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Chair

Mr. James Bezan

Standing Committee on National Defence

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● (1530)

[*English*]

The Vice-Chair (Mr. Jack Harris (St. John's East, NDP)): I call meeting number 68 of the Standing Committee on National Defence to order. We are continuing the clause-by-clause consideration of Bill C-15.

I've been asked by the chair to open the meeting; he is in the House of Commons presenting a bill. I suspect he'll only be a few minutes, so I don't see much point in starting the meeting....

We were in the midst of discussion with Colonel Gibson, I believe, regarding clause 20 and some of the consequences of that. But I don't think he's going to be very long. When I left the House there was a private member's bill being presented, and I think as of today he has to present his bill.

Madame Moore.

[*Translation*]

Ms. Christine Moore (Abitibi—Témiscamingue, NDP): As Mr. Bezan has not arrived, I want to check something about supplementary estimates (C). The meeting on March 18 will be the only one this month, as we will be on the road twice. So we will have no other meetings here, in the House of Commons, until April.

I would just like to know what is happening with regard to supplementary estimates (C). I may not have understood properly that the situation was at the last meeting. I would like to obtain some clarifications about this before we move on to the clause-by-clause study.

[*English*]

The Vice-Chair (Mr. Jack Harris): Thank you.

Perhaps the clerk can clarify the consideration of that. There was some discussion about which date we must consider them by. Do you have any information, Mr. Clerk?

[*Translation*]

The Clerk of the Committee (Mr. Leif-Erik Aune): I will speak in English, if I may.

[*English*]

We understand the department has confirmed the availability of the minister for March 6, if this pleases the members. He's been tentatively scheduled to appear on that date as long as the members are in agreement.

The Vice-Chair (Mr. Jack Harris): When is the date by which we have to report back to the House?

The Clerk: I believe the final date by which the committee would have to report back is March 21. In the case of this committee, it would have to be before that because of the travel.

[*Translation*]

Ms. Christine Moore: Thank you.

[*English*]

The Chair (Mr. James Bezan (Selkirk—Interlake, CPC)): Mr. Alexander.

[*Translation*]

Mr. Chris Alexander (Ajax—Pickering, CPC): What we have understood is that the meeting with the minister, on March 6, will concern the main estimates, and not supplementary estimates (C), and that, if an opening in the schedule was found to discuss supplementary estimates (C), the minister would return in April. That's unless the situation has changed.

[*English*]

Is it March 6?

● (1535)

The Chair: It's March 6 for supplementary estimates (C).

Mr. Chris Alexander: I thought it was main estimates.

The Chair: No, it's supplementary estimates (C). Our invitation was for supplementary estimates (C).

[*Translation*]

Ms. Christine Moore: So the meeting in April will be reserved for main estimates.

[*English*]

Mr. Chris Alexander: I stand corrected.

What about the main estimates, though? Do they need to be reported back by the end of March?

The Chair: We haven't requested that yet as committee.

Mr. Chris Alexander: I guess my point was that it was one out of the two, and you're right.

[*Translation*]

Supplementary estimates (C).

Ms. Christine Moore: So supplementary estimates (C) will be discussed on March 6.

Mr. Chris Alexander: That will be the reason behind his appearance on March 6, and we will discuss the other budget later on.

Ms. Christine Moore: So main estimates will probably be discussed in April.

Very good. Thank you.

[*English*]

The Chair: Okay, sorry.

Mr. Chris Alexander: I meant to say the opposite.

The Chair: Main estimates need to be reported back at the end of May, or even the first part of June. So there is a timeframe there and we have some time before the minister needs to appear on that.

Are there any other questions? If not, let's get back to our work.

We're on meeting number 68. I want to thank Mr. Harris for taking the chair while I had to table a private member's bill in the House, and we ran late, of course. It was QP today, so it caused my delay, and I apologize for that.

We're doing our clause-by-clause consideration of Bill C-15, an act to amend the National Defence Act and to make consequential amendments to other acts. We were in clause 20 when we adjourned on Monday evening.

(On clause 20)

The Chair: Are there any further comments or questions on clause 20?

[*Translation*]

Mr. Larose, you have the floor.

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

I have a few questions about clause 20. I was wondering if Colonel Michael R. Gibson could answer them. I would also like to thank him for joining us today. We appreciate it very much.

Last time, we talked about intermittent sentences served over the weekends. My understanding was that those sentences did not pertain only to reservists, but also to full-time members of the Canadian Forces. That obviously applies to non-commissioned officers.

[*English*]

Colonel Michael R. Gibson (Deputy Judge Advocate General of Military Justice, Office of the Judge Advocate General, Department of National Defence): Mr. Chair, to respond to that question, yes, clause 20, which amends subsection 142(2) of the act, would apply generally to all members of the Canadian Forces. The particular provision for having intermittent sentences is anticipated to be perhaps of most benefit to reservists, but that provision would apply to both regular force and reserve members.

Mr. Jean-François Larose: My understanding is that the reason a regular force NCO would end up being a private while incarcerated —if he does intermittent service, meaning only on the weekends—is that during the week he would remain a soldier. Is that correct, or have I misunderstood that? Or is it only when he is incarcerated?

Col Michael R. Gibson: Mr. Chair, subsection 142(2) of the act currently provides that:

> If a non-commissioned member above the rank of private is sentenced to detention, that person is deemed, for the period of the detention, to be reduced to the rank of private.

That's the law as it currently stands. It applies equally to both regular force and reserve members.

The answer to the question, as I understand it to be, is that for the period the person is serving the sentence of detention, they are deemed to be reduced to the rank of private.

Mr. Jean-François Larose: Okay. Let's say he chooses to do only the weekends because he needs to stay with his kids during the week. He goes back to being a sergeant when he's going to work, and on the weekends, while he's incarcerated, he's a private. Correct?

Col Michael R. Gibson: No, that's not correct, sir.

What clause 20 would provide is that the person would be reduced to the rank of private until the sentence of detention is completed. If the person requests to serve a sentence intermittently, one of the consequences they have to factor in when making their request is that they would be a private for the period of detention.

Mr. Jean-François Larose: As a reservist in the past, I can understand it. For reservists only working on the weekends, I understand why they would choose such a possibility, considering that during the week they're working elsewhere anyway and they wouldn't want to lose their employment. But as a full-time NCO...I have a little bit of difficulty understanding this.

What would be the advantage, other than for family reasons, of doing this? He's being punished during the week under the pretense that it would cause confusion.... I don't know why there would be confusion. I can understand if you're a private in the cell. Having worked in civilian prisons, I can understand the relationship that needs to exist, the punishment being that time they spend in jail. But I don't understand why he would still be a soldier during the week. Wouldn't that be like a sentence that would be added, simply giving him the opportunity to be spending time with his family?

● (1540)

Col Michael R. Gibson: Mr. Chair, with respect, I don't agree with that proposition. The logic behind it is that this person is an offender. They've been sentenced to a period of detention, to a custodial sentence, because they've been found guilty of an offence in which the person giving the sentence considered that it required a custodial sentence. It is at their option, their convenience; they asked to serve it intermittently.

But you can't have a derogation of discipline or any confusion in the chain of command about what that person's status is. In fact, our assessment, which I think is very well grounded, is that it would likely cause dissension or a lot of concern amongst the members of the unit if the person suddenly showed up wearing their regular rank during the week and was only a private during the period of detention.

[*Translation*]

Mr. Jean-François Larose: So it is punitive. For example, an individual who has been given a 10-day sentence serves it over the weekends. Instead of the sentence taking 10 consecutive days to complete, it takes 5 weeks. During the week, the individual continues to be a private, with reduced wages.

I would like to know what happens in their unit. Since the responsibilities of someone like a sergeant must be maintained, is that person replaced? What happens in their unit? There may not be any confusion, since that person is not in detention. Someone being a simple private in detention is understandable, but once that person returns to their unit, they have a sergeant's responsibilities. Are they replaced, or do they continue to be a private who carries out a sergeant's responsibilities?

I think this principle leads to more confusion. The sentence handed down by the court is 10 days, not 5 weeks.

[*English*]

Col Michael R. Gibson: I think the answer is that it's up to the unit to make its assessment of what its operational needs require. The substantive provision is found in clause 24 of the bill, which would amend section 148. That provides that there has to be an agreement between both the offender, the person making the application, and the unit to agree to allow him or her to serve the sentence intermittently, so the needs of the unit would have to be factored in before the commanding officer made his or her decision about whether or not they were going to approve that.

[*Translation*]

Mr. Jean-François Larose: That's all for me.

Thank you.

[*English*]

The Chair: Madame Moore.

[*Translation*]

Ms. Christine Moore: I would just like a clarification.

Let's take the example of a reservist—a non-commissioned member—who has very specific duties or job within a unit. For instance, there is often only one quartermaster in the reserve. Does that person ever go to work in between their detention periods to carry out other duties because the unit really needs them, or are they usually not allowed to return to their normal employment in the unit until the sentence has been completed?

[*English*]

Col Michael R. Gibson: I'm sorry, I didn't really understand the question. Could you repeat it, please?

[*Translation*]

Ms. Christine Moore: I will give you an example where a reservist is sentenced to 14 days of detention. He serves his sentence on the weekends, so it stretches out over seven weekends. Could that person ask to work normal shifts between the weekends? Will he be able to carry out his usual duties even if he has not completed his detention period?

[*English*]

Col Michael R. Gibson: Mr. Chair, again, the answer to that would be determined by the unit, and ultimately by the commanding officer, as to what he or she considered would be required for the efficiency of the unit.

[*Translation*]

Ms. Christine Moore: For instance, the commanding officer could ask someone to perform their normal duties, but with the rank of private. It may at times be strange to see a private giving orders to other people with a higher rank, even if that person would have done it normally as part of their work.

I am a bit confused about that. I am trying to get a concrete picture of what that means. I find that the result may be a bit strange. Could you explain by giving some concrete examples?

● (1545)

[*English*]

Col Michael R. Gibson: Mr. Chair, with respect, that seems not especially relevant to the question of what's proposed in the bill in terms of providing this option. It is remarkably very inconvenient for everybody, the unit and the person involved, when somebody commits an offence and is sentenced to detention, but the sentence has to be determined on the basis of what's required for the maintenance of discipline. The presiding officer will have to arrive at the appropriate sentence on that basis. Ultimately it is up to the commanding officer to run his or her unit in the way that he or she considers to be appropriate, having regard to their mission.

I don't think there's a lot more I can say on that point.

The Chair: Thank you.

We do want to make sure that your comments stay to the technical nature of the bill.

Are there any other comments or questions?

(Clause 20 agreed to on division)

(Clause 21 agreed to)

(On clause 22)

The Chair: You have comments on clause 22, Mr. Harris?

Mr. Jack Harris: I wonder if we could have the rationale here for the second half of clause 22, proposed section 147.1, the prohibition order there with respect to crossbows, prohibitive weapons, etc. These prohibition orders can be made, and proposed subsection 147.1(3) of this says:

> Unless it specifies otherwise, an order made under subsection (1) does not prohibit an officer or a non-commissioned member from possessing any thing necessary for the performance of their duties.

That leaves us with the circumstance where a soldier is prohibited from possessing or carrying or having a weapon at his house or in any of his belongings, his vehicle, etc., but when he shows up for duty he can carry and use a weapon in the performance of his duties. This would, to the ordinary member of the public, seem a little bit odd, that if someone is not trusted with a weapon he should be issued one. I'd like an explanation of that. I think there may well be a reasonable one. In fact, I know it's a difficulty in the United States, for example, where they have much more liberal gun laws and they seem to have trouble preventing soldiers from having weapons of all sorts in their homes or other places. It causes problems for them.

Can you explain that, Colonel Gibson, what the rationale behind this is, why it's required? Why is it reasonable for a person who is prohibited from having weapons—for good reasons obviously, and being permitted to have good reasons under proposed subsection 147.1(1)—to have a weapon while in the performance of their duty?

The Chair: Just so that everybody knows, that currently is in the act. You're just adding the words “an offence”.

Colonel Gibson.

Col Michael R. Gibson: Mr. Chair, exactly, that provision is already in the act. But in brief response to Mr. Harris' question, note that it says “unless it specifies otherwise”. So the intent of the provision is not to automatically exclude the person from being able to perform his or her duties at work if it's considered within the discretion of the person imposing the sentence that they could properly do so. It doesn't presume that they can't, but of course it requires, as with other sorts of sentencing exercises, an exercise of discretion on the part of the person imposing the sentence as to whether or not in those particular circumstances it would be appropriate.

Mr. Jack Harris: Sir, with respect, that doesn't quite answer the question, because in fact it clearly says that the prohibition order doesn't prevent a person from maintaining weapons in the performance of duty. The default position is that he's allowed to do so unless for some reason the court martial decides otherwise.

I wonder if you could provide a rationale as to why the default position is that in a circumstance where this occurs, it doesn't prevent an individual from doing that. By the way, there does appear to be some change here, particularly in section 3.

● (1550)

Col Michael R. Gibson: I would suggest that in respect of proposed subsection 147.1(3), with the header “Application of order”.... Ultimately, does it really make any difference? It requires an exercise of discretion on the part of the person imposing the prohibition order as to whether or not he or she considers that the person should be allowed to have a weapon. It could have been framed the other way around, but substantively I suggest it really doesn't make any difference. It still requires a judgment to be made, Mr. Chair.

Mr. Jack Harris: Again, Chair, I don't think the substantive question is being answered, which is what kind of circumstances would give rise to a discretion being exercised either way in these circumstances.

Col Michael R. Gibson: Mr. Chair, to give an example, if one is an infantry man, your primary duty is to carry a rifle and to conduct exercises and operations as an infantry man. If you declare that the person cannot carry a weapon, you've significantly constrained his or her utility in the performance of their duties.

The purpose of this section is to allow an exercise of discretion on the basis of the circumstances of the case to be made, to determine whether or not it's appropriate that he or she should do so.

Mr. Jack Harris: Chair, when you look at the wording of the section, the court martial is considering it desirable in the interests of the safety of an offender or of any other person. It's obviously a safety issue. If a court martial were to make such an order because of the safety of the offender or some other person, it seems, through common sense, to be potentially or likely inconsistent for an infantry officer, as you pointed out, who can't have a weapon on his own, to be issued one in the service of his duty.

I suspect there's some rationale here that may have to do with military chains of command and obedience to authority and all sorts of other things that might make this possible. But I'm giving you an opportunity to provide a rationale that would make sense to the ordinary Canadian.

As Mr. Norlock keeps saying, I'm asking the kind of question that my constituents might ask, who say, how is it—

An hon. member: [*Inaudible—Editor*]

The Chair: Okay, wait. I've got a speaker over here.

Mr. Jack Harris: How is it that an individual can be considered so unsafe for his own sake or for the sake of others that he can't have a weapon, and yet at the same time he is authorized to have a weapon for the performance of his duties as an infantryman, or in any other role that he might have that would have him using a weapon?

Col Michael R. Gibson: Mr. Chair, briefly, that's why we pay judges: to exercise discretion on the facts of the case and in individual circumstances. As with any other sentencing option, there's a measure of discretion to take into account operational imperatives, operational needs, if they're appropriate in the circumstances.

The Chair: I have Mr. Alexander, Madame Moore, and then Mr. Norlock.

Mr. Alexander.

Mr. Chris Alexander: Thanks.

Yes, their rationale is very clear: if there is a danger of the offender having a weapon, the court martial will specify that the person not have the weapon. If there is not a danger of the person having those weapons, or any of the other items listed, and if the operational requirements dictate that the person carry a weapon or ammunition, they will carry the weapon. It is a balancing act that is present throughout this bill, and it crops up in many different forms. Military justice requires certain forms of behaviour and certain prohibitions when offences are committed and when convictions happen, but the special operational requirements of the Canadian armed forces require most members, regular and reserve force, to carry weapons when they're on operations. This satisfies both of those conditions.

The Chair: Thank you.

Madame Moore.

[*Translation*]

Ms. Christine Moore: I would just like to clarify something.

I assume that also applies to any weapons the person uses for sports, such as hunting. Does that also cover cases where the person's spouse owns registered weapons? If the spouse lives in the same home and the weapons are registered in their name, should all the weapons—or at least access to them—be removed from the home or only those that are registered in the military member's name? Regarding the relationship with civilian authorities, I would like to know what happens when someone is not allowed to carry weapons.

It would help me understand matters if you could clarify those issues a bit.

● (1555)

[*English*]

Col Michael R. Gibson: Mr. Chair, I think the answer is contained in the provision itself:

> If a court martial considers it desirable...it shall...make an order prohibiting the offender from possessing

The order is in relation to the offender, not to a spouse or somebody else cohabiting with him or her, and one would look to the general definition in law of "possession" to determine the ambit of that. I think that's briefly the answer.

The Chair: Mr. Norlock.

Mr. Rick Norlock (Northumberland—Quinte West, CPC): Mr. Harris asked a question in the manner in which I would, because I always ask questions that I believe my constituents would ask, and my constituents would understand the following: coming from a paramilitary background, police officers from time to time.... It's more easily explained by saying a firearm is a tool of the trade. Whether a police officer or someone in the armed forces, that's a tool of their trade. They need that to do their job. It's part of their job. For that person to maintain their employment, they must carry their weapon as part of their uniform and the duties they may have to perform. While they're off duty, while they're not there, they can be prohibited from carrying that tool because it isn't necessary in their day-to-day life.

The Chair: Are there any other comments?

Go ahead, Mr. Harris.

Mr. Jack Harris: I hear a lot of what's called a self-fulfilling argument here, in that you're suggesting there are circumstances where you could do it. I hear what Mr. Norlock is saying. My question is this. Where it's decided that a person is a danger—as the bill says here, in the interests of safety of the offender or another person—enough to have the prohibition order, how could it be safe for the public, in the case of the police officer, for the same person to have a gun or a weapon when he's on duty? I would like to have an example of where that might actually make sense.

I hear what you're saying about tools of the trade, etc. It may be a case of an individual who got into trouble and it had nothing to do with his work or job; you want to isolate it from that, and you can satisfy somebody.... I don't know. It just seems to me that the ordinary person who is not a police officer, who is not a soldier, would have a lot of difficulty understanding how it is that a person who is a danger to himself or some other person and who requires a prohibition order should be competent and safe to have a weapon—and that's the default position: that they would continue to have a weapon in the course of their duties. I haven't had anybody explain that to me yet.

The Chair: Go ahead, Mr. Gibson.

Col Michael R. Gibson: Mr. Chair, very briefly, again, if one looks at the actual text of the provision, it reads, "in the interests of the safety of an offender or of any other person".

In response to Mr. Harris, let's take the example of somebody who had spousal difficulties, had domestic violence difficulties, in the context of the base in Petawawa. The person whose interests are being considered is the offender's spouse. It may be perfectly safe and appropriate to carry a weapon in the course of duty while deployed to Afghanistan in an operational theatre, 10,000 miles away from that person whose safety is at issue. The point is, once again, that it comes down to counsel, prosecution, and defence to make the appropriate submissions on the fact to a judge, and the judge—he or she—will decide.

The Chair: I have Mr. Larose and then Mr. Harris.

Monsieur Larose.

[*Translation*]

Mr. Jean-François Larose: Thank you, Mr. Chair.

I don't agree with you. I have worn the uniform myself. A civilian who is psychologically unstable or uses a personal weapon improperly is usually suspended or loses their job. I have not come across any cases where it was deemed acceptable for unstable individuals to carry a weapon as part of their duties. In such situations, an attempt is made to take away their weapons and provide them with the help they need. A psychological assessment is then carried out to determine whether or not that person can continue to perform their duties. Drawing a parallel between the two situations does not seem very reassuring to me.

During one of my training sessions in the reserve, an individual pointed a C7—the equivalent of an M16 in the Canadian Forces—at the officers. He was seen doing that and pulled out of service, which did not take very long. Did that individual have any weapons at home? I don't know, but I simply wanted to say that, if an individual is unstable—even if we are talking about tools used by the Canadian Forces—it cannot be said that everything is going well in the performance of their duties. I really disagree. I have worn the uniform for most of my life, and I did not find working with such individuals reassuring. I would not want to work with someone like that. I would not feel safe at all, and I would also worry about my colleagues.

● (1600)

[*English*]

The Chair: Go ahead, Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

I hear my colleague's concern about the possible application of this section to other types of circumstances, where you have someone who is unstable, as he called it. I think you have provided an example that people might understand. There is a distinction where you're trying to protect someone: it's the safety of a particular person or circumstance that gives rise to the prohibition. There are circumstances in which an officer is under command, in the field, as you say, 10,000 kilometres away, which would be a different set of circumstances.

That was the kind of explanation I was looking for, sir, something that my constituents—as Mr. Norlock puts it sometimes—would understand. I think people might understand that, although I can see a lot of people would also think like my colleague.

Thank you, sir.

The Chair: Thank you.

Are there other comments?

(Clause 22 agreed to on division)

(On clause 23)

The Chair: Are there any questions or comments?

Madame Moore.

[*Translation*]

Ms. Christine Moore: Mr. Chair, I have a technical question. In the bill before me, the analysts forgot to translate paragraphs 25(2)(*a*) and 23(2)(*b*). Could we come back to this when the provisions have been translated? I don't have it in French. I don't know whether it has been corrected since, but I don't have the translation, after line 27, of “any thing the possession of which”.

[*English*]

The Chair: This is common in bill drafting. Whenever you come to where they are changing just the English part—

[*Translation*]

Ms. Christine Moore: I understand now.

[*English*]

The Chair: —they do the explanation, which is subclause 23(2), but it does show it in English.

[*Translation*]

Ms. Christine Moore: It's okay.

[*English*]

The Chair: Okay, we're good.

Are there any other questions?

(Clause 23 agreed to)

(On clause 24)

The Chair: We have amendment NDP-16, reference number 5993944.

Mr. Harris.

Mr. Jack Harris: Thank you, sir.

Before moving the amendment, I would like to ask some technical questions of the witnesses about this. We did have some discussion during committee about this, and there was a suggestion from the Criminal Lawyers' Association, for example, that there ought to be a 90-day provision similar to the civilian system. I understand there's some relationship between the number of days a person can or can't serve in detention.

Colonel Gibson, can you clarify that for us? The definition or the interpretation of this legislation would suggest that the 14 days we're talking about must be the total sentence. I'm thinking, for example, that we have an amendment suggesting 30 days. If your intermittent sentence were served in three-day increments, so 10 weekends, let's say, none of those periods of detention would be greater than 14 days. Why is that not a rational way to do it, as opposed to treating the 14 days as a totality of sentence?

Col Michael R. Gibson: Mr. Chair, in brief response, there are three reasons—one legal, two policy-oriented.

The legal one, first of all, is that the law already provides at QR and O 114.11(3) that any sentence longer than 14 days of detention must be served at the Canadian Forces Service Prison and Detention Barracks in Edmonton. Imagine the circumstance where you're suggesting that one allowed a person to serve a 30-day sentence intermittently. If that person didn't live in Edmonton, you'd be shuttling him back and forth from Toronto to Edmonton every weekend. That would make absolutely no sense at all. It wouldn't make sense, but there is also a legal prohibition against it.

The second reason, in terms of policy, is that the sentence of detention, especially for a longer period, up to 30 days, is meant to serve a particularly rehabilitative function, and there's a unique regime in place at the Canadian Forces Service Prison and Detention Barracks that is meant to take a person through a progressive stage of rehabilitation. We consider for that period that the rehabilitative effect of that special regime at the service prison and detention barracks would be lost.

Thus, for practical reasons, a legal reason, and also a policy reason, we suggested that the appropriate threshold would be 14 days.

● (1605)

Mr. Jack Harris: Thank you for that explanation, although the legal prohibition could be overcome, I would submit, by changing the regulations to meet the act, if the act were so changed.

I do apprehend and understand the policy reason why you're saying a sentence beyond 14 days, in order to achieve the rehabilitative results, as you pointed out, is not going to be much good if you're in barracks or some other form of confinement that would apply on an intermittent basis.

Having heard that explanation, Mr. Chairman, I withdraw the amendment.

The Chair: Are there any other comments on clause 24?

(Clause 24 agreed to)

(On clause 25)

The Chair: Are there comments or questions?

We are now on page 12, halfway down.

Mr. Jack Harris: Let's go for it.

The Chair: Okay.

(Clauses 25 to 30 inclusive agreed to)

(On clause 31)

The Chair: Mr. Harris.

Mr. Jack Harris: This is a provision whereby a person is released under conditions. We had a debate about conditional versus absolute sentences. We are talking here about setting conditions for bail only, so that conditions of release mean essentially bail.

Is that correct?

Col Michael R. Gibson: Mr. Chair, what this provision at clause 31 is meant to do is to fill a gap that currently exists in the scheme.

If a person is arrested and is retained in custody, there's an obligation to bring them before what's called the custody review officer at the unit. He or she makes a decision whether to retain them in custody or release them. They can release them with or without conditions.

If that custody review officer from the unit releases them with conditions, what clause 31 would provide, in furtherance of a Lamer report recommendation, is the ability to have those conditions reviewed by a military judge.

So yes, it has to do with conditions that apply when the person has been released from custody pending trial.

The Chair: Are there any other comments or questions?

(Clause 31 agreed to)

(On clause 32)

The Chair: Mr. Harris.

Mr. Jack Harris: I think we're introducing a phrase here, Colonel Gibson, that is probably new to the act: the notion of public trust in the administration of military justice. That's a phrase that's used in the Criminal Code, of course, "trust in the administration of justice". What is the peculiarity of the trust in the administration of military justice, as distinct from justice as a general affair? Are we talking about something different because we're talking about military justice?

That phrase appears in another context as well, but I wanted to give you an opportunity to talk about what exactly it might mean.

● (1610)

Col Michael R. Gibson: Very briefly, Mr. Chair, what this amendment is meant to do is harmonize the use of the phrase "military justice" throughout the act so that it will be used consistently. That's its primary intent.

If you're asking for a policy explanation or a philosophical explanation of military justice, it really goes back to the two purposes of military justice set out in clause 62 of the bill: in essence, to promote operational effectiveness and to do justice.

I would just point out that really, the primary intent of this particular provision is to be in consistency with the judgment of the Supreme Court of Canada, in the Hall case, about the tertiary ground. That's really the thrust of this amendment.

Mr. Jack Harris: Do you think using the term "military justice", as has been suggested in other contexts, may in fact be, and is, harsher in many respects than civilian justice? Concomitant with that, if the reasons for maintaining trust in the military justice system include the notion of discipline and operational effects, they would be included in that interpretation, in terms of trust in the administration of your regime inside the Canadian Forces. Am I right about that?

Col Michael R. Gibson: Mr. Chair, in general terms, yes. The thrust of the provision is to maintain public confidence in the administration of justice, be it military in a particular context or not.

The Chair: Thank you.

Are there any other comments or questions?

(Clause 32 agreed to)

(On clause 33)

The Chair: Is there a question?

Mr. Jack Harris: This is one that I find surprising: that despite the fact that a person is directed to be retained in custody or that conditions be imposed upon them, that direction may be cancelled in circumstances prescribed by regulation made by the Governor in Council.

Is that a new provision, and why is it necessary? And what kind of regulations would be contemplated to be passed under the act? We haven't heard in any of the recommendations anything as to why this should be included.

The Chair: Is this a new section, Mr. Gibson?

Col Michael R. Gibson: Mr. Chair, yes, it is.

What it is meant to relate to primarily is the circumstance in which there has been a direction to retain a person in custody or to impose conditions, and when the matter has been referred to the director of military prosecutions for his or her decision about preferral of charges for court martial, that office decides not to prefer the charge.

This is meant to be an elegantly simple way to deal with the circumstance in which the director of military prosecutions has decided not to prefer the charge, so that you won't have to go back and construct some sort of elaborate regime to say that the person should be released from custody or to direct that the condition should be cancelled.

In other words, this is what the regulation would essentially prescribe: that where the director of military prosecutions has issued a notice of non-preferral, then you have a simple and clean way to deal with the situation.

Mr. Jack Harris: So this is not intended to implement any policy, other than an administrative way of allowing someone to be released from conditions or actual custody without having to go back before a tribunal or a court or—

Col Michael R. Gibson: That's essentially correct. It's meant to relieve the person dangling on the hook of uncertainty, if you want to put it that way, from the effect of the DMP's decision not to prefer.

Mr. Jack Harris: And it is not intended to overrule a direction given by a court or by a tribunal.

Col Michael R. Gibson: No, Mr. Chair, it is not at all.

The Chair: I have Mr. McKay, and then Mr. Alexander after that.

Hon. John McKay (Scarborough—Guildwood, Lib.): I accept the explanation. I'm not sure that is what this says, though.

It says it's prescribed in regulations made by the Governor in Council. What are these regulations going to say, then?

It seems to me you've created a fairly broad means by which release can be cancelled, and then you give an explanation that makes some sense, but then you leave a fairly wide open door for the purposes of getting people out of jail.

Col Michael R. Gibson: Mr. Chair, I would reiterate that the primary intent in respect of the regulations to be made pursuant to this proposed section relates to the circumstance I described. But it is possible that other circumstances might arise in which one might wish to have the ability to in essence not have to go through a protracted process to cancel the condition or to get the person out of custody. That's one reason for having chosen the instrument of doing it through regulations; it's to provide some degree of flexibility for the future.

● (1615)

The Chair: Okay.

Hon. John McKay: Well, hang on. I just want to think about that. I don't want to go over the top here, but it seems to me that this gives the CDS a "get out of jail free" card for anybody who is remanded in custody.

Col Michael R. Gibson: Well, Mr. Chair, I think that presumes an awful lot about the actions and intentions of the CDS. Any actor in this system is going to, one should presume, be governed by good faith and act in accordance with the rule of law. I don't think it bears the sort of potentially sinister interpretation that is suggested.

Hon. John McKay: I don't see that as potentially sinister; I simply see it as a matter of drafting. If in fact the idea is as you initially described it, then surely to goodness the drafting could be a bit more precise than the way it currently appears, which to my mind is as a fairly wide open opportunity for abuse.

Not all people in all systems at all times operate in good faith.

Col Michael R. Gibson: May I briefly respond, Mr. Chair?

Given that regulations are made by the Governor in Council, I think one presumes that the Governor in Council is going to act in good faith in accordance with the law.

Hon. John McKay: Do we have any example of the regulations? Are the regulations available at this point? Are they about to be drafted? Where are we?

Col Michael R. Gibson: Mr. Chair, as Mr. McKay may know or may recall, draft regulations are subject to cabinet confidence, so I cannot speak in any great level of detail about what exactly would be in the regulations, simply because I am unable to do so.

Hon. John McKay: Do these kinds of regulations come before something equivalent to the scrutiny of regulations committee?

Col Michael R. Gibson: Mr. Chair, the regulations under QR and O are exempt from the requirement to be gazetted, but yes, they go through the regulatory submission process, which I can tell you from painful personal experience is extensive and protracted, and ultimately they are regulations made by the Governor in Council.

Hon. John McKay: Well, there is an antidote to pain, and that's generally precision in drafting.

I'm not prepared to pursue this, Chair, but it strikes me as anomalous, to be candid with you.

Col Michael R. Gibson: Mr. Chair, Lieutenant-Colonel Dufour has trained as a legislative drafter. Maybe he could add a little bit of interest here.

The Chair: Lieutenant-Colonel Dufour.

Lieutenant-Colonel André Dufour (Director, Military Justice Strategic Response Team, Office of the Judge Advocate General, Department of National Defence): Mr. Chair, with respect to the federal regulatory process, as a matter of policy we follow this federal process, and throughout any submissions made to the Governor in Council or to any competent authorities, we comply with those requirements.

Under section 12 of the National Defence Act, we can make regulations for this purpose; however, under the statutory instrument regulations there is an exemption for examination, registration, and publication. So we do this pursuant to law.

Hon. John McKay: I buy the argument that you're doing it within the framework of the current legislative framework. I don't argue that point. But because it has no public scrutiny, therefore the regulations get drafted outside of the purview of the public. Presumably the power that, in effect, this section gives you is the power to get somebody out of detention. I don't want to beat this to death, but it just strikes me as....

The Chair: Yes.

Mr. Alexander.

Mr. Chris Alexander: Thanks, Chair.

In my two years on this committee and as a member of Parliament, I have never heard either a government member or an opposition member call into question the integrity of agreements, regulations, and orders. They, by and large, pass muster with all of us. Given that we give them very little attention, they seem to function well.

I think we on this side, and we on the committee, can assume that drafting will be done in good faith. But could we ask Colonel Gibson, if it would not be too much to ask, to have it signalled to the committee once these regulations have been completed, published, so that we can—not necessarily with committee time but on our own time—review them to ensure that they fulfill the expectation created by this clause?

Col Michael R. Gibson: Of course, Mr. Chair. Once regulations are made by the Governor in Council, they're public, and they're published; they're on the Internet. In fact, the official version is now the official version published on the defence website. So they are perfectly transparent, but I'd be very happy to pass on to the committee notice that those have been made.

● (1620)

The Chair: We would appreciate that, Colonel Gibson.

Mr. Harris.

Mr. Jack Harris: Thank you, Chair.

I was actually comforted by the first response I got from Colonel Gibson as to the intention and the purpose here with respect to establishing an administrative mechanism to meet the need here. But I'm a little disturbed in your answer to Mr. McKay's question that yes, that's the primary intent here, but it could be used for other purposes. That comment gives some force to what Mr. McKay was saying in terms of the way this matter is drafted.

What other circumstances are you talking about, then, outside of an administrative one? It doesn't quite say administrative here. I took your comments in good faith, particularly since they're on the record here in the defence committee, that this was the intention and that it was involved with administrative proceedings. I'm not looking for any nefarious reasons here, but what else is contemplated? Aside from the notion that there ought to be some way that doesn't involve a lot of other procedures to allow for the release of someone who is in custody under lawful direction or who has conditions on their release under a lawful order of a tribunal or court, what other ones do you have in mind?

The Chair: Colonel Gibson.

Col Michael R. Gibson: Mr. Chair, again, without, obviously, stepping over the line of cabinet confidence, I could say that in general terms, the explanation or the intention that I already indicated is the one that we're contemplating at this time. I'm merely making the point that throughout the act there is often an ability provided to make regulations, partly in recognition of the fact that we know we're not smart enough to contemplate every single possibility down the road. But I would reiterate once again that the GIC doesn't make regulations that are patently illegal or won't pass public scrutiny.

Thank you.

The Chair: Thank you.

(Clause 33 agreed to on division)

(Clause 34 agreed to)

(On clause 35)

The Chair: We have two amendments submitted by the NDP. They are consequential, so we are voting on both amendments. When you're voting on amendment NDP-17, you're also technically voting on amendment NDP-18. So if it succeeds, they both succeed; if it's defeated, they are both defeated.

It's reference number 5993962.

On clause 35, Mr. Harris.

Mr. Jack Harris: I would like to move that amendment.

This is, I guess, a technicality, in the sense that we have to thank Justice LeSage for pointing it out. He pointed out that, based on a similar amendment in Bill C-41 in the last Parliament, there was a need for some certainty here, because of the confusion as to “after that day” being added there: what day is “that day”? He proposed that it be clarified by ensuring that the day we're talking about is that the summary trial can commence within one year after the day on which the offence is alleged to have been committed.

We have therefore moved this amendment, which is NDP-17, to give that clarity. I don't have much more to add to it than that. He does explain in his report that “after that day” is confusing. It's difficult to understand what day we're talking about in “the summary trial commences within one year after that day”. He's a judge. He tells us that he finds it ambiguous and confusing. They're the ones who are asked to apply these laws.

This puts on a limit. Of course, someone can always make an objection to a court or to a tribunal that the charge is taking place at the wrong time and have it thrown out. He suggests there is a need for clarity here. We are taking his advice and putting this to the committee to have that clarity imposed or put in the bill to allow that proper interpretation to be made and the intention of the legislature to be clear.

● (1625)

The Chair: Currently the bill doesn't specify “that day”, although that's what it says here: “that day”.

Mr. McKay.

Hon. John McKay: I generally operate from the principle that justice delayed is justice denied. I think if it's applicable outside there, it's even more applicable inside the military community. Any offence or any allegation of any offence has significant implications, not only for the soldier and his or her family, but also for, if you will, the extended military family. I preface my observation with that kind of caveat. If justice delayed is justice denied out there, it's really justice delayed is justice denied if it's not dealt with expeditiously inside the military culture.

As I would understand it, the starting point for the NDP and the government's amendments is the day of the offence, so that the charge has to be laid within six months of the offence date. But then the government gives itself, in effect, one year from the charge date to deal with the matter, whereas the NDP amendment basically is that the 12 months start running from the day of the offence.

In some respects, the government's position is more precise, but it's a longer timeframe. Am I understanding it correctly, therefore, that effectively from day one to the end of the day, the NDP amendment covers off 12 months and the government's position is 18 months. Is that fair?

The Chair: We have Colonel Gibson.

Then we'll get back to you, Mr. Harris.

Col Michael R. Gibson: Mr. Chair, just to respond briefly to those observations, first to Mr. McKay's question, no. The relevant day is the day on which the service offence is alleged to have been committed. The intention—and we consider that the drafting of the provision is fairly clear—is that the first limitation period is that the charge has to be laid within six months of that day—

Hon. John McKay: Of the offence date.

Col Michael R. Gibson: Yes, the offence date—

Hon. John McKay: Okay.

Col Michael R. Gibson: —and the trial has to commence within one year of that day. It's not an 18-month thing. It's six months to lay the charge, a year to start the trial.

Just in response to—

Hon. John McKay: Sorry to interrupt, but do you have an intervening date of the charge...? Is it one year from the charge date or is it one year from the offence date?

Col Michael R. Gibson: The offence date.

Hon. John McKay: The offence date: so I'm not reading it correctly.

What's the difference between—

Col Michael R. Gibson: Sorry, but just to respond briefly to Mr. Harris' observation, there are two things.

Bill C-15 was introduced in Parliament on October 7, 2011. The LeSage report was not tabled until June of 2012. I would ask you to just bear that in mind.

The second point is that it's a matter of legislative drafting and interpretation. In this case, we consulted with our friends, the legislative drafters at the Department of Justice, who actually draft the bills, and we asked them what they thought of this. They were fairly adamant that actually, no, it was good as it stood.

In fact the amendment suggested—with the greatest of respect to Justice LeSage—in their view was not technically appropriate and would not actually contribute to clarity or be consistent with their drafting of protocols.

That's why it is the way it is.

Mr. Jack Harris: Well, sir, I thank you for your opinion.

I guess Mr. McKay's comment actually proves my point, that he read this...and Mr. McKay is a lawyer of very long standing, I believe one of Her Majesty's counsel learned in the law. He thought —

A voice: [*Inaudible—Editor*]

The Chair: Order.

Mr. Jack Harris: —the amendment was designed to shorten the limitation period from 18 months to 12 months. Now we have it confirmed, of course, by Colonel Gibson, that the intention here of the government in this amendment is that when an offence is alleged to have been committed on a certain day, a charge has to be laid within six months, and the trial has to commence—it doesn't have to end, but to commence—within 12 months of the date of the offence. But if you look at "after that day", Justice LeSage also was concerned with the interpretation of that.

Now, there are legislative drafters, which is fine. They have their opinions, and they are very experienced people. But with all due respect, the legislative drafter is not the person who is sitting down and interpreting the law in court. Lawyers like Mr. McKay and others are arguing about the possible interpretations of the act. A judge may decide, yes, it is confusing here; we're not sure what this is all about.

You know, we keep hearing about the LeSage report having been tabled in the House in June of 2012, but it was presented to the government in December of 2011. He was commenting on a clause in Bill C-41—not on this, but this is an identical clause—and he said that if this is being brought in, it should be clearer.

Now, the legislative drafters may think it's clear. Mr. McKay doesn't think it's clear. Justice LeSage doesn't think it's clear. I don't think we're doing any harm to the universe if we make it clearer.

So I would see this as...I wouldn't call it a friendly amendment. There's no such thing, perhaps, as a friendly amendment.

● (1630)

The Chair: You're right, there is none.

Mr. Jack Harris: This is actually an amendment. There's no such thing as a friendly amendment, but this is not a contentious amendment. It's not one that's changing policy. It's not one that's changing the intention of the law. It is actually designed to make clear the law.

It seems to me that this amendment would be for the benefit of justice and the military justice.

Col Michael R. Gibson: Mr. Chair, I would make just one observation.

Of course, it's a fundamental principle of statutory interpretation that Canada is a bilingual, bijural country. In interpreting legislation, one has to read both the English and French versions together. One can be an aid to the interpretation of the other.

I think it's quite clear on the French side what the intention is. I've already indicated the assessment. Ultimately it's a matter for decision by members of Parliament as to what to make of that assessment, but we take the technical advice of the legislative drafters in terms of drafting issues.

Thank you.

The Chair: Mr. Alexander.

Mr. Chris Alexander: Far be it from me, Chair, to call into question the faculties of the intentions of my learned lawyer friends opposite, but to my mind it's perfectly clear, and I think to most Canadians reading it.

The word "day" is mentioned twice in the paragraph. The second time, there is reference to "that day" in the English version, which can only refer, in my reading, to the first reference to "day". That reference is clearly to the day of the alleged offence.

The Chair: Madame Moore.

[*Translation*]

Ms. Christine Moore: I would like to clarify something. I want to talk about offences committed over an extended period of time. If memory serves me right, section 98 of the National Defence Act talks about simulation. If someone were to feign back pain for three months, what date would be taken into account—the first day when the person began feigning that back pain or the last day? Is that implied? That should be specified in the case of offences committed over a prolonged period of time.

[*English*]

Col Michael R. Gibson: Mr. Chair, perhaps Colonel Dufour could respond to that.

[*Translation*]

LCol André Dufour: I will answer in French.

In the case of an ongoing offence, it is often said that the offence is committed over a certain period of time. If there is conclusive evidence that the offence was committed during that period, and the evidence confirms it, the offence can begin at any point during the period in question.

I am not sure if I am explaining it properly, but I think there is some flexibility when it comes to that.

Ms. Christine Moore: If, for instance, the person stops feigning their back pain after 5 months and 28 days, they can still be tried under a summary trial. That's my understanding.

LCol André Dufour: That's exactly right.

Ms. Christine Moore: Thank you.

[*English*]

The Chair: Mr. Harris.

Mr. Jack Harris: Thank you, Mr. Chair.

The suggestion by Colonel Gibson that the French version is also part of the interpretation is a fair point, except that the amendment is actually seeking to bring about conformity between the wording in the French section and the English section, so that's all the more reason why it would be a reasonable thing to do.

Nobody here is perfect, and this is not a suggestion that a significant error has been made here, but what we're suggesting is that on the advice of Mr. Justice LeSage, and given the example of even our discussion here today, it seemed to make good sense to have what day we're talking about specified. To those who are not experts in legal interpretation, and we're talking about a lot of people who are not experts in the law who are subject to all of this, it might be worth ensuring that it actually says what it is purported to mean by your explanation here today.

● (1635)

The Chair: Mr. McKay.

Hon. John McKay: Nor would I offer any commentary on the capacity of members opposite, but one prefers to resolve ambiguities prior to rather than subsequent to an issue. It seems to me that if I have misinterpreted—quote, unquote—the drafting as is, the crown in fact leaves itself open to a position that it commenced prosecution on month 13 after the offence, rather than within 12 months of the offence. I suppose as a defence counsel one should just sort of sit in the weeds and wait for that.

As to the French/English, again, if the French is very clear and it means what you say it means, then presumably it would be helpful if the English were as clear as the French.

I'll leave my observations at that. I read it, then I reread it, and I thought, "This is the government's position." Essentially it's an 18-month window. Mr. Harris' amendment is essentially a 12-month window. But you tell me that yours is a 12-month window as well. It seems to me that if the crown has an opportunity to clarify ambiguity at the point of drafting, it would be a good time to do it; otherwise, you'll leave yourself a bit exposed.

Col Michael R. Gibson: Very briefly, Mr. Chair, in canvassing this issue—and absolutely, we're fans of clarity, we all are—with the drafters, their response was that those additional proposed words would be what's called "surplusage" and would actually detract from clarity. That's their interpretation.

Mr. Jack Harris: Then why didn't they change the French?

[*Translation*]

Ms. Christine Moore: The French is fine.

[*English*]

The Chair: It's fine.

Are there any final comments?

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: Do you have a question, Mr. Harris?

Mr. Jack Harris: Yes. I have a question on proposed subsection 35(1.2).

Assuming we know what proposed subsection 35(1.1) says, proposed subsection 35(1.2) says, "The accused person may"—once again—"in accordance with regulations made by the Governor in Council, waive the application" of that section. In other words, he doesn't have to be charged within six months, and his trial doesn't have to be within one year if the accused waives that. His right, or the permission to waive that, or the circumstances under which he can waive that, are set out in regulations by the Governor in Council.

Once again I ask, what's contemplated by that? Why would there have to be regulations of the Governor in Council if such a waiver is contemplated?

Col Michael R. Gibson: Mr. Chair, the answer is that, generally speaking, if one is constructing a procedural scheme involving process, our general approach is to prescribe that process in more detail in regulations rather than clutter up the act. Clearly, the right to waive would be set forth in statute in the National Defence Act.

The mechanism, the timeframe, and how and to whom the accused would have to make that application would be prescribed in regulations. It's entirely consistent with the general sort of way we approach law in the system in terms of not cluttering up the act with great levels of detail.

● (1640)

Mr. Jack Harris: What's the incentive for the accused to say "try me after six months", or "try me after a year", or "try me two years down the road" by summary conviction?

Col Michael R. Gibson: It's an interesting question, Mr. Chair, because this was canvassed in a Court Martial Appeal Court case called Grant, and it was also canvassed before the Standing Senate Committee on Legal and Constitutional Affairs in their review of Bill C-60. What they essentially said was that they could envisage circumstances in which the accused may consider it to be in his or her interest to have the matter dealt with by summary trial, notwithstanding the expiry of the limitation period, and in essence they would give that option to him or her.

In general terms, of course, summary trials are more expeditious than courts martial. They occur much more rapidly. They generally occur with less publicity. It would be up to the accused to make his or her assessment, with the appropriate advice, as to what they thought would be in their best interests.

Mr. Jack Harris: But doesn't that give the military police or the military an option, then, to avoid the six-month limitation period for matters that would be normally tried by summary conviction matters, and for the authorities within the military to decide that they're going to charge somebody in a circumstance where a court martial is the only option to file a charge, which would or could lead to more serious consequences? You're really getting around limitation period here.

Col Michael R. Gibson: The short answer, Mr. Chair, is no, because the way the provision is framed is that the accused person may, in accordance with the regulations, waive the application, so it's the accused who has the option to waive. It's not an option that's initiated on the part of the chain of command.

Mr. Jack Harris: Well, sir, with respect, if I'm the accused person, I don't get to be an accused person unless a charge has been laid. If a charge has been laid under a particular provision, I am in circumstances where you're creating an incentive, even though you can't lay a charge that can be dealt with under summary conviction after six months.

In my books, what you're talking about here is a circumstance where we can't lay a charge that would be tried summarily, but we'll lay a charge under court martial proceedings so it can only be dealt with under court martial, and that puts the accused at a disadvantage. Obviously, there's an incentive there for him to waive this, but you're effectively dismissing the six-month limitation period.

Col Michael R. Gibson: Mr. Chair, I guess I would say I don't agree that it's an appropriate interpretation. The purpose of laying charges, of course, is the maintenance of discipline. Those have to be dealt with in accordance with law.

What we're really talking about here is a question of jurisdiction. The default position would be that there would be no jurisdiction to try that particular charge by summary trial if it's laid outside the limitation period or if more than one year has expired. In that circumstance, the default position would be that if the charge were to be tried, it would be tried by court martial. This merely preserves an option for the accused, if he or she considers it to be in their best interests, to waive the application of the limitation period.

The Chair: Mr. Alexander.

Mr. Chris Alexander: Chair, the point is that it preserves choice, if the accused wishes to exercise choice even after six months.

The Chair: Okay. Good.

(Clause 35 agreed to on division)

(On clause 36)

The Chair: NDP-18 is a consequential amendment to NDP-17, so —

Mr. Jack Harris: It's actually not consequential, sir, but there's not much point in moving the same amendment and making the same arguments.

The Chair: They essentially are the same. They are consequential, so they are grouped together in the vote.

Mr. Jack Harris: Well, you can.... I'll withdraw the amendment.

The Chair: Are there any other comments on clause 36 that are different from what we just heard?

(Clause 36 agreed to on division)

(Clauses 37 to 40 inclusive agreed to)

(On clause 41)

The Chair: We have amendment NDP-19, reference number 5993967. This proposes to delete line 14 on page 18 of the bill, up to line 24 on page 19.

Mr. Harris, do you want to move that?

● (1645)

Mr. Jack Harris: Thank you. I do move that.

Amendment NDP-19 is with respect to the reserve military judges system. We believe it's unnecessary. We would rely on the arguments made to this committee by Colonel Drapeau, who testified on February 11.

We're also looking at the dissenting opinion by Commissioner Norman Sterling in the report of the Military Judges Compensation Committee, who talked about the existing workload of military judges being what he called the lowest amount of compensation, the lowest number of days, of any court, so their workload can't be compared with the superior courts. He was concerned about the cost of this.

But here we are in fact creating more judges when it's not necessary. We don't think it's necessary, and it's regarded by Colonel Drapeau as an extravagance. It's unnecessary to add this other layer of military judges to a system that's already over-resourced, shall we say.

The Chair: Mr. Alexander.

Mr. Chris Alexander: Thanks, Chair.

We oppose the amendment because there needs to be provision in this act for a surge capability for military justice. We did not see that need on a mission such as the Afghanistan mission, even though there was extraordinary complexity there. We saw it on the battlefields of Europe at different periods in our history. When our armed forces go from roughly 100,000 to 200,000, or half a million to a million people in uniform, as has happened in the past, there is a requirement to take the tools of military justice overseas with that force.

This provision applies specifically to that. It meets the operational obligation of the force under the act to be ready to operate in intense situations on a very large scale at short notice. If we didn't have it, we would really be hamstringing the military justice system in terms of its flexibility in the unlikely event, the very unlikely event, that this need should arise. It's absolutely essential, in fact one of the most essential aspects of the military justice system, as now codified in the act.

The changes our bill is making to clause 41 will enhance the status, the reliability, the professionalism of military judges. That is one of the goals of the act: to encode their status in law more formally. The reserve force of military judges has to be part of that equation.

The Chair: Mr. Harris.

Mr. Jack Harris: I'm not sure what world the parliamentary secretary is living in, but we're not on a war footing. This Parliament, this country, is not on a war footing. If we're contemplating—if I may finish—the necessities of an armed force of 100,000 or 200,000 or one million people in uniform engaged on a battlefield, while we're putting these people into uniform and recruiting them and training them and standing them up, or whatever the appropriate expression is, and sending them into a circumstance where we might need more military judges, then somewhere along the way I suspect that the Parliament of the day could ensure that whenever it's necessary to have an appropriate system in place for that work—whether it be raising the funds to do it, bringing legislation into order, or making sure that we have the things contemplated—that would be done. We can't put 100,000 people in the field like that. Look at the experience of Afghanistan.

Yes, we used reservists. Why did we use reservists? We used reservists because we didn't have enough armed forces to maintain the unit in the field at the strength required, and we brought reservists to the fore. They spent six months training before they got there.

If we had the kind of emergency that my friend is talking about, then we'd certainly have a very compliant Parliament that would ensure the system was adequate to handle it, whether it be financial, whether it be legal, whether it be legislative emergency powers or whatever else is required to do that.

I really don't think that is much of an argument for creating a system that's unnecessary in the current circumstance.

● (1650)

The Chair: Colonel Gibson.

Col Michael R. Gibson: Mr. Chair, I believe Mr. Alexander has articulated one of the primary policy intents—to provide a search capacity in the event of the rapid-mobilization expansion of the forces.

There is also another rationale, for which one does not have to look to such an exotic or far-off potentiality. We have only four regular force military judges. It's not difficult at all to envisage a case in which there are multiple accused with cut-throat defences in which they make motions for separate trials. It doesn't take long to exhaust the bench of four judges to do that, so this provides us with a very low-cost and flexible mechanism to accommodate the circumstances of having a case in which there are 10 accused, which is not at all impossible to envisage. That is also one of the policy rationales for the provision.

The Chair: Okay.

Madame Moore.

[*Translation*]

Ms. Christine Moore: My comment is not specifically about the amendment. It's actually about the provision itself.

[*English*]

The Chair: There is a technical problem.

[*Translation*]

Ms. Christine Moore: Can I speak even if my comment is not specifically about the amendment?

[*English*]

The Chair: We're on the amendment—

[*Translation*]

Ms. Christine Moore: Can we come back to this later on?

[*English*]

The Chair: We have to deal with the amendment first, and then we can come back to the main motion after that.

Mr. Alexander, you wanted the floor.

Mr. Chris Alexander: It's just to say that Mr. Harris' argument is patently absurd, given that every major military engagement we've been involved in has involved us in combat in much less than a year, and often within months of the beginning of the mission, and in this particular case it's taken us almost two years to come even close to amending the National Defence Act with regard to military justice. We have shown our own inability to meet this kind of requirement on short notice—led by Mr. Harris, I might add.

The Chair: Mr. Harris.

Mr. Jack Harris: I might remind my colleague that, led by Mr. Harris, the legislation with respect to military judges went through all three stages of legislation in the House of Commons, with respect to Bill C-16, in a matter of three weeks. It was introduced on maybe October 10 or 11 and was passed into law before the end of that month, because it was regarded as a necessity, given the circumstances that presented themselves.

I don't think we need to play politics with this. We can have legitimate arguments here. A similar thing happened with the passage of Bill C-60 in about a month. That was before I was here, in 2006 or 2007.

We are here as politicians for the good of the country. We may have differences about what we're doing now, but in a time of emergency or special circumstance, as we saw with the concerns about the legitimacy of the military justice system because of the rulings under the Charter of Rights and Freedoms, actions are taken. My view is that is exactly what would happen in the circumstance we're talking about, if this country were at war.

The Chair: Seeing no other hands, we are voting on the amendment, which is NDP-19.

(Amendment negatived [See *Minutes of Proceedings*])

The Chair: We're back to clause 41.

Madame Moore, you had a technical question.

● (1655)

[*Translation*]

Ms. Christine Moore: Regarding military judges, the bill states the following: “A military judge ceases to hold office on being released at his or her request from the Canadian Forces or on attaining the age of 60 years.” The same is stated in the case of Reserve Force military judges. Why were the words “at his or her request” used? Is that really relevant?

It seems to me that, once the judge is released from the Canadian Forces, it doesn't matter whether they were released at their request or not. Why was it deemed relevant to add those words? The person could be released for medical reasons. In such a case, the release would not come at their request.

Why were the words “at his or her request” added? I don't understand how that is relevant.

[*English*]

Col Michael R. Gibson: I'm sorry, but the translation wasn't especially clear.

Could I ask you to please point to which particular provision you are referring to?

Ms. Christine Moore: I can explain it to you in English.

When we are talking about military judges ceasing to hold office on being released from the Canadian Forces, why do we use the words “at his or her request”. In fact, he's being released from the Canadian Forces, so if it's at his request or not, it doesn't matter. If he's released, he's released.

Col Michael R. Gibson: Mr. Chair, the answer goes to the fundamental requisites of judicial independence. One of the three requirements for judicial independence elaborated by the Supreme Court of Canada in a number of cases, including Généreux, is security of tenure. In order not to violate security of tenure, you have to have a retirement age fixed by law—in other words, an age at which the person ceases to hold office, in this case 60—but it's also possible that the person may decide himself or herself that they no longer wish to do that. In this case, it's because it's their voluntary choice to cease office. That doesn't infringe their security of tenure.

The short answer to the question is that it's necessary to contemplate the situation where the person himself or herself wishes to cease holding office in order to respect the requisites of security of tenure, which is one of the fundamental requirements of judicial independence.

The Chair: Do you wish to follow up, Madame Moore?

[*Translation*]

Ms. Christine Moore: Proposed subsection 165.21(5) states that the person may no longer wish to carry out their duties; that's very clear.

However, when someone is released from the Canadian Forces—be it for medical reasons or at their request—they cease to perform their duties. I don't understand how the words “at his or her request” are relevant. It seems to me that this adds some confusion. The person stopped performing their duties either when they were released from the Canadian Forces, when they attained the age of 60 years, or when they resigned under proposed subsection 165.21(5).

LCol André Dufour: I can answer that.

I would like to begin by specifying that the law—chapter 22 of the Statutes of Canada, 2011—talks about that provision. That provision was used again because there was uncertainty over whether Bill C-15 and Bill C-16 should be introduced at the same time.

To answer your question more specifically, I would say that, in proposed subsection 165.21(4), two circumstances are set out—the judge's request, or the attainment of the age of 60 years. Subsection 165.21(5) talks about how to deal with resignations. The legislation overlaps simply to cover both possibilities.

Ms. Christine Moore: Under what provision can the judge request to stop working as a judge, but remain in the Canadian Forces? Is that a possibility?

LCol André Dufour: Yes, in principle, the judge could make such a request, but positions other than that of judge would have to be available.

Ms. Christine Moore: Thank you. You have answered my question.

[*English*]

The Chair: Are there any other questions?

(Clauses 41 to 44 inclusive agreed to on division)

(On clause 45)

The Chair: We have an amendment from the government, G-1, reference 5973363.

Mr. Alexander.

● (1700)

Mr. Chris Alexander: Thanks, Chair.

This is very simple housekeeping. The clause enhances judicial independence by establishing the quadrennial Military Judges Compensation Committee, and the change here is to enshrine its status in the act rather than in regulations. The amendment we're proposing is simply to adjust the date of the next inquiry so that it commences in 2015, rather than 2011, to reflect the timing of this bill's progress through Parliament.

The Chair: Are there any comments on the amendment?

Mr. Jack Harris: It's an amendment to 40...?

The Chair: It's on page 24, starting on lines 4 and 5. The dates that are listed in proposed subsection (3) at the top of page 24 talk about 2011, and Mr. Alexander is moving an amendment to change it to the year 2015.

Does everybody see it? It's just changing 2011 to 2015 in both lines.

Are there comments on the date, the timeline?

Mr. Harris on the date, because we're talking only to the amendment.

Mr. Jack Harris: Yes, if we're going to talk only to the amendment, I won't make any comment. I'll speak to the clause.

The Chair: Okay.

(Amendment agreed to [See *Minutes of Proceedings*])

The Chair: Now we're going to clause 45 as amended.

Comments, Mr. Harris.

Mr. Jack Harris: Mr. Chair, this is really talking about compensation for military judges, and of course it brings to mind the evidence we had in committee presented by Mr. Justice Létourneau and retired Colonel Michel Drapeau.

I know this is not a very popular topic with those in the military, but there is and has been a considerable movement throughout the western world, particularly amongst our allies in Australia, the U.K., and New Zealand, and even in France, to civilianize the military justice system, particularly in peacetime. France is the one exception to that; they have the two systems.

One of the considerations, of course, is the cost. When the last compensation committee dealt with this, during the course of which consideration was given to the workload of military judges...and the caseload of military judges could be described as being rather modest compared to that of Superior Court judges. The other systems, such as those in Australia, New Zealand, and the U.K., have managed to incorporate the systems into the regular justice system.

When pressed in the committee—I wasn't here, but I heard it—about having to have military judges because of the nature of the offences and things that are dealt with, one example that was given was the case of Jeffrey Delisle, who of course was tried not by a court martial or by a service tribunal but by a civilian court. A judge heard that case, which involved a sub-lieutenant of the Royal Canadian Navy, during which the judge dealt with the whole purpose of sentencing, etc., all aspects of bail, and everything to do with Sub-Lieutenant Delisle, as judges do on all sorts of law that may be different.

It's a concept that deserves consideration. I'm bringing it up here, under this particular clause, because it does deal with the issue of compensation of military judges and the need for a separate system of military judges. It's one thing to say that it's valuable, desirable, necessary, useful, and certainly constitutional to have a military justice system that is separate from the ordinary justice system because of the need for—as is well known and accepted by all parties in our House of Commons—operational efficiency and discipline as important parts of military effectiveness and operational efficiency, but that doesn't mean we have to have, necessarily, a whole separate system of military judges.

The suggestion has been, of course, that the Federal Court and the military judges could be joined together under the one system. The compensation system would be equal. You wouldn't have a separate system of compensation for military judges. You would have a military panel of the Federal Court made up of those who have experience in carrying out these operations. Of course, as is well known, the judiciary itself has a process whereby over the course of their careers they have many opportunities to keep up with all aspects of the law as part of the ongoing training of judges, so any concerns about that could be dealt with.

● (1705)

I'm raising it now, but I don't want to take up too much time with this because we are dealing with the compensation of judges. We do know that they have to be compensated, but we also have a great deal of sympathy—and in fact support the call by Mr. Justice Létourneau—for a wall-to-wall review of this system to seek to, I would say in this case, actually modernize it, in keeping with what our allies have done.

The review obviously wouldn't take place under this section. It might be another area. We'll talk about it again for a few moments under the review of this act and in keeping with the LeSage report, but it may be the subject of some motions that we would bring to the committee for consideration after we've fully considered this act.

I think the issue has been brought to the committee through this act, rather than being a separate study on that whole point. Perhaps one way to bring it before the committee for its consideration, and a potential recommendation through the House of Commons for a different type of review, would be to bring a motion. I'm not going to give notice of it today, but we'll do it in the normal process of giving a motion and having it debated before the committee.

I wanted to put that on the record, Mr. Chair, because it seemed to be appropriate in this section when essentially we're talking about the compensation of military judges. Multiply that by four and all the accoutrements that go with it. We're talking about the cost of having a separate system as opposed to integrating with the normal justice system, as is done in other countries.

Those are my comments, sir.

The Chair: Okay.

I see no other hands.

(Clause 45 as amended agreed to on division)

The Chair: Is there any chance of grouping any of these clauses together?

A voice: On clause 46...[*Inaudible—Editor*]

The Chair: Okay. Let's look at clause 46. Are there any comments or questions?

(On clause 46)

Mr. Jack Harris: Yes. I don't know what argument or rationale is being made to suggest that the taxpayers should pay for judges to be represented before the Military Judges Compensation Committee, where they would presumably be seeking to gain financial benefit. This is an example, I should think, of wasteful spending in this case.

In other courts, when they have judicial commissions, the judges themselves are represented by.... I'm aware of a number of cases. In fact, in the Provincial Court of Newfoundland and Labrador, for example, they have their own counsel and they pay for that counsel themselves. They're seeking to make independent representations. It is not paid for by the government.

I don't see why military judges who want to convince someone to give them a different form of compensation or a raise should not be paying their own freight. They are remunerated very well. It's not a case of a need for legal aid, as it were, and it has to do with representation. We see it in all aspects of unions, where they pay their dues and they hire their own lawyers or they get their own union reps. I don't know why the judges shouldn't have to pay their own way, so we don't think that's an appropriate amendment.

● (1710)

The Chair: Okay.

Colonel Gibson.

Col Michael R. Gibson: Mr. Chair, the answer is actually quite brief. It has to do with the equity of the number of judges and also the fact that a very similar scheme is actually in place in the Judges Act in respect of Superior Court judges.

To start with the first one, there are approximately 1,000 Superior Court section 96 judges in Canada. There are four military judges. To defray the expenses of representation, which are not significantly different as between those two fora, because the function is the same, it's a lot more equitable to spread that cost over 1,000 people than it is over four.

The second part is the fact that there is a provision, a very similar one, in the Judges Act, which doesn't pay the full amount but pays most of it, because it recognizes that the whole point of this process, of a compensation committee, both in the military context and in the civilian context of the quadrennial commission, is that the Supreme Court of Canada has indicated that it is necessary as an incidence of judicial independence.

It's not there to provide some sort of undue perk to military judges. It's a practice that recognizes the necessity to have a process that is respectful of judicial independence and is also consistent with provisions that Parliament has already put in place in the Judges Act.

Thank you.

The Chair: Are there other comments?

(Clause 46 agreed to on division)

The Chair: Now, can we do any groupings? Will I just keep going the way we're going?

Mr. Jack Harris: Yes.

(On clause 47)

The Chair: Are there any comments on clause 47?

Mr. Jack Harris: Yes, I have a comment.

The Chair: Mr. Harris, we'll hear your comment.

Mr. Jack Harris: We don't have an amendment on this because it's very difficult to amend without a brand-new scheme being proposed, which would probably be ruled out of order, but we listened to the comments of Jean-Marie Dugas, whose testimony was given to the committee on February 6, and also to the comments of Mr. Justice Létourneau in his book, which he so generously made available to the committee in both official languages.

An hon. member: To some.

Mr. Jack Harris: The chair was given five copies—

The Chair: I was given five copies.

Mr. Jack Harris: —so we can have it photocopied if anyone wants a copy. They're available to the committee—

The Chair: For a price.

Mr. Jack Harris: If I had it in front of me, I'd read out the relevant parts to you. If you want to wait....

The Chair: Okay, okay, regardless, you have the floor, Mr. Harris.

Mr. Jack Harris: Thank you, Mr. Chair.

We heard arguments as to why this ought to be kept the way it is now—you don't want officers of a lower rank passing judgment on members of an upper rank—and the importance of having this. But I think we need to be reminded that the courts martial deal with the question of fact; they decide the questions of fact, whether or not certain facts existed. We have that in the civilian system, whereby it doesn't matter the rank—social, financial, or any rank—a jury of your peers is considered to be anybody who is fit for jury duty. You can have ordinary folks passing judgment on a question of fact for someone who is a wealthy corporate banker, say, or someone in the position of high authority, if they choose a jury trial.

So a very strong argument is to be made as part of civilianizing the system that would include the changes to be made to the court martial panels, whether it be to change it as Colonel Dugas suggested, and as we heard from the Standing Committee on Legal and Constitutional Affairs in the Senate. They recommended some changes, but they weren't very specific.

We're not bringing specific recommendations. We want to highlight that this is something that does need to be looked at as part of an overall review of the National Defence Act.

● (1715)

The Chair: Any other comments?

(Clause 47 agreed to on division)

The Chair: Clause 48 is just adding the term “military police”.

(Clause 48 agreed to)

(Clause 49 agreed to on division)

(Clauses 50 to 61 inclusive agreed to)

(On clause 62)

The Chair: Are there any comments on clause 62? Clause 62 is another biggie. It starts on page 34 and carries all the way through to page 40. We have no amendments filed.

Do you have comments, Mr. Harris?

Mr. Jack Harris: I think we have to recognize again that when we're dealing with sentencing here, we have an absolute discharge but no conditional discharge. The suggestion seems to be that it would require a certain amount of working with the civilian and provincial authorities to do this. I don't think that's necessary if we're going to provide for conditional discharges.

The problem with the absolute discharge availability is that it becomes an all or nothing circumstance, and an absolute or conditional charge recognizes that while an accused may have been guilty of a particular offence, it's not in the interests of the public, or in this case of the military justice system as well, to have a person convicted of that.

A person can be discharged absolutely or upon certain conditions. This provides for flexibility in sentencing, and I think this was recognized by the Senate Standing Committee on Legal and Constitutional Affairs. They asked for an amendment to provide sentencing flexibility to allow for conditional discharges, probation, forfeiture, restitution, suspended intermittent sentences. We've got an intermittent sentence in here. We've got an absolute discharge, but we're not really making the kinds of substantive changes that have been suggested by the Senate after due consideration and that have been suggested by Mr. Justice Létourneau. He acknowledges that there were substantial reforms proposed in the bill, but he says it's hard to understand why this stopped there.

If you look at the civilian court and the comparison, the suspended sentence is an option for up to two years, allowing a monitoring of a person's behaviour. One would think that in the military the opportunity to monitor one's behaviour would be even more available than in the civilian society, because you do have to have a system of probation. You have to have probation officers. You do have that available. In the military, of course, you have an option, obviously, within the chain of command to observe someone's behaviour. If a person has then been of good behaviour for a period of up to two years, he can be granted an absolute or conditional discharge.

So that's an important provision and flexibility that could be built into the military system. As retired Justice Létourneau says, we don't get that in the military. The sentence is already passed. What he was talking about was suspending passing of sentencing.

The conditional discharge, again, he suggested is something that would also be very helpful if someone is of good behaviour. Once again, this type of recommendation was supported by the submission of the Criminal Lawyers' Association to the committee as well.

We don't see that here. We see that as something that ought to be considered. There was plenty of time for the government to consider such a system here, and frankly, I don't think we've been given a very strong reason why it couldn't be done.

We see some very positive things here. The idea of having a victim impact statement is quite important. I think our courts have recognized for many years, and our judicial system, our legal system, has recognized for many years, how victims have been left out of the system. I practised law myself for many years before there was such a thing as a victim impact statement, and victims were treated as if they were merely witnesses in the court. Mr. Dechert, as a lawyer, knows that as well. That was very disconcerting, and in fact very disgusting to many victims of crime, and I think it has been changed.

So we're bringing that into this system here, the idea of having a very elaborate procedure for the principles of sentencing, of service tribunals. That's a very useful thing.

● (1720)

There are some things that obviously aren't in the system of civilian justice. Again, that's appropriate as well. We recognize that there are special aspects of sentencing with respect to the military that ought to be there, but to spell these things out is a very important thing to provide for victims and for restitution. But the conditional discharge is absent. The idea of having more flexibility in sentencing is missing, and we think that's something that ought to be here, and, again, ought to be part of the kind of review we would have expected after we had the recommendations from the Standing Committee on Legal and Constitutional Affairs. That was 2009, I believe.

There has been plenty of time in the last three years, before this bill was presented, to have broadened the scope of the sentencing provisions and provide for the kind of flexibility that is available to judges or tribunals in the civilian system. We think that's something that ought to have been included and developed.

Again, we're not in a position to create wholesale provisions for amending the act. If it's not provided for in the act, we're mindful that these kinds of provisions might be ruled out of order as being new instruments. But we do have the substantive comment from serious people, including the standing committee of the Senate; Mr. Justice Létourneau, who has considerable judicial and legal reform experience; and, of course, the Criminal Lawyers' Association has also spoken to this issue.

The Chair: Thank you.

Are there any other comments?

(Clause 62 agreed to on division)

(On clause 63)

The Chair: We're on to page 40, at the bottom.

Are there any comments?

Mr. Jack Harris: Colonel Gibson, this is perhaps a technical point.

On the commencement of the sentence—I don't know if this changes anything—it says the “punishment of imprisonment or detention shall commence on the day on which” the sentence is pronounced. For instance, the fact that detention is supposed to take place in Edmonton, do we count the time to get there as part of the sentence? And with regard to “subsections (3) and 148(1)” and “sections 215 to 217”, what do they provide by way of exception?

● (1725)

Col Michael R. Gibson: Mr. Chair, section 217 merely refers to the ability for review and remission, so if there's an order for remission, that would affect the running of the time.

Subsection (3) refers to the special case where a sentence cannot be lawfully carried out by reason of a vessel being at sea. That would be one exceptional case that would depart from the general rule.

Otherwise, these are just minor adjustments that are being accomplished in that section.

The Chair: Thank you.

(Clause 63 agreed to)

(On clause 64)

The Chair: Mr. Harris.

Mr. Jack Harris: We're talking here about the suspension of the execution of a sentence of imprisonment or detention. I'm assuming this provides for the release of a person who is sentenced pending the hearing and determination of appeal.

Am I right about that?

Col Michael R. Gibson: No, Mr. Chair.

Release pending appeal is dealt with in a separate provision of the act. This is having to do with the suspension of the execution of the punishment once the sentence has been imposed. It's two different concepts.

Mr. Jack Harris: It does make reference to the offender's sentence being affirmed or substituted on the appeal by the Court Martial Appeal Court, so it could still be suspended even if it's affirmed.

Why would you do that?

Col Michael R. Gibson: The effect of the provision, Mr. Chair, is to add the ability to the Court Martial Appeal Court, as was recommended by Chief Justice Lamer, to suspend a sentence—in other words, to equip them with the full tool kit that they need to craft an appropriate sentence. If the offender's sentence is affirmed or substituted on appeal, the Court Martial Appeal Court will still have the ability to suspend.

Mr. Jack Harris: Is that what Justice Létourneau was saying, that it was the power to suspend the execution of a sentence, but not to suspend the sentence at all? In an ordinary court, when your sentence to a particular thing is suspended for two years, if you have good behaviour within the two-year period, they can apply some other sentence. You're talking about having given a sentence and suspending the execution of it. How does that work? Does that suspend forever, or does it have the sword of Damocles, so called, hanging over your head for some time?

Col Michael R. Gibson: Mr. Chair, the short answer is yes, that is the fundamental difference in the term “suspended sentence” between the civilian system and the military system. In the civilian criminal justice system a suspended sentence means that the court suspends the passing of the sentence, whereas in the military context, it is already the case in the act, and has been for a long time, that the court may suspend the putting into execution of the sentence. There are remission provisions—so no, it doesn't hang over their head indefinitely—that calculate how long it takes for that suspension to actually expire. One of the innovations as well in proposed section 215 is the ability to provide conditions.

So in a way it's a kind of probation scheme. It's meant to give that incentive to the offender, that they will be restored to their liberty so long as they abide by these conditions. It gives them a positive incentive to abide by those conditions.

Mr. Jack Harris: So it does have a form of conditional release, at least. But in terms of the sentence itself, if someone is sentenced to 60 days' detention, or whatever, that sentence, even though suspended, stays in place as a sentence that was passed?

Col Michael R. Gibson: That's correct, Mr. Chair. That's the difference between this and a conditional discharge.

The Chair: Thank you.

I see no other comments.

(Clauses 64 to 66 inclusive agreed to)

(On clause 67)

● (1730)

Mr. Jack Harris: I have a question.

The Chair: Okay, there's a question.

Mr. Jack Harris: We're being asked to repeal section 218.

Colonel Gibson, could you tell us what that...?

The Chair: Colonel Gibson, what section are we repealing?

Col Michael R. Gibson: Very briefly, Mr. Chair, that deals with the provision about committal after suspension and when suspended punishment is put into execution. The reason that one is being repealed is that in the revised scheme, with the proposed new sections 215 and 216 that old portion of the scheme is no longer necessary. In other words, it's being replaced by the revised scheme being put into place in proposed sections 215 and 216.

The Chair: Okay.

(Clause 67 agreed to)

The Chair: The bells are ringing.

We're almost there, halfway.

The bells are ringing. We have to adjourn.

The meeting is adjourned.