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Chair

Mr. James Bezan

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● (1605)

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): Good afternoon, everyone.

Sorry for the delay because of the bells and the vote. We know there is another vote coming at us, so we are going to have a limited amount of time with the witnesses today.

We are starting off with our study of Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, which is pursuant to the order of reference to this committee on Wednesday, December 12, 2012.

We're going to welcome as our key witness today the Honourable Peter Gordon MacKay, the Minister of National Defence. He's no stranger to this committee.

In the interest of time, Minister, I'm going to ask if you can bring your opening comments. My hope is that before bells start ringing, we'll get around to each party for their one round of questioning.

With that, Minister, you have the floor.

Hon. Peter MacKay (Minister of National Defence): Thank you very much, Mr. Chair.

Colleagues, I'm pleased to be with you again. I note that this is my 32nd appearance before the committee as a government member. I recognize that we're here for the important examination of Bill C-15.

I should also note that I'm joined by Major-General Blaise Cathcart, who is our Judge Advocate General, as well as by Vice-Admiral Bruce Donaldson, who is the Vice Chief of the Defence Staff.

The proposed amendments to the National Defence Act found in this bill will ensure that Canada's military justice system remains one that the Canadian armed forces, and I suggest Canadians at large, can trust. These amendments will also clarify the roles and responsibilities of the Canadian provost marshal and will enhance the military police complaints process and the military grievance system, among other amendments.

[*Translation*]

The need for a military justice system to maintain the discipline, efficiency and morale of the Canadian Forces, one that is separate from the civilian system, has been endorsed by Parliament, as well as the Supreme Court of Canada in the 1992 Généreux decision. The existence of a separate military justice system is also expressly referred to in the Charter of Rights and Freedoms.

[*English*]

Mr. Chair, colleagues, this system, the existence of a separate military justice system, in addition to being endorsed by both Parliament and the Supreme Court of Canada, is also expressly referred to in the Charter of Rights and Freedoms. As members here will know, the strength of Canada's military justice system was confirmed as well in two independent reviews, material that I know you have reviewed.

The first independent review, conducted by Chief Justice Lamer in 2003, for example, found that Canadians would continue, and could continue, to have confidence in Canada's military justice framework, a framework that meets the disciplinary needs of the military, whether in times of peace or conflict and whether in Canada or abroad. That said, Chief Justice Lamer also recognized that there were opportunities for improvement, and he made recommendations to strengthen our system.

His assessment was supported by the findings of the second independent review of the military justice system, conducted by Chief Justice LeSage and tabled in the House last June, following the introduction of this bill, Bill C-15.

The bill before you today is required to implement those recommendations from the Lamer report that are still outstanding, and it maintains the essence of the government's previous legislative efforts to address this report, mainly through Bills C-7, C-45, and C-41. It is a bill that clearly identifies the objectives, purposes, and principles of sentencing in the military justice system. It sets out a wider and more flexible range of sentencing options. It enhances the treatment of victims by introducing victim impact statements at courts martial.

I view this, Mr. Chair, as someone who spent a bit of time in the courts prior to my career in politics, as extremely important. This is a modernization of many of the basic principles we've had in our criminal justice system, going back almost 20 years, that we are trying now to bring forward for victims who would be affected within the military justice system.

All of this is in line with amendments set out in Bill C-41. The bill also clarifies the process and the timelines for future independent reviews of the military justice system.

Now, since this bill was introduced, the government has worked hard to respond to concerns and certain misconceptions regarding the state of Canada's military justice system. It might surprise some to know that a relatively small number of Canadians even realize that we have a separate military justice system. So I'd like to take this opportunity to briefly, Mr. Chair, speak to some of these issues and clarify any lingering misunderstandings that might exist.

I want to begin by first addressing the summary trial system. This system has been validated by both the first and second independent reviews of Bill C-25. The 2012 most recent independent review confirmed that the summary trial system is both vital to the maintenance of military discipline and essential to the life and death work the men and women of the Canadian Forces are asked to do each day. Moreover, this review concluded that the current system is constitutionally sound.

The 2012 LeSage review made several helpful recommendations for improving summary trials, and the government will certainly pursue them following the passage of this bill. That is to say that the LeSage report, and there may be questions on this, was actually tabled after this bill was presented to Parliament.

● (1610)

Speaking specifically to clause 75, there's also been confusion over the matter of criminal records flowing from convictions of service offences in this particular clause of the bill. To be clear, under clause 75, service members would no longer be required to apply for a criminal record suspension, formerly known as a pardon, for convictions that would be deemed to not constitute an offence for the purposes of the Criminal Records Act.

Some members have expressed concern over the scope of these exemptions that will be created by this clause. I've listened carefully to these concerns. As I've indicated, and as I've previously indicated during second reading, the government will submit an amendment that will expand the list of exemptions to mirror those amendments made by the committee during its consideration of Bill C-41.

We hope this will help facilitate a quick progress through the committee of this important legislation, as it is now in its fourth iteration and has appeared before the House of Commons for debate now, by my estimation, in five different parliaments.

[*Translation*]

Some members have expressed concerns over the scope of the exemptions that will be created by this clause. I have listened carefully to those concerns. And as I indicated during second reading, the government will submit an amendment that will expand the list of exemptions to mirror the amendment made by the committee during its consideration of Bill C-41. We hope that this will help facilitate the quick progress of this legislation through committee.

[*English*]

Mr. Chair, colleagues, over the last 10 years a number of changes have already been made to the Canadian Forces Grievance Board. These changes have reinforced the responsibilities of the chain of command to address grievances quickly and directly, and they have simplified the review process to make the grievance system more responsive to the needs of military members. The amendments proposed in Bill C-15 will further enhance the effectiveness of the grievance system.

[*Translation*]

This bill allows the Chief of the Defence Staff to delegate his power as the final grievance authority when appropriate. This measure allows grievances to be resolved more swiftly and efficiently, while allowing the Chief of the Defence Staff to focus on those grievances with strategic consequences.

The bill will also formally change the name of the Canadian Forces Grievance Board—at its own request—to the Military Grievances External Review Committee. The new name will better reflect the board's independent status and increase the confidence of our military members in its impartiality.

[*English*]

Mr. Chair, let me conclude by saying a few quick words about the military police complaints and the provost marshal. For any complaint dealing with the conduct of military police, the bill requires the Canadian Forces provost marshal to resolve the issue within 12 months—this, I suggest, is a move to expedite cases in that system and to prevent long delays of justice—and protects those making complaints in good faith from being penalized for doing so. The provisions of the bill regarding the Military Police Complaints Commission are consistent with the recommendations of both the Lamer and the LeSage reports.

With regard to the position of the provost marshal itself, this bill specifies its roles and duties and clarifies the relationship with the provost marshal and the chain of command and increases transparency by requiring the officer to submit an annual report to the Chief of the Defence Staff.

Finally, Mr. Chair, I think we can all agree that a sound and fair justice system for our military is key to maintaining the discipline and effectiveness and the morale and justice for members of the Canadian armed forces and their families, and to protect the public and project public confidence. That is precisely what the government is working toward through the delivery of Bill C-15.

I'm also proud to be here, along with officers from the Canadian Forces, to respond to any questions the committee has on this important legislation, and I look forward to seeing the committee's support and work on this bill.

Thank you. *Merci.*

● (1615)

The Chair: Thank you, Minister MacKay.

We're going to move right into our first round of questioning.

In line with our routine motions, when the minister is before committee we have 10 minutes in the round.

With that, Mr. Harris, you have the floor.

Mr. Jack Harris (St. John's East, NDP): Thank you, Chair, and good afternoon, Mr. Minister. Thank you for being with us today.

I'll get right to the point because I only have a short period of time. We support many things in the bill, but we have some concerns. You mentioned the Charter of Rights and Freedoms a number of times during your presentation, and the necessity for public confidence in the administration of military justice and indeed legislation. We've had a number of occasions, of course, where changes had to be made to the military justice system because of the Charter of Rights and Freedoms. Indeed, we agreed on swift passage of one of those, a companion bill to this, Bill C-16, in a matter of three weeks back in the fall of 2011 for that very reason.

But public confidence was somewhat shaken recently when it was revealed by a senior justice department lawyer that the vetting of bills by the justice department, which is required by law for charter compliance, is in fact being done with a degree of confidence of I think 5%. In other words, the statement made by the senior Justice lawyer was that if there was a 5% chance that it could comply with the charter or if there was any argument that could be made, it didn't matter, the justice department would not flag this to Parliament for consideration.

Can you tell me, Mr. Minister, in regard to this particular iteration of the bill and the confidence level that you have, as you've expressed here today, is it the 5% confidence level that the justice department seems to be using as a standard, or is there some other level?

Hon. Peter MacKay: Thank you, Mr. Harris, for the question. I certainly don't purport to speak for the justice minister here. What I can tell you is that we have very able counsel within the Department of Justice and at the Judge Advocate General's office, including the Judge Advocate General himself. We have people like Colonel Mike Gibson and others who have been very diligent in their review of this bill and the amendments, and I think it's fair to say that this particular bill has received an inordinate amount of scrutiny, certainly by Parliament and certainly by my department.

So based on that, yes, I have a high degree of confidence in the legislation.

Mr. Jack Harris: Would you be prepared to see a legal opinion to that effect tabled before this committee?

Hon. Peter MacKay: Whatever you'd like to do, that's something you'll have to take up with the committee chair, Mr. Harris. If you're in possession of a legal opinion, which I suspect you may be, then fill your boots.

Mr. Jack Harris: It's not my boots, sir; it's your legal opinion. If you have one, would you be prepared, you or the Judge Advocate General, to table it before this committee?

Hon. Peter MacKay: I don't have a legal opinion, Mr. Harris, from outside sources. I have depended on the very competent counsel who work for the Department of National Defence.

Mr. Jack Harris: So you don't have an opinion. You just accept a verbal opinion from the department. Is that what you're saying?

Hon. Peter MacKay: No, that's not what I'm saying.

What I'm saying is that I very often read Supreme Court opinions. I read Généreux, I read Trépanier, and I've read other Supreme Court decisions that pertain specifically to the military justice system and impact directly on some of the very amendments that we're here to discuss.

Mr. Jack Harris: Yes, and Généreux was the one that said it was okay to have a separate military justice system, but it decided that the court martial system that existed at the time was unconstitutional. So there are—

Hon. Peter MacKay: That's your interpretation.

Mr. Jack Harris: That's not my interpretation.

Hon. Peter MacKay: Sure it is.

Mr. Jack Harris: That's what the court said, and changes were made as a result of it.

If I could move on to another matter, there has been a lot of discussion over the last number of years—from Lamer in 2003, by Justice LeSage, by witnesses at this committee, by the chair of the grievance board—of the concern about the CDS not having the power at the end of a grievance procedure to actually order a monetary award.

I understand, Mr. Minister, that in recent months the decision has been made by the cabinet to actually give the CDS power to make *ex gratia* payments to the amount of $250,000.... Actually, it doesn't even have an amount here, so for any amount. This is in PC number 2012-0861.

Is that something that was done in response to these complaints, and why has that not been given publicity?

● (1620)

Hon. Peter MacKay: Mr. Harris, what I can tell you is that we are proceeding on a number of issues that pertain to the justice system. This bill is but one of them.

To your earlier point, two Supreme Court justices—not one but two former Supreme Court justices—upheld the constitutionality of the legislation. In fact, Chief Justice Lamer made 88 recommendations in his 2003 report: 81 were accepted by the government; 29 have been implemented either through legislation...and 36 are contained here in this bill.

We're trying to modernize the military justice system. We're making progress in that regard, I would suggest, with your support. With respect to the CDS and monetary awards, there have been recent decisions taken that also reflect that goodwill to modernize and expedite some of these outstanding grievances, particularly when they have to do with financial awards and compensation.

Mr. Jack Harris: The payment of *ex gratia* payments as of June 19, 2012, was not announced publicly. I take it from you that it's being used to make monetary awards in grievances.

Why is it not made retroactive to cover the kinds of grievances that have come to light lately concerning the payment of home equity assistance that has been denied to people? They are expressing grievous losses of thousands of dollars and great damage to their families.

Are you prepared to find a way, or to allow us through amendments to find a way, to ensure that people get the monetary awards they would be entitled to if the CDS had that authority?

Hon. Peter MacKay: Mr. Harris, what I can tell you is that some of the reporting in the paper today and some of the comments from the military ombudsman reflect an ongoing study the ombudsman is doing, and is scheduled, as I understand it, to report on this summer. The department will certainly look at that advice.

The intent here is obviously not to create any financial hardship for members of the Canadian Forces, who very often have to move through no fault of their own. This is the nature of military service. Postings often take them from one jurisdiction to another. Those jurisdictions may have different standards of living with respect to the cost of housing. We're very aware of the fact that there have been situations where members have been required to take up their new posting and sell their property at a loss. There's already a system in place to compensate. In many cases, they can receive up to 100% compensation for those losses, depending on the area to which they've moved.

There are Treasury Board guidelines that have to apply as well. This is not an inconsequential decision for Canadian taxpayers. We are looking at ways in which we can lessen the negative effect of a move by members of the Canadian armed forces, we are looking at ways to streamline our decisions with those of Treasury Board, and we're working on that with the good offices of the Vice Chief of the Defence Staff and the Chief of the Defence Staff to see that members of the Canadian Forces are always treated fairly.

Mr. Jack Harris: Mr. Minister, my information is that there are upwards of 150 families who have applied under this program as of 2010, and none of them were in fact approved for this higher level of support, the 100% you're talking about. People have lost up to—

Hon. Peter MacKay: Those statistics—

Mr. Jack Harris: If I may finish, they have lost up to $80,000, and the military families affected are selling assets, taking second jobs, declaring bankruptcy, and utilizing community financial assistance programs in an effort to compensate for the losses they've incurred because they've been moved by the military.

That's not good enough, Mr. Minister, and I think you would agree. I'm asking whether or not you're prepared to support changes that would allow the CDS, having found that these individuals were entitled or should have received the 100%...that they are actually going to get that.

The order in council is not retroactive, so many of these people, if not all of them, will be left out. Are you prepared to see that remedied?

● (1625)

The Chair: There are about 40 seconds left to answer that question, Minister.

Hon. Peter MacKay: Mr. Harris, you have referred to certain statistics. I've told you we do have a process currently in place that has met many of the concerns that were expressed by you. You are not the adjudicator of these particular cases, to assess what is fair and what isn't fair. I'd suggest there are people who have looked at all of these cases. There are also appeal processes to go back and examine them again.

We're looking at the process and taking recommendations from people like the military ombudsman. We have in fact instituted a new process where the Chief of the Defence Staff can now insert himself into some of these grievances with respect to financial compensation. We're continuing to make progress.

I'm hopeful that this committee will allow this bill to proceed and will also look at further recommendations from Mr. Justice LeSage in the hopes of making further improvements for members of the military and their families.

The Chair: Thank you, Minister.

Bells are ringing, but I believe I asked earlier to make sure each party gets a chance to ask a question....

I'm going to turn it over to Mr. Strahl.

You have 10 minutes.

Mr. Mark Strahl (Chilliwack—Fraser Canyon, CPC): Thank you, Mr. Chair.

I'll get right to it, Mr. Minister.

Bill C-15 would place a requirement in the National Defence Act to conduct future independent reviews of the military justice system, the military police complaints process, and the grievance process. Can you tell us how that would benefit members of the CF and the future evolution of military law?

Could you also explain why the review period has been changed from five to seven years?

Hon. Peter MacKay: Sure.

The Lamer report does make recommendations with respect to the review period for the military justice system and the Canadian Forces grievance process that can be specifically required and entrenched within the act, within the bill. Bill C-15, to answer your question directly, would accomplish that. As well, it would improve the current system and mechanism for review by moving the review process and provisions into the defence act so that it becomes codified, specifying the scope of the review, the thematic basis—that is, the military justice system, the grievance, the Canadian Forces military policy complaints schedule. All of this would increase the utility of reviews by changing the review cycle from five to seven years. To do this, I would suggest, accords a sufficient period of time to provide the adequate track record upon which to base subsequent assessments of the operations of provisions.

We find ourselves today in this place where there was a review called for in earlier iterations of this bill, and because of the fact that this particular legislation has been unable to move forward for a number of reasons, the time has essentially passed.

Putting this bill in place and then allowing seven years to pass will allow us to sufficiently study the impacts of these amendments and then respond appropriately at the next review period. We've had two reviews. We've incorporated reviews into this legislation, and we'll do the same in future legislation.

Mr. Mark Strahl: You mentioned the length of time that has passed since Chief Justice Lamer delivered his report in 2003. The first bill was in 2006. Do you feel that Chief Justice Lamer's recommendations still hold up, and if so—it's been languishing for seven years now—what's the urgency now to get this moved through Parliament?

Hon. Peter MacKay: I mentioned this in my opening remarks. Things such as amendments that will protect victims and enhance victims' participation in the military justice system I deem to be very important. All of these measures are aimed at modernizing, and in some cases mirroring, changes that have occurred or will occur in the criminal justice system. We don't always want to ensure parity, because there is a necessity, as I spoke to earlier, for a separate and distinct military justice system, but we do want to ensure fairness. We want to ensure that members of the military, their families, the participants, are feeling that genuine efforts are being made to modernize and keep up with changes and evolution in the law.

I also note that there have been case law impacts, Trépanier and others that Mr. Harris referenced. In fact, the majority of the Lamer recommendations either have been or will be incorporated by virtue of the passage of this legislation.

So yes, those recommendations were timely back in 2003. I would suggest that some of them are now urgent in terms of their application in this bill.

● (1630)

Mr. Mark Strahl: I would like to share the rest of my time with Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much.

Minister, I ask questions that I assume my constituents would ask you, and I think they'd ask you what is the importance and rationale of keeping the military justice system separate from its civilian counterpart. What is the purpose of a military justice system, and who is subject to that system?

Hon. Peter MacKay: That's a very relevant question.

The main distinguishing feature, as you know, is that the military justice system is designed to promote the operational effectiveness of Canadian Forces, their members, by contributing to things such as the maintenance of discipline; the efficiency; the morale, which is very important to the Canadian Forces; and to contribute to respect for the law and the maintenance of a just and peaceful, safe society, both inside and outside the forces.

Canadian Forces members don't live in isolation. They live in communities across the country, but they also operate outside the country on deployed missions. It's important to have a military justice system separate from that of the civilian one because military personal are very often required to risk injury or death in the performance of their duties. They do so both inside and outside Canada. This system puts at a premium the necessity for discipline, for cohesion of military units, for individual members who may from time to time put themselves at risk. So the operational reality has specific implications, individual implications. I know there are members of this committee who have served in the forces who I think could speak to that passionately.

You, Mr. Norlock, have served as a police officer. You recognize that while on duty you are held in many cases to a higher standard than what would be expected of a civilian. This separate military justice system takes into consideration that higher standard and the requirement to maintain discipline and morale.

Mr. Rick Norlock: Thank you.

At second reading, there was a debate concerning some comments about summary trials. Can you speak to the issue and the importance of summary trials? In particular, can you speak to their fairness and constitutionality, and what protections there are currently for the rights of the accused person?

Hon. Peter MacKay: Yes, I will. Thank you.

First of all, I'd suggest that they are fair and they are constitutional. We have a two-tier military justice tribunal structure. That includes summary trials, which are most often to do with disciplinary matters, matters that would be described in civilian terms as of a relatively minor effect, but that can have catastrophic effects in the field and can have far-reaching implications, and then we have the more formal court martial system.

The summary trial is by far the most commonly used as a form of service tribunal in the military justice system. It plays a vital role for the maintenance of discipline and operational effectiveness, which I spoke to a moment ago.

The summary trial system also provides a prompt and fair justice system and is used only in respect of minor service offences, so again, things that members here who have served could speak to, such as a member's appearance, for example, or a dereliction of duty, or insubordination. Those are the types of classic summary trial types of offences. The objective is clearly to deal with those minor service offences as quickly and effectively as possible to not infringe upon the member's ability to carry out their duty.

The military unit itself requires a member to return to duty as quickly as possible, so it's something that should happen quickly. In this way, the unit benefits from having its discipline restored quickly. It also has implications for what I would describe—again, in civilian terms—as general and specific deterrence; that is, the observation of others in the unit to see what happens when a particular offence is committed. Resolving it quickly and dealing with it as far as consequences go—if any—is meant to do so in a way such that members can carry out their mission.

To answer the latter part of your question, some of Canada's most eminent jurists—the late Justice Brian Dickson, Antonio Lamer, and, more recently, Justice LeSage—each have examined our military justice system, and in significant detail, I would suggest. Each has come back with recommendations—some for refinement—but all have stated that the system is in fact constitutional and is efficient and necessary to maintain as separate from our current criminal justice system.

● (1635)

Mr. Rick Norlock: Thank you very much.

You mentioned that they came back with some suggestions. In particular, you used the word “refinement”. Have those suggestions and refinements been included in this bill?

Hon. Peter MacKay: Yes, in fact they have, sir. There are too many to list, but I referenced earlier the fact that in Mr. Justice Lamer's case, he made 88 recommendations, and 81 have been accepted.

Many were in fact incorporated prior to this bill through various other changes to regulations, and some through legislation that was passed by an all-party agreement. There are now another 36 that can be found in this bill. Almost half of the recommendations from Mr. Justice Lamer are contained in the legislation that is the subject of this hearing.

The Chair: Thank you very much.

Your time has expired.

Mr. Rick Norlock: Thank you very much.

The Chair: Mr. McKay, you have the last 10 minutes.

Hon. John McKay (Scarborough—Guildwood, Lib.): Thank you, Chair.

Thank you, Minister.

You will know, Minister, that the contentious part of this bill is contained in proposed sections 18.5 through 18.6. It sets up a scheme whereby the “Vice Chief of the Defence Staff may issue instructions or guidelines in writing in respect of a particular investigation”. Then the provost marshal is expected to publicize those, unless the provost marshal decides that he or she will not publicize them in the interests of the administration of justice.

You would know as well as anyone that this is a contentious point of constitutional law and charter law. In fact, when the last iteration of this bill was before us in January 2011, the Military Police Complaints Commission drew it to our attention and urged us to remove the clauses of the bill that would permit the vice chief to issue instructions in respect of a specific military police investigation and described them as “highly problematic” and, in the opinion of MPCC, directly contrary to the accountability framework of March 1998 by the VCDS and the provost marshal. This came about as a result of the Somali inquiry, which was not a happy period for either government or military, and which found that interference in police investigations by commanding officers had been a pervasive problem.

The question, Minister, is that, as I understood your response to Mr. Harris, you do not have in your possession—and I am presuming you have not sought—an opinion as to the charter-worthiness of this particular section. Am I correct about that?

Hon. Peter MacKay: Mr. McKay, you would have heard me say as well a moment ago that we've had two former chief justices examine a broad variety of issues as they pertain to the military justice system—

Hon. John McKay: Do you mean on this specific section?

Hon. Peter MacKay: I suspect they would have looked at the entire National Defence Act in their review.

Hon. John McKay: Did they opine on this particular section, do you know?

Hon. Peter MacKay: I believe Mr. Justice LeSage would have specifically looked at this section and commented.

Hon. John McKay: Is that report in the public domain?

Hon. Peter MacKay: The LeSage report certainly is.

Hon. John McKay: Is there any particular reason you didn't ask the justice department for its opinion? This will be, almost without exception, a contentious point. I suppose the point is why not head this off at the pass?

Hon. Peter MacKay: There is no particular reason I did not ask the Department of Justice to look at this section.

Hon. John McKay: There are concerns about this particular section, and these concerns always come up in the context of some really ugly facts, Somalia being a really ugly set of facts. You probably went to the same law schools I went to, and you learned that bad facts make bad law. Hence the issue is, if you will, a bit of prudence on the part of the presentation.

I would have taken some comfort from—as I assume Mr. Harris would in the same manner—the existence of a specific opinion on this specific section as to whether it is or is not constitutional, because there is a concern that in the future you may actually put either the CDS or the vice CDS or the provost marshal in a very difficult or awkward position. Investigative independence is a core concept of our judicial system.

● (1640)

Hon. Peter MacKay: I certainly don't disagree with you, Mr. McKay, that the confidence all members of the Canadian Forces, as well as the public, have to have in the independence of the investigation is absolutely critical. I can assure you that the Judge Advocate General's office would have reviewed all of the provisions of the bill before you, in accordance with proposed amendments to the National Defence Act, with an eye to their constitutionality.

I referenced the fact that Mr. Justice Lamer would have undertaken a similar exercise. Some of the recommendations he made, Mr. McKay, which you're aware of, speak specifically to efforts being made to ensure a higher standard of investigation, compliance with investigative standards, and training in professional applicability of the military police to ensure compliance with those standards. Investigations with respect to conduct that is inconsistent with the professional standards of the military police are also subject to review by the Military Police Complaints Commission. Again, recent examinations of military police that have been very high profile are an indication that the system works. Military police are in fact subject to a high degree of scrutiny.

The bill is consistent with efforts being made and undertaken to comply with recommendations from Mr. Justice Lamer. We always have an eye as to constitutionality, to recommendations that come from the Judge Advocate General, as well as to Mr. Harris's suggestion that the Department of Justice review all government bills. Having been a member of the previous government, you know that there's a rigorous constitutional filter, if you will, undertaken by the Department of Justice.

Hon. John McKay: Generally speaking, there is, at least there was, a rigorous constitutional filter. No bill actually hit the floor of the House of Commons without that filter being applied by the Department of Justice. The concern here is that the JAG is, in some respects, reviewing itself and signing off on itself. If in fact this were done by the Department of Justice, as happened in times past, you would have some level of comfort that it would stand up to judicial scrutiny.

The concern I have is that it's only going to be applied in a messy situation. It's going to derail, or potentially derail, or give an avenue for a defence counsel to derail an inquiry over something that is unnecessary.

I would be very encouraged, I would feel much more comfort, had we a justice department filter—a written filter would be even better—for JAG or for you directly that would satisfy the concerns raised by the MPCC and Professor Roach and others. I know we're going to hear other testimony that says this is not constitutional or is not charter-proof.

Hon. Peter MacKay: To speak to that point directly, Mr. McKay, I'm not a legal scholar. I was more of a practitioner. I do sometimes believe that legislators, and even the Department of Justice, suffer from a bit of constitutional constipation. They focus so fastidiously on whether this will pass the charter that perhaps no amendments would ever be made to legislation.

We have a very capable, rigorous examination by trusted, capable lawyers within the Department of National Defence in our Judge Advocate General's department. This is a separate system of justice. We're talking about our military justice system. There is expertise within the department that would not only examine the constitutionality of this but would try to anticipate, as you've suggested, these messy situations.

I'm not a strict adherent to Cartesian thinking that we have to try to codify and write down every single situation in anticipation of somehow preventing breaches of the law. It simply doesn't work that way.

● (1645)

Hon. John McKay: I think one of the great remedies for constitutional constipation is anticipating that small changes could actually work.

Anyway, we can go around this mulberry bush for a while longer, but I want to get one other—

The Chair: You have 30 seconds, and that includes a response.

Hon. John McKay: Thanks very much. You're a good chair.

As you know, the ombudsman has been very frustrated with the issue of an *ex gratia* payment ordered by the CDS, but you end up in this bureaucratic limbo-land. I have in my hand the Privy Council Office order of June 19 of last year. Paragraph 3 says "the power to authorize payment under subsection 1(1)"—which is the CDS ordering an *ex gratia* payment—"is subject to any conditions imposed by the Treasury Board".

Is this an appearance of a solution or is it a real solution?

Hon. Peter MacKay: I'm hoping it's the latter, Mr. McKay. You've been around here as long or longer than I have and you know that the wheels of government and the grist often turn slowly here, but this is a genuine effort to address—

Hon. John McKay: I agree with the effort.

Hon. Peter MacKay: Again, with the greatest respect, I cannot either anticipate or speak for Treasury Board, but we, the Department of National Defence, the JAG office, have made it clear that we feel this is a change that would be welcome, that would expedite these outstanding grievances. And we're hopeful, based on the Privy Council's reporting, that this will be favourably received at Treasury Board.

The Chair: Thank you.

We're going to cut it off there. Time has expired. We have fewer than ten minutes, closer to nine minutes, to get to a vote.

Minister MacKay, thank you so much for your appearance, along with Vice-Admiral Donaldson and Major-General Cathcart.

With that, the meeting is adjourned. We're out of here.