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Chair

Mr. Stephen Fuhr

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• (1105)

[English]

The Chair (Mr. Stephen Fuhr (Kelowna—Lake Country, Lib.)): Welcome back, everybody, to the defence committee this morning to continue our discussion about Bill C-77.

I'd like to welcome back Colonel Strickey, Lieutenant-Colonel Lortie and Major Lacharité. Thank you for coming.

I think we left off with CPC-7. MP Bezan was about to speak to his proposed new clause 42.1.

Mr. Bezan, go ahead.

Mr. James Bezan (Selkirk—Interlake—Eastman, CPC): I'll move it first. It says:

That Bill C-77 be amended by adding after line 28 on page 49 the following new clause:

“42.1(1) The portion of paragraph 249.27(1)(a) of the Act before subparagraph (i) is replaced by the following:

(a) an offence described in section 87, 89, 91, 95, 96, 99, 101, 101.1, 102, 103, 108, 109, 112, 116, 117, 118, 118.1, 120, 121, 122, 123 or 126 for which the offender is sentenced to

(2) Subsection 249.27(1) of the Act is amended by adding the following after paragraph (a):

(a.1) an offence described in section 85, 86, 90, 97 or 129;

(3) Subsection 249.27(2) of the Act is replaced by the following:

(2) An offence referred to in paragraph (1)(a), (a.1) or (b) does not constitute an offence for the purposes of the Criminal Records Act.”

May I speak to that, Mr. Chair?

The Chair: Go ahead.

Mr. James Bezan: As you know, this amendment is very simple. If you look at the summary of Bill C-77 at the beginning of the bill, it notes the amendments:

(l) provide for the creation, in regulations, of service infractions that can be dealt with by summary hearing;

(m) provide for a scale of sanctions in respect of service infractions and for the principles applicable to those sanctions;

(n) provide for a six-month limitation period in respect of summary hearings; and

(o) provide superior commanders, commanding officers and delegated officers with jurisdiction to conduct a summary hearing in respect of a person charged with having committed a service infraction if the person is at least one rank below the officer conducting the summary hearing.

Since we're dealing with service infractions and the issues surrounding summary hearings, the amendment is very simple. This is about making sure that criminal records that occur for members of

the military do not become part of their civilian criminal records going forward.

Specifically, we are dealing with a few minor offences here that we want to make sure are dealt with. Section 85 deals with insubordinate behaviour; section 86 is about quarrels and disturbances; section 90 is about absence without leave; section 97 deals with drunkenness; and section 129 is about conduct prejudicial to good order and discipline.

All of those infractions would not form a criminal record for civilians, but they do for military members. When they leave the forces, that will haunt them as they apply for jobs and move on with their lives. It's not just for their work lives, either. If one of them wants to volunteer as a hockey coach and someone does a criminal records check, these things will pop up.

What we're trying to do is make sure that these minor offences do not become anything more than just an issue of disciplinary action within the military and do not travel with members down the road as they transition into veterans.

The Chair: Is there any discussion?

Mr. Spengemann, go ahead.

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

I have a sense here that this amendment, as laudable as its aim might be, might fall outside the scope of what we're trying to do here, which is to achieve parity between the civilian and military justice systems.

I'm wondering if I could get the view of the officials and the clerk on whether this amendment is procedurally in order.

The Chair: Okay.

As it's consistent with an earlier ruling on NDP-1 and consistent with *House of Commons Procedure and Practice*, third edition, on page 771, which I used when we discussed NDP-1, it is out of order because it refers back to the parent document, which isn't before us right now.

In addition to that, with that logic, CPC-8 and CPC-9 also become inadmissible because they are consequential to CPC-7.

I agree with Mr. Spengemann. Unfortunately, CPC-7 is out of order.

Although we might have a discussion on our hands, which we could certainly take outside of what we're trying to do here today, I find it interesting that CPC-7 could have been introduced into a previous bill. Bill C-71 was very similar to the one we're doing now, which isn't just by coincidence, I guess.

I know you're going to want to respond to that, so it's over to you.

Mr. James Bezan: I'll challenge the ruling of the chair, because I think the summary of the bill is quite clear on this. We are dealing with service infractions. We are talking about minor infractions that are dealt with through summary hearings.

Mr. Darren Fisher (Dartmouth—Cole Harbour, Lib.): I have a point of order, Mr. Chair.

Can you speak to a challenge of the chair?

The Chair: No, I'm willing to let him say a few words.

He's going to challenge the chair, and he can speak to it.

Mr. James Bezan: I'll just say that I think this is an overstep. As Mr. Garrison said when you ruled out his amendment, NDP-1, these opportunities only come along once in a while.

To address your point on Bill C-71 and Bill C-77, this is why we have committee meetings. This is why we have expert witnesses. This is what we've heard from expert witnesses. It comes back again to Mr. Perron. He is the one who suggested that we go this route. We need to make sure these criminal records do not haunt the future of our veterans.

When we start talking about transition and wanting to support our military members as they move back to civilian life, really minor service infractions should not be on their criminal records. This is a way to address it. I think it is incredibly unfortunate that we aren't taking the opportunity to hear from expert witnesses and incorporate those changes into the bill, because, as was pointed out by Mr. Garrison, this won't happen again for the next....

We need to make sure that we address those issues. The summary of the bill, which is in the front of Bill C-77 is very clear that we are dealing with minor infractions. I can't see how you can rule this out of order. For that I challenge the chair.

• (1110)

The Chair: Just before I call that, I believe there's a National Defence Act review in 2020. There might be an opportunity there. This committee is the master of its own domain. If these are important to the committee, we can certainly take this up. As you said, as we have committee, we also have rules, and I'm obliged to follow them.

Shall the decision of the chair be sustained?

Mr. James Bezan: I'd like a recorded vote, please.

Mr. Mark Gerretsen (Kingston and the Islands, Lib.): Hold on. I want clarification on what we're calling.

Is the vote that the decision of the chair be sustained?

The Chair: I ruled CPC-7 out of order.

Mr. Mark Gerretsen: And he is challenging it. Are we voting on the challenge, or its being sustained? It makes a big difference in how we vote.

Mr. James Bezan: We're voting on whether the ruling of the chair shall be sustained.

The Chair: Yes, I've already said this once.

I've ruled CPC-7, CPC-8 and CPC-9 out of order. Shall the decision of the chair be sustained?

(Ruling of the chair sustained: yeas 5; nays 3)

Mr. James Bezan: Can I ask a question of our experts?

The Chair: I'm okay with it, if you can do it briefly.

Mr. James Bezan: I'd like to follow up, not necessarily on the decision, but on the issue of those minor service infractions.

Colonel, could you fill us in? When we're dealing with the regulations, how are we going to deal with these types of service infractions going forward? Are they going to show up on the criminal records of our troops, or are they going to be dealt with in a different manner going forward?

Colonel Stephen Strickey (Deputy Judge Advocate General, Military Justice, Department of National Defence): Just to clarify for the committee, the current provision in the National Defence Act, section 249.27, came into force on September 1, 2018. It deals with summary offences. The current proposed legislation you have before the committee deals with service infractions. In the current legislation, proposed section 162.5 says, "[a] service infraction is not an offence under this Act."

To answer your question, sir, you're quite correct. In terms of the current state of the National Defence Act, which this is trying to address, dealing with service offences at summary trial and court martial, certain offences of which a person is found guilty will cause that person to have a criminal record.

Switching to the proposed legislation before this committee, a service infraction would not denote a criminal record because, if and when this legislation comes into force, there would be no summary trial system. There would only be the service infractions and service offences in section 249.27, following a conviction at court martial.

To answer your question, as we talked about before, sir, service infractions will be set out in the regulations. As noted in proposed section 162.5, if passed, a service infraction would not be an offence under the National Defence Act.

Mr. James Bezan: Just to follow up on that, QR&O are where these will be described. Does it go through the regular gazetting process of every other act?

Col Stephen Strickey: The QR&O are exempt from being gazetted under the Statutory Instruments Act. However, there are provisions within the QR&O that mandate that commanding officers ensure that all military members are provided with access to the QR&O, and that all military members, like the three of us sitting here, must be acquainted with the QR&O.

In terms of members being aware of what is in all four volumes of the QR&O, yes, that is—

Mr. James Bezan: Unlike a gazetting process, though, where they invite public discussion, that doesn't happen under QR&O.

Col Stephen Strickey: That's the current state of law, sir, yes.

Mr. James Bezan: That's a problem.

Thank you.

The Chair: Moving along, I have no notice of amendment for anything between clauses 43 and 60.

(Clauses 43 to 60 inclusive agreed to on division)

(On clause 61)

The Chair: On clause 61, I see a Liberal amendment. Who would like to speak to LIB-9?

• (1115)

Mr. Darren Fisher: I'll move this, Mr. Chair.

It's another one of these meaty amendments. It says:

That Bill C-77, in clause 61, be amended by replacing, in the French version, line 1 on page 57 with the following:

[*Translation*]

"incarcéré dans un pénitencier ou une prison civile, au sens"

[*English*]

The Chair: Is there any discussion?

(Amendment agreed to on division)

(Clause 61 as amended agreed to on division)

(Clause 62 agreed to on division)

(On clause 63)

The Chair: We have LIB-10.

Mr. Spengemann, go ahead.

Mr. Sven Spengemann: The amendment reads:

That Bill C-77, in Clause 63, be amended by replacing, in the English version, line 14 on page 70 with the following:

"(1.2) The court martial or the Court Martial Ap."

What it essentially does is remove the excess word "tribunal" from the English text. That's proposed subsection 215(1.2) of the National Defence Act. This section refers to courts martial, and therefore the word "tribunal" is superfluous.

The Chair: Is there any discussion?

(Amendment agreed to on division)

The Chair: CPC-9 was dealt with in a previous ruling.

(Clause 63 as amended agreed to on division)

(Clause 64 agreed to on division)

(On clause 65)

The Chair: On clause 65, we have LIB-11.

Mr. Fisher, go ahead.

Mr. Darren Fisher: The amendment reads:

That Bill C-77, in Clause 65, be amended by replacing, in the French version, line 16 on page 81 with the following:

[*Translation*]

"(15) Si l'article 59 de la première loi entre"

[*English*]

Mr. James Bezan: Could you repeat the French part?

Mr. Darren Fisher: Do you want me to repeat that?

Mr. James Bezan: Yes. I think you missed one word. We better get it on the record.

The Chair: Is there any further discussion?

(Amendment agreed to on division)

(Clause 65 as amended agreed to on division)

The Chair: On clauses 66 through 68, I don't see an amendment request.

(Clauses 66 to 68 inclusive agreed to on division)

The Chair: Shall the title carry?

Some hon. members: Agreed.

The Chair: Shall the bill as amended carry?

Mr. Garrison, go ahead.

Mr. Randall Garrison (Esquimalt—Saanich—Sooke, NDP): We can have a discussion on this at this point. Is that right?

The Chair: Yes. We're talking about whether the bill shall carry as amended.

Go ahead.

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

I believe that Bill C-77 does important things in reforming the military justice system, especially as it improves victims' rights within that system, despite my disappointment that a couple of things, I think, were incorrectly ruled out of order. I will take those up at report stage in the House. In particular, on the urgent matter of removing all obstacles for those who may be considering self-harm to get care, I believe the amendment I moved is germane to that. I believe it's germane to the larger reforms of the military justice system that we've undertaken.

I'm also disappointed that Mr. Bezan's amendment, to try to make absolutely sure that people do not get criminal records as a result of infractions, was ruled out of order. I understand the technical arguments that we've heard, but I think it should have been considered by the committee and not ruled out of order.

Despite my disappointment on those two rulings, I still think this bill is an important reform of the military justice system. I will be voting in favour of the bill.

The Chair: Mr. Bezan, go ahead.

Mr. James Bezan: Again, the majority of Bill C-77 reflects what we did in Bill C-71. Protecting victims' rights is something we support. I agree with Mr. Garrison. We had a chance to help with the destigmatization of mental health, especially around suicide and self-harm, by taking that out of the National Defence Act.

I do hope that the members from JAG here are listening to the concerns we've raised about the criminal records aspect and how these things can come back to bite our troops as they become veterans and want to participate in their communities as volunteers, as well as seek future employment. I hope that as you draft the new QR&O, that is well taken into consideration.

I will be supporting Mr. Garrison as he brings forward his amendments at report stage. Hopefully, we'll have a better hearing with the Speaker than we received at committee.

• (1120)

The Chair: As we've been together for three years, I know that the committee is very sensitive to NDP-1, and certainly open to discussing CPC-7, CPC-8 and CPC-9. There's a time and a place to do that. I guess we'll have an opportunity. If not, we can discuss it and bring it from the committee using other opportunities.

Shall the bill as amended carry?

Some hon. members: Agreed.

An hon. member: On division.

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

Some hon. members: Agreed.

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

Some hon. members: Agreed.

The Chair: I want to thank our witnesses for coming, a couple of times now, and for their support. I would really encourage you to listen to the discussion that we had, so you'll be privy to moving this forward. There were some important things discussed in these hearings. Again, I want to thank you for coming.

The meeting is adjourned.

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