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Mr. James Bezan

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• (1530)

[English]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): Good afternoon, everyone. We're going to start meeting number 63 and continue with our order of reference from Wednesday, December, 12, to study Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts.

Witnesses joining us for the first hour are, from the Office of the National Defence and Canadian Forces Ombudsman, Pierre Daigle, who is the ombudsman, and his acting director general, Alain Gauthier.

Mr. Daigle, you have the floor for your opening comments. Then we'll move right into questions and answers.

Mr. Pierre Daigle (Ombudsman, Office of the Ombudsman, National Defence and Canadian Forces Ombudsman): Mr. Chair, I would like to begin by thanking the committee for inviting us to testify today in its study of Bill C-15. As you mentioned, Alain Gauthier is my director general of operations.

Although not cited in the National Defence Act, the office of the ombudsman was established in June 1998 to help increase transparency in the Canadian Forces and the Department of National Defence and to ensure fair treatment of concerns raised by members of Canada's defence community. This community includes members of the Canadian Forces, both regular force and reserve force, civilian DND employees, family members, and anyone in the recruitment process.

The ombudsman draws upon his or her powers from a ministerial directive and reports directly to the Minister of National Defence. The ombudsman operates independently of both the Department of National Defence administration and the Canadian Forces chain of command. The office of the ombudsman remains neutral and is an objective sounding board, often acting as both mediator and investigator.

[Translation]

Stated simply, the office has a mandate to investigate and make recommendations to improve the overall well-being and quality of life of the members of the defence community. While our investigators attempt to resolve complaints informally and at the lowest level possible, some complaints require thorough investigation leading to a formal report with findings and recommendations that are made public.

[English]

Over the past 15 years the ombudsman's office has helped more than 21,000 individuals navigate existing channels of assistance or redress when they have had a complaint or concern.

In February 2011, I appeared before this committee to discuss the findings of my 2010 report entitled, "The Canadian Forces Grievance Process: Making It Right for Those Who Serve". The report highlighted deficiencies in the grievance process that are causing further hardship for Canadian Forces members who have already been wronged.

At that time I testified that we found the redress of grievance process to be flawed and unfair. It is supposed to provide soldiers, sailors, airmen, and airwomen with a quick and informal mechanism to challenge Canadian Forces actions and resolve matters without the need for courts or other processes. Specifically, we determined that the chief of the defence staff, who is the final decision-maker in the grievance process, does not have the authority to provide financial compensation to fully resolve unfairness.

[Translation]

Moreover, when claims are rejected—which is often the case—Canadian Forces members are informed that they must initiate legal action against the Government of Canada in order to obtain compensation. However, unbeknownst to most men and women in uniform, legal action will rarely be heard by a court because previous courts have ruled that there is no legally enforceable employment contract between the Crown and Canadian Forces members.

[English]

Our findings were consistent with those of both former Chief Justice Lamer, who in 2003 recommended that the chief of the defence staff be given financial authority to settle financial claims in grievances, and former Justice LeSage, who indicated in 2012 that the issue should be addressed in legislation.

The Minister of National Defence expressed his commitment to providing the chief of the defence staff with the financial authority to resolve grievances and was looking at mechanisms to achieve the result. Short of Justice LeSage's recommendation to address this issue in legislation, a resolution is not obvious.

The minister advised me in a letter on July 26, 2012, that Treasury Board approved the authority for the chief of the defence staff to make *ex gratia* payments in the grievance process. Minister MacKay said this was an initial basis from which to address my recommendations.

Ex gratia payments have significant limitations in that they are prohibited by Treasury Board policy from being used to fill perceived gaps or limitations in existing acts, policies, or other governing instruments.

In closing, I would reiterate what I said when I testified before this committee in 2011. The Canadian Forces redress of grievance process will remain flawed and unfair as long as the final decision-maker in the Canadian Forces grievance process, the chief of the defence staff, lacks the authority to provide financial compensation to resolve unfairnesses.

Mr. Chairman, I'm happy to answer any questions you may have at this stage.

• (1535)

The Chair: Thank you very much.

I appreciate those opening comments. You've given us more time for questions and answers, since you were brief in your opening comments.

With that, Mr. Harris, you have the first seven minutes.

Mr. Jack Harris (St. John's East, NDP): Thank you, Chair.

I'd like to acknowledge the presence of Laurie Hawn at the committee. He's been here before dealing with this matter. Welcome to a "new old-comer".

Thank you, Mr. Daigle, for your appearance here this afternoon. I know that you and others, going back to Justice Lamer, at least, in 2003, all recommended that there's a serious problem with the actual ability for delivery of the benefits of a grievance to a member because of the second stage. In some cases, members have actually had to file a lawsuit against the government to get money that they were found to have been owed.

I am going to give you a copy of an order in council dated June 19, 2012, in both official languages. I have copies for all members of the committee.

This order in council gives authority to the chief of the defence staff to make an *ex gratia* payment where a final decision is made under the grievance process established under the National Defence Act.

I note two limitations there. One is that the payment can only be made for something that had already been decided on the day of coming into force of this order in council. The other is that the payment is subject to any conditions imposed by the Treasury Board.

I want to ask you whether you think that will help in any way the people who have outstanding grievances and need for redress.

Mr. Pierre Daigle: Effectively in our report in 2010, we did recommend that the chief of the defence staff be given financial authority to address financial compensation. But we also recommended that the Canadian Forces should look at the past to address those who at that time were not fully satisfied, within their grievance, when there was a financial compensation attached to it. There were some people who came to our office who we kind of held in abeyance waiting to see the changes. Our recommendation was it should be a bit retroactive, it should look back at all those who had been affected by this particular issue. This is one thing.

The other thing, as you mentioned, is that the power to authorize a payment is subject to any conditions imposed by the Treasury Board. It was, in our view, in our reading, the assessment of Chief Justice Lamer that the CDS be given full final authority to address this. By giving the chief of the defence staff an *ex gratia* authority, this *ex gratia* payment under Treasury Board directive specifically said, and I have the more complete—

Mr. Jack Harris: Have you seen any conditions that Treasury Board has in fact imposed?

Mr. Pierre Daigle: I didn't see any figures from Treasury Board, but it says that an *ex gratia* payment is subject to any conditions imposed by the Treasury Board. It is clear, when you look at those conditions, as it states here, that this directive of *ex gratia* is not used to "fill perceived gaps or compensate for the apparent limitations in any act, order, regulation, policy, agreement or other governing instruments", if, for example, a particular subject is governed by another instrument, and so on and so forth.

We are of the opinion that the fact is that *ex gratia* is subject to conditions, and those conditions are that the chief of the defence staff will not be able to fully compensate someone who has been wronged financially, if it is felt that it will fill a gap that already exists in an existing law or instrument.

• (1540)

Mr. Jack Harris: One of the outstanding matters that has become public in the last little while, and you yourself have had something to say about it, is the home equity assistance program. Many have gone to final grievance, and I understand that some 140 people have been denied compensation.

Many of them are before June 19, 2012, and may also be subject to a Treasury Board guideline, so this order in council won't help them at all, as far as I understand it.

Mr. Pierre Daigle: I'm afraid not. The home equity assistance program, which is a separate issue, was established by Treasury Board in the 1990s. For people who are incurring additional costs based on their move within Canada, if they're claiming additional financial costs, it is still subject to Treasury Board. Since an *ex gratia* carries a condition that it should not be used to fill a gap, I would assume that this will not give full resolution to the member either.

Mr. Jack Harris: Are you aware of whether or not expenditures are being made under this order in council since last June?

Mr. Pierre Daigle: Not that I remember, no.

Mr. Jack Harris: In terms of resolutions, you're not aware of that?

Mr. Pierre Daigle: For the home equity assistance?

Mr. Jack Harris: No, for any... The recommendation being that for grievances that involve a monetary award, the CDS now has authority, are you aware of that authority being used to make sure that monetary payments are being made since this order in council was put in place?

Mr. Pierre Daigle: Personally, no.

If you would allow us, maybe my director general of operations, who's dealing with those cases individually, is aware of it.

Mr. Alain Gauthier (Acting Director General, Operations, National Defence and Canadian Forces Ombudsman): No, at this time we haven't seen or received any report of the *ex gratia* being used, but my understanding is that perhaps the CDS will appear and will probably be in a better position to answer this question.

Mr. Jack Harris: Thank you.

I have 30 seconds. I take it you probably dealt with this in your opening remarks, but what about your status as an officer reporting to the minister? What would you prefer to see?

Mr. Pierre Daigle: Well, as I said, we're not cited in the National Defence Act. Obviously, since 1998, the year we were created, my predecessors have made many attempts to legislate the office of the ombudsman. We are fully independent from the administration of DND and the Canadian Forces chain of command.

Within my ministerial directive, I might be called on to review the process of the Canadian Forces grievance process, and I might be called on to review the process of the Military Police Complaints Commission. Both bodies are part of the National Defence Act, but at this stage the office of the ombudsman is not part of the act.

The Chair: Thank you very much.

We'll move on.

Mr. Hawn, you have the floor.

Hon. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair. It's good to be back to discuss Bill C-15, or Bill C-41, C-45, or C-7, whatever it is in the latest iteration.

Hon. John McKay: Or Bill C-35.

Hon. Laurie Hawn: Whatever it is, thank you to the witnesses for being here.

Mr. Daigle, in your report that you've referenced—in fact, I was at that meeting when you did brief us—Chief Justice Lamer and the CDS said that the CDS should have the authority to grant financial compensation. We've talked about that.

You referred to a previous statement of the Minister of National Defence in his July 12 letter to you committing to take action on that. He did outline that after nine years of not a lot of progress in that area, the minister did get approval from Treasury Board last June, such that the CDS could make *ex gratia* payments. There's a commitment to revisit that after a year.

We do agree that obviously everybody would like to see all things move a lot faster than they do, but a lot of these issues are sensitive, and not necessarily simple. Would you agree this is a step in the right direction and that we do need to embark on these things with some sensitivity to the complexity of the process?

Mr. Pierre Daigle: When the minister advised us in writing in July about the *ex gratia*, I did reply to the minister in August saying that I still have strong concerns about the perceived resolution, one being the *ex gratia*, because it will not give full satisfaction to any grievance, and the other one being the retroactivity of it.

When the minister replied to my August letter, he did mention that the limitation was a bit unexpected and that this is an initial basis to move forward from. This was decided in 2003 by a former chief

justice of the Supreme Court of this land, followed in 2012 by a provincial chief justice, who both said that this should be giving full authority to the Chief of the Defence Staff. I do not believe that an *ex gratia* will achieve that, with the Chief of the Defence Staff being the final authority for a grievance. In fact, he doesn't have final authority if he's not able to compensate fully for what has been wrong.

• (1545)

Hon. Laurie Hawn: But as the minister said, it's an initial step. Do you agree that this is at least a step in the right direction? Also, when you talk of retroactivity, what are you defining that as? Is it a period of time? How do you define retroactivity? How far back?

Mr. Pierre Daigle: Again, it's an initial step which means to me that this *ex gratia* payment might still be the subject of debate. As I said, it will not achieve what it was intended to achieve. Definitely, it's always good to see that things are moving after 10 years, and hopefully we'll get final closure of it.

Hon. Laurie Hawn: You mentioned Treasury Board policy. Treasury Board also has guidelines. It sounded to me like you're making some assumptions about what Treasury Board would do based on worst case or based on, perhaps justified, pessimism. Are you not making assumptions about what Treasury Board will do?

Mr. Pierre Daigle: All I'm saying is the Treasury Board directive on claims and *ex gratia* payments states very clearly that the directive is not used to fill perceived gaps or compensate for the apparent limitations in any act, order, regulation, policy, agreement, or other governing instruments.

All I'm saying is if the CDS is to compensate someone who has been wronged in any financial grievance that has a tie directly to Treasury Board or not, at the end of the day it will be subject to this condition. Therefore, if it's perceived he wanted to give money to redress a grievance, if it's perceived that it's to fill a gap in law, it will not be approved. That's Treasury Board conditions.

Hon. Laurie Hawn: Treasury Board does use discretion on each one of these cases as it comes before them. I sit there. There are Treasury Board directives which really are guidelines. Treasury Board does have discretion to go one way or the other. I understand your sentiment on that, but I think you're being a little bit too positive about what Treasury Board will do.

I'd like to switch to the home equity assistance program. Mr. Harris quoted some numbers about claims that were denied. The numbers we have are that less than 2% of Canadian Forces personnel request housing equity assistance. In the last six years, 2006 to 2012, there were about 113,000 who were relocated and there were only 30 claims that were actually denied, which is three one-hundredths of one per cent. I don't know whether that jives with your numbers. If there's one unsatisfied customer, obviously somebody has a concern with that, but considering the number we're talking about, that number seems quite small.

Mr. Pierre Daigle: I'm not sure what number we're using here. If we're talking about the 19,000 to 20,000 people who are moving in this country every year and you add a few to that, it's still a large number of people who are dissatisfied by this financial aspect.

Hon. Laurie Hawn: We're talking 30 claims out of 113,000 military in six years. Anybody can make their own judgment on that, I guess.

Let's talk about the history of cost moves. Obviously, people move a lot less. In the last 25 years of my service I had 12 cost moves which means moves of dependants, furniture, and effects. Have you been tracking the decrease in the number of cost moves over the last 10 or 20 years?

Mr. Pierre Daigle: A decrease in cost moves?

Hon. Laurie Hawn: Yes, a decrease in cost moves or a decrease in relocation.

Mr. Pierre Daigle: I don't have that number.

When I took this function I saw a presentation that was given to a defence management committee in which in discussing this cost move budget, I remember the number being about 19,000 people who were moving per year. This is where I draw the conclusion that if everybody was moving, every five years people would move again, and within a 30-year career, people would probably move six times. I didn't really look at the trending to the cost move.

Hon. Laurie Hawn: I'm not sure of your personal experience, but certainly in mine I don't think it's unusual that the moves today are a lot less frequent than they were in the past. Would you agree that's part of the sensitivity of the Canadian Forces to aid personal family disruption and obviously cost?

• (1550)

Mr. Pierre Daigle: We are doing a major investigation on the impact of military life on military families. Moving is definitely an important subject. We will be looking at the mobility policy, why people are moving so often, and so on. Right now what we know is that on those 16 bases I visited since I took this function this cost move and integrated relocation policy across the country have a very high dissatisfaction rate and frustration among the families.

Hon. Laurie Hawn: I agree.

The Chair: I'm sorry, but time has expired. We're going to continue on.

Mr. McKay, you have the last of the seven-minute round.

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

Thank you both for coming in. We appreciate it.

Just going back on this thing, I've seen a number of case summaries. One person lost \$76,000; another person claimed \$101,500; another person claimed \$53,000, another claimed \$53,000; another person claimed \$29,000, and another claimed \$45,000. These are pretty unhappy people, and it doesn't really matter that 98% of the people who moved are not making any claim. What matters is the pool. The pool is the people who don't feel they've been properly compensated.

I have a letter from somebody in Bracebridge whose son-in-law was moved from Petawawa to Afghanistan and back to Petawawa, then to Borden, then to Edmonton, and then to Halifax, all within — well they don't actually say the period of time—and then they just got blown away. They are not happy campers.

It is no answer to say there are *ex gratia* payments if the person making the *ex gratia* payment can't actually write the cheque. That seems to me to be the issue.

You have limitations on your *ex gratia* payment, which you've articulated well. Treasury Board has this policy, which the government wishes to argue is a good first step, but it strikes me as no step at all. If the CDS, during the period of time since the June guidelines have been out, hasn't actually written one cheque, then this is not a step; it is the appearance of a step.

You can't sue. The government has presented Bill C-15 as a piece of legislation in which they could have rectified it. This appears to be going in circles for a bunch of people—maybe not a huge bunch of people, but a bunch of people—who have taken significant hits on their family situations. I'm sure you're pretty frustrated at this point.

What's the cheap and cheerful solution here? Do we simply allocate an authority to the CDS and be done with it?

Mr. Pierre Daigle: If I may, before going there, I'll go back to some of the questions.

I just remembered the last statistics I saw. From 2009 until 2012 there were 111 claims through Treasury Board about home equity assistance which is for people who have lost more than \$15,000 on their home, with \$15,000 being the maximum they will get.

I would agree that it seems we are turning in circles. The grievance system is not a military justice system. It's a system to help people to get better quality of life, to look after the well-being of the people. This is a leadership responsibility.

When people do not get fully compensated for a situation in which they've been wronged, the system tells them that they can sue the government. We know that court has decided in the past that you cannot sue, because there is no employment contract between the crown and the service member. At the end of the day even if you go to the *ex gratia* there is a condition attached to it, to fill a gap, and you will not get redress.

Turning to home equity assistance, Treasury Board has said that if there's a depressed market, you will be fully reimbursed on the loss of your house, but at this stage within Canada there has been no declaration of a depressed market. If there is no depressed market, all you will get is 80% of your loss to a maximum of \$15,000. This is what some of those numbers are: 111 of them have lost more than \$15,000 and some have lost probably \$75,000, but because this is home equity assistance and is a policy established by Treasury Board, I would argue that the condition that you cannot fill the gap and give it back will apply.

Having said all this, I'm not a lawyer, but looking at what a chief justice of the Supreme Court and another chief justice mentioned, I believe that giving the Chief of the Defence Staff authority within the National Defence Act should solve this issue. Then once and for all we'll know who the final authority on redress of grievances is.

•(1555)

Hon. John McKay: Thus far the minister has not been able to persuade his cabinet colleagues that the CDS should be able to have, to put it in colloquial terms, cheque-writing ability. Given that this legislation doesn't contain any redress to these suggestions by Supreme Court justices and given that the guideline set out by Privy Council in June is an appearance of a step rather than the reality of a step, we're left with a situation in which people are unnecessarily aggravated: "The good news is that we're moving to Moose Jaw; the bad news is that we just lost \$100,000." It's hard to retain a sense of fairness if you can't even sue and the grievance process goes nowhere.

Within your experience what stories, if you will, have affected you the most when people have come to you as the ombudsman and have expected you to fix the situation?

Mr. Pierre Daigle: Within this particular...?

Hon. John McKay: Within this particular realm of file.

Mr. Pierre Daigle: I'm not sure.... I'm sorry.

Hon. John McKay: I'm assuming people are coming to you as the ombudsman.

Mr. Pierre Daigle: Yes.

Hon. John McKay: And you're powerless.

Mr. Pierre Daigle: Well, the ombudsman cannot order any change. All we can do is make recommendations. Obviously, when we do make recommendations, we make them being fully accountable to the Minister of National Defence. Our recommendations are based on facts and not allegations. We have to be very credible in what we do.

When I go around the country and tell them what I can do for them, that I can help the system, individual people, individual complaints, but also systemic investigations, I sense that people have a sense that they've been abandoned.

[*Translation*]

Abandoned to a certain extent, as far as their loyalty and confidence in the system go.

[*English*]

They feel very frustrated, particularly with an issue like this one. The grievance system has been streamlined and improved since 1998 in order to come to two different layers and so on, which is, as Chief Justice Lamer mentioned, contrary to the military justice system, which is more of an adversarial system. Redress of grievance is a cooperative process between chain of command people to help them resolve their issues. Most of the issues are of a human resource nature within the system.

Obviously we will continue; my office is to serve all our constituents. We're there not to take sides but to really advocate for fairness. It is unfair when someone who is in charge of the control administration of the armed forces of this country tells someone, "I agree with what you are saying; you've been wronged, but there is nothing I can do for you." By saying in the books that the CDS has final and binding authority...I would say he doesn't have final authority.

The Chair: Thank you. Time has expired.

We are going to move to our five-minute round, and leading us off is Mr. Opitz.

Mr. Ted Opitz (Etobicoke Centre, CPC): Thank you, Mr. Chair, and welcome, gentlemen.

Mr. Daigle, welcome.

I heard what you had to say earlier about grievances, especially being sold at the lowest level. I know I've had success with that in my own time. Things have improved a lot over a few decades. I remember they were pretty grim at the beginning, back in the 1970s, and throughout the years they have improved significantly.

Although we are talking about some of the issues we face today, there have been massive improvements over the last 10 or 20 years, in particular to the grievance system and other related parts of that.

I want to follow up on what Mr. Hawn was talking about, just to finish off something.

Sir, can you identify some of the types of grievances that are filed due to relocations? In addition to that, would any of those grievances be solved with the authorities being granted in this bill and with order in council authority? Could you comment on that?

Mr. Pierre Daigle: Do you mean some of the examples for relocation?

Mr. Ted Opitz: Yes, grievances due to relocations.

Mr. Pierre Daigle: There are many about relocations that have to do with door to door, for instance. People are grieving the fact that in order to.... When you move from one house to another, when you are posted across the country, the system allows you to do it within five days. If you take more than five days, you have to show reasonable effort that you have done the door to door. A lot of people are incurring additional costs out of pocket because the system does not allow that, and they have to justify why it took so long.

We know at this stage that 1,500 claims are in a backlog with the director general of compensation and benefits, 1,500 claims that have to do only with door to door, people claiming they incurred more expense. There's a backlog to address that.

We know that when the decision is taken, some of those claims will eventually go to a grievance, because people will grieve the decision. Right now we have about 215 grievances at the first level that have to do with moving.

You're right that the grievance process has evolved over the years. It's better than it used to be. It used to follow the chain of command, from the captain up to the CDS. Now it's only two layers, the immediate authority and the final authority. There has been a lot of improvement in the authority levels, and there has been a lot of improvement in the delays. The director general of the Canadian Forces grievance authority has now changed the delays. Redress should not stay at a level too long.

We know there is a big backlog, and I am doing a mini-systemic—I call it “mini” because its more drilling down to the details on all those backlogs and the delays with the director general of compensation and benefits. A lot of them have to do with financial issues. A lot of them have to do with moves across the country.

•(1600)

Mr. Ted Opitz: Thank you for that.

We are going to continue to try to improve the system. Part of the reform of the grievance system is part of Bill C-15 in response to recommendations made by Chief Justice Lamer.

As ombudsman, you undertook a study on the grievance system and you've spoken publicly a number of times about it. Can you tell us, sir, the role that the ombudsman plays in the grievance system? Perhaps you can also outline some of the other types of complaints and investigations you undertake and if the proposed legislative changes would assist in resolving some of those complaints.

Mr. Pierre Daigle: As we mentioned at the beginning, we try to help people navigate existing mechanisms to resolve their issues. We provide a lot of information and do a lot of education and referral, but at one point we also try to open doors to put people in contact with the proper office to resolve their issues.

As I said, we do not replace the chain of command. We encourage people to use existing mechanisms, the redress of grievance being the last one that someone can resort to. We're a bit of a last resort on this particular issue. When the member has exhausted his process and a decision has been taken by the Chief of the Defence Staff as the final authority, they can come to us if they still feel that they've been treated unfairly, and we will review the full process of the redress of grievance and in the end make some recommendation to the Chief of the Defence Staff.

This is in itself a complex issue because, without offence, when it becomes too legalized, we feel that the system becomes a bit heavier than it should be. When you think about it, this is an administrative process to help resolve a decision that created some wrong. If we review the process because we find out that some element was omitted and ask the Chief of the Defence Staff whether he would have changed his mind if he had known of this particular issue, he might say yes, because it's a decision that he made. Right now, we are still confronting some resistance. I hate to use that word, because I've hated to hear that word for a long time.

It's *functus officio*. It's because a decision has been taken and cannot be reviewed, but this is not a court or a legal decision; this is an administrative decision that someone took. If you're told that this is what we found out and you said, “If I had known that, I would have changed my mind”, I would assume you would be able to change your mind because you could correct the mistake.

In redress of grievance, we review the entire process and make those recommendations, and so on.

The Chair: Thank you.

The time has expired.

[*Translation*]

Mr. Brahmi, you have the floor.

Mr. Tarik Brahmi (Saint-Jean, NDP): Thank you, Mr. Chair.

I want to thank Mr. Daigle for appearing before us today.

According to your 2011-12 report, the vast majority of complaints made during that period had to do with benefits.

Could you explain the reason behind such a difference as compared with other grounds for complaints?

•(1605)

Mr. Pierre Daigle: Since the office first came into being, in 1998, we have been putting out an annual report. And over those 15 years, the most common complaint, the one that always ranks at the top of the list, has to do with benefits and compensation. That's not necessarily negative. I spoke to the Chief of the Defence Staff. In fact, we advise people within the chain of command. It helps for them to know what those in uniform are concerned about. What's more, I would say that personnel, compensation, benefits, salaries and so on account for—and my figures are not necessarily precise—at least 51% of the department's total budget.

Naturally, any change to a regulation or act has consequences for personnel. Our job is to serve members of the defence community. We're talking about a human element. So anything that affects their finances has consequences for them, their families and so forth. So it happens a lot. In the office's 15-year history, that has been the number one reason for people's complaints or dissatisfaction.

Mr. Tarik Brahmi: The people who seek you out have already gone through the grievance process and are not satisfied.

How is it that so many complaints are tied to something that should be more or less automatic, the payment of a salary?

Mr. Pierre Daigle: I'd like to clarify something, if I may. We receive, on average, 1,500 complaints per year. About 85% are settled at the first level of intervention. We help people select the appropriate resolution channels. We refer them to the appropriate mechanisms. About 15% of those complaints will be the subject of an investigation. Those are individual complaints. If I observe a pattern, since I have visited 16 bases around the country, I can decide, on my own authority, to conduct a systemic investigation. In those cases, that is what we do. Indeed, we are seeing that grievance redress still entails an element of dissatisfaction and unfairness. People come to us.

If you look at the numbers, you see that the top five categories have held steady over the years, the top category being compensation and benefits. There are also cases related to military release, recruiting, medical issues and harassment. Those are always the top five categories for the 1,500 complaints we receive.

Mr. Tarik Brahmi: Very well.

If we look at the past three years according to the table we have here, we see that the number is always changing. How do you explain that change every year, say between 2008 and 2010?

Mr. Pierre Daigle: Are you referring to a change in the number of complaints?

Mr. Tarik Brahmi: I'm referring to the number of complaints.

Mr. Pierre Daigle: We focused on our awareness program. I mentioned earlier that I had visited 16 bases so far. There are 28. I don't think I'll have time to make it to all of them. People are more aware of what we do. For instance, when I was hired, they called me the military ombudsman. And because of that, many of DND's civilian employees were under the impression that the office was only for military personnel, not civilian employees. So we did a great deal of education, through base visits, kiosks and such. We educate people on what we do and we listen to what they wish to share with us. Anytime I return from a base, I always have 30 or so more complaints. The people who submitted those complaints may not have contacted us by phone.

Mr. Tarik Brahmī: When it comes to benefits, what is the main complaint? Does it have to do with unpaid salaries?

Mr. Pierre Daigle: It doesn't really have to do with salaries. It's more of a compensation issue. That's one of the reasons we decided to conduct a comprehensive investigation into the impact of military life on families. It covers everything having to do with a family's moving all over the country and the effects of those moves.

The Chair: Thank you very much, Mr. Brahmī.
[English]

Mr. Chisu, you have the floor.

Mr. Corneliu Chisu (Pickering—Scarborough East, CPC): Thank you very much, Mr. Chair.

Mr. Daigle, there was a considerable debate at second reading as to what should be the composition of the grievance authority. It was proposed that at least 60% of the board should not have any military background.

Mr. Daigle, you are a former member of the Canadian armed forces. Do you think that having a military background is helpful in positions such as the grievance board? Would you agree that the board should be composed of the best candidates regardless of whether or not they have, or ever had, a military position?

• (1610)

Mr. Pierre Daigle: Mr. Chair, this is outside my jurisdiction. I know the composition of the Canadian Forces Grievance Board has been debated at this committee. The Canadian Forces Grievance Board is part of the National Defence Act. It's not appropriate for me to discuss composition of the board.

I am ex-military as the member mentioned, but as far as the ombudsman's office itself is concerned, we look for the best possible candidate. I've been there since 2009, and we've been through some important restructuring. We've increased the bar to a standard high enough because we're serving the community. I have a mix of expertise with ex-military, outside the police force, social workers, any expertise that can help us best serve the constituency that we're serving.

However, the Canadian Forces Grievance Board is not within my jurisdiction, and I will not comment on that.

Mr. Corneliu Chisu: I would like to ask you also about the time it's taking for a grievance. Do you ever look at the time from when a person files a grievance until it is resolved, or a decision is made?

Mr. Pierre Daigle: If you don't mind, I will ask Alain to give you the details. There were major changes. You're quite right, if I understand the spirit, because in the past it took too long, a very long time, years in fact, to get a final decision. There was a lot of effort to streamline the process to help with that. Alain can give you more detail on that.

Mr. Alain Gauthier: Mr. Chair, one of the complaints we still receive quite a bit is about the delay in the grievance process. It is still significant at times. On average we're talking about two years for a decision.

This is why we launched a mini-systemic study on director general compensation and benefits. There are 200 grievances stuck there, not moving forward, holding the decision where people are asking for reimbursement of money that is potentially owed to them. We're expecting to conclude this mini-systemic investigation within the next month and a half and produce a report for the minister.

It is an issue, the delays within the grievance process.

[Translation]

Mr. Pierre Daigle: Perhaps you can provide some detail around initial authority and final authority.

[English]

Mr. Alain Gauthier: As the ombudsman mentioned before, within the grievance process there are two levels: initial authority and final authority. Based on existing data within the Director General Canadian Forces Grievance Authority, there are well over 1,000 grievances awaiting a decision at the initial level. For the final authority, between 200 and 300 grievances are also awaiting a decision.

From discussions with Justice LeSage that it should be legislated forcing the system to produce a decision within 12 months, I think that would be a sage decision. It would make sense based on the significant delay that exists today.

Mr. Corneliu Chisu: Thank you very much.

I have a final question, if I may, regarding the Canadian Forces grievance process *ex gratia* payments. I'm an engineer, not a lawyer. Is there any financial limitation on the Chief of the Defence Staff? For example, I note that in the infrastructure vote, the commander can decide to spend \$1 million for something, but here I don't see anything.

Do you think there's any limitation, \$1 million, \$2 million, or something like this?

Mr. Pierre Daigle: Obviously, in terms of what we were provided with and what our office received from the minister's letter, there was no number attached. We know that the process that seems to have been adopted used the *ex gratia* route. I'm sure normally there are numbers attached to that, which essentially we don't have access to.

This is also part of an issue that we are having difficulty with, that it's getting more and more difficult to have access to documentation, particularly if it's deemed to be a cabinet confidence. It is difficult for me, accountable to a minister and making recommendations to the Minister of National Defence, to make proper recommendations if I don't have access to the whole of an issue.

For this particular matter, since it's cabinet confidence, we do not have access to the details.

• (1615)

[Translation]

The Chair: Thank you very much.

[English]

Time has expired.

[Translation]

Mr. Larose, go ahead for five minutes.

Mr. Jean-François Larose (Repentigny, NDP): Thank you, Mr. Chair.

Mr. Daigle, thank you for being here. We are always happy to have officials from the ombudsman's office here.

I'd like to talk to you about summary trials. Over the years, has your office received many complaints involving summary trials?

Mr. Pierre Daigle: My mandate does not give me the authority to investigate anything related to the justice system. Therefore, I cannot investigate decisions rendered by military judges or those associated with court martial or summary trials. If there is ever an issue that involves any of those areas, it is usually referred to the proper authority. So we cannot conduct any investigations related to the justice system.

Mr. Jean-François Larose: Basically, then, you cannot even investigate the mechanisms around the information. You have no involvement in that whatsoever.

Mr. Pierre Daigle: People can contact us regarding a situation in which they feel they were not treated fairly, something that might result from a summary trial, say. In that case, we might be able to look at elements that we could address. However, in the case of decisions or summary trials, we are prohibited from conducting any such investigations because that aspect comes under the military justice system.

Mr. Jean-François Larose: What elements do you have the authority to examine as far as a summary trial is concerned? You said there were external elements you might be able to look into.

Mr. Pierre Daigle: For example, someone might tell us they were treated unfairly, accused of fraud and so forth. A summary trial might end up taking place. It primarily involves the procedural side before things get to that level. We don't investigate the summary trial or the procedure per se.

In some situations, administrative actions are taken, but no charges are laid for a certain period of time. If the issue is being dealt with through the military justice system, however, we do not get involved.

Mr. Jean-François Larose: The Report of the Second Independent Review Authority recommended a certain number of amendments to the National Defence Act.

Do you think the committee should amend Bill C-15 in accordance with the recommendations made by former justice LeSage in his report?

Mr. Pierre Daigle: I appeared before this committee in 2011. On March 23, 2011, the committee's report clearly stipulated the following:

“That Bill C-41, in clause 6, be amended by replacing line 3 on page 5 with the following:”

The report said that the Chief of the Defence Staff should “(a) decide all matters relating to a grievance, including financial matters”.

I was very pleased to see that the committee had recommended granting the Chief of the Defence Staff all of that authority under the National Defence Act. Since that provision was almost incorporated into the act, I thought it would put an end to all those debates and processes, which I believe can turn into bureaucratic exercises.

[English]

Mr. Jean-François Larose: Thank you.

[Translation]

I am going to share my time.

The Chair: Ms. Moore, go ahead.

Ms. Christine Moore (Abitibi—Témiscamingue, NDP): I have some questions on women, specifically.

Should Bill C-15 have put in place measures to protect women, particularly victims of sexual harassment? For instance, are there measures that prevent the perpetrator from being assigned to the same base or unit as the victim? Men, too, can be victims of this type of harassment.

Does the bill include measures of that nature?

• (1620)

Mr. Pierre Daigle: It's hard for me to speak about the bill in detail. If, in the course of our duties, we are advised that people are being harassed, we must refer those individuals elsewhere. What's more, if, in the course of investigating a case, we discover that criminal activities took place, we are required to notify the chain of command and the proper authorities. The Criminal Code still applies. The harassment process, for either civilian or military personnel, also applies.

We make sure, then, that anyone who has suffered any mistreatment whatsoever has access to the existing mechanisms to resolve their situation. If an activity of a criminal nature has occurred, we are required to report it to the proper authorities such that the next steps are handled outside our office.

The Chair: Thank you very much. Your time is up.

[English]

Mr. Strahl, it's your turn.

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

Following up on one of the answers you just gave, can you explain what amendments would need to be made to the Financial Administration Act in conjunction with the grant of greater financial authority to the Chief of the Defence Staff? Do you believe that would need to take place in order for that to happen?

Mr. Pierre Daigle: Again, our position is clear. When we look at the Canadian Forces grievance system, which is entrenched in the National Defence Act, we feel that there's still unfairness and the system as such is not complete until the final authority, which is the Chief of the Defence Staff, receives full authority to compensate financially.

We do not look into the Financial Administration Act, and we do not look into *ex gratia* in the sense that it is under Treasury Board, but we know that those particular instruments most of the time deal with the head of the organization, who is the deputy minister. Our report on this particular issue is the Canadian Forces grievance system is mainly under the Canadian Forces and we feel the injustice could be dealt with in the National Defence Act. It already reflects the CF Grievance Board and the Military Police Complaints Commission grievance system, but it does not say that the Chief of the Defence Staff cannot make financial compensation. The minister raised this in one of his letters. Therefore, our position is it should be in the act, which means that the rest is irrelevant.

On the civilian employee, public servant side, if someone has a grievance.... They have no union. This is what the members have. If a civilian employee grieves a decision by the employer and it takes a month for it to get to the final level of grievance, during that time the civilian employee may have been removed from his duties. If the decision is that the decision was wrong, the system will pay the month of salary that the employee lost.

We have examples of military personnel who were removed from their positions, grieved the decisions, came back, and the Chief of the Defence Staff agreed that they should never have been removed. They lost two weeks of salary, and he could not pay them back.

There are two different grievance systems, military and civilian, with all those acts. All I'm saying is that by going to the *ex gratia* with a direct tie to the conditions imposed by Treasury Board will not give the CDS the final authority to close a grievance under his authority.

Mr. Mark Strahl: In your opening statement you indicated that your office remains neutral and is an objective sounding board. For obvious reasons we've talked a lot about shortcomings, perhaps, in Bill C-15. Do you have examples of where the grievance process is being improved in this new legislation, or can you not provide those?

From your perspective, is there any good in what the government is doing with Bill C-15 and the grievance process?

Mr. Pierre Daigle: There are two aspects to Bill C-15, but obviously with respect to the grievance process, you're talking about the grievance board. The grievance process as such, which is part of the National Defence Act, is a good process. It has been streamlined. It has been improved over the years. All I'm saying is an important part is missing in order to close this process.

I might seem to be an advocate, but we're not advocates for people or for the institution. We're advocates for fairness. The reason I am pushing this issue is there are people in uniform in this country who are not treated fairly because of this particular aspect, and just by closing this loop, we'll once and for all conclude what Justice Lamer and Justice LeSage said should be done, and eliminate the rest of the bureaucracy.

• (1625)

Mr. Mark Strahl: One of the amendments contained in Bill C-15 enables the CDS to delegate his power as a final authority in the grievance process under certain circumstances. Do you believe this is an effective change to the National Defence Act?

Mr. Pierre Daigle: I think it exists already. The Chief of the Defence Staff is the final authority. He can delegate. Right now the Director General Canadian Forces Grievance Authority is the final authority delegated by the Chief of the Defence Staff, and I think that's a good thing. As former Chief Justice Lamer said, the CDS cannot manage the whole process by himself. The fact that he's delegating to one of his senior officers to help him manage the process does not take him away from or outside the process.

The Chair: Thank you. Time has just about expired.

I'm going to give Madame Moore the floor for about three minutes, and then we do need to cut it off and clear the table for the next witnesses.

[Translation]

Ms. Christine Moore: I'd like to pick up on the matter of sexual harassment or assaults. According to the annual report entitled *Delivering Results for Canada's Defence Community*, harassment is one of the seven top complaints. It ranks fifth among the complaints made by the family members of Canadian Forces personnel. So there are complaints of that nature. Do you think the military justice system could be improved to prevent such situations? Do you have any recommendations as far as harassment is concerned?

Mr. Pierre Daigle: I will ask Alain to answer because he appeared before a committee on that issue. He has all the information on that.

Mr. Alain Gauthier: In our last analysis, we noted 58 complaints regarding harassment over the past two years. Of those, only 3 involved sexual harassment. So we get very few of those. But we do know there are some problems. People are reluctant to complain about sexual harassment out of fear of reprisal. That's a major problem that persists. The figures and the complaints we see do not accurately represent the true number of complaints.

Other surveys have been done within the Canadian Forces. The Chief of Military Personnel recently conducted a survey on harassment, specifically. The results indicated that 10% of women had complained of sexual harassment. So 10% of 14,000 is 1,400. We're talking about 1,400 cases a year. We also saw that only 3 people really dared to complain. There is a clear problem around fear of reprisal within the system. So that is something that has to be dealt with.

Ms. Christine Moore: Do you have any solutions to suggest?

Mr. Alain Gauthier: The regulations already include relatively clear guidelines on the matter. They prohibit the use of reprisal and give people full freedom to come forward. I think it's a matter of the culture needing to change, and changing the corporate culture can take years.

[English]

The Chair: I'm going to have to cut it off there so we have time to clear the table and move in our other witnesses.

I'd like to thank you, Mr. Daigle and Mr. Gauthier, for sharing your expertise with us in our study of Bill C-15.

With that, we're going to suspend for a couple of minutes.

•(1625)

(Pause)

•(1630)

The Chair: I call the meeting back to order. We're going to continue on with our study on Bill C-15.

Joining us now from the Department of National Defence we have Vice-Admiral Bruce Donaldson, who is the Vice-Chief of the Defence Staff, and Major General Blaise Cathcart, who is the Judge Advocate General.

Admiral Donaldson, I will turn the floor over to you for your opening comments.

Vice-Admiral Bruce Donaldson (Vice-Chief of the Defence Staff, Department of National Defence): Thank you, Chair. I hope that General Cathcart will have an opportunity to give a couple of opening remarks as well. I am thankful for the chance to be back before you. I apologize,

[Translation]

I wasn't able to have my remarks translated in time, but a translation will be provided later.

[English]

My brief opening remarks will focus on four areas of Bill C-15 that we believe are of particular importance: offences under the military justice system, military police complaints, the office of the provost marshal, and the grievance process, specifically the role of the Chief of the Defence Staff within that process.

We have attempted to bring into line those convictions under the military justice system that would be deemed not to constitute an offence for the purposes of the Criminal Records Act. Therefore, service members would no longer be required to apply for a record suspension, formerly known as a pardon, for these offences. You will recall that Minister MacKay indicated that the government intends to submit an amendment that will expand the list of exemptions that mirrors the amendments made by committee during its consideration of Bill C-41.

The military police structure, regarding both the complaints process and the role of the provost marshal, has evolved and will continue to do so with this bill.

Since the last time I addressed this committee, we have completed implementation of some very important changes to the command structure of the military police. On April 1, 2011, command and control of the military police for the purposes of policing was transferred to the Canadian Forces provost marshal. Not only has this provided additional agility to address the policing needs of the CF and DND, but more importantly, it has firmly established the requisite investigative independence of the military police as a critical part of the military justice system. This bill addresses the

findings of Chief Justice Lamer with regard to the powers of the Military Police Complaints Commission. For example, provisions within this bill require that the Canadian Forces provost marshal resolve any complaint dealing with the conduct of the military police within 12 months, as well as protecting those people making complaints in good faith from being penalized for doing so.

It is important to note the operational role of military police in support of both domestic and international operations. This proposed legislation clarifies the reporting relationship of my office, the vice chief's office, vis-à-vis the provost marshal, while providing balance between the independent role of the Canadian Forces provost marshal in support of the military justice system, as well as providing the necessary oversight to ensure Canadian armed forces missions are supported effectively by the military police. This bill clarifies the role of the office of the Canadian Forces provost marshal and its relationship with the office of the vice-chief of the defence staff, and increases transparency through the formalization of reporting measures to the Chief of the Defence Staff.

I would now like to turn to the subject of the Canadian Forces grievance process. Allow me to underscore that dealing effectively with grievances in the Canadian Forces is a key leadership responsibility. I would also like to draw attention to the singular importance of the office of the Chief of the Defence Staff. The roles and responsibilities of the CDS in the grievance process are twofold: to safeguard the institution that is the Canadian armed forces, and to promote the welfare of the members of the Canadian armed forces. These responsibilities converge in the person of the Chief of the Defence Staff when he becomes the final authority for grievances.

Yet Chief Justice Lamer recognized that it is unrealistic to expect the CDS to personally decide every grievance that must be reviewed by the grievance board. The authority sought in Bill C-15 would allow the CDS to choose the grievances he wishes to determine as final authority and to delegate all others primarily to an officer directly responsible to him. In fact, that current officer, Colonel François Malo, is sitting here behind me. This would allow the Chief of the Defence Staff to focus his time on systemic issues, on matters that touch the core of our profession or on the demands that service places upon military members.

I must emphasize that the CDS is well versed in the status of the grievance portfolio on an ongoing basis. He remains ultimately responsible and accountable for all decisions made by his delegate.

Bill C-15 would also empower the CDS to cancel the release of Canadian Forces members as a potential remedy in the grievance system when it is discovered that a member has been improperly released.

•(1635)

In addition to these amendments, I'm pleased to inform you that the government recently authorized the CDS, under an order in council, to make *ex gratia* payments to grievors while making a final decision in certain circumstances within the grievance process. The Director General Canadian Forces Grievance Authority is in the process of implementing this authority. Obtaining the authority for the CDS is a significant step. As the implementation process continues, the CDS will assess the scope of the authority given to him through the order in council, and determine whether it fully addresses the issue identified in the Lamer report.

We have also taken other steps to improve the grievance process, including reducing the number of grievances submitted by encouraging CF members to inform their commanding officers of their intent to grieve. This new process helps a commanding officer to engage early, and when able, to resolve issues locally. We continue to work with the grievance board to explore ways to expand the types of grievances they review to ensure that the final authority's determination of grievances reflects the approach taken to similar issues across the public service.

I'm pleased to report that as a result of improvements over the last few years, the number of grievances submitted by CF members annually has declined by 10% since it peaked at nearly 1,000 in 2010. I am, however, also keenly aware of a large number of grievances on compensation and benefits matters that are working their way through the system. I directed last fall that additional personnel resources be provided to both the Canadian Forces grievance authority and the chief of military personnel to address these grievances and reduce this backlog.

We remain committed to the goal of determining grievances in a timely manner and continue to strive to reduce the staffing of grievances to a maximum of 12 months, while increasing the transparency and the fairness of our grievance system.

These proposed amendments to the National Defence Act constitute an important step forward not only in the adjudication of military law, but in the effectiveness and transparency of the Canadian Forces provost marshal and the overall efficiency of the grievance process.

These changes will help to ensure the integrity of the institution that is the Canadian armed forces, and as importantly, further protect the welfare of our men and women in uniform.

I would like once again to thank you for the opportunity to speak on this important matter.

Mr. Chair, I turn the floor back over to you, but I recommend that we give General Cathcart, our Judge Advocate General, the opportunity for some opening remarks.

Thank you.

•(1640)

The Chair: There is time, Mr. Cathcart.

Major-General Blaise Cathcart (Judge Advocate General, Department of National Defence): Thank you, Mr. Chair.

Again, a huge thanks to you and the entire committee for extending the invitation to speak to you today on this very important matter, which is important not only for military justice but for the entire Canadian Forces as a whole, and that is Bill C-15.

[Translation]

As you know, the primary intent of this bill is to respond to the recommendations made by the Right Honourable Antonio Lamer in the first independent review of the legislation in 2003.

[English]

As Judge Advocate General, it is my statutory role, pursuant to section 9.1 of the National Defence Act, to act as legal adviser to the Governor General, the Minister of National Defence, the department, and the Canadian Forces in matters relating to military law. I have the additional statutory responsibility pursuant to section 9.2 to superintend the administration of the military justice in the Canadian Forces.

As stated by Chief Justice Lamer in his 2003 report, the JAG's role as superintendent of the military justice system is largely analogous to that of an attorney general. The military justice system has two fundamental purposes, as recognized in clause 62 of Bill C-15: (a) to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and

(b) to contribute to respect for the law and the maintenance of a just, peaceful and safe society.

To put it in a nutshell, it is to maintain discipline and to do justice.

[Translation]

I would like to take a few moments to address some points that arose during the committee's proceedings related to Bill C-15 when the minister appeared last week.

[English]

Bill C-15, similar to any other government bill introduced in Parliament, advanced through a prescribed process of development and consideration. This process includes: the development of a memorandum to cabinet that includes a review by all other departments, including the Department of Justice and the Privy Council Office; interdepartmental meetings at which the legislative initiative is scrutinized and discussed and other departmental officials have the opportunity to express their concerns and to comment; consideration and approval of the MC by cabinet; and, following approval by cabinet, drafting by the legislative drafters at the Department of Justice working in conjunction with instructing counsel from the relevant department.

These legislative drafters have, as part of their mandate, an obligation to raise any charter concerns. Thus, as part of the legislative process that I alluded to above, many stakeholders are involved before a bill is introduced. This particularly includes an opportunity for the Department of Justice, pursuant to subsection 4.1 (1) of the Department of Justice Act, to raise any concerns it may have regarding the compliance of the bill with the charter.

However, having regard to my statutory mandate, in terms of any proposed legislation impacting on the National Defence Act, it is my duty to advise the minister on the constitutionality of proposed legislation.

•(1645)

[Translation]

As the superintendent of the military justice system, it is my statutory responsibility to ensure the system serves the operational requirements of the Canadian Forces while respecting the charter.

[English]

Contrary to one concern that has been expressed, there is no conflict of interest in the office of the JAG advising on the constitutionality of legislation relating to the military justice system, anymore than there is in the Attorney General of Canada advising on the constitutionality of proposed legislation drafted by the Department of Justice. This is the job that Parliament has given me to do in the National Defence Act.

I have an outstanding team of legal officers to assist me in doing that. Within their areas of expertise, they do not take a back seat to anyone in terms of their quality, their education and training, their professional standards, and their devotion to the rule of law. We are Canada's leading authorities in matters of military law and military justice.

To be clear, I have no doubt that the military justice system is constitutional and satisfies the guarantees set forth in the charter, and I stand behind this bill. As recently as 2011, Chief Justice LeSage adopted the views of Chief Justice Lamer, who stated, "Canada has developed a very sound and fair military justice framework in which Canadians...have trust and confidence." Further, Chief Justice LeSage made recommendations that would assist in ensuring the continued strength and viability of the military justice system.

Therefore, while you may hear criticisms of the military justice system during your study, I would refer you to the comments of two eminent jurists, Chief Justice Lamer and Chief Justice LeSage, during their respective independent reviews that served to reinforce my view that the military justice system is fair to accused members while serving the operational needs of the Canadian Forces.

In conclusion, Mr. Chair and members of the committee, I leave you with comments of the former Chief Justice of Canada, the late Honourable Brian Dickson, who stated that there "is a need for a separate and distinct military justice system, consistent with the primacy of the rule of law".

[Translation]

Like chief justices Lamer and LeSage, I am confident that Canada has a sound and fair military justice system.

[English]

Bill C-15 would serve to further enhance the military justice system. The improvements it would make are necessary to enable the military justice system to fulfill its two fundamental purposes: to promote operational effectiveness and to do justice for the men and women of the Canadian armed forces.

With that, Mr. Chair, I thank you and the committee for this opportunity, and I welcome any questions you or the committee members may have.

The Chair: Thank you, General.

Admiral, we appreciate your opening comments.

With that, we're going to our seven-minute round.

Mr. Harris.

Mr. Jack Harris: Thank you, gentlemen, for joining us today. This is a very important piece of legislation, and I think we all agree on that. There is much in it that we are quite supportive of and are happy to see advanced.

However, as is my duty, I will have to ask you to comment.

General Cathcart, I have to direct this to you first. I hear your comments comparing your role as the JAG to the role of the Department of Justice, and your own views with respect to the Charter of Rights. I have to put to you the comments made in a affidavit to the Federal Court by Edgar Schmidt, who is a senior Department of Justice lawyer. He states in his affidavit that his instructions, personally given to him as a standard to be employed under statutory examinations of legislation, were essentially this:

...if any argument could reasonably be advanced in favour of the consistency of a provision of a bill or regulation with the Bill of Rights or the Canadian Charter of Rights and Freedoms, (the "Charter"), that was to be the end of my inquiry as it concerned the statutory examination. It was expressly made clear to me that the review was not to concern itself with whether a provision was more likely than not inconsistent with the Bill of Rights or the Charter or even whether a provision was almost certainly inconsistent with the Bill of Rights or the Charter—it was only when it was utterly certain that a provision was inconsistent with the Bill of Rights or the Charter because no reasonable argument existed in its favour that the Department considered any issue arose under the statutory examination provisions.

As a lawyer, sir, and you being a lawyer as well, I think I can say that most lawyers in Canada were probably shocked to hear that statement. I'd ask you to comment on that, in view of the approach that at least this individual says he was instructed to take in dealing with these provisions.

You mentioned that part of the review of this provision was a review by the Department of Justice. Did you get an opinion from them in accordance with their obligations with respect to some of these provisions? I know and you know that these have been challenged on the basis of the inconsistencies. That's not as a whole, but certain provisions could be inconsistent with an individual's right under the charter.

•(1650)

MGen Blaise Cathcart: That's a very, very probing question, Mr. Harris. Obviously I'm not prepared to comment on the specifics of Mr. Schmidt's own circumstances or the case before the Federal Court. I can't do that. I can only refer you to our roles and the roles we had with our government colleagues in Bill C-15, and, as I said, absolutely assure you that from our perspective the provisions as proposed are constitutional and would withstand challenge.

As a lawyer, you know well that every time a provision is challenged, whether it's in this type of legislation or any other, or an exercise of other government authority, you never know what the final outcome is going to be until a judge pronounces on it. As professionals who have been around this topic for many, many years, not only me personally but the long tradition of JAG lawyers dealing with military law, military justice, I can reiterate with great confidence that the bill is sound.

Mr. Jack Harris: Well, sir, with all respect, I'm sure your predecessors had the same view on other legislation which we had to rush through Parliament in November 2011 to fix the status of the military judges as a result of a constitutional decision that declared there was a problem. I would suggest that other JAGs have been down this road before and have had the same kind of confidence.

The last time out, in 2011, in Bill C-41, and you and your then deputy were a part of that, substantial changes were made to clause 75 as a result of concerns about the constitutionality, in our view, and perhaps agreed to by the government, about the undue imposition of criminal records on people. As a result of that concern, substantial changes were made, from 5 or 6 offences to 25 or 26 offences, with respect to eliminating a criminal record.

Yet, when this bill went back to the House of Commons after having this study and review, and I guess you would call it a compromise that was reached, we see that's gone. Somebody decided it wasn't necessary to do that, or to even bring in some of the provisions recommended by Justice Lamer that were there and are now out again, such as the simple changes to continuing the term of office for a member of the grievance board or the Military Police Complaints Commission if they were in the middle of a case. These things were stripped out of the bill as well.

It gives me pause to wonder whether these amendments, and the discussions that went on in this committee, were even taken seriously.

MGen Blaise Cathcart: Again, I can't speak for the government. You heard the minister last week addressing those issues, and on clause 75 he's obviously said publicly many times that the government has gone back and reviewed that. I think that's just an indicator, frankly, of the process.

In vibrant democracies such as ours there's great debate. Reasonable people can disagree reasonably, review matters, and come back with a final answer that will hopefully fit the bill. Ultimately in some cases that will be determined not by our judgment but by the judgment of a court perhaps, as in the case of your reference to Bill C-41, and Bill C-15. That's what makes our system strong and vibrant: we think we have it right; the courts don't, and we'll respond to that as we have.

•(1655)

Mr. Jack Harris: So you're saying in terms of the decision-making that you don't make the decision, that the government does, and you just give advice.

MGen Blaise Cathcart: These are policy choices made by the government.

Mr. Jack Harris: If I may, I'll turn now to you, Vice-Admiral Donaldson.

We've had this discussion before, the last time out, about delegation of authority for final results of grievances being made by the CDS, and I put it forth in the context of morale and discipline. You may have been here to hear the ombudsman talk about the huge number of grievances that are stalled and the length of time it takes. He said on average it takes two years to get a grievance through the system.

I know that commitments were made last time to try to make improvements, and I guess one of the questions is whether there have been any.

On the issue of delegation, I think you would agree that the previous CDS, and I'm sure the new CDS, made it his business to take a personal interest in and to have a personal relationship with the members of the CF. I think he achieved that very well. Even if the work, shall we say, may be delegated to someone else, surely, knowing that the final decision can actually be in the hands of the CDS, all the work of sifting through the evidence and weighing it might be done by a delegate, who could say, "Okay, here's where it's at and this is what I think we should do".

Why would you delegate that away from the CDS? I know he has plenty of things to do, but why would you do that?

The Chair: The time has expired, so Admiral, could you give a very brief reply.

VAdm Bruce Donaldson: Thank you, Mr. Chair.

Mr. Harris, thank you for that. Let me very quickly try to address both your questions.

First, regarding the grievance backlog, we have been working on that. One of the most challenging areas of grievance is compensation and benefits. It turns out that no one's upset if they come away with a little more money than they were expecting, but everyone's upset if they come away with a little less. The instance of grievance for compensation and benefits is very high.

I don't question the motivation or the legitimacy of the grievances, but there are an awful lot of them that go through the grievance system, many of which have policy implications. Each case is looked at very carefully for those policy implications, and there's a bottleneck there. We've put extra resources in to try to resolve the bottleneck, but moving forward is still a challenge.

We're addressing it by changing the way we address grievances by looking at different dispute resolution options for people, and by addressing them early and at lower levels, so that we elevate to higher levels only those things that require that level of policy attention and scrutiny. But I admit, sir, that we continue to work on this and we do need to get better at it.

Second, I think you would agree that if the Chief of the Defence Staff is going to agree with a grievance, the more expeditiously that can be done the better. In many cases, a delegated authority can come to that conclusion faster than the Chief of the Defence Staff can actually go through given the volume. We could pare it down to having the chief invest his time in the more challenging grievances that touch on the questions of the institution or the specific well-being of men and women in uniform and responding to the grievance board in those instances.

I hope I've touched on it.

The Chair: Thank you. I appreciate that.

Mr. Norlock, you have the floor.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Thank you very much, Mr. Chair, and through you to the witnesses, thank you for appearing today.

My questions are mainly for Major-General Cathcart in his position as Judge Advocate General.

Thank you very much for your introduction. It answered some of my questions. I usually ask questions of the witnesses that would be asked of me as a member of the defence committee, basically, what do they do and what does a judge advocate general do, and in your introduction you did answer some of that.

When you say your job is primarily to advise, I think you might advise the Governor General, an others. Can you give us some examples of how you do that, perhaps by giving us some hypothetical situations? What kinds of questions come before you? What would a typical response be to the authorities you advise?

• (1700)

MGen Blaise Cathcart: That's a very good question. I appreciate that because certainly part of my mandate since I've been appointed as JAG is really to help folks, both inside the government and in the Canadian populace as a whole, understand the role of the Judge Advocate General. It's somewhat different from perhaps the TV show that people have seen, although we're looking for a new fighter plane to get witnesses....

Mr. Rick Norlock: That's why I'm asking the question.

MGen Blaise Cathcart: In all seriousness, it's a long historical role. In fact, last year we celebrated the 100th anniversary of the appointment of the very first judge advocate general in 1911, Colonel Henry Smith. We've had a long tradition of judge advocate generals in Canada, I think largely unknown by the populace as a general rule.

More recently, certainly since the new amendments were made in 1998, the role and responsibility of JAG were squarely put by Parliament in legislation in the National Defence Act. I alluded to those roles. Those are very important roles. There's the idea of being an adviser to the Governor General, the minister, the department, the Canadian Forces, on all matters of military law. Military law is not defined in the act or anywhere else, so it's a rather broad term, and we looked at it in that sense.

In basic terms, Mr. Norlock, for any legal issue that arises in CF activities or CF operations, including governance of the Canadian Forces, the Judge Advocate General provides that specialized military law legal advice. Of course, in doing so, we do so with the support of and in consultation with our other legal partners in town, whether they be at the Department of Justice or at the Department of Foreign Affairs.

You can imagine a number of issues that go from the high end of perhaps strategic analysis, which would be legal authority for the Canadian Forces to participate, let's say, in the conflict in Afghanistan or Libya, and what rules would be involved in terms of rules of engagement, targeting who from a legal perspective, and how can targeting be done in those types of circumstances.

We go right down to sort of human issues, or what we call military administrative law, which is dealing with all those issues from recruitment to release of CF members. Frankly, that's an area of law that really means a lot more to the men and women in uniform, the young troopers and soldiers and airmen and seamen, because those are the issues that we've alluded to in this committee like pay, like

grievances, that really make or break morale. We advise on a whole gamut of those issues.

We try to break those down within our organization to three main areas: 1 military justice, which we're primarily discussing today; administrative law, which I just mentioned; and operational law, those things that relate to all the issues that arise on operations. We hear a lot of things in the press. We heard things about detainees and the transfer of detainees in Afghanistan. We had important roles, again, in working with our legal colleagues in town to respond to that.

Mr. Rick Norlock: Thank you very much.

There's been some talk of the possibility of appointing part-time military judges. I wonder if you could speak briefly about the necessity of doing so.

Then for some other folks, because in some instances there's a parallel relationship with the civilian judicial system, why couldn't some of the military judges not be members of the Canadian armed forces but just be someone, a civvy, who applied the rules of jurisprudence that are there?

If you have some time, I wonder if you could tell me, and you may or may not know, how many lawyers the attorney general's department has, and your department has, and why it shouldn't shock anybody that you all don't think the same way about everything.

Voices: Oh, oh!

MGen Blaise Cathcart: I don't know if I have the time for that one, Mr. Chair—

Voices: Oh, oh!

MGen Blaise Cathcart: —but I'll do my best.

Mr. Rick Norlock: The reason I mention this is we're smiling at it, yet, because one lawyer gives an opinion to a body, all of a sudden it's suspect that... I'm referring, quite frankly, to the Canadian Charter of Rights and Freedoms. I would imagine there's a lively debate, but in the end a consensus, so leave that to the end, if you can, and maybe address the other three questions.

MGen Blaise Cathcart: Great. Those are very important questions. I don't mean to make light of them, but they reflect a natural...some tensions around town between lawyers. It's not unusual; you see the same in private practice. I will address that in a second.

I will address the second question first, if I may, Mr. Chair, on the concept of civilianizing military justice. We have heard that out in the public as a suggestion perhaps to improve the military justice system. I fundamentally disagree with such a proposition. I think it's critical to have those judges. We are talking about the military judges who actually sit at courts martial. We're not talking about the judges who sit on appeal at the court martial appeal court who are civilian judges. I fully support and always have supported the concept of having civilian judges on the appeal review, because those are matters of law and they will have a broader perspective from across Canada and in their Federal Court roles. But internally, I think it is vital to have people who sit in judgment of our men and women in uniform on either mundane or very serious charges, as we saw recently with Captain Semrau, or the courts martial involving Major Watts and others that are in the press these days.

To me at a very fundamental level it's common sense that you want somebody who obviously knows the law, is very practised in the rules of evidence and criminal law and discipline. But again it's that point: discipline. That's what separates the military justice system from the civilian system. It's discipline that requires the troops to pay attention so that when they are in times of crisis, in firefights in the middle of Afghanistan, they are going to respond to orders without questioning them. It's that habit of obedience that discipline really goes to form.

You have to have, in my opinion, clearly someone who fully understands that, who has actually been brought up in that culture, if you will, of understanding what discipline really means, and the context in which our men and women in uniform actually conduct their activities. It's one thing for us to sit sometimes in the relative comfort of offices here in Ottawa, and another to actually be out there and understand what it's like on the front lines.

I think it would be very dangerous, in my respectful opinion, to have that part of the courts martial system civilianized. I think we would lose not only the experience of those judges, but the understanding of the concept of discipline.

In regard to the part-time judges that you mentioned, what we're really referring to is the ability to have what we call a surge capability in times of heightened activity when we may need more military judges at courts martial. Right now the way the scheme is proposed, we would have to appoint them as military judges. As you know, with Bill C-15 and Bill C-16, they would have tenure until the age of 60. We may have a surge of activity; let's say we were in a major conflict again and we needed more judges to sit on courts martial and then after that surge we're left with perhaps a pool of 15 to 20 military judges of which a lot of them functionally we don't need. This gives us the ability to surge when we need to, to have part-time military judges, reserve judges, who could then not be required once that surge element is over.

Regarding the interaction, overall I can say with a great amount of confidence that Parliament and Canadians as a whole should be very proud of all of the government's legal advisers. We do some tough work, a lot of times in anonymity. We're not asking to be put in the headlines, that's for sure, but there's a lot of hard work done in the trenches, literally. We work closely with the Department of Justice, Foreign Affairs, and Privy Council legal advisers.

Having said that, as I said, in response to Mr. Harris's question earlier, reasonable people can agree reasonably to disagree over interpretations. It doesn't mean one is wrong or one is better than the other; it simply means there is a different perspective.

What we bring to the table, not to put it too lightly, is 100 years of critical experience of military operations and understanding of how they're done not only at the strategic level, but right down to the tactical level as well.

● (1705)

The Chair: Thank you. The time expired quite a while ago.

Mr. McKay, you have the floor.

Hon. John McKay: Thank you, Chair, and thank you to both of you.

I have heard of a military surge; I have not heard of a lawyer surge before.

Vice-Admiral Donaldson, you seem to put great stock in the issuance of this Privy Council order with respect to these *ex gratia* payments which has been in existence now since June. Can you tell me whether the CDS has issued any cheques based upon this order?

VAdm Bruce Donaldson: I don't believe the CDS has resolved the financial grievance yet, Mr. McKay.

Hon. John McKay: How many would be on his desk?

● (1710)

VAdm Bruce Donaldson: I don't think there would be any on his desk. I think he would have resolved them. I think some of them are still working through the system.

Until we have had the chance to work through some of them, I think we need to get a sense of how the conditions, to which the chief and the grievance authority are subject, play out. We don't actually have experience yet in resolving financial grievances.

Hon. John McKay: This thing has been out for eight months now, and we hear of a bunch of unhappy folks in the military. Do you perceive this order as having a retroactive effect?

VAdm Bruce Donaldson: I don't think the Government of Canada can give retroactive effect to—

Hon. John McKay: Well, I just didn't know the scope of the discretion of the CDS. Would anything prior to June 19 that had been "resolved" not be picked up by this particular Privy Council order?

VAdm Bruce Donaldson: I don't think so, Mr. McKay.

Hon. John McKay: I just wanted clarification. It's only in going forward, and you haven't actually had any experience in resolving an issue.

VAdm Bruce Donaldson: In applying it, no.

Hon. John McKay: In applying it at this point.

VAdm Bruce Donaldson: No, but the authority is really the authority to make *ex gratia* payments within the conditions that are normally laid down by the Government of Canada for exercising that authority, and the—

Hon. John McKay: Does that strike you as going around in circles? Because if in fact Treasury Board has these guidelines, which I'm absolutely certain they do, and the Treasury Board guidelines are now going to apply to the CDS in the same manner as if they applied to Treasury Board, and if Treasury Board has said as a blanket statement there are no declining markets in Canada, how can the CDS avoid that statement?

Vadm Bruce Donaldson: Sir, in terms of declining markets, you're talking about the housing market.

Hon. John McKay: Yes.

Vadm Bruce Donaldson: I think it's important to accept that the Government of Canada actually frames the policies that benefit our men and women in uniform during things like moves and that type of thing. The policy has a certain scope and a certain intent.

I'm sure that the intent of the government was not to delegate to the Chief of the Defence Staff the ability to make different scopes or intents of the policy that the government put in place, but rather to get at the interpretation of that policy to make sure the unique circumstances of men and women in uniform are not creating circumstances that actually fall within the policy but that we're not smart enough to figure out.

Hon. John McKay: How is the CDS actually going to make an *ex gratia* payment that is different from what Treasury Board would do? If Treasury Board has started with the proposition that you can't suffer a loss by virtue of the fact that there are no declining markets in Canada, how is it that the CDS can actually avoid that interpretation of what will be exactly the same set of guidelines as Treasury Board's?

• (1715)

Vadm Bruce Donaldson: I would say, sir, first of all, that the Chief of the Defence staff doesn't have exactly the same scope as Treasury Board. Treasury Board has considerable scope. Treasury Board can revisit policies and applications, etc., but once Treasury Board has set those parameters, they apply to everybody.

I would say, however, that in terms of the problem of home equity loss, it's not a particularly good example of a grievance to which the chief's authority can be applied. I think that in the ones we're confronted with, it is exactly because the intent of the government, made quite clearly to limit the scope of that policy—

Hon. John McKay: I don't want to belabour the issue. It just strikes me as peculiar that the CDS, if I understand what you're saying correctly, can effectively ignore what has been a policy interpretation of Treasury Board, i.e., there are no declining markets in Canada.

Vadm Bruce Donaldson: I can't comment about the policy decision by Treasury Board or whether that policy decision has actually been made, but what I can say, sir, is that the scope of financial remediation of grievances is broader than home equity assistance. In many instances of men and women in uniform having grievances that have caused financial effects on them as well, the chief does have the authority, and Treasury Board has given him the exact instrument he needs to remediate.

Hon. John McKay: He appears to have, prior to June, authority to recommend, but he doesn't have any cheque-writing ability.

What I don't understand—and I don't want to pursue this any further—is what difference the June order makes. He can't write cheques willy-nilly; it might well be an appearance of a move forward, but I'm not sure it is. Anyway, I have very few minutes and I'll just leave it there.

I'll turn to General Cathcart.

As you know, the contentious point here is proposed section 18.5 and the ability, in this case of Vice-Admiral Donaldson, to issue guidelines to the provost marshal.

As I read the legislation, the legislation is silent as to what would be the exceptional circumstances, or maybe just circumstances, period, in which he or she would issue guidelines to the provost marshal. We are therefore left with taking it on good faith. It's a bit of a vague way to impact, if you will, on police investigative independence.

MGen Blaise Cathcart: Yes, that is a very important question. I heard you refer to it before, Mr. McKay, as controversial. I'm not sure yet how controversial it is. There are a few folks who have—

Hon. John McKay: It seems to get a lot of airtime around here.

MGen Blaise Cathcart: It certainly does in certain quarters.

From a larger perspective, a superintendent of the military justice system perspective, I would fully support the underlying goal. I'm extremely sensitive to the concept of police and police independence, because if you don't get that right, a lot of the underpinning of the entire military justice system can fall very quickly.

I am very confident with the underlying rationale, which is a fundamental understanding that military police are unique in Canada. A good Latin term we use in the legal world is *sui generis*. There is no other police force in Canada that is like the military police. The difference is that they not only do policing, which is very important, but they have an operational role. They are members of the Canadian armed forces.

In that context you have to constantly find ways and evolve ways in which they can fulfill without hesitation, without question, their independence in the policing function they do while at the same time recognizing that they are still full-fledged members of the military and have a chain of command.

Hon. John McKay: I understand the issue.

The Chair: Your time has expired. I'm sorry.

Hon. John McKay: Oh, what a shame. We were just having some fun here.

The Chair: We have time for only one more set of questions.

Mr. Opitz, you have the floor.

Mr. Ted Opitz: Thank you, Mr. Chair.

Thank you both for being here, Admiral and General.

I hear you on the military police, because people don't realize the military police have a role on the battlefield as well. That fact often goes missing in a comparison with the role of a regular peace officer.

As we did in the first round, we're talking about some of the areas where we need to improve our system, certainly. I think the Admiral will remember, starting out as a naval reservist back in 1977, that the system back then was not necessarily the best, particularly for reservists, who were often left out of the justice loop. In the last 20 or 30 years, especially in the last 10 years, with the flattening of the grievance system to two particular levels—immediate and final, as opposed to the multi-level approach of the past—things have improved significantly. I think it has made things move faster. Hopefully you can comment a little bit on that.

I want to talk a little bit about summary trials. That's the most common form of military tribunal in the system. It is a very prompt way to deal with minor offences. Those things were dealt with when I was a company commander and battalion commander in the field, because they are quick and can sometimes be done in a matter of a week or so.

Some criticisms of summary trials have been advanced. Could you elaborate, General, on your views regarding the fairness and the constitutionality of summary trials?

• (1720)

MGen Blaise Cathcart: It's another very important topic and question, so I thank the committee for that question.

Again, fundamentally the summary trial system from my perspective is very sound and constitutionally compliant. It does its job both on the legal side, but also, more importantly, in support of the chain of command. I mentioned earlier the concept of discipline. It is really the key disciplinary tool. Mr. Opitz, you referred to that it is the most commonly used. Generally, on an annual basis through my annual reports it's confirmed that somewhere in the area of 94% to 95% of all charges are dealt with at summary trial so that is the main tool out there.

Is it perfect? No. No system is perfect, and that's why we're continually looking for ways both internally within ourselves, and consulting with others, with allies, and using the parliamentary processes here, to find ways and suggestions to make it a better system. But it's fundamentally at its base very sound, and that was attested to through all the independent reviews by Justice Lamer, and more recently by Justice LeSage as well, and Justice Dickson. They all said the summary trial system does what it's supposed to do. That is to, as you highlighted, deal with, generally speaking, minor disciplinary matters in a fair yet efficient way both here in Canada, but more importantly when deployed, because there is no other law unless you want to be subject to the host nation's law unless the code of service discipline or the National Defence Act goes with you, which include a summary trial system.

We also are very vigilant internally. We do annual JAG surveys of the military justice system. We also send out JAG staff to actually talk to a sampling of individuals across the military justice system,

those who have been involved, for instance, CEOs like you were in your past sitting in judgment. We've talked to accused and convicted who have gone through it. Generally, more often than not the answers are positive that people think the system is ultimately fair, it does the job they expect it to do, and they respect it for what it does. Again, that's not to say it's perfect. Certainly you will run into the odd individual who preferred a different punishment perhaps at the end of the day, but the reality is they understood the process, and they understood they had a fair shot in it.

Mr. Ted Opitz: I also found it to work at the lowest possible level with the least administrative burden, so I found that useful.

Further to that, I see there's provision in Bill C-15 that would impose an additional limitation in respect to summary trials, but it would also allow for an option for the accused to waive the summary trial limitation period.

Could you explain a little bit more about that, and why it's included in the bill.

MGen Blaise Cathcart: It can be viewed as a minor point, but I think process-wise and, again, to our young men and women in uniform, it's very important they understand that the first amendment that's being proposed is to have a charge laid within six months to be dealt with in terms of a summary trial process. That's in addition to what's already outstanding, that a trial has to occur within one year from the charge being laid. Again, it's designing to streamline and make it more efficient and fair at the same time.

The fairness is you may have a charge that was beyond that limitation period that the accused, himself or herself, may not want to go to court martial because the only option to deal with the charge at that point is to go to a more formal, full-blown court martial. This, in essence, is giving an opportunity to individuals charged outside of those limitation periods to choose on their own accord to say that no, they're going to waive the limitation period so they can take advantage of the summary trial system. They could do that for a variety of reasons, but most commonly it would be because it would be a quicker process for them to go through at that point.

The Chair: Thank you.

Time has expired, and the committee does have to suspend and move to some committee business that will take a few minutes.

I want to thank Vice-Admiral Donaldson and Major-General Cathcart for their testimony today and for helping us with our study. We really appreciate that.

I'd ask anybody who's not tied to a member of the committee to vacate the room immediately.

The meeting is suspended.

[*Proceedings continue in camera*]

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