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• (1630)

[English]

The Chair (Hon. John McKay (Scarborough—Guildwood, Lib.)): I call the meeting to order.

Mr. Duguid has been brought into the committee semi-officially. Welcome, sir.

Welcome to Mr. Allison as well.

We have joining us today two witnesses: Mr. Walbourne and Mr. White. Mr. Walbourne is certainly familiar with this committee. He knows that we'll ask each of you for a five-minute opening statement.

Mr. Walbourne, please begin, and then we'll go to Mr. White.

Mr. Gary Walbourne (Former Ombudsman, National Defence and Canadian Armed Forces, As an Individual): Good afternoon.

Thank you, Mr. Chair, for the opportunity to be here today to comment on this very important matter.

It's been a while since I left the position of ombudsman. However, I remain in contact with the defence community, including veterans, on a daily basis. I am disappointed that little to no progress has been made on some of the key challenges that I and others have flagged to the Department of National Defence.

My appearance today is as an individual, but let me be clear that the next hour I will spend with you is not about me; it's about the ombudsman's office and who it represents. In 2021, this committee heard in great detail about the interference that members of the ombudsman's office and I faced at the hands of both the Minister of National Defence and senior departmental officials. As for the details, I encourage you to revisit the transcript. It wasn't pretty, but I believe it likely serves as the real example of where, how and in whose hands it can all go wrong.

In May 2014, I was asked at this very committee whether the office required legislation. I responded at that time by saying that I believed it was possible to function without it. I was quickly shocked to learn that I had re-entered middle school, where personalities reign supreme. I came into the position naively thinking that we were all focused on the same goals. However, when we allow personalities to interfere with what is right for those who wear the uniform in service to Canada, we lose the plot.

I've been observing the calls for this office to be legislated and report to Parliament. I was heartened to see Ms. Mathysen's bill

tabled before the House. It is encouraging that others are now seeing the benefits of having an ombudsman legislated.

The DND and CAF ombudsperson has had its doors open for 26 years, and there have been six ombudspersons in that time. Each and every one of them has come to the same conclusion: that the office should be legislated and report to Parliament.

Why? There have been six appointments, four different administrations, two different political parties and various backgrounds, all with the same conclusion. The evidence has been laid out in numerous reports by multiple ombudsmen, including me. The simple answer is this: All's well when you are not chafing up against the status quo, when you go along to get along, but if you shine light on the parts that people don't want you to see, you quickly feel the squeeze.

What do you do when a minister refuses to meet with you or refuses to discuss items of importance, and subsequently the administration of that department applies pressure, utilizes tactics that restrict your ability to do the job for which you were hired and, to add insult to injury, takes a personal attack position? In what world does it make sense that the entity you are tasked with overseeing in regard to fairness has total control over the tools you need to do the job? Furthermore, it has, in the current structure, the ability to investigate the office. When someone at the top of the organization is the problem, how does a \$7-million organization repel the force of a \$20-billion one?

During my mandate, I witnessed a significant decline in the quality of responses I received to the evidence-based recommendations. A great deal of these recommendations remain unimplemented seven to 10 years later. These include warnings issued to the Minister of National Defence and senior civilian and military leadership on various matters, which, if they had been addressed, would have helped mitigate issues before they spun out of control.

Scrolling through the letters sent by all ombudsmen over the years, me included, and reviewing the ministerial and departmental responses would be comical if it weren't so tragic. So many of the issues the CAF is now grappling with had previously been identified, with urgency, years ago. The common pattern was as follows: The ombudsman warns via a letter, and the minister or department responds casually or not at all; the ombudsman warns yet again, with the same reaction; the ombudsman launches an investigation and makes recommendations; the issues make national headlines; and both the minister and the department react quickly and accept all of the recommendations, but sadly rarely implement them.

That is why the concerns raised by the ombudsman's office, in my opinion, are of national importance. The office is like the canary in the coal mine. If the Minister of National Defence and the government of the day do nothing with the concerns raised by the office, then having the office report to Parliament would help ensure that these concerns are visible and appropriately addressed. The office's budget and authorities would be free of petty power squabbles, as would the business of ensuring those in the defence community are treated fairly, regardless of who is in charge.

Twenty-six years of questions from all ombudspersons, documented cases of interference, the issue of neither addressing nor implementing recommendations, personal attacks, pettiness, and agendas that never get us to the core of doing the right thing—all of this has led us to where we find ourselves today. Is there a better path? Can we create one? Can we give DND and the CAF the same right that we afford incarcerated individuals in this country, that being a legislated body free of the vindictive and petty behaviour that helps no one?

These issues are of national importance and impact national security. Don't let this opportunity slip away yet again.

Thank you.

• (1635)

The Chair: Thank you, Mr. Walbourne.

Mr. White, you have five minutes, please.

Mr. Patrick White (As an Individual): In November 2022, I provided the access to information, privacy and ethics committee with examples of how the Canadian Armed Forces and Department of National Defence abuse the access to information and privacy systems and deny victims of sexual misconduct the critical information they need to seek justice.

I became familiar with DND and CAF abuses of the ATIP system and the reprisals against whistle-blowers through fighting an ongoing five-and-a-half year battle for accountability against the Royal Canadian Navy's chain of command to seek justice against a serial sexual misconduct offender known as Officer X and the leadership who are covering up for him.

For context, here it is. In 2018, instead of supporting victims and witnesses of Officer X's serial sexual misconduct, the chain of command of my former naval reserve unit "interrogated [victims and witnesses] under caution with allegations of mutiny and treason". These threats of high-order criminal charges were made against those considering reporting Officer X in order to silence and intimi-

date them—in other words, "mutiny" and "treason" for reporting crimes and inappropriate behaviour.

When the military police found enough evidence to support a charge of sexual assault against Officer X in response to my complaint, the commanding officer decided the appropriate response was "divisional interview and mentorship". There is no evidence that this substantively inappropriate decision has ever been questioned by anyone in the entire Royal Canadian Navy chain of command.

In response to my raising concerns, the same commanding officer sent defamatory emails to the naval reserve headquarters to discredit my complaint against Officer X, questioning the timing and implying it was false or made in bad faith. The command team then leveraged personal relationships with naval reserve headquarters personnel to create the false narrative that victims and witnesses of Officer X's serious sexual misconduct were "trying to influence a police investigation that was underway at that time by organizing a parallel justice system". The "influence" and "parallel justice system" referred to were about the encouragement of others to report sexual assault and sexual harassment through the established system.

I provided a summary of the sexual misconduct suspicions against Officer X and forced the naval reserve headquarters to conduct its own internal investigation, which confirmed, "All of the individuals brought forth allegations that...[were] 'bundled up' with 14 years of multiple allegations and [Military Police] Investigations against Officer X that had resulted in 'zero action'."

My founded harassment complaint of abuse of power against the unit coxswain who interrogated me and others resulted in only minor, private consequences, while he was publicly celebrated. Commodore Pat Montgomery, commander of the naval reserve and Camosun College professor, and navy captain Richard Jean, naval reserve deputy commander, then dismissed complaints against the commanding officer and the then executive officer and staff officer, relying excessively on procedural technicalities and timelines, stating, "there exists no evidence that reprisals would have followed in the event of your submitting harassment complaints against [the CO and XO]". It is genuinely concerning that Commodore Montgomery and Captain Jean decided no evidence existed without even having conducted an investigation, while each had full knowledge of the defamatory emails.

I raised my concerns about the naval reserve with Rear-Admiral Christopher Robinson, commander of the Maritime Forces Pacific, who in the face of all the foregoing concluded, “you have been treated fairly”.

In October 2023, Vice-Admiral Angus Topsy, commander of the Royal Canadian Navy, was confronted at a public event by a concerned citizen and directly made aware of these issues. Despite his personal assurance and signature on the page promising to investigate, nearly six months later there has not been one single update or follow-up meeting scheduled. It does not seem to concern the navy that the commanding officer who made the “mentorship” decision is listed as an involved person on page 3 of the very same police report for which he acted as a charge-laying authority and failed to recuse himself.

Mr. Chair, I'll take this moment to state that I understand my previous request for extra time was rejected, but I wonder if, in light of what I've said so far, and with the preview that the worst is yet to come, I could have two more minutes to finish my remarks.

• (1640)

The Chair: It's up to the committee.

Some hon. members: Agreed.

The Chair: Go ahead, sir.

Mr. Patrick White: All of the facts that I have provided are written in the CAF's own reports. The military police investigation into sexual assault was founded. The harassment investigation into abuse of power was founded. The privacy breach investigation was founded. The internal investigation into Officer X's 14-year history of sexual misconduct against multiple victims was founded.

To the best of my knowledge, Officer X and all members of the chain of command are still serving in the Royal Canadian Navy, and not one has faced any disciplinary consequences for their actions. In fact, the executive officer has since been promoted and is the current commanding officer of a naval reserve division. He is also personally responsible for a founded breach of the Privacy Act.

It gets worse.

Most of the members in this case are part-time reservists and have full-time civilian occupations in your communities. This also means that there is potential risk to members of the public.

As I reported directly to Commodore Montgomery in April and May 2023, the coxswain who threatened charges against me and others carries police authority in his civilian job. The former CO who decided that “mentorship” was an appropriate punishment for sexual assault and Officer X, responsible for over 14 years of sexual misconduct, are each employed full time with direct supervisory authority over children.

To conclude, I have relied heavily on the broken and inadequate access to information and privacy systems to fight for the critical information I have shared today. After five and a half years, one message is clear: The Canadian Armed Forces and Department of National Defence are anything but transparent. There is no justice without accountability, and there is no accountability without transparency.

Thank you.

The Chair: Thank you, Mr. White.

We'll start our six-minute round with Mr. Kelly.

Mr. Pat Kelly (Calgary Rocky Ridge, CPC): Thank you.

We noted your testimony about the ATIP system before the access to information, privacy and ethics committee. Can you summarize your concerns with the ATIP system?

Mr. Patrick White: I would separate them into the access to information system and the privacy system.

The access to information system is easily defeated on the basis that it relies on an honour system. As we heard in testimony from the deputy minister, there's no standard procedure under which different groups across the department are required to respond, so there's ripe opportunity for abuse where records can be withheld or deleted and very little accountability.

In terms of the privacy system, a significant barrier and challenge I'll highlight is that you are required to name the individual record holder in trying to get access to your personal information. As an example, I would welcome any member of this committee to name the individual Canada Revenue Agency employee who helped process your tax return to know whether you could get information on that under the Privacy Act. I can tell you that a victim of sexual misconduct does not have information about the totality of the headquarters and who is involved in their files.

Mr. Pat Kelly: You've indicated that you've been the victim of a privacy breach, perhaps two breaches. For your first breach, can you describe how this happened and how you became aware of it?

• (1645)

Mr. Patrick White: The first breach happened when I submitted a harassment complaint. I submitted an ATIP for the response because, unfortunately, Commodore Montgomery didn't think it would be appropriate to give me the final decision in one harassment investigation.

In the one against the executive officer I mentioned, the privacy breach happened because the individual improperly retained access to and shared personal information that should have been transferred or destroyed when I transferred units. I had to ATIP the package that confirmed that. I made a complaint with the appropriate group, the director of access to information and privacy. I'm looking at their recommendation, and unfortunately they didn't feel that they needed to take any action because the system in which the information was stored had changed.

To the comments that have been made by the minister and the deputy, there are no consequences for breach.

Mr. Pat Kelly: In the course of making an access request, did you get the information you requested?

Mr. Patrick White: I got the information I requested. Sometimes it takes two or three approaches or kicks at the can.

Mr. Pat Kelly: Okay, but they violated your privacy in so doing.

Mr. Patrick White: One of the documents released in the release package was an email that was circulated internally that had attached my personal information. That's how I knew there was a breach.

What concerns me about that, sir, I'll also add, is that the individuals who sent it and the individuals who received my information had all of the requisite training, knowledge and experience as former commanding officers—and in this case a current commanding officer—and they should have known better.

Mr. Pat Kelly: If I understood your opening statement correctly, are you saying that the military police that investigated you had a connection to the complaint itself?

Mr. Patrick White: It was not the military police. Under the old system—which has since changed but did apply to my case of sexual misconduct—commanding officers had to lay charges. In other words, the military police had to refer the files back to the units to lay a charge or have a charge-laying decision.

As I raised concerns, this individual, the commanding officer who made the charge-laying decision, which is part of the justice process, was not only present at the event but a friend of the accused—or a perceived friend—and has known him for a long time. This is a very clear conflict of interest, and apparently not one member in the entire Royal Canadian Navy chain of command was able to read to page 3 of the report.

Mr. Pat Kelly: How would you describe transparency in the MP reporting system?

Mr. Patrick White: It's very difficult.

First of all, complainants are not automatically given a copy of their police reports. In fact, I believe there's a box that the military police can check that says, "Complainant not notified". I truly struggle to understand why that box is allowed to exist.

Mr. Pat Kelly: How does a complainant access a copy?

Mr. Patrick White: First of all, you would have to find out that the report has concluded, and you don't always get that unless you follow up with the police. Then you would have to go through the access to information system itself to make the request. I believe it took a significant amount of time, maybe up to six months or a year, for me to get that.

One thing that's very difficult about it is that to make a complaint with the Military Police Complaints Commission, you have one year from the conclusion of an investigation. If there is a delay in receiving a copy of a report and it pushes you outside the one-year time limit, you have to get discretionary approval in order for the Military Police Complaints Commission to investigate.

Mr. Pat Kelly: However, all the way along, you were having to use the access to information system to get the information you needed to make a proper complaint.

Mr. Patrick White: That's a hundred per cent correct.

Mr. Pat Kelly: Would you say that delay is endemic in the access to information system?

Mr. Patrick White: Absolutely.

Mr. Pat Kelly: Do you get feedback or reasons why they won't give you the information?

Mr. Patrick White: Sometimes you do get an occasional response from the department saying that they're going to exceed the time limit. I know that an article came out recently saying that they weren't doing that. They started doing that. They've now stopped doing that again.

I often follow up with them via email, because I know that attempting to resolve the problem is a prerequisite of going to the Information Commissioner or Privacy Commissioner. However, complaining to the Information Commissioner and the Privacy Commissioner is not an exception to getting the information. It is part of the process. You will not get your information unless you make a complaint.

The Chair: Thank you, Mr. Kelly.

Mr. Fisher, you have six minutes.

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

Gentlemen, thank you very much for being here.

Naval Lieutenant White, thank you for being here and sharing your story. Thank you for your continued service to your country.

Mr. Walbourne, Gary, it's nice to see you again. We've had many conversations over the last several years. I can't believe it's been six years since you've been gone from the position of ombudsman. I'm glad to hear you are enjoying retirement in Prince Edward Island on your farm, cleaning up the damage from Fiona.

Gary, you touched on some of this in your opening five minutes, and it probably revisits an awful lot of things you've said to this committee and to individuals around the table in the past, but upon reflection, what tools or supports would have enabled you to better fulfill your duties in your time as an ombudsman? Again, I know you've touched on some of these things individually, but I'd like to get them on the record.

• (1650)

Mr. Gary Walbourne: There are two areas of restriction that really bear down on the ombudsman's office. One is financial control. The other one is human resource control.

It was ludicrous behaviour. It got to a point where I wanted to travel as the ombudsman and had to get approval to do that. It would be things along the lines of being asked to submit my claim and do the factoring four places beyond the decimal point. It got to be such a laborious process to go through to get anything done.

We once wanted to staff a position, and we determined the attributes and assets that this person needed. Then, when we sent them to the department for posting—because they have the authority—they changed what we put on the bulletin. It changed into the type of individual they were recruiting and not what we were recruiting.

Having those things always in someone else's hands was really restrictive to the ombudsman doing his job.

Mr. Darren Fisher: I remember meeting with you one time in Centre Block. As frustrated as you were, you were also clearly very proud of some of the work you were able to get done—things you were able to accomplish on behalf of individual members of the Canadian Armed Forces.

Can you talk a little about some of those successes and things you were able to accomplish as ombudsman? Again, as frustrated as you were at the time, you had some major successes and were very proud of some of the work done.

Mr. Gary Walbourne: A lot of what the ombudsman does goes unsung. We don't see everything.

During my tenure—I was there for four and a half years—we handled approximately 10,000 personal cases, with a one hundred per cent success rate in getting those people to where they wanted to be. I think that's the bread and butter of what an ombudsman does day to day.

We issued 14 reports in four and a half years. There were an untold number of recommendations made. I'm disappointed, though. They haven't all been implemented, but there's been some work towards most of them.

Retaining members was something we were very proud of. They weren't going to release a member until all benefits and services were in place from all sources. Now I see that is starting to slip. We are starting to release members again before having them prepared for what city streets look like.

I think we made some great strides while I was there. We raised some very good points about the reserve force. We did several reports on the reserve force that hadn't been done before and opened up access to some benefits for them. We met with the rangers in the north. Something as simple as putting a report out in their language, they were receptive to that. I'm very proud of the Valcartier report and the benefits that came out of it.

I think there was a lot we accomplished. I will go back and say again that I think what we did on a day-to-day basis was tremendous work—the actual grunt work, as I call it, on the ground, when we were there on the bases meeting people face to face and listening to the widows.

I used to enjoy getting out of Ottawa. I still enjoy it, I have to tell you. I enjoyed talking to the people. The men and women who make up the Canadian Armed Forces are unsung heroes every day. These people get up and do their best. They come to work and do the job Canada asks them to do. That's where the real truth lies. I think that's where we made a lot of headway. We built a lot of trust with that community and got some engagement.

Mr. Darren Fisher: I'm not sure how much time I have.

The Chair: You have one minute.

Mr. Darren Fisher: I'll finish off, Gary, by saying that you made yourself available to us, not only as committee members but also as members of Parliament, on a regular basis. I can remember how flexible you were when we were trying to meet with you. I want to thank you personally for that.

I know we met several times. I've learned an awful lot from you. I'm very thankful for the work that you do.

• (1655)

Mr. Gary Walbourne: I think part of the ombudsman's role is to make sure he's educating all communities about what's going on so they can seek help, input and assistance to help move the portfolio forward.

Mr. Darren Fisher: Thank you.

The Chair: Thank you, Mr. Fisher.

[*Translation*]

Ms. Normandin, you have six minutes.

Ms. Christine Normandin (Saint-Jean, BQ): Thank you very much.

Thank you to both witnesses for being here.

My first question may concern both witnesses, but they may not have the answer. I'll open this up to both of them.

My understanding, based on what military members have said, is that it's extremely easy for anyone with the necessary security clearance working at the Department of National Defence to access any given member's file.

The problem is that, when someone accesses a member's file, there's no record of who accessed it, no notes, nothing. That means anyone can access a file without the knowledge of the person concerned. That's not how it works in, say, the health care field. When someone accesses a medical file, there's a record of that. The information is there.

Are you aware of this situation?

[*English*]

Mr. Gary Walbourne: Since it's about access, I'll give it to you, Patrick.

Mr. Patrick White: When it comes to a lot of the cases and information, I appreciate the highlight of this struggle.

One of them, I can tell you, related to the grievance file and was exactly that. One of the first steps when you file a grievance is they give you a consent form that gives the department permission to access everything about you. They don't necessarily tell you who's accessing it or the totality of things they're considering. I understand members can then ATIP again, but remember that anytime I say “ATIP”, there's a delay involved. Members can ATIP their grievance file to see what's in it. That's supposed to be the totality of what's considered. If something is missing from the grievance file, members should have an ability to say, “No, I'm adding additional documentation.”

Since the recent article about Officer X in the newspaper, I've been receiving anonymous, harassing emails from someone who claims to be associated with National Defence headquarters. I've asked my chain of command to look into who may have accessed my personal email, because it's coming to my personal email. However, they don't seem able to tell me who's been pulling up my file and accessing it.

I would certainly hope they're able to do that. There's a group of people you would expect to have accessed my folder, but if someone—whom I very clearly don't know—who doesn't have any reason to access it did so, I'd say the military police owes them a visit.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

Are you saying that you'd recommend updating the computer system so there's a record of who has accessed a military member's file?

[*English*]

Mr. Patrick White: I think that would certainly be welcome. The problem, of course, is effectively how that would be rolled out. As an example, in a naval reserve division, you have a ship's office, which is our administrative cell. It handles all those things, like the personal files and the administration of a member. You could perhaps integrate some means of allowing members to access that information. I imagine the department would probably provide an excuse and say they'll add it to their list of a hundred things to do, and by next century when we've all forgotten about it, they'll take it off and no one will notice.

[*Translation*]

Ms. Christine Normandin: Thank you very much.

Mr. White, the committee has received some of the recommendations you made.

Would you tell us more about records being destroyed when someone retires? Can you tell us what that's about and why you recommend retaining the records for a longer period of time?

[*English*]

Mr. Patrick White: Part of the concern is that members can use retirement to escape justice. I believe there was a case in CFB Halifax where an officer was placed under harassment investigation, resigned from the military and started work as a civilian the next day, at which point the military threw up its hands and said, "Well, I guess the matter is closed. The member is released." Having access to information that allows us to dig into the files of people who have retired means we're not in a situation where important decisions are made, members are able to release from the forces and their emails or other documents are destroyed.

I was very surprised that the system relies on an honour system. If I come up with a list of five names and, in the process of filing a request, they go to those five people and one has retired, they will throw up their hands and say, "Well, the member is retired. We can't get their records." Are you telling me that the day after they retire, we have no backups and have nothing saved, and no one is able to say, "Hang on. The IT team didn't actually delete their records. That's scheduled for next week?"

If there are records worth preserving, an obligation of members before they're released should be to ensure that they are properly preserved, or we need appropriate backup systems in this case. In my mind, when I say that, I mean there could be emails, drafts and correspondence, because honestly you can rely on what's on the page, but the real decisions are probably hidden in emails or correspondence.

• (1700)

[*Translation*]

Ms. Christine Normandin: Thank you very much.

I don't have much time left, but we can pick this up again in the next round of questions.

One of your recommendations is to pause the time limit to submit a complaint, including a grievance, if an information request has been made and disclosure of that information would be relevant in drafting the complaint.

I'd like you to tell me about time limit issues in relation to complaints. I'll keep that in mind for my next turn because you won't have time to answer my question this time.

[*English*]

The Chair: I'm sure you want to answer that in a fulsome way, and Ms. Normandin will have further time.

Ms. Mathysen, you have six minutes.

Ms. Lindsay Mathysen (London—Fanshawe, NDP): I too want to thank both witnesses for appearing here today.

Mr. White, I want to acknowledge the strength that you bring to this study and all that you do. I appreciate that.

Mr. Walbourne, your breadth of experience is something very important to this committee as well, so I'm grateful for that here today.

Mr. White, you have referenced often the story that came forward in the Ottawa Citizen about Officer X. The internal report from the integrated complaint and conflict management team found, as you referenced, that they had bundled up the information and all the allegations. Over 14 years, there were multiple allegations, but despite all of that, no action had been taken. It wasn't until all that information was leaked to the media that we knew about that.

You also talked about that connection between transparency and accountability. Can you elaborate a bit more on that, but also on the recommendations you have specifically to ensure justice for survivors throughout all of this?

Mr. Patrick White: First of all, I'd like to thank you for even raising and proposing the study. I was glad to see that someone on the national defence committee had picked up the torch, because there's certainly been a lot to talk about in this study.

With respect to the recommendations, I certainly don't wish to hold myself out as an expert or as having more value than I have, but I will say that my experience, as you heard in my remarks, has been very broad. I have touched on a lot of different offices. I've run into a lot of different barriers, and I've basically been fighting for as long as the Second World War took.

Some hon. members: Oh, oh!

Ms. Lindsay Mathysen: That's quite the context.

Mr. Patrick White: The comparison isn't a flattering one for our current forces.

However, I would say that in terms of transparency, fundamentally it comes down to accountability. I believe that while we can take some of the expertise that Mr. Walbourne has and implement recommendations—and we'll continue to evolve and do that over time—at a fundamental level I think the military has a lot of what it needs to solve its problems. The one thing it doesn't have is accountability among senior leadership.

Ms. Lindsay Mathysen: It's internal will too.

Mr. Patrick White: That's where the accountability would come from.

Ms. Lindsay Mathysen: Yes.

Mr. Patrick White: We have codes of ethics, and when you don't respect the dignity of all persons, you can be released.

I struggled to find the name of a single senior member of the forces who has been held accountable for anything other than their own personal conduct. In other words, has anyone been relieved of command for the 2,000 sexual assaults that occurred in the last year or the year before that? We're still dealing with these problems eight years after Operation Honour.

As I've told people, when you look at the facts, I don't believe that when the issues that may have happened regarding General Vance happened, he was acting alone. There was a group of people who may have been signing travel claims. There may have been people who knew about it.

As I said, if you want to change the culture, you change the culture by making people more afraid of doing wrong than doing right. That's the current state of affairs.

Ms. Lindsay Mathysen: Mr. White, in the beginning of this study, the deputy minister, Bill Matthews, came before the committee and stated that one of the biggest problems we had in the ATIP system and the timing of the releasing of information was that the records weren't digital and that they were working on that. However, you've suggested that even with the deletion of an email when someone retires or a change within that system, there are quite a lot of things lost.

Should we be concerned about the movement towards digitization?

• (1705)

Mr. Patrick White: Digitization may help speed up parts of the requests, and if you're able to digitize and store records so that individuals no longer need to provide them themselves....

Again, the process is that you make a request and it goes to the corporate secretary in the ATIP team. They figure out where it needs to go. They blast it out, and then individual record holders are supposed to search their emails and provide search terms. I know this because I've included my name in one of my own requests to see how that process unravels. They ask what search terms you entered. When you're looking for, as a public example, Mark Norman, but you've never used Mark Norman's name in an email, Mark Norman's emails or emails related to Mark Norman are not going to come up in that response.

As one possible solution to part of the problem, if the department tracks what terms are searched and who is solicited for a response, could we not make that available to requesters, to provide their own degree of accountability and oversight? All of the documents that I've requested in my case and the cases of the related issues you've heard today were requested as a double-check. I requested a copy of the police report to see who was interviewed as a witness, and they didn't interview the commanding officer who was present at the time. That's an example of how you need to request these records so you can hold the system accountable. It's the same as when you get your grades back in a school assignment. You might want to check your teacher's math because we're human and we make mistakes.

The Chair: Thank you, Ms. Mathysen.

Mr. Bezan, you have a five-minute round.

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

Thank you, Mr. Walbourne and Mr. White, for being here today and for your opening comments and testimony so far.

When this government came to power, Justin Trudeau campaigned on wanting the most transparent government in history. Yes or no, do you think the government has become more transparent?

Mr. Patrick White: It's a broad question, to be honest, but I can say that at least in how things are trickling through the Department of National Defence, what are transparent are the problems.

Mr. Gary Walbourne: I would have to ask, "As compared to what?"

Mr. James Bezan: Compared to.... Well, they said that it was going to get better. Has it gotten better or worse?

Mr. Gary Walbourne: I can only speak from a personal perspective. I would absolutely say it's gotten worse.

I went through a process at the end of my career that wasn't pretty. I referenced it in my opening comments, and I suggest you go back and look at the transcript. There were about eight or 10 people involved in that whole—I have to be careful here; I'm too old to be sued—situation.

Some hon. members: Oh, oh!

Mr. James Bezan: You're protected at committee.

Mr. Gary Walbourne: Without exception, every one of them was promoted. No one was ever challenged on the actions they took and the part they played in this scenario.

Mr. James Bezan: Mr. Walbourne, in your opening comments, you talked about a common pattern. You had five things listed as a common pattern with multiple ombudsmen.

We can look at the situation with the former chief of the defence staff Jonathan Vance. You took that to Minister Sajjan at the time. Did that follow the same pattern you had experienced and your predecessor had experienced up to that point in time?

Mr. Gary Walbourne: It got worse.

As an ombudsman, part of your role is to advise the minister and seek guidance on files that cannot be solved at the lower level. You have to go to the minister with issues, and sadly, a few of them are at the end of their life. If you can't get to the minister and if you get shut down, the doors are closed. Someone on staff can refuse the ombudsman a meeting with the minister, and it happened consistently after that episode.

Not only did the pattern stay the way it was in that it was lather, rinse and repeat, which I witnessed for four and a half years, but it got progressively worse after that.

Mr. James Bezan: Mr. Walbourne, with the way the current system works, the deputy minister, the defence ombudsman and the judge advocate general report directly to the minister. They are order in council appointments. The government is proposing in Bill C-66 to add to that list the provost marshal general, the director of military prosecutions and the director of defence counsel services. They would become order in council appointments and would also report to the minister.

You've long advocated, as has your successor Mr. Lick, that the ombudsman's office should become a fully independent office that reports to Parliament and is properly resourced to remove political interference. Do you believe that having more people report to the minister circumvents, as Mr. White laid out, the chain of command covering up for each other with no accountability, or does it open the door for more political interference?

• (1710)

Mr. Gary Walbourne: In my opinion, it absolutely opens the door for more interference. If you say on paper who reports to the minister.... I had to go hat in hand to the deputy minister to get the money and authority to do staffing. If we put them in the same situation.... I don't know how or in what world you think you're increasing transparency if you start bringing everyone into the house and putting them under the same set of rules.

I just think it's going to get worse, not better.

Mr. James Bezan: Mr. White, you made 11 recommendations when you appeared before the ethics committee. Do those 11 recommendations still stand?

Mr. Patrick White: I would say for the most part they certainly do. I'm following some of the feedback and testimony that have come out of the previous meetings here, understanding that, again, the government rejected an accelerated process for sexual misconduct victims and survivors requesting information.

At the end of the day, I would have wanted to hear in the deputy's response—which I did not hear in his defence of that rejection—information that might come into play in a court setting. If there's a statute of limitations, a limitation period or some court timeline that cannot be amended, are you going to tell a sexual misconduct survivor or victim who has to give a victim impact statement, "I'm sorry. We just process everything and all of the ATIPs we get in order"?

To your specific question, if the committee thinks they're relevant—

Mr. James Bezan: Down the road, we're going to be studying Bill C-66 with changes to the military justice system. Both of you have had extensive experience, unfortunately from a negative standpoint, with military justice and the way it's been carried out.

Would you be prepared to appear as witnesses on Bill C-66 as well?

Mr. Pat Kelly: That's if Parliament asks.

Mr. James Bezan: Well, yes. It has to come to committee.

The Chair: We have to get it to committee. I'm sure you'll put forward that request.

We'll go to Ms. Lambropoulos for five minutes.

Ms. Emmanuella Lambropoulos (Saint-Laurent, Lib.): Thank you, Chair.

Thank you to both of our witnesses for being here and for your testimony. I know you're both here to make the system better, and I appreciate that.

My questions are for Mr. White.

You said something that I found quite interesting. Actually, your whole testimony was eye-opening, interesting and unfortunate. One thing you said that stood out to me was that in order to change the culture, you have to make people "more afraid of doing wrong than doing right".

I think one of the big reasons why justice isn't really served within the military is that people are afraid of coming out and complaining. I know it's gotten better. I think the complaints have increased because people have heard that changes are going to be made. Have those actually happened? They haven't yet, from what I'm hearing.

I'm wondering if you can explain a bit further why people are afraid and what consequences could be placed against someone. I'm new to the idea of that. Could you express it?

Mr. Patrick White: As I stated before the ethics committee when the question of reprisals came up, reprisals can be varied. They can be numerous. They can come in many forms and can very often be hard to detect. Where there is discretion, command authority or an opportunity to decide things, the root of the abuses of power can exist. As I said, fundamentally, we're dealing with an accountability and abuse of power problem.

For example, you might complain about something, and then all of a sudden, for a posting you really wanted and might have been the most qualified for, well, as that's a discretionary decision, command has gone in a different direction. It could be emails attacking your credibility. I've experienced that.

The challenge is that there's supposed to be a military ethos, a code of ethics that is supposed to shame people and make them feel like they're doing wrong when they step outside of it. The problem is the incentive structure of the forces. If you're choosing a lifelong career in the forces, you risk not being promoted. You risk being thrust aside. You miss all kinds of opportunities, so the incentive could be that you're just going to keep quiet, keep your head down and do what the boss wants until you're the boss. Then, maybe, you can nudge the ball forward on things.

I could answer this question for an hour, but I'll stop there.

• (1715)

Ms. Emmanuella Lambropoulos: I think that exists in most organizations, unfortunately.

What do you think needs to change? You said people need to be "more afraid of doing wrong than doing right". Can you give us an example of what exactly would allow that to happen?

Mr. Patrick White: The short answer is that we need to move from a system of whistle-blower reprisals to a system of whistle-blower protections.

I would like to highlight on the record, for those who might take issue with the manner in which I've communicated certain information today, that I've been fighting this for five and a half years. I'd like to know why, at any point in the last five and a half years, this couldn't have been dealt with by any of the command authority that exists within the Royal Canadian Navy.

Part of it is about encouraging people in a similar position to feel as though there's trust and confidence that issues will be looked at or solved. They could be brought in to explain things. I find a big problem is that the military doesn't want to talk. We've covered five and a half years' worth of issues effectively in 30 minutes so far. Why hasn't anyone bothered to pick up the phone, call people and say, "Let's talk about these issues" so that everyone gets buy-in, rather than the decision just being communicated and there it is? That's fundamentally what we need so that, again, the military and the chain can be given a chance to do the right thing.

When people feel like outsiders for doing the wrong thing, we'll know we've succeeded.

Ms. Emmanuella Lambropoulos: I hear the bells, so maybe you want to ask—

The Chair: No, those aren't bells.

Ms. Emmanuella Lambropoulos: Oh, did they stop?

The Chair: No, it's just that the House is suspended at the call of the chair.

Ms. Emmanuella Lambropoulos: Okay. Can I continue?

The Chair: We can proceed. You have 30 seconds.

Ms. Emmanuella Lambropoulos: The last thing I want to say is that it's crazy Officer X was promoted after a 14-year history of sexual misconduct. I don't know who that is, obviously, but when things like this happen, what do you think it says about the culture?

Mr. Patrick White: There's too much to answer in 30 seconds.

As I said, fundamentally, you need leadership to lead. My father, before he died, gifted me with a plaque that he had on his desk at work. It says, "If you're ahead of me, lead. If you're behind me, follow. If you're not going to do anything, get the hell out of the way."

Ms. Emmanuella Lambropoulos: Thank you.

The Chair: It should be the title of the study.

Voices: Oh, oh!

Mr. Patrick White: I did like the proposal "Not Their First Rodeo". I found that was quite good.

Voices: Oh, oh!

The Chair: We have competing titles.

Madame Normandin, go ahead for two and a half minutes, please.

[*Translation*]

Ms. Christine Normandin: Thank you, Mr. Chair.

Mr. White, I'd like you to tell us about the time limit and the recommendation you made.

[*English*]

Mr. Patrick White: Absolutely.

To add to that, part of the concern that was missing from the officials' presentation about grievances is... I think it was one of the generals who responded by saying that there's a catch-all that says if you exceed the timeline to file a grievance, it can, of course, still be accepted, but it's a discretionary decision. It is not a mandatory decision where, say, if you meet five guidelines, your grievance will be accepted late. If you have bad actors in the system who are abusing their authority and don't want to do the right thing, or who don't want to err on the side of hearing or entertaining a grievance, they can shut those things down.

That is part of why I proposed the idea that we have these notices of intent to grieve and we have the grievance timelines. Particularly in the naval reserve, they seem very strict and, when it suits them, will shut down a grievance and say that the member could have done this or that. The goal is to try to encourage members, almost like an intervention at an early stage, so that if they have everything they need, they can proceed with a grievance.

To finish the thought, I'll say that the grievance clock starts at the time of the decision because that's what you have to grieve—the decision. If it takes six months to get an access to information request related to the decision, well, I'm sorry, but you've exceeded your 90 days. Now, again, a reasonable initial authority might look at that and say that the member made the argument that this was essential information to filing a grievance, and the authority will allow it. Others may say that they don't think it's relevant, and they'll throw it out because they can, because it's easy.

I also want to highlight one last point.

It seemed very flippant, almost, to hear that the final authority can act as the catch-all solution when the final authority has no maximum time limit to consider requests. However, why are we saying that it's okay to have a botched or invalid initial-authority decision? That's like saying we're going to let you go to court, the trial judge is totally going to butcher it, but you shouldn't worry because you can appeal. You've denied a first opportunity for review, which would have also solved the problem much more quickly. How is that an acceptable outcome?

• (1720)

The Chair: Thank you, Ms. Normandin.

[*Translation*]

Ms. Christine Normandin: Thank you.

[*English*]

The Chair: It makes me think of the Trump trials.

Ms. Mathysen.

Ms. Lindsay Mathysen: Thank you.

Mr. Walbourne, in your opening statement, you mentioned that you are highly supportive of my bill, Bill C-362, for which I am very grateful. It means a lot. It was because of listening to a few ombudsmen on this issue that I put it forward.

The creation of a truly transparent office for the CAF and DND ombudsmen is the main thrust of the bill, of course. That independence could play such a key role. What specific tools could help in making the military more accountable on things like a culture change?

Mr. Gary Walbourne: I'll liken that to when they set up the sexual misconduct response centre. We learned very quickly when it was rolled out that it reported through the chain of command to the chief of the defence staff and then, functionally, to the deputy minister. There was a lot of reluctance among members who had experienced this type of behaviour to come forward because there was no thought of independence.

It can't just be independent; it also has to be perceived as independent. People, especially people who have been aggrieved, all

automatically have a mistrust in the system. If they think their concern is not going to be taken seriously and will not be outside of the chain of command where it can have a full evaluation so that where it should go can be determined on its merits, then there will be a reluctance to come forward. If they have the thought that a person is not tied to the department—although the person reports through and assists the department—they'll think they have an option other than having to always respond to the one entity. I think it gives members, especially, this feeling that there's something they can do, there's somewhere they can go, there's a voice that will hear them and it's not going to be restricted by any schematic that has been set up by the department.

I just think it goes to transparency and the perception of transparency.

Ms. Lindsay Mathysen: You've said before, and you said again today, that listening to them shouldn't come down to personalities. Do you believe that independence would be key to ensuring that your work, your successors' work and the implementation of the recommendations don't come down to personalities, or is there more?

Mr. Gary Walbourne: I think it opens up a venue where the concerns would be heard by a broader audience. It doesn't come down to an ombudsman going hat in hand looking for some money. It changes the ground, and it makes it different for everybody who would use the office.

The Chair: Thank you, Ms. Mathysen.

Next we have Mrs. Gallant for five minutes.

Mrs. Cheryl Gallant (Renfrew—Nipissing—Pembroke, CPC): To the former ombudsman, from the time you gave your testimony on how the military addresses sexual misconduct cases within its ranks until now, have you seen any improvement made by DND and the CAF?

Mr. Gary Walbourne: There's been incremental improvement. It would be unfair to say they haven't tried to do their best. I do believe, as Patrick has said, there has been some acceptance in the environment and people feel that, yes, they can come forward a bit more.

I don't know if we've gotten down to the ground on this yet. I believe it's going to be a work in progress for a period of time. The current set-up and structure seem to be helping along those lines. I don't think you're going to swallow an elephant, but maybe you will be eating it one bite at a time.

There has been some incremental improvement. There's an option for people there, and it's being received somewhat in a fairly good light.

Mrs. Cheryl Gallant: During your time as ombudsman, were there any reports of reprisals from DND or CAF superiors when a service member requested an ATIP?

Mr. Gary Walbourne: Absolutely.

Mrs. Cheryl Gallant: What sorts of reprisals? Are they the same type we're hearing about from Mr. White?

Mr. Gary Walbourne: Absolutely.

• (1725)

Mrs. Cheryl Gallant: How should service members be protected from reprisals from their superiors when they request an ATIP?

Mr. Gary Walbourne: Each case in and of itself is different. Some of these things are very minor issues that need to be dealt with. For some, it was a clerical error. For others, you would almost think it was a planned way forward not to release the information. Each and every case is different, and it depends on the circumstances of the case. Sometimes people are not being given information or people are being accused of using the wrong search, when they are asked for someone by name and they're only referred to by rank.

Those are the types of things we see. The ombudsman did have the opportunity to squeeze some of that information out of the department to help a constituent move forward.

Mrs. Cheryl Gallant: An ATIP request seems to be a very inefficient way for persons to obtain the information they need. Are there other areas in the public service required to go through the same process to find the documents they need for their cases?

Mr. Gary Walbourne: Once an ATIP request comes in, anyone who is mentioned on it has to be engaged. The writer of some of this information also has the privilege to say, "No, I don't want it released."

Mrs. Cheryl Gallant: Is there a process aside from ATIPs—because this is obviously broken—where service members can obtain the documents they need without going through that system? Is there another way to do it?

Mr. Gary Walbourne: It all depends which documents you're looking for. If you're looking for access to personnel records, that's fairly easily done, but it would depend on what documents they were searching for.

Mrs. Cheryl Gallant: For legal records—for example, copies of reports of testimonies—when somebody is making a report after a sexual assault, is that something they have to use an ATIP for? Should they just be able to get it? Do they need to retain a lawyer to obtain the documents?

Mr. Gary Walbourne: The answer is yes to all of the above.

Again, not to be flippant, but if it's something that has to do with a member's personnel file, it should be in their file. If it is something to do with an accusation of inappropriate behaviour or sexual misconduct, whatever that may be, it may not be captured in a personnel file and would end up being an ATIP request. There aren't many other ways to get access to that information.

Mrs. Cheryl Gallant: At one point along the way, there was a duty to report any sexual assaults, and here the individual did report and was in trouble for doing that. Is there another way to ensure, aside from going outside the military, that instances such as this can be addressed in a proper and timely manner?

Mr. Gary Walbourne: I think it comes back to what Patrick has already said: We need to talk about accountability. If we keep rewarding poor behaviour, we're going to get poor behaviour.

This is an accountability issue. I would say—and you're asking me in my jaded old age—that these types of things should all be outside of the military chain of command, but that's not going to happen.

What is another option for us? The ombudsman, even when the sexual misconduct response centre was set up, still continued to deal with inappropriate sexual behaviour complaints. On the duty to report, we need to allow the victims to determine what their self-actualization looks like: What do they want to do and how do they want to do it? It shouldn't be someone else reporting on them. There's a lot in that.

Mrs. Cheryl Gallant: Were there other reprisals, as Mr. White experienced, when obtaining access to information reports?

Mr. Gary Walbourne: Absolutely.

Mrs. Cheryl Gallant: This is business as usual.

Mr. Gary Walbourne: Absolutely.

Mrs. Cheryl Gallant: Again, we should be entitling this "Not Their First Rodeo", Mr. Chair.

The Chair: We'll take that under advisement.

Mr. Collins, you have five minutes.

Mr. Chad Collins (Hamilton East—Stoney Creek, Lib.): Thanks, Mr. Chair.

Welcome to both of the witnesses. You gave terrific testimony.

Mr. Walbourne, I've been in public life for many years. I've found that when you deal with problem areas of an organization, sometimes it takes someone such as you to shine a light on a problem to try to raise awareness and create a healthy tension to implement change. I've found over the years that where there's push-back, sometimes it requires policy changes, as you and Mr. White have highlighted here today. Sometimes it requires a change in personnel among leadership that just doesn't want to buy in. Sometimes it's gone on for so long in an area of an organization that it's embedded in the organization. To use Ms. Mathyssen's term earlier, you need wholesale "culture change".

You've been at this for a number of years. Most would point to you and say that you're an expert in this field. When you've implemented policy changes and changed leadership or you've done both and you still haven't found a change, what are the next steps?

• (1730)

Mr. Gary Walbourne: I think we've talked around it a bit here today. It has to be about developing a system where we reward proper behaviour and punish inappropriate behaviour. I talked about my personal case. There were eight or 10 people involved and every one of them was promoted. What do you think their underlings now see as the proper way to move ahead in the organization?

Mr. White talked about discretion inside the military chain of command and someone who didn't get a posting. When his colleague sees how that works and gets the chance to be in a place of command or obtain something for his benefit, he's going to use the same behaviour.

We all talk about culture change and how we're going to change the culture. We go on ad nauseam about it, but what do we do? We don't go after what's causing the culture to be broken, which is the behaviour of individuals in the culture. Unless we want to weed those people out and start rewarding proper behaviour and punishing bad behaviour, we can talk about culture until the cows come home, but it's not going to change.

Mr. Chad Collins: Thank you for that.

We've seen that culture change happen in other areas. I'll point to the entertainment industry as a great example. In amateur sports here in Canada, I think we've made strides in encouraging people to report.

Mr. White, you talked about encouraging people to report and the reprisals that came with trying to seek out more information. The more information we have when there's an investigation, the better opportunity we have to pass judgment on those who have done something wrong.

Can you talk about the importance of having a system in place that allows and actually encourages people to proactively report wrongdoing when they see it?

Mr. Patrick White: I think the basics of the system exist. The system that I would say needs to be fixed is the people system. It's the people version of that system, which is about making sure that when you report to someone, they're willing to take it on.

Here's my interpretation of the obligations of superior officers. If a subordinate came to me to report wrongdoing and after I reported it to my boss I was not satisfied that my boss was going to do the proper thing, I would have an obligation—not an option, not a chance—to take that further.

In my particular case, I'm the most junior member—the person who was victimized in this situation—and I've had to fight every step of the way. I've given you the names of all the commanding officers and superior officers who have knowledge of this. Why is it being driven by those individuals?

In the system, what is severely lacking is, effectively, an internal champion or people who wouldn't be punished for saying, "I respectfully disagree with the boss's opinion; I need to go talk to their boss." It's seen inherently as insubordination.

Mr. Gary Walbourne: Can I just add to that?

Mr. Chad Collins: Absolutely, yes.

Mr. Gary Walbourne: You asked how Hollywood and athletics have changed. They have changed because the public spotlight got shone on them. They didn't change because we allowed an internal unit inside either one of those entities to report upon itself. That's not how they changed. They changed because the public became outraged about the behaviour. Why did the public become outraged? It was because it became public knowledge. It was put above the tabletop: Here it is in its ugly truth; let's deal with it.

Mr. Chad Collins: Chair, how much time do I have?

The Chair: You have 30 seconds.

Mr. Chad Collins: It's hard for me to ask a question and get an answer in 30 seconds, but I'll reiterate my opening comments that you've given terrific testimony here today.

I agree with Mr. Bezan that we should have you back when the legislation is back here. You've provided a lot of information for us to think about. I appreciate that you've taken time out of your day to do so.

Mr. Gary Walbourne: Thank you for that.

The Chair: That completes our second round.

Colleagues, I propose that we go to a third round. We have the room for two more hours.

Mrs. Cheryl Gallant: I thought we had a vote tonight.

The Chair: The bells aren't ringing, so we're not worried about that for the time being.

We'll commence the next five-minute round with Mr. Bezan.

Go ahead, Mr. Bezan.

Mr. James Bezan: Thank you.

We're talking about culture and we're talking about cover-ups. One witness on the study already said there's a culture of overclassification at National Defence so they don't have to release anything. They can hide it using "secret" and "top secret". We've already mentioned the use of code names, like when Vice-Admiral Norman was referred to as the "Kraken", although some may say that is the common code name used for the commander of the Royal Canadian Navy. Then on top of that, as you've experienced, Mr. White and Mr. Walbourne, they rag the puck when it comes to slowly trickling out information under ATIPs and even requests for papers coming from committee. They take their sweet time about it.

What can we do to change that culture and provide checks and balances to ensure there is accountability in the leadership on both the Canadian Armed Forces side and the department side and to ensure that access to information is released in a timely manner? How do we fix this? You guys have both been on the inside.

• (1735)

Mr. Gary Walbourne: Look, not to repeat myself, but let me repeat myself.

We're talking about people who have been put in positions of authority. There are guidelines on what they're supposed to do. They're well written. When I first joined the public service after a long stint in the private sector—I should have stayed there—what I was given was a thick binder. It didn't tell me just about how I should behave; it told me how I should dress and how I should present myself. It was a binder of about 200 pages on how executives should present themselves.

In it, they talked about ethics, being accountable, understanding the law and doing the right thing. It was an ethos, so I said, "What a place. Let's rock and roll." However, it's funny that the farther you get up the ladder, the thinner the air gets—I'm sure that's what happens—and the blood rushes to their heads or their egos.

We have a system in place. We don't need to reinvent the wheel. We have the Public Servants Disclosure Protection Act if someone wants to blow the whistle on something, but we see that system abused. We have an ATIP process that is supposed to follow a step-by-step, logical format in order to release information, and it's not followed. It's circumvented by people in the system.

How do we change the culture? I'll go back to this again: We have to start rewarding proper behaviour and punishing bad behaviour. Why do we promote people when they do the wrong thing? Others come forward and offer themselves up, saying, "Listen, guys, this is what's going wrong. Can we get a little help here?" Those people are turned on.

You absolutely have a fundamental flaw here, but it's not with your policies. Your policies need updating, sure they do, and you need to adjust a few, add a few things to them and bring in a few more nuances and codicils there, but what we have to get at is the behaviour of the people currently sitting in the seats.

I read the transcripts from when Mr. Matthews was here. He was asked a question about the ombuds model, and he said they have no control over the ombudsman's office. Then, in the next statement, he said they were thinking about loosening up some of the controls. Those two comments don't make sense. How is it you have no control and you're going to loosen the controls? It's one or the other.

We don't challenge people when they do things that are inappropriate and use and manipulate the rules and regulations in place to suit their needs. I think we have to get back to that.

Mr. James Bezan: Would you both agree that it's a sad state of affairs when the Information Commissioner has to take the Department of National Defence and the Minister of National Defence to court?

Mr. Gary Walbourne: Absolutely, and it was a sad state of affairs when I had to challenge the minister publicly to get information on the transition process of the Canadian Armed Forces. Here we go again.

It's not like this just happened yesterday. This is pattern behaviour, and if we allow it to continue, we'll be continuing this conversation. Patrick will be my age when we come back the next time, God bless him.

Voices: Oh, oh!

Mr. James Bezan: I hope not.

Mr. Patrick White: I like your hair, but....

Voices: Oh, oh!

Mr. Gary Walbourne: It took me an hour.

If we don't go after the people who are in these positions and challenge them to do the right thing, teach them how to do the right thing and reward them for doing the right thing.... Everyone at DND in the executive cadre is getting a bonus this year. I guarantee you that.

Mr. James Bezan: Patrick, I'll let you get in on this.

There is an ethos. There is the code of service discipline. There are the KR&Os. They're supposed to describe how our leadership in the Canadian Armed Forces is supposed to act, yet the ones at the top are the ones ignoring them, in your experience and in the experience of others.

Mr. Patrick White: Let me quote from the privacy breach report that I received from the department, which said they were basically in mitigation—

The Chair: Read it very briefly, because Mr. Bezan—

Mr. Patrick White: It's one sentence.

The Chair: —has blown through his time quite nicely.

Mr. Patrick White: I understand.

It says, "25 August 2023, member B was reminded that according to section 7 (use) of the Privacy Act the use of [personal information] must be consistent with the purpose for which it was collected, and that retention of performance related information must be in accordance with current systems policies and standards."

The punishment for breaking the Privacy Act is being reminded of what's in the Privacy Act.

The Chair: Thank you for that reminder.

Mrs. Lalonde.

• (1740)

Mrs. Marie-France Lalonde (Orléans, Lib.): Thank you very much, Mr. Chair.

Again, thank you, Mr. Walbourne, for your service to our CAF members and their families.

Lieutenant, I would like to hear a bit more from you.

I will reflect on Bill C-66, the military justice system modernization act. The government has proposed to increase the independence of military justice actors, like the provost marshal, to ensure they are not influenced by the chain of command. I would like to hear your thoughts on the importance of the independence of military justice actors, but also the role that the chain of command can play in the system at present.

Mr. Patrick White: First, I would say I haven't actually brushed up too much on the military justice system. As you heard, "mentorship" was the response from the recommendation by the military police for charges. I haven't gotten to the trial phase.

In my corporate law practice, we deal with issues of fiduciary duties of directors. There are stockholders who can appoint directors to the board of a company, but the directors, regardless of their affiliation with the stockholders, must act in the best interests of the corporation. The appointment process doesn't necessarily mean that an individual is in a conflict of interest if there is a very strict code of ethics and there is enforcement of that code. A breach of fiduciary duties is a cause of action in a court of law.

A director who breaches those duties can be held personally liable for individual breaches. That means that if they're acting inappropriately, they can be held accountable by other stockholders or they can be held accountable by other actors who have been harmed. The same principle can apply here.

I read with interest an assessment of Bill C-66 by someone in the profession with much more expertise than I have, Rory Fowler, a well-known name, I believe. To his point, I'm not sure that changing the appointment process is truly going to fix issues of independence when you could, in fact, empower someone with either positive reinforcement or the negative reinforcement that comes with clearly laying out ethical issues. In other words, let's say they received pressure from the chief of the defence staff to act inappropriately. If they had a reporting mechanism and an ethical obligation to resist that sort of pressure, they could be supported and there would be no need to change that appointment process.

Again, I will qualify that I have not brushed up too much on that aspect of the military justice system.

Mrs. Marie-France Lalonde: Thank you for that answer. I really appreciate it.

As I said, thank you for your service. I know you're still in the forces.

How has your experience with the Canadian Armed Forces grievance system affected your ability or your willingness to continue to serve? Have you spoken to individuals in a situation similar to yours?

Mr. Patrick White: The grievance system is presently almost the bane of my existence. It is a source of aggravation and frustration.

I'll say two things. First of all, you need to put yourself in the perspective of the most vulnerable kind of person. Respectfully, that's actually not me. I'm an attorney. I have some legal knowledge. I'm not the most vulnerable kind of person. The most vulnerable kind of person may be the 16-year-old who gets parental con-

sent to join. They may be the person who is so affected by aggravated sexual trauma that they can't even put their hand on the door-knob to get into work, or may vomit when putting on their uniform. That's just an example. If you design a system so that individuals like that can navigate it rather than requiring us to be Rory Fowler or Michel Drapeau, you will succeed in having a system that works for everyone.

The grievance system, as it stands, requires individuals like me and others to spend our limited part-time, our free time, to fight a system that is paid and employed full-time to fight back. That's the challenge I have. I am not an expert on military regulation, military law, etc., but they have access to all of those resources. They also have access to legal advice on those issues. Members don't. What annoys me more than anything is when senior members who have never been affected in the way some of us have flippantly say, "If you don't like it, grieve it," knowing full well that they've never had to go through those processes, or maybe they did in a minor way and had success.

If I could leave the committee with one final point to think about, it's that if you really want to get to culture change and solve these issues, you need to look at every single aspect of the system and understand how it feeds back in. That includes the honours and recognition system, the promotion system, the grievance system and the military police system—all of it—but with a central view of what the effect would be on these sorts of things that we get to.

• (1745)

The Chair: Unfortunately, we'll have to leave it there, colleagues. As you can see, the bells are ringing. They're 15-minute bells. Only with your permission can I squeeze out another five or 10 minutes. Do you want to do that?

Mr. James Bezan: Yes. We're just upstairs, so we'll run up and vote.

The Chair: Okay. We'll give it another 10 minutes.

Just to be fair, we'll have two minutes, two minutes, two minutes and two minutes.

Mr. Darren Fisher: Yes, that works.

The Chair: Okay.

Ms. Normandin, you have two minutes.

[Translation]

Ms. Christine Normandin: Thank you, Mr. Chair.

Mr. Walbourne, you mentioned that the media only come out when the ombud makes recommendations or when there's a scandal. They shine some light on that kind of thing. One of the recommendations is to have the ombud report directly to the House rather than to the minister.

In your opinion, if the ombudsman reported to the House rather than to the minister, what would be the role of MPs, particularly opposition MPs?

[English]

Mr. Gary Walbourne: As to the construct of how it would work, the ombudsman is still going to report through the minister. The work that's done through the CAF would have to come through that chain. If there is no response, where does it go from there? The corrections ombudsman right now reports through the minister. He goes to the commissioner. If there's no action, he goes to the minister. If not, it goes from there to the House, it gets tabled and there is light shone on it.

How do we want to do that at the end of the day? Is it through the committee? Is it taken to the House? I think those details on the best way forward need to be determined.

There are several options. The Five Eyes have various applications of this, so I think there are ways of doing it, but I think it would remain about what the capacity is and where it should go. That's how I'd like to see it reviewed.

[Translation]

Ms. Christine Normandin: Thank you very much, Mr. Walbourne.

Since I don't have much time left, my comments will be brief.

Mr. White, one of the recommendations is to introduce administrative and disciplinary sanctions against people who avoid creating records or who destroy them.

If this recommendation is implemented, is there a risk that only people at the bottom of the hierarchy will be penalized, not those who give orders?

[English]

Mr. Patrick White: It's a good question in the sense that there's always an opportunity, as I was saying, when you have issues around discretion, for abuse to arise. When it comes to requesting information, the challenge, of course, is that assumptions are made as to who's making these sorts of requests, and actions can be taken appropriately.

I'm very certain—from what you hear from oral history, for example—that in the naval reserve headquarters, meetings about me and my issues are dealt with verbally. They even go a step further than just destroying records. They don't create them. They don't send emails. They'll send a text message that can't be ATIPed. They'll make phone calls. There's—

The Chair: Mr. White, I'm sorry to interrupt you, but as you can see, we're short on time.

Mr. Patrick White: Understood.

The Chair: Ms. Mathysen, go ahead for two minutes.

Ms. Lindsay Mathysen: Mr. Walbourne, in a couple of months, Mr. Lick will be retiring from his role as ombudsman. We're in mid-April. I asked him, and he's certainly very concerned about the fact that on the PCO website there is still no job post up for his replacement.

Are you concerned about that? What do you think needs to happen to ensure a transparent, open process for choosing the next ombudsperson?

Mr. Gary Walbourne: Rest assured that I'm not concerned about applying for the position.

Some hon. members: Oh, oh!

Mr. Gary Walbourne: However, I think it's absolutely critical that there be a competition. I hear the scuttlebutt on the road. I'm sure it's around this table and people know about various levels of it. There's a thought process about how an ombudsman is going to be appointed. I shudder to think what that's going to do to this office.

When we appoint an ombudsman, let me tell you—and we all know how it works—there is a quid pro quo. Somewhere down the road, it will be time for payback. I question the independence of the office, so I really hope that at the end of the day, if nothing else happens, when we go looking for the next ombudsperson, there is an open competition, to which those who wish to can apply, and that, based on merit and ability, the right person is selected for the job.

You talked about transparency. I think appointing an ombudsman goes contrary to any definition of transparency you will find.

• (1750)

Ms. Lindsay Mathysen: We haven't started that process yet. How long did it take for the process in which we saw Mr. Lick take on that role?

Mr. Gary Walbourne: I have no idea. Mr. Lick came in as an interim ombudsman, I think, for six or eight months, and then a competition was opened, to which he applied. I have no idea how long it took for me. From the time I applied to the time I got through, it was almost six or eight weeks. There was psychological testing. There were nine people on the panel, from the Prime Minister's Office and from the minister's office. PCO was in the room. There was a broad base of people in the room who were coming at it from different perspectives.

Anyway, I'll knock the table and hope we don't....

Ms. Lindsay Mathysen: Did you have time to transition?

The Chair: I'm sorry, but that's your two minutes.

Mr. Kelly, go ahead.

Mr. Pat Kelly: Mr. Walbourne, in response to Mr. Bezan's question, you were quite emphatic that the culture change that's talked about all the time is really just a matter of leadership and accountability on the part of individuals—those who let the system down through bad behaviour and the tolerance of bad behaviour.

The government has been in office for almost nine years now. It promised improvements in openness and transparency. If there was clear leadership at the ministerial level to demand accountability and demand openness and transparency, is it fair to say we'd have it by now?

Mr. Gary Walbourne: I think we have a perfect opportunity, to follow on Ms. Mathysen's question. The minister now has an opportunity to pick the next ombudsperson coming into the organization. If we're going to just pick someone off a list or find someone we think is qualified and put them in there.... It goes back to leading by example.

The proper behaviour should be rewarded. If we continue to allow behaviour that is not at the level that we as taxpayers expect and that I expect from this group in Parliament, we need to challenge that.

Mr. Pat Kelly: Mr. White, do you see any evidence that there has been a demand by the minister for improvements to openness and transparency or any evidence of that being borne out in the actual day-to-day life in the department?

Mr. Patrick White: I can comment more on just the effect.

To be honest, I empathize with everyone around this table in the sense that I don't think there's a single person here—even beyond the table, in the entire room—who would want sexual misconduct in the military and a dysfunctional military. I appreciate that the challenge might surpass one government and go into the next, as you're all trying to take your ministerial orders and filter them down, but regardless of effort, I don't think it's working.

Mr. Pat Kelly: That's my time. Two minutes go by quickly.

The Chair: Mrs. Lalonde, go ahead for two minutes.

Mrs. Marie-France Lalonde: Thank you very much.

I'm going to try to give both of you a minute, but Mr. Walbourne, could you tell us a bit about some of the types of research and studies you conducted in your role as ombudsman? Please be very brief.

Mr. Gary Walbourne: We looked at just about every aspect of the military: reserves, Canadian Rangers, junior rangers, cadets, transition, mental health and support for families. It was such a broad base. We looked at just about every aspect that we thought would get at members' well-being. We spent a lot of time with families and a lot of time with reservists because they had not received the attention. It was across the board.

Mrs. Marie-France Lalonde: Thank you very much.

Lieutenant White, I want to give you the last minute or so of this committee. I know that you brought recommendations, and I'm going to leave you to tell us what else we need to do to ensure more fairness.

Mr. Patrick White: Well, I looked at the minister's remarks and he commented, "I also understand my responsibility for holding [my officials] to account". I certainly hope the minister is supported in that opportunity, because this is what being a minister is about.

I won't speak for Mr. Walbourne, but fundamentally, regardless of what people say, I think individuals like me and like Mr. Walbourne are trying to make things better.

The Chair: Thank you, Mrs. Lalonde.

Mrs. Marie-France Lalonde: Thank you.

The Chair: Unfortunately, that brings an end to our time together.

We're going to adjourn, colleagues, and then, after the vote, return as a subcommittee to deal with things.

I want to thank you, Mr. White and Mr. Walbourne, for your willingness to appear and be so candid and direct with us. It's helpful, but it's also immensely challenging.

On a personal note, it's good to see you again, Mr. Walbourne. I think the first time I saw you I was the Liberal Party's defence critic, back in 2011.

• (1755)

Mr. Gary Walbourne: I remember it well.

The Chair: With that, we're adjourned until after the vote.

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