death and that positive changes regarding the treatment of victims of OSIs will form a part of his legacy. At this time, the provisions of paragraph 98(c) have become ill-suited to how Canadian patriots should be treated.

This is not a matter of politics. We are not motivated in a partisan way but view this problem as one with real casualties and fallen. The ripple effect that occurs when a member takes his own life extends beyond those immediately involved and to the larger community.

Despite the different political affiliations, I truly believe that everyone in this room wants to be part of the solution regarding the issue of suicide in the armed forces. This should be an easy issue for you to consider. It is inconceivable to me—and I think to you—that threatening a code of service offence and the possibility of life imprisonment will help ease the epidemic of suicide in the forces.

There is no benefit to leaving paragraph 98(c) in the National Defence Act, nor is there a downside to removing it. In my heart, I believe it is morally responsible. Each of us must do everything within our power to ensure that not one more person dies. Each of our men and women must feel valued and worthy of our attention in this matter. Our injured troops have earned our support, not our disdain. They are not simply disposable military assets. If the deletion of paragraph 98(c) saves even one life, your actions will be worth it.

Thank you for your efforts to effect positive change and to enhance our military.

The Chair: Thank you for those important words.

Mr. Perron.

[*Translation*]

Lieutenant-Colonel (Retired) Jean-Guy Perron (As an Individual): Good afternoon. My name is Jean-Guy Perron, and I am a retired lieutenant-colonel.

I enlisted in 1978 and graduated from the Collège militaire royal de Saint-Jean. From 1983 to 1990, at the start of my career, I was an infantry officer with the Royal 22nd Regiment and the 1st Battalion of the Canadian Airborne Regiment.

I studied law at the University of Ottawa. From 1995 to 2006, I was a military lawyer with the Office of the Judge Advocate General. I commanded the Canadian Forces National Counter-Intelligence Unit from 2004 to 2006, I was appointed as a military judge by the Governor in Council in 2006, and I was released from the Canadian Forces in 2014.

I was deployed to Bosnia, Rwanda and Uganda and travelled to Afghanistan on several occasions, in particular, to preside at the court martial of Captain Semrau.

● (1150)

[*English*]

I wish to focus my comments on summary hearings and the related provisions of Bill C-77. I will start with a comparison of Bill C-71 with Bill C-77.

Bill C-71 uses the term ”disciplinary infraction” instead of “service infraction”. Both are created by regulations and are not an offence under the NDA or the Criminal Records Act. Under Bill C-71, a disciplinary infraction can only be tried by a summary trial. Under Bill C-77, a service infraction may only be dealt with by a summary hearing. The sanctions found in Bill C-71 are identical to those found in Bill C-77.

As for the principles and objectives of sentencing found in Bill C-71, they too are practically identical to those in Bill C-77. A summary trial under Bill C-71 is a service tribunal that deals with disciplinary infractions and not service offences. It offers the accused practically all of the protections of criminal law. A summary hearing under Bill C-77 is, in effect, identical to the summary trial in Bill C-71, except for one critical element. Everything will be defined in regulations. A hearing under Bill C-77 is not described. If one follows what we now have in chapter 108 of the QR and O, which describes the procedure for a summary trial, one should expect that the future chapter 108 of the QR and O would be quite similar for a summary hearing. If that is the case, a finding in a summary hearing is made on a balance of probabilities, instead of beyond a reasonable doubt, as what is in Bill C-71 and presently for a summary trial.

The objectives and principles of sentencing in Bill C-77 are practically identical to the purposes and principles of sentencing presently used by service tribunals and the purposes and principles of sentencing found in the Criminal Code. However, Bill C-77 mentions minor sanctions that may be imposed at summary hearings but does not define them. Would minor sanctions be identical or quite similar to the minor punishments that exist today? It would be most probably so.

The punishments of confinement to barracks and extra work in drill would raise concerns. Commanding officers can confine a person to barracks for up to 21 days. The rules relating to confinement to barracks could constrain the liberty of movement and action of a defaulter. A defaulter cannot go beyond the geographic limits prescribed by the commanding officer in standing orders. This deprivation of liberty can be very strict and would be similar to a conditional sentence of imprisonment: house arrest.

A person subject to confinement to barracks could be ordered to stay within unit lines during the complete period of the punishment. This means a person with a spouse or a family could be forced to live apart from them for the punishment period. A person undergoing a sentence of house arrest still lives with his or her spouse and family. This is a significant difference. Strict confinement to ship or barracks conditions could be very restrictive on the person's liberty and could equate to detention.

Under Bill C-77, the accused is liable to be sentenced to have more severe punishment based on a lower threshold of conviction. A summary hearing under Bill C-77 offers less protections to the accused than what was present in Bill C-71 and what is actually present in the summary trial process.

I'll now turn to the role of the commanding officer. “The commanding officer is at the heart of the entire system of discipline”, so stated Justice Dickson in his 1997 report. Currently, the National Defence Act and the QR and O reflect this key role. A review of the JAG annual reports from fiscal years 2008-09 to 2017-18, 10 years, provides very useful information to help one understand the current military justice system. Data indicates that COs presided over 16% of summary trials, delegated officers over 80% and superior commanders over 4%. This distribution is probably similar today, but the JAG ceased providing these statistics after 2010. This is unfortunate, because it does offer a clear picture of how discipline is enforced within units. It does appear that the great majority of summary trials are presided over by the officer closest to the accused and who possesses the least severe powers of punishment.

Bill C-77, just as Bill C-71 did, radically transforms this concept. Bill C-77 gives more powers of punishment to the superior commander than it does to the CO. This brings into question whether the CO is still the most important actor in disciplinary matters within his or her unit.

Next, on the need to change the military justice system, why does the chain of command need new service infractions and a new disciplinary system to ensure the proper administration of discipline within a unit? Over the 10-year period, approximately 70% of the summary trials occurred without the accused being offered the election of a court martial. Over that same 10-year period, the five minor offences and disobedience of a lawful command represented 94% of the charges tried by summary trial.

The punishments, in order of those awarded the most often, are a fine, 59%; confinement to barracks, 24%; extra work and drills, 6%; a reprimand, 4%; and detention, approximately 2%. Based on these statistics, why is there a need to create new disciplinary infractions and a new disciplinary process to assist the CO in enforcing discipline within his or her unit?

With regard to decriminalizing disciplinary infractions, a person found guilty of any of the service offences listed at section 249.27 of the National Defence Act and sentenced to a punishment of imprisonment, dismissal from Her Majesty's service, detention, reduction in rank, forfeiture of seniority, or a fine exceeding one month of basic pay will have a criminal record. The service offences found at section 249.27 include the five minor offences—insubordinate behaviour, quarrels and disturbances, absence without leave, drunkenness, and conduct prejudicial to good order and discipline.

Section 83 of the National Defence Act, disobedience of a lawful command, is not included in section 249.27. A person found guilty of a purely military offence—for example, disobedience of a lawful command, insubordinate behaviour, absence without leave, drunkenness, or conduct prejudicial to good order and discipline—may have a criminal record.

● (1155)

The consequences of having a criminal record are significant. Applying for employment or attempting to cross the Canadian border are but two of the everyday consequences that can have an important impact on a veteran's life. Do we truly wish to burden a veteran with a criminal record, when he or she has committed a service offence, which may have no equivalent in our criminal justice system or in Canadian society? The answer to this question is not found in section 249.27 or the creation of service infractions.

One should examine the nature of the service offence to determine whether the offender should suffer the consequences of a criminal record. One should examine not only the punishment or the service tribunal that tried the offence.

A thorough and comprehensive review of the Canadian military justice system is definitely required. Any discussion on the subject of discipline and military justice must start with a basic understanding of the uniqueness of the Canadian Armed Forces and its specific role in Canadian society. Canada maintains a military force whose primary purpose is to ultimately use deadly force to execute the government's directives.

This armed force must be well led, well trained and disciplined. Military justice is but one facet of discipline. It is actually the means of last resort, when all other aspects of discipline have failed. The military justice system is not synonymous with military discipline.

Any major reform to the military justice system must be discussed in a public forum. A parliamentary committee could listen to Canadians, academics, lawyers and members of the Canadian Armed Forces. It would have the independence and necessary resources for the thorough review and creation of a modern system of military justice that will effectively balance the needs of discipline with the rights protected by the Canadian Charter of Rights and Freedoms.

Thank you.

● (1200)

The Chair: Thank you.

For those who haven't been to committee before, part of my responsibilities is to make sure that everyone has an equal opportunity to express themselves and interact with you. If someone sees me going like this, if they could wind it down in 30 seconds or less, it would be very helpful for me.

We're going to go to seven-minute questions, and the first one will go to MP Dzerowicz.

The floor is yours.

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

Thanks so much for the excellent presentations, very different presentations.

I'm going to start off with Ms. Fynes.

Thank you for your wonderful presentation. I'm very sorry for your loss, for our loss. I'm very thankful for the service of your son to our nation. Thank you.

Ms. Sheila Fynes: Thank you so much.

Ms. Julie Dzerowicz: I just want to be very clear on the issue you've raised in your key recommendation. I think you've made an impassioned plea and I want to make sure that I'm clear on it.

I believe that your key recommendation is the removal of paragraph 98(c). You feel it is not necessary and it somehow might actually, for those who might be attempting suicide, put them into some sort of a conflict with the Canadian Armed Forces.

Could you explain what you think the issue is? I want to be very clear on it. I understand that your recommendation is to remove it.

Thank you.

Ms. Sheila Fynes: When a service member gets to the point where they're seriously thinking, “I'm done; I can't do this anymore”, I think telling them that they will be tried and put in jail.... I just don't see how that fixes anything. I don't think it's beneficial to the service member. I don't see it as beneficial to the military.

That is not going to produce a soldier, airman or someone who is going to be out there being a benefit in any way whatsoever. It's just going to make them feel worse. To me, it pushes along the decision they make.

Ms. Julie Dzerowicz: My understanding—and I could be wrong on this—is that 98(c) exists because it's trying to be a deterrent to people somehow indicating that they might be ill as a way of trying to get out of continuing to serve. That's my understanding.

Ms. Sheila Fynes: I think some of that might be covered in paragraphs (a) and (b) of that same section—malingering, faking being ill and all of that.

Paragraph (c) speaks specifically to if you try to kill yourself, in basic language. People who get to that point need help, not punishment. It just is so contrary to not just the military but to anyone who is at that point.

I don't come at this perspective just from our experience. We do know a lot of young people who have served overseas. We get the same message from everybody. It's antiquated.

I tried to find out if anyone had been charged and put in jail with this. I couldn't find anything quickly and readily. My friend here has told me that there have been three summary trials in the last few years for that exact offence. To me, it just is a completely antiquated law.

● (1205)

Ms. Julie Dzerowicz: I thank you for that.

Your raising this as an issue and giving voice to it is very important, so thank you so much.

I'm going to move over to the Quebec bar and ask a couple of questions.

I had been rereading some of the notes of the bill. I was looking at the fact that we provide caseworkers to victims of inappropriate sexual behaviour. I was also looking at the fact that we provide liaison officers to ensure victims are able to exercise their rights.

First, you made a number of wonderful recommendations—some big ones, some small ones, some cleanup stuff. I'm really grateful for all of them.

I want to get you to clarify a bit more in terms of your recommendation around minimal training for the liaison officers and the caseworkers, because I think that's important.

Mr. Pascal Lévesque: Just for the record, on Ms. Fynes' point, I've retrieved some stats on section 98 at the summary trial, but it doesn't say whether it's paragraph 98(a), 98(b), or 98(c). We could dig that out. I'm sure my colleagues at the Department of National Defence could find out.

[*Translation*]

With regard to the victim's liaison officers, the people who help the victims of criminal acts are generally social workers who work in the field on a full-time basis. Consequently, they are used to working with victims. You obviously can't ask an officer charged with handling victims in a theatre of operations to have any particular training and to do only that. However, he must have received basic training from professionals used to working with victims because, if you don't treat victims properly, you may make matters worse and cause them to withdraw.

However, we understand the legislator's wish to have someone who is appointed to every trial, but it has to be made clear in the regulations that the Canadian Forces must provide basic training to assist victims, particularly since certain service members have had training in social work.

[*English*]

Ms. Julie Dzerowicz: Thank you very much. I think that was important.

I will be reading through your recommendations again, because you've made a lot of them. They were very thoughtfully done. I really appreciate that.

I thought you also made very thoughtful recommendations, Lieutenant-Colonel Perron. Thank you for that.

I want to clarify something. I know you went through the different sections in your recommendations, and you had issues with some of them. I really appreciated that. You may have mentioned this at the beginning, but I want to make sure you did agree with the objective and our intention with Bill C-77 and what we're trying to do overall. I want to verify that you are supporting what we're intending to do with this bill, which is to ensure that victims receive the support they need and deserve, so that victims rights are actually enshrined within the National Defence Act.

The Chair: Unfortunately, I'm going to have to hold it there. We don't have a ton of time left, and I have to make sure everyone has an opportunity.

MP Bezan.

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

I want to thank our witnesses for appearing and for your testimony.

Ms. Fynes, again, our condolences for Corporal Langridge. I'm very familiar with the case. I was previously chair of the committee and the parliamentary secretary making sure that records were turned over so that you had them for information purposes and legal proceedings.

Lieutenant-Colonel Perron, thanks for your service to Canada. You've had quite a distinguished career—a Van Doo, a commando, a JAG and a military judge. You've done it all and seen it all.

To follow up on Ms. Dzerowicz's question, are you making recommendations for amendments to Bill C-77?

● (1210)

LCol (Ret'd) Jean-Guy Perron: I have provided the clerk with my written submissions. They will be translated and then provided to the committee. I have 15 recommendations in my written submissions. I've also provided you with three annexes that contain what I think is useful information for when you are considering my submissions.

Yes, I do make recommendations pertaining to Bill C-77.

Mr. James Bezan: Are you picking up any of the language that was used in Bill C-71 as a better way of interpreting military justice than Bill C-77?

LCol (Ret'd) Jean-Guy Perron: No, because, on the issue of summary hearings, these changes to military justice, Bill C-71 and Bill C-77 are practically identical.

The major fundamental change, which is critical, changes the summary trial to a summary hearing, thus keeping basically what I consider, as I discuss in my submission, what is still a penal proceeding with penal consequences, but replaces the “beyond a reasonable doubt” standard with a “balance of probabilities”, which is, for me, very problematic.

Mr. James Bezan: Would that be a violation of charter rights?

LCol (Ret'd) Jean-Guy Perron: As far as I'm concerned, yes.

Mr. James Bezan: I think, Mr. Lévesque, you mentioned that as well in your presentation. You're also concerned that there is this issue of beyond a shadow of a doubt, that justice will not be served if it becomes a balanced position. Essentially, the CO is making a determination without respecting the charter rights of the accused.

[*Translation*]

Mr. Pascal Lévesque: That is the understanding of the Quebec bar. In cases where members of the military are facing serious penal consequences, removing such elements as the possibility of a criminal record and detention does not change the fact that, if the matter is brought before a judge, problems could arise and the Canadian charter could be violated.

[*English*]

Mr. James Bezan: In Bill C-77, the elective of going to a court martial is no longer available if it's considered a non-criminal offence. Is that right?

LCol (Ret'd) Jean-Guy Perron: Correct. That is also very problematic, because there's a lot we don't know about the consequences of Bill C-77. The infractions will be defined in regulations. The procedures will be defined in regulations. There's nothing in the bill that tells us exactly where we're heading from an infraction point of view and procedure point of view, other than a “balance of probabilities”.

If we use, presently, the five minor offences as the standard for what should be a disciplinary infraction, we would use a process that would be quite similar to a summary trial. Presently in a summary trial, if the accused may be subject to a fine that's more than 25% of basic monthly pay, detention or a reduction in rank, that gives the accused the right to elect for a court martial. This you will not see in Bill C-77 should the infractions be basically the minor offences of today. This option would not exist.

Mr. James Bezan: I don't know if you've read the Auditor General's report from the spring, an analysis of the military justice system that was very critical of the JAG. Have you seen that report?

● (1215)

LCol (Ret'd) Jean-Guy Perron: I read it, but many months ago.

Mr. James Bezan: It was very critical. I guess one of the concerns is the Jordan principle and that there are a lot of delays in the judicial process. I'm unsure whether it's a shortage of lawyers or whether it's a shortage of investigators, but things aren't moving down the pipe in a timely manner.

Of course, now we have the Beaudry decision from the Court Martial Appeal Court, which suggests that these issues be tried in civilian court rather than through a court martial if they're committed in Canada. Of course, we have the delays in the civil system as well, mainly because of the lack of judges in some jurisdictions.

How do we get around this issue of delays? Does Bill C-77 fix that? I know the Canadian Armed Forces believes it does take off some of that pressure, because commanding officers will be making more decisions than military judges.

LCol (Ret'd) Jean-Guy Perron: Based on the statistics from the JAG annual reports over the last 10 years on summary trials, I do not see how Bill C-77 would change the landscape that greatly, considering the nature of the offences tried at the unit level and the sentences—the punishments—handed out at the unit level. Eighty per cent of trials are by delegated officers. They're not even by COs. They're by a major or a captain in the unit. COs do 16%.

The unit handles the minor disciplinary infractions, so I don't understand how Bill C-77 changes the landscape.

The Chair: I'm going to have to move on to MP Garrison.

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

Thank you to all the witnesses for appearing today.

I want to assure the Quebec bar association and Lieutenant Colonel Perron that we'll look at the detailed recommendations very carefully.

I think that the presentation from Ms. Fynes today, for me, illustrates that when we talk about bills, we sometimes get to the technical or the lofty levels, and we sometimes forget the real impacts on people.

I've had the privilege of getting know to Ms. Fynes and her family as constituents. I wish it would have been for better reasons, but it's still been a honour for me to get to know you.

I noticed this morning that the Canadian Legion has selected Anita Cenerini as its 2018 National Silver Cross Mother. This will be the first time that a Silver Cross Mother has been one who has lost her child to suicide.

I wonder, Ms. Fynes, if you would like to say something about the significance of that decision by the Legion.

Ms. Sheila Fynes: It's probably one of the most important inflection points for us. It's been a journey for us to bring attention to the issue of soldier suicide. She made a comment—it was in the paper—about how they're the forgotten soldiers. I think that putting a Silver Cross Mother of a soldier who took his own life on the national stage like that is awesome. I do.

My heart just.... I almost cried. We were having breakfast, and it was it like.... Today of all days.... It was great.

Mr. Randall Garrison: I know that you focused very much on the positive strides that the Canadian military has made, but I think it's important that we acknowledge that some of that progress is the result of efforts by people like your family and the Cenerinis to get a different treatment.

Ms. Sheila Fynes: There are a lot of us out there, actually. There are a lot of families. Some choose to keep it down, to keep it within their family unit, but we strongly feel that it's just too big an issue. As I said, they're not disposable assets. These are people who are just so proud that they get to serve their country. We just have to do everything we can to support to them.

Mr. Randall Garrison: When you and I have talked about paragraph 98(c), I think that in our discussions and my discussions with senior military leadership locally, they all acknowledge that the use of it is infrequent. However, what I hear you saying to me, both before and today, is that although the military is trying to remove barriers, it has left this in the code of conduct.

● (1220)

Ms. Sheila Fynes: I was astounded that it even ever existed. It just so goes against.... The right thing to do is to help somebody who is not well, regardless of what they do for a living. When you told me about that, you know, I was like, “What? No, that can't be.”

Mr. Randall Garrison: I think you're quite correct. If you look at section 98, paragraphs 98(a) and (b) talk about the traditional concerns of discipline: malingering, or faking or prolonging illness. However, paragraph 98(c) is peculiar in that it singles out self-harm.

Ms. Sheila Fynes: I understand paragraphs 98(a) and (b)—I really do—but paragraph 98(c) is the logical extension of this scenario: If you don't get what you want through paragraphs 98(a) and (b), then if you take that extra step, we're going to take that step as well.

Mr. Randall Garrison: I think we talked about the 161 families, and I don't want to demean the individuality of each of those cases. However, what you have said to me before—and I know you feel very strongly—is that some families haven't been able to take this and turn it into something more positive.

Ms. Sheila Fynes: It's hard. It is really hard. You think you have it under control, and time goes by. People think, “Okay, it's been a year”, or “It's been three years”, or “It's been five years.” When we were putting this together, it was yesterday. It never goes away. For some families, it just is easier to not deal with it in that way. For me, I'm a doer. If there's an issue, I kind of meet it head-on. That's how I cope. That's how I hope to make a difference.

As I said, I saw that in the paper this morning, and I thought, “I know this family. Maybe because we came forward in a very public way, we aired it all. Maybe it made a difference somewhere to some families along the way, and they will deal with it however they choose.”

The Chair: I was just in discussion with the clerk. Before I move to the next speaker, given our tardy arrival from votes and the fact that many of you have travelled to be here, I'm going to forgo committee business and let the questioning go to the top of the hour.

The next seven-minute question goes to Yves Robillard.

[*Translation*]

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

I'd like to thank the witnesses for their excellent presentations.

My first question is for Lieutenant-Colonel Jean-Guy Perron.

What are the best practices for recognizing and respecting victims' rights in a military justice context?

In your view, does the proposed addition of the Declaration of Victims Rights to the Code of Service Discipline respect established standards and best practices in this area?

LCol (Ret'd) Jean-Guy Perron: I can't really comment on the Declaration of Victims Rights provided for in the bill. I had a look at it, but I didn't examine it in depth.

I agree in principle with including victims rights in the National Defence Act, to be sure. By the way, I agree with what Mr. Lévesque said about certain elements of the bill. I can't really comment any further.

Mr. Yves Robillard: I see.

How does Canada compare with other countries, such as the United Kingdom, France and the United States, in recognizing the rights of victims of service offences?

LCol (Ret'd) Jean-Guy Perron: I can't answer that.

Mr. Yves Robillard: Very well.

My next questions are for Ms. Haddadi and Mr. Lévesque.

Bill C-77 provides for the designation of a victim's liaison officer at the victim's request. That person's job is to assist the victim during the process.

Would victim liaison officers be able to provide legal advice to the victims they are responsible for assisting?

● (1225)

Mr. Pascal Lévesque: If the victim's liaison officer belongs to a provincial bar association, they could. The department and the Canadian Forces could set out a regulatory requirement that victim liaison officers be members of a provincial bar association. They could be military lawyers on secondment, for instance, and a special unit could be created solely to assist victims. That would be the prerogative of the executive branch.

Mr. Yves Robillard: Bill C-77 will amend the National Defence Act to incorporate indigenous sentencing considerations. Military tribunals will be required to take into account the circumstances of indigenous offenders when determining sentences.

Could you please explain how sentencing will take into account the circumstances of indigenous offenders under Bill C-77?

Ms. Siham Haddadi: Thank you for the question.

Unfortunately, we aren't able to answer that because it wasn't something the Quebec bar examined.

Mr. Pascal Lévesque: We did a bit of work on the issue, but I will give you my personal opinion, based on my experience as a lawyer.

With respect to indigenous rights, the Supreme Court of Canada held, in Gladue and Ipeelee, that the justice system had to take into account the fact that an offender was indigenous. The justice system is required to take into account an offender's indigenous descent.

The Canadian Forces include first nations members. Just think of the Rangers up north, who are part of the Primary Reserve. Applying the logic of public protection, the Quebec bar is of the view that…. Every lawyer knows that, when indigenous people are dealing with the justice system, it is absolutely essential that the community they come from be taken into account and that the consequences be adjusted accordingly, and clearly, that is true in military justice.

Mr. Yves Robillard: Thank you.

[*English*]

The Chair: You have a few more minutes, unless you want to pass on your time.

We'll move to the next speaker, MP Spengemann.

Mr. Sven Spengemann (Mississauga—Lakeshore, Lib.): Mr. Chair, thank you very much.

Thank you all for being here, for your service and for your expertise and your advocacy.

Mrs. Fynes, my condolences on the passing of your son, Corporal Stuart Langridge. It is my hope that through our conversation here today we are able to honour his life and honour his service, and to honour the service of all members of the Canadian Forces who died because they made a decision to take their own lives.

We heard you loud and clear that a member of the Canadian Forces who seeks help for reasons of mental health should be supported and not punished. Thank you for making that point.

My question is for Lieutenant-Colonel Perron. There are a lot of conversations throughout our government and globally on the need to have greater participation of women in our armed forces. The women, peace and security agenda and Canada's Elsie initiative on women in peace operations resonate broadly into the United Nations and beyond.

Are there gender dimensions to the points you have made to the committee earlier? In other words, do any of the recommendations, the points you have identified as worthy of attention, line up differently depending upon whether they apply to men or women, either in current practice or post-Bill C-77?

LCol (Ret'd) Jean-Guy Perron: No. As I reviewed Bill C-77 focusing on the disciplinary aspect, the summary trial, summary hearings, I cannot say that I perceived any aspect of those provisions that would make me wonder if there was a gender aspect or an issue that is significant.

Mr. Sven Spengemann: In terms of gender impact in the application or also in what a young woman might look at in the recruitment stage with respect to the work environment she would step into as a member of the Canadian Armed Forces who would be subject to service discipline under Bill C-77, you don't see anything that would be concerning along gender lines?

● (1230)

LCol (Ret'd) Jean-Guy Perron: No, I haven't seen that, but I've also been told often that there are a lot of things I don't see.

Mr. Sven Spengemann: We appreciate that. It's important to get your perspective, so thank you for that.

The other broad question I wanted to ask you—you've given advice internationally at the level of the UN—was about how our partners and allies are doing on conduct and service discipline. We often look to Australia, New Zealand, the U.K., the U.S. as potential models for peacekeeping or collaboration on security matters. What about conduct and service discipline? Have you done any research there? Are there any opportunities for us to look at their practices in informing our discussion on Bill C-77?

LCol (Ret'd) Jean-Guy Perron: Definitely we should be looking, for example, at the British system or the Australian system, because we share common roots. I would not suggest looking at the American system because we are quite different, but when in looking at the British system and how they reformed their military justice system in the last few years, I feel that is a very good starting point.

The Australians have also done a lot of work in attempting to create a permanent military court, which is also, as far as I'm concerned, a very good initiative.

Mr. Sven Spengemann: That's helpful. Thank you for that.

Mr. Chair, have I one minute? Is that right?

The Chair: It's about that.

Mr. Sven Spengemann: I would like to look at two mechanisms that are proposed by Bill C-77 that exist in the civilian world and are used frequently there, restitution orders and restraining orders.

Mr. Lévesque, you spoke about restraining orders earlier. For either of you, how important is it that those two mechanisms are now embedded in Bill C-77? How often are they invoked? Generally, are you favourably inclined toward the provisions in Bill C-77 on these two provisions?

[*Translation*]

Mr. Pascal Lévesque: As a general rule, the Quebec bar is in favour of any amendment that would bring the civilian and military justice systems into alignment. If those mechanisms are available in the civilian system, they should also be available in the military system, with any necessary adjustments, of course. It only makes sense.

I'd like to answer the question you asked earlier.

The British model is indeed an interesting one. The United Kingdom reformed how it handles summary trials. It was grappling with the same question. To what extent can the rights of military members be respected in summary trials? The U.K. changed the review and brought in a legal mechanism. It took the time to make sure the decision was informed and supported by a legal opinion. Nevertheless, the summary trial process remained as it was. It passed muster as far as the Charter of Fundamental Rights of the European Union was concerned.

[*English*]

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

The Chair: Mr. Martel is next.

[*Translation*]

Mr. Richard Martel (Chicoutimi—Le Fjord, CPC): I'd like to thank the witnesses for being here today.

My question is for Lieutenant-Colonel Jean-Guy Perron.

As the Minister of National Defence tries to figure out how to address the Beaudry decision, sexual assault cases remain in limbo.

Is it possible to respect a victim's right to be informed throughout the judicial process when the Minister of National Defence isn't quite sure what's going on?

LCol (Ret'd) Jean-Guy Perron: I'm not sure whether I can answer your question, Mr. Martel.

To be frank, I don't really have an answer.

Mr. Richard Martel: In light of the Jordan decision, establishing the right of an accused to a timely trial, is it possible that cases involving serious offences committed by members of the Canadian Forces could be dropped?

LCol (Ret'd) Jean-Guy Perron: I don't want to answer blindly, but anything is possible.

Is it likely? It all depends on the nature of the offence. There is always the option of laying criminal charges under the civilian system to make sure the offence is tried. The idea isn't to let the offence go or drop the case. There are ways to ensure that justice is served, despite the current circumstances.

● (1235)

Mr. Richard Martel: I have a question for Mr. Lévesque.

Please describe, if you would, how the Beaudry decision will impact Bill C-77.

Mr. Pascal Lévesque: It's hard for the Quebec bar to answer that, since it's not something we've looked into. I could answer in my capacity as a lawyer, but since the bar hasn't examined the issue, I can't really comment.

Generally speaking, however, as a lawyer, I can tell you that the Beaudry decision affects the right to a trial by jury. Let's see what the Supreme Court says. The prosecution has asked the Supreme Court to consider the matter. Will it uphold or set aside the decision of the Court Martial Appeal Court? I have no idea.

That said, the bill is moving its way through Parliament. Clearly, in the meantime, no cases can be prosecuted. The bar hasn't studied the impact of the Beaudry decision. Frankly, it's hard to answer your question.

Mr. Richard Martel: Thank you.

[*English*]

The Chair: Before we go to MP Fisher, two more people have joined us at the table. They are Corporal Stuart Langridge's father, Shaun, and his brother Michael. Thank you for joining us.

I'm going to give the floor to MP Fisher.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): Thank you very much, Mr. Chair.

Thank you all for being here.

Mrs. Fynes, thank you for your testimony. It was so moving, but it was so important. I want to thank you for being a doer. Don't give up.

Ms. Sheila Fynes: I won't.

Mr. Darren Fisher: I have a few general questions for you, based on some of the things you said.

You talked about great advances since 2008. You're seeing progress. You're seeing the culture change.

I see the culture change outside the military, as well. Ten years ago, nobody would talk about mental health. Now, with Bell Let's Talk and many other things, it's at the forefront in today's society.

Maybe I'm wrong about the 10 years; it might be eight, but it's there. It's definitely happening. That culture change you stated is happening.

Now, as a doer, because in my past life I used to be a doer—just a joke—how frustrating is the pace of this culture change? You woke up this morning and you read the story about the Silver Cross. Are you frustrated daily, and is that what continues to drive you? Are you happy with the pace of this culture change, these advancements?

I would like to hear a little bit more. I was rivetted when you were speaking, but you didn't go into too much depth on that.

Ms. Sheila Fynes: I think the change is happening faster and faster. It's accelerating as we go.

I think there was a time when it was almost shameful. The word itself, “suicide”, meant “defective”, mental illness: “What's wrong with the family?” or “Why did this happen?”

Now there have been so many public people who have come out and been involved in Bell Let's Talk. There have been athletes. Within the military, there are more and more families willing to speak out, and I think that really has made things go more quickly.

At the same time, if I could wave a magic wand, everyone would get everything they need yesterday. That's not going to happen. I am well aware that there are processes and restrictions, and while I am a doer, I am also pretty realistic about how glacial the speed can be when it comes to changing things.

Let's face it: I'm asking you to consider changing something in the National Defence Act, and that's a pretty big deal in my world. To me it's kind of a no-brainer, but maybe other people don't feel the same way. I am very well aware that I am asking you to consider a big thing. It's really not that important in the whole scheme of things to people outside of it, but to the people involved in it and the sick people, it's a huge thing. It doesn't get any bigger.

● (1240)

Mr. Darren Fisher: I think about what you said, that it was almost shameful; I think it was in fact shameful.

You used the line “de facto abuse of a subordinate”, and I scribbled that down.

Ms. Sheila Fynes: Yes, it was.

When our son was ordered out of hospital, there were a lot of restrictions put in place, and I was interested in what you had to say about detainment and defaulters discipline.

He had to live at the duty desk. If he left the duty desk, he had to say exactly where he was going, and he always had to have a phone number with him. He had to be tucked up in his little bed behind the duty desk by a certain time at night, quite early. It was very restrictive, and shameful, because the whole regiment knew that Langridge was under defaulters discipline.

I have to tell you that I have yet to meet a soldier who was prouder to serve than Stu was. From when he was 12, he wore a green uniform in some way or another. It was everything for him, and he was good at it. He was really good at it. He flew the Black Hawk helicopter with the ministry of defence over Afghanistan. He was chosen to represent Canada in Utah as a gunner. He was good, and he loved it.

To go from that place to this defaulters discipline was the worst thing that could have happened, and within 10 days he was dead. Just like that, it was over.

Mr. Darren Fisher: Is that my time?

Thank you.

The Chair: MP Gallant is next.

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

My question is directed to Mr. Perron. It is with respect to the glaring change you've found in the legislation between 1971 and 1977—that a summary hearing is based on probabilities as opposed to reasonable doubt—and its relationship to a possible violation of the charter. In order to have that aspect of the legislation put through, would we have to make a constitutional change? Would we need to open up the Constitution to examine this?

LCol (Ret'd) Jean-Guy Perron: No, I don't think you would be examining the Constitution.

The Supreme Court of Canada provides a two-part test to determine whether a proceeding is administrative, penal or criminal in nature.

The 2015 Guindon decision from the Supreme Court of Canada, which basically reiterates the test from Wigglesworth and Martineau, gives us the guidelines to assess a situation and to determine whether we are dealing with something that's purely administrative in nature and procedure, and therefore the administrative law applies, or whether it's criminal or penal, and therefore the higher standards apply. This, for me, is the exercise that must be undertaken when examining Bill C-77.

Mrs. Cheryl Gallant: Thank you.

We've seen that the justice department has quietly launched an artificial intelligence experiment as the government prepares to use software to decide cases in immigration, for example, and tax law. When you raised this stark difference between probabilities and reasonable doubt, it led me to consider that perhaps this is where the government is eventually going: to use artificial intelligence in deciding cases, as it is planning to do with immigration and tax law. There, they're feeding data into the software systems and predicting outcomes based on what the outcomes of previous cases were. Indeed, perhaps the gigantic scoops of data that we've learned about in recent days may be part and parcel of this experiment on artificial intelligence.

However, we have a policy vacuum. There is currently no legislation and there are no regulations, policy positions or frameworks within the Government of Canada to govern the use of AI in Canada. Also, there seems to be an anathema within the government to even have a study on AI—for example, in this committee—on what our policy is going to be as it applies to defence.

With your having been both a serving member in the military and a military judge, if this is the direction that our government is headed in to speed up the quick resolution of cases, do you think having a software program decide innocence or guilt based on probabilities would serve the defendant?

● (1245)

LCol (Ret'd) Jean-Guy Perron: I think I'm qualified also to talk about the defendant, because I've been accused and I had my summary trial many years ago. Long answer short, I cannot see the day that there will be any other way of deciding a summary trial or a court martial without having a judge and the human aspect. As far as I'm concerned, it's impossible to do it otherwise.

Mrs. Cheryl Gallant: Thank you.

We haven't seen yet how the Jordan decision is going to play into military justice. Do you think it's possible that, for example, as my colleague mentioned, if the case has not been heard within the military justice system and if the timeline exceeds the maximum amount according to the Jordan decision, they will be unable to have that case tried in a civilian court?

LCol (Ret'd) Jean-Guy Perron: Well, on the Jordan decision and the time delays that could lead to a decision to stay proceedings based on unreasonable delay, could that happen? Yes, of course. It all depends on that specific case. Is it transferred to the civilian system? How does it make its way through the civilian system? Then, if there's a charter challenge, what are the exact factors that come into play in determining if there is a breach of a charter right and the application of the Jordan decision? There is no definite answer that applies to every case.

Mrs. Cheryl Gallant: Thank you very much.

The Chair: Thank you.

MP Romanado, welcome. The floor is yours.

Mrs. Sherry Romanado (Longueuil—Charles-LeMoyne, Lib.): Thank you, Mr. Chair.

First of all, I'd like to thank everyone for being here.

[*Translation*]

Lieutenant-Colonel Perron, thank you for your service.

[*English*]

Mrs. Fynes, my deepest condolences to you and your family on the loss of your son.

I too am a military mom. I have two sons serving, and the reason I am sitting in front of you today is that I decided to run for office because I wasn't too happy with how we were treating our military and our veterans, and so, what better way than...? Don't tick off a military mom, right?

I'm a fellow doer. I want to thank you, because they say when a member serves, their family serves right along with them, and I know that to be true, so I offer my deepest condolences to you and your family.

As I said, I have two sons serving, one who is deployed as we speak. I've had to accompany him to funerals as well, funerals of classmates and fellow soldiers who unfortunately lost their battle with mental health.

You talked a lot about...and I wrote this down: “It is a mental health issue, not a crime.” I was speaking with my colleague Randall on the way here, and we were talking about the fact that the Royal Canadian Legion has now recognized a Silver Cross mom who lost her son to suicide.

We've made strides. I previously was the parliamentary secretary to the Minister of Veterans Affairs and Associate Minister of National Defence, up until two months ago, and I was with the CDS and our two ministers for the joint suicide strategy announcement.

We are asking our men and women in the Canadian Armed Forces to come forward and say they're suffering. We've heard a lot about universality of service and the fear of coming forward and then not being able to serve. Do you think that having paragraph 98(c) still in force for universality of service is what is preventing people from coming forward and asking for help, in your opinion?

● (1250)

Ms. Sheila Fynes: I believe that as soon as you put your hand up, your career is pretty much toast. Maybe it's not so much the case now, but it definitely was when Stu was serving. You become “that guy”.

I think what makes a really good soldier is the pride attached to what they do. As soon as you take that away, you truly have stripped them of everything important to them.

I think that you do have to be deployable, absolutely, but I do believe that there's a responsibility on the part of the employer, and that would be DND, to help you with that, right? If you step up and....

I do think it's changing. We had reason to cross paths about a year ago with someone who was an officer in Stuart's regiment, and he offered his condolences. He knew Stuart. It meant the world to us. It just stripped away so much negative stuff that we'd been feeling. I think that just as there is a responsibility on the part of the serving member to do everything they can to be deployable and well and valuable and all of that, there is an equal responsibility on the part of the military to help them when it kind of goes sideways.

Mrs. Sherry Romanado: Thank you.

Colonel Perron, you mentioned—and I'm not a lawyer, so please correct me—that there are service offences that result in criminal records—for instance, insubordination, absence without leave, drunkenness, conduct, and so on—that are not found in the civilian world. In your opinion, should somebody who was in the Canadian Armed Forces have a criminal record for one of these offences? Once they leave the Canadian Armed Forces, should that criminal record follow them? Is there something that we should be thinking about with respect to that?

You mentioned that when they leave the Canadian Armed Forces, they would have difficulty finding a job, crossing the border, and so on and so forth. Should an offence that is unique to the Canadian Armed Forces or that field carry forward into the civilian world, and is that something we should be looking at, or should we just be abolishing completely a criminal record for offences that are found strictly in military life?

LCol (Ret'd) Jean-Guy Perron: In the discussion concerning a criminal record, for me the basic question is why someone who is found guilty of absence without leave or insubordination, which have no equivalent in civilian life, should suffer the consequences that a criminal record brings. It makes no sense to me. Should certain offences under the code of service discipline result in a criminal record? Quite possibly, but we need to examine this so we don't punish individuals who should not be punished—I say "punish" in a wide sense, a criminal record.

Mrs. Sherry Romanado: That brings up a really good point in terms of transition.

When people leave the Canadian Armed Forces and are trying to go on to a civilian life, if they have a criminal record for going AWOL, for instance, and try to find a job after they leave their military service, but the job requires.... We see a lot of folks going on to work in security fields, but that requires a criminal background check, and you now have a criminal record for something that you would absolutely not have a criminal record for in the civilian world. Are we hindering Canadian Armed Forces members who are transitioning out of the Canadian Armed Forces to be able to find gainful employment by having this record follow them?

The Chair: If you can answer that in a sentence or two, I would appreciate it.

LCol (Ret'd) Jean-Guy Perron: I feel it does happen.

Mrs. Sherry Romanado: Okay.

The Chair: Mr. Bezan wanted to add one point.

Mr. James Bezan: I have one very quick question for both Mrs. Fynes and Colonel Perron.

I agree that we want to remove self-harm from the National Defence Act. The problem I have is that paragraph 98(c) says "wilfully maims or injures himself or any other person". We definitely want to make sure that those who try to hurt themselves are exempted and treated. It's a cry for help, and we don't want to stigmatize mental health and we want to ensure OSI and PTSD get treated.

Colonel, from your experience, should we still maintain and amend that section so at the very least those who maim and injure others, even if the other person is saying "please hurt me", would still face an indictable offence.

● (1255)

LCol (Ret'd) Jean-Guy Perron: I'm no expert on section 98, to be honest. I haven't looked at it. If we look at what paragraph 98(c) says, we see it's an offence to injure someone—

Mr. James Bezan: Including yourself.

LCol (Ret'd) Jean-Guy Perron: Including yourself, but if we focus on the other person, which I think you were leading up to, we have numerous other offences—assaults, attempted murder, name it—that would penalize you for the action you've committed toward the other individual that are captured in a way by paragraph 98(c), so we could reach the same result.

Mr. James Bezan: Thank you for that. I appreciate that.

Mr. Pascal Lévesque: Mr. Chair, may I?

The Chair: You have 30 seconds, please.

[*Translation*]

Mr. Pascal Lévesque: I would just like to point out that members of the military are not allowed to strike or associate to defend their rights. When scrutinizing their rights, it's important to take all aspects into account, beyond party politics.

I did a comparison between disciplinary prison law and military law. To a certain degree, prison law better protects individuals' rights because the proceedings are recorded and, in the case of serious penalties, the decision-maker is independent. There is also the fact that individuals sometimes have the right to be represented by a lawyer. Canada would be in a rather unique position if it were to give those who break the law more rights than those who defend it abroad.

[*English*]

The Chair: Thank you all very much for appearing today, and a special thank you goes to Corporal Stuart Langridge's family. You added important value to this discussion, and we're very privileged to have had you here today.

The meeting is adjourned.