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LEGISLATIVE SUMMARY

Bill C-71:
An Act to amend the National Defence Act and the Criminal Code

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative Summary of Bill C-71
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-71: AN ACT TO AMEND THE NATIONAL DEFENCE ACT AND THE CRIMINAL CODE

1 BACKGROUND

Bill C-71, An Act to amend the National Defence Act and the Criminal Code (short title: Victims Rights in the Military Justice System Act), was introduced in the House of Commons on 15 June 2015 by then minister of National Defence, the Honourable Jason Kenney. The bill died on the *Order Paper* at the first reading stage when Parliament was dissolved in August 2015 for the 42nd general election.

The stated purpose of the bill is to give victims of service offences the rights to information, protection, participation and restitution that were enshrined in the *Canadian Victims Bill of Rights* in 2015.[1] It also limits the jurisdiction of the most common form of service tribunal,[2] the summary trial,[3] to a new category of minor offences prescribed in regulations: "disciplinary infractions."

The distinction between a "service offence" and a "disciplinary infraction" is important, since the rights set out in the new "Declaration of Victims Rights" apply only to victims of service offences. Lastly, changes to the procedures for summary trials are introduced to improve the operational effectiveness of the Canadian Forces (CF).

1.1 INTERACTION BETWEEN BILL C-71 AND THE *CANADIAN VICTIMS BILL OF RIGHTS*

Pursuant to section 18(3) of Bill C-32, which became *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*,[4] the *Canadian Victims Bill of Rights* does not apply to service offences that are investigated or proceeded with under the *National Defence Act* (NDA).[5] In an address to the House of Commons in April 2014, the Honourable Peter MacKay, then minister of Justice, explained that this exclusion was warranted owing to the special nature of Canada's military justice system.

> [T]here are particular challenges to extending this bill of rights into the military culture and into their system, particularly for summary trials. By that I mean that we have disciplinary tribunals that are administered by the chain of command. This system carries out the vast majority of proceedings within the Canadian military justice system, and this victims bill of rights would not be immediately applicable to it upon final adoption by the House.[6]

At that time he also informed the House of Commons of his government's intention to introduce another bill to incorporate the rights set out in the *Canadian Victims Bill of Rights* into the military justice system and commended the work of the Judge Advocate General (JAG) in this area.[7] Bill C-71 is the result of this work. As will be seen in the following sections, it creates a new category of offences – "disciplinary infractions" – prescribed in regulations, and limits the jurisdiction of summary trials to cases involving only these infractions. It follows that victims of minor disciplinary infractions are not entitled to the same rights as victims of service offences.

1.2 The Military Justice System: A Parallel System of Justice Separate from the Civilian Criminal Justice System

The military justice system is subject to the same constitutional framework as the civilian criminal justice system, with which it shares many of the same underlying principles of justice.[8] However, it is different with respect to proceedings, procedural safeguards, offences and sentencing. According to Gilles Létourneau, former judge of the Court Martial Appeal Court (CMAC) of Canada, an accused in the military justice system is denied certain rights to which an accused in the civilian justice system is entitled.[9]

The Code of Service Discipline (CSD), set out in Part III of the NDA, is the legislative basis of the military justice system. It identifies those individuals who are subject to it, both in Canada and abroad;[10] sets out offences that are specific to the military, such as misconduct in the presence of an enemy and absence without leave,[11] specifying the nature of and sanctions for these offences; and incorporates into military law all offences punishable under the *Criminal Code* or any other Act of Parliament.[12] The CSD also establishes who has the authority to arrest and hold those individuals subject to it, service tribunals, and processes for the review and appeal of findings and sentences issued by these tribunals.[13] Service tribunals have jurisdiction over all service offences, except for certain offences committed in Canada: murder, manslaughter and child abduction.[14]

The military justice system has a two-tiered tribunal structure consisting of a summary trial system and a court martial system.[15] These two types of tribunals are distinct in a number of ways.[16] Essentially, a summary trial deals with relatively minor service offences. This type of trial, the one most commonly used, allows commanding officers to react quickly to misconduct by applying disciplinary measures to maintain unit effectiveness and discipline. A court martial, however, is for more serious service offences. It is a more formal court presided over by military judges. Compared with a summary trial, the court martial affords the accused more procedural safeguards, such as the right to legal counsel. The procedures for the disposition of charges before both types of service tribunals are set out in the *Queen's Regulations and Orders for the Canadian Forces* (QR&Os) which are regulations authorized by the NDA.

The Supreme Court of Canada has ruled twice, in 1980[17] and in 1992,[18] on the validity of the military justice system. In *R. v. Généreux*, the Supreme Court made the following remarks:

> The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. The safety and well-being of Canadians depends considerably on the willingness and readiness of a force of men and women to defend against threats to the nation's security. To maintain the Armed Forces in a state of readiness, the military must be in a position to enforce internal discipline effectively and efficiently. Breaches of military discipline must be dealt with speedily and, frequently, punished more severely than would be the case if a civilian engaged in such conduct. As a result, the military has its own Code of Service Discipline to allow it to meet its particular disciplinary needs. In addition, special service tribunals, rather

> than the ordinary courts, have been given jurisdiction to punish breaches of the Code of Service Discipline. Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military.[19]

This view is shared by the JAG, who wrote the following in his annual report:

> The ability of the CAF [Canadian Armed Forces] to operate effectively depends on the ability of its leadership to instill and maintain discipline. This particular need for discipline in the CAF is the *raison d'être* of the military justice system. Indeed, while training and leadership are central to the maintenance of discipline, the chain of command must also have a legal mechanism that it can employ to investigate and sanction disciplinary breaches that require a formal, fair, and prompt response.[20]

2 DESCRIPTION AND ANALYSIS

2.1 PURPOSE OF THE CODE OF SERVICE DISCIPLINE (CLAUSE 4 OF THE BILL)

For the first time, Bill C-71 sets out the purpose of the CSD in the NDA. According to new section 55 of the NDA (clause 4), the purpose of the CSD "is to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale and to contribute to respect for the law and the maintenance of a just, peaceful and safe society."

This amendment essentially reflects the wording of section 203.1(1) of the NDA regarding the fundamental purposes of sentencing by service tribunals.[21] This provision – which was not in force at the time of writing[22] – and those pertaining to the fundamental purposes of sentencing by service tribunals were added to the NDA by Bill C-15, which became the *Strengthening Military Justice in the Defence of Canada Act*.[23]

Analogously, sections 718 to 718.2 of the *Criminal Code* set out the purpose, principles and factors that courts must consider when sentencing in the civilian criminal justice system.

2.2 DEFINITION OF "VICTIM" (CLAUSE 3 OF THE BILL)

Clause 3 adds four new definitions to section 2 of the NDA, including the definition of "victim"; the other definitions will be addressed in the following sections, as will the amendment to the definition of "summary trial."

The full scope of the proposed definition of "victim" encompasses not only clause 3, but also two coordinating amendments (clauses 27(13) and (14)), which amend the definition by the coming into force of certain provisions of the *Not Criminally Responsible Reform Act* (Bill C-14)[24] and the *Strengthening Military Justice in the Defence of Canada Act* (Bill C-15).[25]

The ultimate objective is to amend section 2 of the NDA to ensure that any person against whom a service offence has been committed, or is alleged to have been

committed, and who has suffered, or is alleged to have suffered, physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence, is considered a victim under the NDA. Persons other than the immediate victim who have suffered physical or emotional harm, property damage or economic loss as a result of the commission or alleged commission of the offence are also considered victims for the purposes of applying the rights provided by the new "Declaration of Victims Rights," as well as by sections 202.201 (victim impact statements at hearings in cases where the offender is unfit to stand trial or is not criminally responsible on account of mental disorder), 203.6 (victim impact statements at sentencing) and 203.7 (obligation of the court martial to inquire of the prosecutor whether the victim had the opportunity to file a victim impact statement)[26] of the NDA. Therefore, an individual who has allegedly suffered psychological damage as a result of an assault against his or her spouse could be considered a "victim" with respect to the application of these specific sections and of the rights provided by the "Declaration of Victims Rights."

The proposed definition of "victim" is consistent with the definitions set out in the *Canadian Victims Bill of Rights* and section 2 of the *Criminal Code*, as amended subsequent to the entry into force in July 2015 of *An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*. Moreover, similarly to the definitions set out in these statutes, a conviction is not required before an individual is deemed to be a victim.

2.3 Individuals Who May Act on a Victim's Behalf (Clause 3(3) of the Bill)

Under the new section 2(1.1) of the NDA (as amended by clause 3(3) and the coordinating amendments set out in clauses 27(21) and 27(25)), if the victim is dead or is incapable, other than for operational reasons, of acting on his or her own behalf, the following other individuals may exercise the victim's rights:

- the victim's spouse or common-law partner;
- a relative or dependant of the victim;
- an individual who has custody, or is responsible for the care or support, of the victim; and
- an individual who has custody, or is responsible for the care or support, of a dependant of the victim.

This new provision applies to the rights guaranteed by the new "Declaration of Victims Rights," as well as to the rights set out in certain sections of the NDA concerning the obligation to inform the victim of the acceptance of a plea (s. 189.1), victim impact statements (sections 202.201, 203.6 and 203.7)[27] and the obligation to consider making a restitution order (new section 203.81, as set out in clause 25).

Under this new provision, a victim who is unable to act on his or her own behalf for operational reasons may request that a member of the CF, appointed by the Chief of the Defence Staff or any officer authorized by the Chief of the Defence Staff, act on their behalf.

The new section 2(1.2) of the NDA provides that an individual is not a victim of a service offence and is not entitled to a victim's rights under the Declaration of Victims Rights if he or she is charged with or found guilty of that offence or is found, in relation to that offence, unfit to stand trial or not responsible on account of mental disorder.

Lastly, the same individuals may act on a victim's behalf in the military justice setting as in the civilian criminal justice system, with the exception of a member of the CF appointed in cases where the victim is unable to act on his or her own behalf for operational reasons.

2.4 Declaration of Victims Rights (Clause 5 of the Bill)

Clause 5 adds a new section, "Declaration of Victims Rights," to the CSD. The new section gives victims of service offences the rights granted in 2015 by the *Canadian Victims Bill of Rights*: the rights to information, protection, participation and restitution.

Under the new section 71.01 of the NDA, the rights set out in the "Declaration of Victims Rights" apply only to victims of service offences. Victims of disciplinary infractions are not entitled to these rights.

2.4.1 Victims Rights (New Sections 71.14 and 71.15 of the NDA)

The "Declaration of Victims Rights" applies to a victim's interactions with the military justice system, beginning from the moment an offence is reported until the end of the offender's sentence.[28] It also applies in cases where an accused who is found unfit to stand trial or not responsible on account of mental disorder is, in relation to the offence, under the jurisdiction of a court martial or a Review Board (as defined in section 197 of the NDA) responsible for making or reviewing decisions when a verdict of not criminally responsible by reason of mental disorder or unfit to stand trial has been rendered (new section 71.14 of the NDA).

In order to exercise his or her rights set out in the "Declaration of Victims Rights," the victim must be present in Canada or a Canadian citizen or a permanent resident within the meaning of section 2(1) of the *Immigration and Refugee Protection Act*[29] (new section 71.15(2) of the NDA). Therefore, a victim of a service offence committed abroad who does not meet one of these requirements is not entitled to exercise the rights set out in the "Declaration of Victims Rights," regardless of whether the trial is conducted in Canada or in the country where the offence was committed.

Lastly, as with the *Canadian Victims Bill of Rights*, the rights set out in the "Declaration of Victims Rights" are primarily procedural (the victim's right to express his or her views during the proceedings or the right to information). These legislative provisions do not grant victims status as a party to proceedings. Furthermore, these rights are to be exercised through the mechanisms provided by law (new section 71.15(2) of the NDA). In other words, the "Declaration of Victims Rights," like the *Canadian Victims Bill of Rights*, does not appear to create free-standing enforceable rights. As discussed farther on, the "Declaration of Victims

Rights" provides a complaints review mechanism for victims who feel that their rights have been violated, but no binding dispute resolution mechanism.

2.4.2 Designation of Liaison Officer (New Section 71.16 of the NDA)

Bill C-71 provides for the designation of a victim's liaison officer at the victim's request. Unless it is not possible to do so for operational reasons, the commanding officer is responsible for appointing a liaison officer to assist the victim by explaining the procedures regarding investigations, charges and convictions, and obtaining information that the victim requests and to which the victim has a right (new section 71.16(4) of the NDA).

To the extent possible, the commanding officer will appoint the officer or non-commissioned member requested by the victim to act as the liaison officer. In the event of the absence or incapacity of the appointed liaison officer, the commanding officer must appoint another liaison officer, unless it is not possible to do so for operational reasons (new section 71.16 of the NDA).

This aspect, which is not part of the *Canadian Victims Bill of Rights*, recognizes the distinct nature of the military justice system. The government's backgrounder for the bill states the following:

> Service offences can have diverse types of victims, including military members and their families, and members of the broader civilian community. To many of these individuals, the military justice system can be unfamiliar and potentially intimidating. Therefore, to help ensure that victims are properly informed and positioned to access their rights, the proposed legislation provides for the appointment of a Victim Liaison Officer when a victim requests this appointment.[30]

2.4.3 Rules of Interpretation (New Sections 71.17 to 71.19 and 71.23 of the NDA)

Under the new section 71.17 of the NDA, the rights and procedures set forth in the "Declaration of Victims Rights" are to be construed and applied in a manner that is reasonable in the circumstances and not likely to interfere with the proper administration of military justice, ministerial discretion or discretion that may be exercised by any person or body authorized to release an offender into the community. The "Declaration of Victims Rights" is also not to be interpreted in a manner that could endanger an individual's life or safety or cause injury to international relations, national defence or national security (new section 71.17).

The bill requires that, to the extent that it is possible to do so, every Act of Parliament enacted – and every order, rule or regulation made under such an Act – is to be construed and applied in a manner that is compatible with the rights set out in the "Declaration of Victims Rights" (new section 71.18 of the NDA). This means that the rights set out in the "Declaration of Victims Rights" will influence the interpretation and application of other legislation. Where there is an inconsistency with another Act, the rights and processes provided for in the Declaration are to prevail, except when the other law is also a quasi-constitutional law, such as the *Canadian Bill of Rights*,[31] the *Canadian Human Rights Act*,[32] the *Official Languages Act*,[33] the *Access to*

Information Act,[34] the *Privacy Act*,[35] or the *Canadian Victims Bill of Rights*,[36] and in respect of any orders, rules and regulations made under any of those Acts (new section 71.19 of the NDA).

In addition, identifying an individual as a victim of a service offence does not result in any adverse inference against the accused (new section 71.2 of the NDA). As noted in section 2.2 above, the definition of "victim" does not require an accused to have been found guilty of the offence, as this would deny victims their rights during the investigation and prosecution of the offence. Consequently, section 71.2 states that the designation of a person as a victim – prior to a conviction – for the purposes of the "Declaration of Victims Rights" cannot be used against the accused during proceedings. The "Declaration of Victims Rights" also does not grant to, or remove from, the victim, any individual acting on their behalf or his or her liaison officer the status of a party, intervener or observer in the proceedings (new section 71.23 of the NDA).

Lastly, the "Declaration of Victims Rights" is not to be construed as permitting any individual to enter Canada, or to remain in Canada beyond the end of an authorized stay, or as delaying or preventing the enforcement of any removal or extradition proceedings (new section 71.21 of the NDA).

2.4.4 Rights Recognized in the Declaration of Victims Rights

2.4.4.1 Right to Information (New Sections 71.02 to 71.04 of the NDA)

New sections 71.02 to 71.04 of the NDA provide that the victim of a service offence has the right, on request, to information about:

- the military justice system and the role of victims in it;
- services and programs available for victims;
- the right to file a complaint;
- the status and outcome of the investigation into the offence;
- the location of proceedings in relation to the offence, when they will take place and their progress and outcome;
- the release of the offender from a service prison or detention barrack;
- hearings held by a court martial for the purpose of making a ruling relating to a person found unfit to stand trial or not responsible on account of mental disorder and the dispositions made at those hearings (e.g., whether to release the offender and under what conditions); and
- hearings held by a Review Board under section 202.25 of the NDA relating to a person found unfit to stand trial or not responsible on account of mental disorder and the dispositions made at those hearings.

The proposed amendments, with any modifications that the circumstances require, are nearly identical to those in the *Canadian Victims Bill of Rights*, except for the right to information about reviews under the *Corrections and Conditional Release Act* (CCRA) relating to the conditional release of federal offenders and the timing and

conditions of any such release.[37] However, although the "Declaration of Victims Rights" does not recognize the right of victims to information about the carrying-out of sentences (e.g., conditional release dates) for service prisoners and convicts in a federal penitentiary or provincial prison, it appears that these victims could exercise their right to such information under the CCRA.[38]

That being said, since victims in this situation are not recognized under the *Canadian Victims Bill of Rights* or the "Declaration of Victims Rights," they probably could not file a complaint under federal legislation if a provincial correctional facility refused to provide information regarding a service prisoner or convict.

2.4.4.2 Right to Protection (New Sections 71.05 to 71.09 of the NDA)

The new section 71.05 of the NDA states that victims have the right to have their security considered by the "appropriate authorities" in the military justice system. The term "appropriate authorities" is not defined, although it likely includes the military police, prosecutors, military judges, commanding officers of service prisons and detention barracks, and any individuals acting under such a command. Victims also have the right to have reasonable and necessary measures taken by the appropriate authorities to protect them from intimidation and retaliation (section 71.06 of the NDA). Like the *Canadian Victims Bill of Rights*, the bill does not quantify or qualify the type or extent of assistance that could be provided.

Victims also have the right to have their privacy considered by the appropriate authorities in the military justice system (new section 71.07 of the NDA). Furthermore, victims have the right to request that their identity be protected if they are complainants in respect of a service offence or witnesses in proceedings relating to a service offence (section 71.08 of the NDA). Such a request could be made before the case proceeds to a court martial or to a judge during the proceedings. The bill does not set out what forms of confidentiality are to be provided to protect an individual's identity.

As well, victims have the right to request testimonial aids (new section 71.09 of the NDA). The bill does not specify what testimonial aids could be authorized, although article 112.65 of the QR&Os states that the judge may order that the evidence of a witness be taken using any means that allow the witness to testify outside the courtroom and to engage in simultaneous visual and oral communication with the court, the prosecutor and the accused.[39] As well, pursuant to amendments made in Bill C-15, the judge may permit the accused to appear by closed-circuit television or using any other means, as part of the procedures for hearings with respect to an accused who is declared unfit to stand trial or not responsible on account of mental disorder (see section 202.201(13) of the NDA).[40]

2.4.4.3 Right to Participation (New Sections 71.1 and 71.11 of the NDA)

The new section 71.1 of the NDA sets out that victims have the right to express their views about decisions to be made by appropriate authorities that affect their rights under the "Declaration of Victims Rights" and to have those views considered. Victims also have the right to present a victim impact statement to the appropriate

authorities in the military justice system and to have it considered (new section 71.11 of the NDA). However, these guarantees will not necessarily provide victims with a specific outcome.

Section 203.6(1) of the NDA[41] requires that, for the purpose of determining the sentence to be imposed on an offender or whether the offender should be discharged absolutely in respect of any offence, the court martial must consider the statement of any victim of the offence describing the harm done to, or loss suffered by, the victim arising from the commission of the offence.

A coordinating amendment in clause 25 amends the wording in the section (which was not in force at the time of writing) to reflect the new definition of "victim" in Bill C-71. This amendment requires the court to consider the statement of any victim of the offence describing the physical or emotional harm done to him or her, or the property damage or economic loss he or she has suffered, as a result of the commission of the offence and the impact of the offence on the victim.

Like the amendments made to the *Criminal Code* through the coming into force of the *Victims Bill of Rights Act*, amendments made to section 203.7 of the NDA[42] allow victims to present, during their victim impact statement, a photograph of themselves taken prior to the offence or to present their statement outside the hearing room if this does not disrupt the proceedings.

Clause 25 also adds two additional sections to the NDA, which require the court martial to consider any statement made on behalf of a community describing the impact of the offence on the community (new section 203.72), as well as any statement made on behalf of the CF on the military impact of the offence (new section 203.71).

2.4.4.4 Right to Restitution (New Sections 71.12 and 71.13 of the NDA)

New section 71.12 of the NDA grants victims the right to have the court martial consider making a restitution order against the offender. This does not mean that such an order must be granted, but rather that the court must put its mind to the possibility.

In accordance with the new section 71.13 of the NDA, if a restitution order is made and the offender does not pay, the victim may have the order entered as a civil court judgment enforceable against that offender, which allows the victim to seek repayment through measures such as seizure or garnishment of the offender's funds.

A coordinating amendment in clause 25 adds section 203.81 to the NDA to require the court to consider making a restitution order as to whether the offender is convicted or discharged absolutely for the offence, mirroring the amendments made to the *Criminal Code* subsequent to the coming into force of the *Victims Bill of Rights Act*.

For restitution to be meaningful, the offender must have the ability to pay. Under the new section 203.91, the offender's financial means or ability to pay do not prevent a restitution order from being made. This new provision reflects the case law concerning restitution, which does not bar a restitution order from being made where the offender is unable to pay. Although the case law states that the offender's current

and future means to pay is not determinative, the court must nonetheless take it into account when considering whether a restitution order is appropriate. The court must also consider the impact of restitution on the offender's rehabilitation.[43]

In making the order, the court must require the offender to pay the full amount by the date specified in the order or, if the court is of the opinion that the amount should be paid in instalments, the order must include a payment scheme (new section 203.902 of the NDA). An offender may be ordered to pay restitution to more than one person, in which case the order must specify the amounts to be paid to each person and the order of priority of payment (new section 203.903 of the NDA).

2.4.5 Remedies (Complaints and Appeals) (New Sections 71.22, 71.24 and 71.25 of the NDA)

New sections 71.22, 71.24 and 71.25 of the NDA set out the remedies available to victims, who may file a complaint if they believe their rights have been infringed by an authority within the military justice system. Rules will be set out in regulations concerning the review of complaints, the power to make recommendations to remedy such infringements, and the obligation to notify victims of the findings of the complaint review body.

2.4.5.1 No Cause of Action (New Sections 71.24 and 71.25 of the NDA)

Like sections 28 and 29 of the *Canadian Victims Bill of Rights*,[44] new sections 71.24 and 71.25 of the NDA state that an infringement of the victims rights outlined in the "Declaration of Victims Rights" does not create a cause of action (i.e., the right to initiate legal proceedings) or a right to damages, nor does it create a right to appeal a decision made in the course of proceedings within the military justice system on the grounds that a right under the "Declaration of Victims Rights" has been infringed or denied. The new section 71.24 of the NDA states that this section does not affect any other cause of action or right to damages.

2.4.6 Right of the Victim to Lay an Information to Restrict Communication From and the Movements of the Accused (Clause 6 of the Bill)

Under the new section 147.6 of the NDA, if a victim fears that a person who is subject to the CSD will cause physical or emotional harm to the victim or to the victim's spouse, common-law partner or children, or cause damage to the victim's property, an information may be laid before a military judge to restrict that individual's movements or communications with the victim and the victim's family.

The information may also be laid by another individual on the victim's behalf. If the military judge is satisfied by the evidence that there are reasonable grounds for the victim's fears, the judge may order that the person referred to in the information (who is subject to the CSD) to abstain from communicating, directly or indirectly, with the victim, the victim's spouse, the victim's child or a person who has been cohabiting with the victim in a conjugal relationship for a period of at least one year (new section 147.6 of the NDA).

Because of the importance of protecting victims from the accused during legal proceedings, if, for operational reasons, no military judge is available, a commanding officer is authorized to make such an order. However, such decisions by commanding officers must be reviewed as soon as feasible by a military judge. The procedure for laying such an information is prescribed by regulations.[45]

2.4.7 Victim's Safety and Security (Clause 7 of the Bill)

Sections 158 to 159.9 of the NDA set out the rules that apply following the arrest of an individual subject to the NDA.[46] Pursuant to section 158(1), the person under arrest must be released from custody as soon as possible unless there are reasonable grounds to believe that pre-trial custody is necessary, owing to the gravity of the offence alleged to have been committed or the need to establish the identity of the person under arrest, to secure or preserve evidence, to ensure that the person under arrest will appear, to prevent the continuation or repetition of the alleged offence, or to ensure the safety of the person under arrest or any other person. Although the wording of the current section 158(1)(f) appears to give consideration to the safety and security of the victim(s) of the offence by including the phrase "or any other person," clause 7 makes this explicit by adding the words "any victim of the offence" before "or any other person."

2.4.8 Consideration of Victim's Safety and Security in Interim Release Decisions and the Right to Obtain a Copy of the Direction on Release from Custody (Clauses 8 and 11 of the Bill)

When the person under arrest is in pre-trial custody, the officer responsible for reviewing the person's continued retention in custody (the custody review officer)[47] may attach conditions to his or her interim release (e.g., to remain under military authority or within a specific area) in accordance with section 158.6 of the NDA. Clause 8 specifies that, when directing that the person be released, with or without conditions, the custody review officer must indicate that he or she considered the safety and security of the victims in deciding to grant the interim release and to impose any conditions (new section 158.6(1.1) of the NDA). The proposed amendment in clause 8 also permits the victim to obtain a copy of the interim release order upon request (new section 158.6(1.2) of the NDA).

Similar amendments are made to section 159.7 of the NDA. In deciding whether to retain in custody or order the interim release of an individual brought before them, a military judge must consider the safety and security of the victim(s) before ordering the individual's interim release (new section 159.7(2)). Like the amendments to section 158.6(3) of the NDA, the new section 159.7(3) requires the military judge to provide a copy of the order to the victims upon request.

2.4.9 Restricting Communications From Individuals in Custody (Clauses 9 and 10 of the Bill)

When the person making the arrest decides to retain the arrested individual in custody, a custody review officer must conduct a custody review pursuant to section 158.2 of the NDA. If the custody review officer determines that there are no

grounds to retain the individual in custody, the individual must be ordered released, with or without conditions. The custody review officer may impose a number of conditions on the release, including a direction to abstain from communicating with any witness or person specified in the order (section 158.6(1) of the NDA). Bill C-71 adds section 158.61 to the NDA, which allows the custody review officer to impose a similar condition when directing that the person be retained in custody. As is the case when this condition is imposed as a condition of release, the order to abstain applies to all direct and indirect communication.

Under section 159 of the NDA, the custody review officer must, as soon as practicable, have the person in custody brought before a military judge for a hearing to determine whether the person is to be retained in custody or released. Under section 159.1 of the NDA, the judge must direct that the individual be released, unless counsel for the CF or an individual appointed by the custody review officer shows that retaining the person in custody is justified. Like the custody review officer, the military judge ordering the release of the person in custody may impose various release conditions (set out in section 158.6 of the NDA), including an order to abstain from communicating with any individual specified in the order. Bill C-71 adds section 159.31 to the NDA to allow a military judge to also direct that a person who is retained in custody abstain from communicating with any person specified in the order.[48]

2.5 Testimonial Aids for Witnesses in Proceedings before a Military Judge (Clauses 16 to 18 of the Bill)

The provisions related to testimonial aids for witnesses outlined below apply to courts martial, not summary trials.

2.5.1 Exclusion of the Public from Proceedings before a Military Judge (Clause 16 of the Bill)

Clause 16 amends section 180 of the NDA, which sets out the presumption that courts martial are held in open court and the circumstances under which a military judge may order the exclusion of the public from the courtroom. The amended section states that not only court martial proceedings, but also other listed proceedings before a military judge (for example, a request for an order to abstain from communicating), are presumed to be held in public (new section 180(1)). Clause 25(16) adds to the list of proceedings that are to be public once certain provisions of Bill C-15 are in force.[49]

Section 180(2) is amended to state that an order to exclude the public from all or part of proceedings before a military judge may be made by the judge on the application of the prosecutor, a witness or the judge him or herself (not the accused). The current provision does not say who is to make the application.

Currently, a military judge may order the exclusion of the public:

- in the interests of public safety, defence or public morals;
- for the maintenance of order or the proper administration of military justice; or
- to prevent injury to international relations.

Clause 16 removes “defence” from the first ground and adds “national defence or security” to the third one (new sections 180(2)(a) and 180(2)(c)).

Currently, section 180 does not include factors to be used in determining whether the public should be excluded. The new section 180(3) introduces factors that must be considered by the military judge in deciding whether to exclude the public on the basis of an interest in the proper administration of military justice, such as encouraging reporting of service offences and safeguarding the interests of witnesses under the age of 18. The military judge is also given discretion to consider relevant factors that are not listed.

This provision differs in some respects from the equivalent section 486 of the *Criminal Code,* which allows not only for the public to be excluded but also for specific members of the public to be excluded from all or part of proceedings before a military judge. Section 486 also provides alternatives to excluding the public – having a witness testify behind a screen or other device so as not to be seen by the public – while Bill C-71 addresses that possibility in new section 183.2 of the NDA, as outlined below. Also, section 180 of the NDA includes public safety as a reason for excluding the public, whereas section 486 of the *Criminal Code* does not. This difference is retained in Bill C-71.

As with section 486 of the *Criminal Code*, no adverse inference may be drawn from a decision to grant, or not to grant, an order to exclude the public. The military judge must provide reasons if an order to exclude the public is not granted and the charge is in relation to certain *Criminal Code* offences mostly of a sexual nature or relating to trafficking in persons (new sections 180(4) and (5)).[50]

2.5.2 Disclosure of Third Party Records to the Accused in Sexual Offence Cases (Clause 16 of the Bill)

Clause 16 adds provisions to the NDA outlining the procedure for the disclosure of third party records in proceedings before a military judge. Currently, the NDA is silent on the matter. The new provisions are almost identical to those included in the *Criminal Code,* as amended by Bill C-32.

“Third party records” are records that contain personal information about the victim or other witnesses for which there is a reasonable expectation of privacy and that are in the possession of someone other than the prosecutor or the defence. Such records include medical, psychiatric, therapeutic, counselling, education, employment, child welfare, adoption and social services records, as well as personal journals and diaries. Records containing personal information, the production or disclosure of which is protected by any Act of Parliament or provincial legislation, are also part of the definition, whereas records made by persons responsible for investigating or prosecuting the service offence are not.[51]

In criminal prosecutions, although the prosecutor has an obligation to disclose investigative files to the accused, third parties in possession of records do not have the same obligation. The *Criminal Code* provides a two-stage procedure for the disclosure of personal information records: the first stage involves a determination as

to whether the records ought to be produced to the court, and the second stage involves a determination as to whether the judge will order that the records be disclosed to the accused.[52]

Although the right to make full answer and defence under sections 7 and 11(d) of the *Canadian Charter of Rights and Freedoms* is a core principle of fundamental justice, in the context of the production of records in sexual offence cases it does not automatically entitle the accused to gain access to information contained in the private records of complainants and witnesses. The courts assess the scope of the right to make full answer and defence in the particular circumstances of each case in light of the need to balance this right with the privacy and equality rights of complainants and witnesses.[53]

Bill C-71 introduces a similar regime into the NDA for courts martial. The main differences between the victim records provisions in the *Criminal Code* and Bill C-71 are outlined below.

2.5.2.1 The Offences for Which a Complainant or Witness's Records May not Be Disclosed

New section 180.02(1) of the NDA lists the types of offences (the qualifying offences) for which complainants' records held by a third party may not be disclosed to an accused who is being court-martialled, except in accordance with the procedure in new sections 180.03 to 180.08. The qualifying offences include sexual assaults, sexual offences involving children, incest, prostitution, indecent acts and other sex-related offences. The bill also includes all historical sexual offences under the *Criminal Code* that would have constituted a qualifying offence if they had occurred on or after the coming into force of the new definition. New section 180.02 is quite similar, although not identical, to the equivalent *Criminal Code* provision.

New sections 180.02(2) and 180.02(3) make the following clarifications:

- If the record is in the possession or control of the prosecutor, he or she must notify the accused of this fact without disclosing the content of the record.
- The complainant or witness may waive the application of the third party record sections (i.e., allow the prosecutor to provide the record to the accused).

2.5.2.2 The Application

The application for disclosure must be in writing and identify the record, who has possession or control of that record, and the grounds for its disclosure. The accused must establish that the record is "likely relevant" to an issue at trial or to the competence of a witness to testify (new section 180.03(2)). New section 180.03(3) lists a number of assertions that are not sufficient on their own to establish that the record is likely relevant, such as the fact that it relates to medical treatment or therapy, to the subject matter of the proceedings, or to the witness's credibility.

New section 180.03(4) requires that an application for the production of third party records be served on the prosecutor, the person who has possession or control of

the record, and the complainant, witness or other person to whom, to the knowledge of the accused, the record relates. They must be served at least 14 days before the hearing in which the military judge will decide whether to order production of the record for his or her review. The military judge retains his or her discretion to allow the application to be made after that time if it would be in the interests of military justice to do so and may, at any time, order that the application be served on any person to whom he or she considers the record relates.

2.5.2.3 The Process

A hearing to determine whether to order disclosure to the military judge takes place in private (new section 180.04(1)). Hearings held "in private" have been defined as those at which all of the parties are present, but from which the public is excluded.[54]

The person who possesses or controls the record, the complainant or witness in question, and any other person to whom the record relates may appear and make submissions, although they are not required to testify (new section 180.04(2)). As soon as is feasible, the military judge must inform those who are entitled to appear of their right to counsel (new section 180.04(3) of the NDA).

New section 180.05 outlines the requirements and factors for the military judge to consider in deciding whether the record should be produced for his or her review. The military judge may order production of the record in the following circumstances:

- The application was made in accordance with sections 180.03(2) to 180.03(5).
- The accused establishes that the record is likely relevant to an issue at trial or to the competence of a witness to testify.
- The production of the record is necessary in the interests of military justice.

In deciding whether a record should be produced, the military judge is required by new section 180.05(2) to consider the salutary and deleterious effects of the decision on the accused's right to make full answer and defence and on the right to privacy, personal security and equality of the person to whom the record relates. It outlines eight factors that must be taken into consideration, including the extent to which the record is necessary for the accused's defence and whether its production would be based on a discriminatory belief or bias.

If the military judge decides that the record should be produced for his or her review, the review must take place in the absence of the parties. A hearing in private may be held if it will assist in the determination of whether the record should be disclosed to the accused (new section 180.06 of the NDA).

New section 180.07 outlines the factors the military judge must consider in determining whether to disclose all or part of the record to the accused, as well as conditions that may be attached to any such order. If the military judge is satisfied that the record is likely relevant to an issue at trial or to the competence of a witness and that its production is necessary in the interests of military justice, he or she *may* order that the record be provided to the accused (new section 180.07(1)). The considerations and factors to be applied are the same as those outlined in new section 180.05(2). If the military judge orders that the record be produced, conditions may be imposed to

protect the interests of military justice and the privacy, personal security and equality interests of the person to whom the record relates. New section 180.07(3) provides a non-exhaustive list of possible conditions.

If a record is provided to the accused, the military judge must direct that a copy also be provided to the prosecutor, unless this would not be in the interests of military justice (new section 180.07(4)). Such records cannot be used in other disciplinary, criminal, civil or administrative proceedings.

New section 180.08 of the NDA requires a military judge to provide written reasons for his or her decision to order or not to order production of the record.

2.5.2.4 Offences related to third party records

Bill C-71 adds a new section 303 to the NDA that makes it a summary conviction offence to publish, broadcast or transmit:

- the contents of an application for disclosure of third party records;
- evidence taken, information given or submissions made at a third party records hearing; or
- the determination of a military judge regarding an order to disclose third party records and the reasons for the decision, unless authorized by the military judge.

2.5.3 Support Persons for Witnesses (Clause 17 of the Bill)

Clause 17 introduces provisions into the NDA to allow certain witnesses to have a support person while testifying in proceedings before a military judge. The provisions are almost identical to those in the *Criminal Code*.

New section 183.1 of the NDA provides that, in certain cases, a support person may be present and close to the witness when he or she testifies. If the witness is under the age of 18 years or has a mental or physical disability, the military judge *must* make the order under this section, as requested by the prosecutor or the witness, unless he or she is of the opinion that the order would interfere with the proper administration of justice (new section 183.1(1) of the NDA).

For other witnesses, the judge can authorize a support person to be present and close to the witness when he or she testifies, if the military judge is of the opinion that such an order would facilitate the giving of a full and candid account or otherwise serve the proper administration of justice (new section 183.1(2) of the NDA). The request for a support person may be made by the prosecutor or the witness in question. New section 183.1(3) outlines the factors to be considered, such as the age of the witness and whether the order is needed for the security or protection of the witness.

Witnesses cannot be support persons unless the judge is of the opinion that having a witness play this role is necessary for the proper administration of justice (new section 183.1(4)). The judge may order that the support person and witness not communicate with one another while the witness testifies. No adverse inference may be drawn from the decision to grant or not to grant an order for a support person (new section 183.1(5) and 183.1(6)).

2.5.4 Witness Testimony Outside of the Courtroom, or Behind a Screen or Other Device (Clause 17 of the Bill)

Section 112.33 of the QR&Os provides for a witness to testify outside the courtroom or behind a screen if certain conditions are met. Section 112.33 allows this only for certain listed offences mostly of a sexual nature, and where a complainant or witness is either under the age of 18 at the time of trial or his or her testimony may be affected by mental or physical disability. In such cases, if the judge is of the opinion that such an order is necessary to obtain a full and candid account, an order *may* be granted for a complainant or witness to testify outside the courtroom in the presence of the prosecutor and counsel for the accused or behind a screen or other device so that he or she does not see the accused. Such an order may be granted only if the accused and the court can visually and orally follow the testimony and if both the prosecutor and the counsel for the accused can engage in simultaneous visual and oral communication with the court. The accused must also be able to communicate with counsel while following the testimony.

New section 183.2 of the NDA introduces provisions that are substantively equivalent to section 486.2 of the *Criminal Code*, which relates to testifying outside the courtroom or behind a screen or other device (clause 17).[55] These new provisions would replace those outlined in section 112.33 of the QR&Os.

New section 183.2 expands the group of people who may testify outside the courtroom or behind a screen or other device. It *requires* such an order if requested by the prosecutor or the witness and the witness is under 18 or, because of physical or mental disability, may have difficulty testifying, unless it is the opinion of the judge that the order would interfere with the proper administration of military justice (new section 183.2(1)). Currently, the military judge may make such an order but is not obligated to do so.

The new section also *allows* the military judge to make such an order in relation to other witnesses to facilitate the giving of a full and candid account or if it would otherwise be in the interest of the proper administration of military justice (new section 183.2(2)). New section 183.2(3) outlines the same factors to be considered when deciding whether to make such an order as are listed in new section 183.1 regarding support persons, along with two additional factors: whether the order is needed (1) to protect an undercover peace officer or someone who is, has or will be acting covertly under the direction of a peace officer, or (2) to protect the identity of a witness with national security or intelligence responsibilities. A military judge may order that a witness testify in order to determine whether an order under new section 183.2(2) should be granted (new section 183.2(4)).

In order for testimony to be given from outside the courtroom, arrangements must be made for the accused, the military judge and the panel of a General Court Martial, if one is convened, to watch the testimony, and the accused must be permitted to communicate with counsel while watching (new section 183.2(5)). No adverse inference may be drawn from a decision to grant or not to grant such an order (new section 183.2(6)).

2.5.5 Cross-Examination of Witnesses by the Accused (Clause 17 of the Bill)

Clause 17 also adds provisions to the NDA to prevent a self-represented accused from cross-examining certain witnesses. In such cases, the military judge must direct the Director of Defence Counsel Services to provide counsel to conduct the cross-examination. The provisions are substantively the same as those found in section 486.3 of the *Criminal Code* and divide witnesses into three categories, as follows:

- Witness under age 18: Upon the application being made by the prosecutor, the military judge *must* make the requested order unless he or she is of the opinion that the proper administration of justice requires the accused to personally cross-examine the witness (new section 183.3(1) of the NDA).
- Certain offences: Upon the application being made by the prosecutor in proceedings for an offence of criminal harassment or sexual assault (sections 264 or 271–273 of the *Criminal Code*), the military judge *must* make the order unless the proper administration of justice requires that the accused personally cross-examine the witness (new section 183.3(2) of the NDA).
- All other cases: Upon the application being made by the prosecutor, the court *may* make the requested order if it would facilitate the giving of a full and candid account by the witness of the acts complained of, or if it would be in the interest of the proper administration of justice (new section 183.3(3) of the NDA). In these cases, the factors to be considered are the same as those used in the equivalent *Criminal Code* provision and in deciding whether a support person is to be permitted under new section 183.1(3)(new section 183.3.(4)).

Note that a defence lawyer is generally provided without cost to CAF members when a charge is forwarded to a Referral Authority. This differs from the civil system, in which a lawyer is provided only when certain criteria, including low income, are satisfied.[56]

2.5.6 Non-disclosure of the Identity of Witnesses (Clause 17 of the Bill)

Clause 17 also creates a new type of court order *allowing* a military judge to direct that any information that could identify a witness not be disclosed in the course of the proceedings in respect of a service offence when such an order is in the interest of the proper administration of justice (new section 183.4 of the NDA). The provisions are substantively the same as those in section 486.1 of the *Criminal Code,* as introduced by Bill C-32. [57] Under this new measure, the identity of a witness would not be disclosed to the accused or his or her defence lawyer, or to the general public.

In determining whether to make an order that the identity of a witness be protected, the judge must consider various factors, including the accused's right to a fair and public hearing, the witness's security and society's interest in encouraging the reporting of service offences and the participation of victims and witnesses. The military judge may also consider other factors he or she considers relevant (new section 183.4(3)).

The military judge may hold a hearing to determine whether the requested order should be made, and this hearing may be held in private (new section 183.4(2) of the NDA). No adverse inference may be drawn from the fact that such an order is or is not made.

2.5.7 Publication Bans (Clauses 17 and 23 of the Bill)

New sections 183.5 and 183.6 add publication bans to the provisions of the NDA, as described in Table 1.[58] A publication ban is an order that the identity of a complainant or a witness (or information that could identify him or her) not be published, broadcasted or transmitted in any way. The provisions are almost identical to those in the *Criminal Code.*

Table 1 – Explanation of the Various Types of Publication Bans

Offence	Person to Whom the Information Relates	Mandatory or Discretionary Nature of the Order	Relevant Provision	Other Notes
Specified offences (mostly of a sexual nature)[a]	Witnesses 18 years of age or older	Discretionary	183.5(1)	
Specified offences (mostly of a sexual nature)	Victims or any witness under age 18	Mandatory if application is made by victim, prosecutor or witness under age 18; otherwise, discretionary	183.5(1) and 183.5(2)	Military judge must inform victim and any witness under age 18 of his or her right to make an application
Service offences other than specified offences	Victim under age 18	Mandatory if application is made by victim or prosecutor; otherwise, discretionary	183.5(3) and 183.5(4)	Military judge must inform victim under age 18 of his or her right to make an application
Child pornography (section 163.1 of the *Criminal Code*)	Witness under age 18 or person who is the subject of the child pornography	Mandatory	183.5(5)	
Any offence (where an order is not available under section 183.5)	Victim or witness of any age	Discretionary	183.6(1)	Military judge must be of the opinion that the order is in the interest of the proper administration of justice
Specified offences relating to organized crime, terrorism and foreign entities	Military justice participant[b]	Discretionary	183.6(2)	Military judge must be of the opinion that the order is in the interest of the proper administration of justice

Notes: a. Although the marginal note for section 183.5 says it introduces an "Order restricting publication – sexual offences," among the specified offences are some – abduction of minors, extortion and charging a criminal interest rate – that do not appear to be sexual in nature (ss. 280, 281, 346 and 347 of the *Criminal Code*).

b. Bill C-71 defines "military justice system participant" in section 2 of the NDA. The term pertains to a person who plays a role in the administration of military justice, including the Minister of National Defence, the Judge Advocate General, various members of the military responsible for aspects of military justice, and witnesses. Unlike the definition of a "justice system participant" in the *Criminal Code,* the definition does not include members of the Senate, the House of Commons, a legislative assembly or a municipal council.

Source: Table prepared by the authors on the basis of sections 183.5 and 183.6 of Bill C-71, An Act to amend the National Defence Act and the Criminal Code, 2nd Session, 41st Parliament.

New section 183.6 governs publication bans in circumstances not covered by new section 183.5. The application must set out the grounds on which the applicant relies to establish that the order is necessary for the proper administration of justice (new section 183.6(6)). A hearing may be held for the judge to decide whether to authorize a publication ban under new section 183.6; this hearing may be held in private (new section 183.6(7)). New section 183.6(8) outlines a number of factors that the military judge must consider in deciding whether to authorize a publication ban, such as fair trial rights and the risk of harm if the person's identity were disclosed. The judge may subject the order to conditions (new section 183.6(9)).

In contrast to the equivalent *Criminal Code* provision (section 486.5), which outlines the procedural requirements (in writing, notice, etc.), new section 183.6(5) states that the process to be used in the military justice system will be set out in regulations.

2.5.8 General Order for the Security of a Witness (Clause 17 of the Bill)

New section 183.7 of the NDA provides the authority for a military judge to grant an order for the security of a witness on the application of the prosecutor, a witness or on his or her motion, other than one that may be made under section 180 (exclusion of the public from proceedings). To grant such an order, the judge must be of the opinion that it is necessary to protect the security of any witness and is otherwise in the interest of the proper administration of military justice. The military judge must consider a number of factors, including the age of the witness and the right to a fair and public hearing, and any other factor he or she deems relevant.

2.6 Pleas (Clauses 18 and 19 of the Bill)

Currently, section 191.1 of the NDA and various sections of the QR&Os provide the procedure to be followed in relation to pleas. Section 191.1 is repealed by clause 19. New section 189.1 is introduced in its place and also addresses a number of issues currently dealt with in the QR&Os. Bill C-71 makes the NDA provision relating to guilty pleas similar to the equivalent provision in the *Criminal Code* (section 606); there are some differences from the Code, although most are not substantive.

New section 189.1(1) states that an accused may plead guilty or not guilty or may enter any other plea authorized by regulation.[59] New section 189.1 permits a guilty plea after the commencement of the trial.[60] Unlike section 606(5) of the *Criminal Code*, which allows for closed-circuit television to be used or for counsel to appear instead of having the accused present for the plea, new section 189.1 does not allow a video link to be used for pleas in the military justice system.

The military judge may accept a guilty plea only if he or she is satisfied of the following:

- The plea is voluntary.
- The accused understands that he or she is admitting to the essential elements of the service offence.
- The accused understands the nature and consequences of the plea.
- The accused understands that the military judge is not bound by any agreement between him or her and the prosecutor (new section 189.1(3)).[61]

However, a failure to fully inquire into the conditions listed above does not affect the validity of the plea (new section 189.1(4)).

If an accused refuses to enter a plea or does not answer, he or she is deemed to have pled not guilty (new section 189.1(5)).[62] The military judge is afforded discretion to provide additional time to the accused to enter a plea, to prepare his or her defence or for other reasons (new section 189.1(6)). Where an accused pleads not guilty to a service offence but guilty to another service offence arising out of the same transaction, the military judge may, with the consent of the prosecutor, accept the guilty plea and find him or her not guilty of the other offence (new section 189.1(7)).[63]

If a military judge accepts a guilty plea for a "serious personal injury offence," he or she must ask the prosecutor whether reasonable steps have been taken to inform the victim(s) of any agreement entered into by the prosecutor and the accused person (new section 189.1(8)). New section 189.1(12) defines a "serious personal injury offence." The term includes a number of sexual offences found in the *Criminal Code*. It also includes a serious offence (defined as having a maximum penalty of five years imprisonment) and a number of listed NDA offences in which one of the following conditions is met:

- There was use of or an attempt to use violence against another person.
- There was conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage upon another person.[64]

In relation to serious offences that are not serious *personal injury* offences, the judge must, after accepting a guilty plea, ask the prosecutor whether any victim had advised the prosecutor of a desire to be informed of any agreement entered into by the prosecutor and the accused person. If so, the judge then must ask whether reasonable steps were taken to inform the victim of the agreement (new section 189.1(9) of the NDA).

Where the new sections 189.1(8) or 189.1(9) apply and the victim was not informed of the agreement before the plea of guilty was accepted, a duty to inform the victim is imposed upon the prosecutor, who must, as soon as is feasible, take reasonable steps to inform the victim of the agreement and the acceptance of the plea (new section 189.1(10)). However, neither the failure of the military judge to inquire of the prosecutor, nor the failure of the prosecutor to take reasonable steps to inform the victim(s) of the agreement, affects the validity of the plea (new section 189.9(11)).

2.7 Consideration of the Victim's Safety and Security when Suspending Punishment (Clause 20 of the Bill)

Clause 20 amends section 215 of the NDA, the provision that allows for the suspension of a sentence of imprisonment or detention by the service tribunal.[65] Bill C-71 provides that, where a punishment is suspended, the decision must include a statement that the service tribunal considered the safety and security of victims of the offence (new section 215(2)). In addition, if requested by the victim, he or she is to receive a copy of the decision (new section 215(3)).[66]

2.8 Right to Appeal a Court Martial Decision (Clauses 21 to 22 of the Bill)

Section 230 of the NDA outlines the grounds on which a person subject to the Code of Service Discipline may appeal to the Court Martial Appeal Court a finding of guilt by a court martial. Clause 21 adds a new ground for appeal to enable a challenge of the legality of a decision *not to make* an order under new section 180.05(1) or *to make or not make* an order under new section 180.07(1), both in relation to the disclosure of third party records. Similarly, clause 22 amends section 230.1 to give the prosecution the power to appeal a military judge's decision to make orders under the same two provisions.[67]

2.9 Changes to Summary Trial System (Clauses 13 and 14 of the Bill)

Currently, as noted above, charges under the military justice system can be dealt with either by summary trial or by court martial. A summary trial is decided by the commanding officer (CO), his or her delegated officer (DO) or a superior commander (SC), generally involves less serious offences and has fewer procedural protections. A court martial is a trial presided over by a military judge. In the case of a general court martial, a panel of five members of the armed forces is added; this is similar to a jury in the civilian system.[68]

Clause 13 repeals sections 162.1 and 162.2 of the NDA. These provisions relate to an accused person who could be tried by summary trial but chooses to be court-martialled. As will be explained in more detail below, because Bill C-71 eliminates the possibility of pursuing a service offence by summary trial, these provisions are no longer necessary.

Clause 14 replaces Division 5 of the Code of Service Discipline, which outlines the rules for summary trials, and introduces a new Division 5.1, which outlines the rules for referring a charge for a service offence to the Director of Military Prosecutions. Both of these divisions are explained in more detail below.

2.9.1 Disciplinary Infractions (Clause 14 of the Bill)

Bill C-71 limits the summary trial system to trying disciplinary infractions, which is a new type of infraction to be outlined in regulations, and requires all service offences to be dealt with by way of court martial. Disciplinary infractions will not be considered an offence under the NDA and will not result in a criminal record (new sections 162.4 and 162.5 of the NDA). The victims rights outlined above will not be available in the summary trial system.

New section 162.6 of the NDA states that a person who has been tried in respect of an offence cannot be tried in respect of a disciplinary infraction arising from the same facts, regardless of whether he or she was found guilty of the offence. This applies whether the offence was tried by court martial, civil court or the court of another country. However, if a person has been tried for a disciplinary infraction, he or she can still be tried for an offence. New section 162.6(3) states that answers or statements given at summary trial cannot be used in any disciplinary, criminal or civil

proceeding except in cases where the hearing or proceeding relates to an allegation that the person made the statement knowing it to be false.

2.9.1.1 WHO PRESIDES OVER A SUMMARY TRIAL AND WHEN THE SUMMARY TRIAL PROCEDURE SHOULD BE USED (NEW SECTIONS 162.93, 162.94 AND 163.2 TO 163.4 OF THE NDA)

According to new section 162.94, if a charge alleging a disciplinary infraction is referred to a CO, he or she shall, taking into consideration the conditions outlined in amended section 163 (see below for more on that section):

- try the person by summary trial;
- not proceed with the charge if he or she is of the opinion that it should not be proceeded with; or
- refer the charge in accordance with regulations to another CO or a SC or DO.

If the choice is made to refer the charge to a DO, the CO may delegate the power to any officer under his or her command, subject to regulations and to the extent he or she considers appropriate (new section 162.93). New section 163.2 states that an SC, CO or DO to whom a charge under new section 162.94(c) or under new section 163.2 is referred has the same three options listed above.

Amended section 163 lists four conditions under which an SC, CO or DO may try a person by summary trial, as follows:

- The person charged is at least one rank below the SC, CO or DO.
- The powers of the SC, CO or DO to impose a sanction are adequate in relation to the gravity of the facts giving rise to the charge. (This is described further in the next section.)
- There are no reasonable grounds to believe that the person is unfit to stand trial or that when the alleged infraction took place he or she was suffering from a mental disorder rendering him or her incapable of appreciating the nature and quality of the act or omission or that it was wrong.
- It would be appropriate, in the interest of discipline. to try the person by summary trial.

Finally, unless it is not practical for someone else to conduct the summary trial, an SC, CO or DO may not preside over a summary trial if he or she:

- carried out or directly supervised the investigation;
- issued a warrant under section 273.3 (for a search); or
- laid the charge or caused it to be laid.

If it is decided that a charge should not proceed to summary trial, this does not preclude such proceedings taking place later (new section 163.3). However, the trial must commence within six months after the day the infraction is alleged to have been committed (new section 163.4).

2.9.1.2 SANCTIONS FOR DISCIPLINARY INFRACTIONS (NEW SECTIONS 162.7 TO 162.92 AND 163.1 OF THE NDA)

New section 162.9 outlines the fundamental purpose of sanctions for disciplinary infractions as being "to promote the operational effectiveness of the CF by contributing to the maintenance of discipline, efficiency and morale." This purpose is to be achieved through "just sanctions" that have one or more of the following objectives:

- promotion of a habit of obedience to lawful commands and orders;
- maintenance of public trust in the CF as a disciplined armed force;
- denunciation of undisciplined conduct;
- deterrence;
- rehabilitation; or
- promotion of a sense of responsibility.

New sections 162.91 and 162.92 outline principles that should inform the determination of an appropriate sanction for a disciplinary infraction:

- As a fundamental principle, sanctions must be proportionate to the gravity of the infraction and the degree of responsibility of the person in question.
- Aggravating or mitigating circumstances relating to the infraction or the person that committed it, including abuse of rank or position of trust or authority; motivation based on bias, prejudice or hate related to various groups; or harm to a military operation or training, should be taken into account.
- Similar sanctions should be imposed for infractions that are similar and committed in similar circumstances.
- The sanctions imposed should be the least severe required to maintain discipline, efficiency and morale.
- Indirect consequences of the finding of guilt, or the sanction, should be considered.

New section 162.7 outlines the sanctions that may be imposed for a disciplinary infraction. Listed from the most to least serious, these are:

- reduction of rank;
- severe reprimand;
- reprimand;
- deprivation of pay and allowances for not more than 18 days; and
- minor sanctions prescribed in regulations.

In contrast, service offences tried at summary trial may currently result in detention for up to 30 days if the trial is presided over by a CO.

Reduction of rank is applicable to officers above the rank of second lieutenant and to non-commissioned members above the rank of private, which are the lowest ranks,

respectively, for officers and non-commissioned members (new section 162.8(1)).[69] Regulations will outline to what rank a person can be reduced, although commissioned officers cannot be reduced to a rank lower than commissioned rank (new section 162.8(2)).

Finally, the type of sanction available also depends on the level of the decision-maker presiding over the summary trial (i.e., SC, CO or DO) (new section 163.1).

2.10 Referral of Service Offence Charges for Prosecution (Clauses 14 and 15 of the Bill)

Because Bill C-71 prevents service offences from being tried by summary trial, the bill also changes the rules regarding the referral of such charges for prosecution. According to amended section 164.1, if a charge alleging the commission of a service offence is referred to a CO, he or she may either refer the charge to a "referral authority" in accordance with regulations or not proceed with the charge if, in his or her opinion, it should not be proceeded with. A "referral authority" is defined in amended section 164 as an officer authorized by regulation to refer charges for service offences to the Director of Military Prosecutions (DMP).

If a referral authority receives an application under amended section 164.1(a), he or she must refer the charge in accordance with regulations to the DMP or not proceed if it should not be proceeded with in his or her opinion (new section 164.2).

If a CO or referral authority decides not to proceed, he or she must communicate that decision and the reasons for it, in writing, to the next superior officer to whom he or she is responsible in matters of discipline, as well as to the officer or non-commissioned member who laid the charge and to the JAG (new section 163.4(1)). If a CO does not proceed, the officer or non-commissioned member who laid the charge may, in accordance with regulations, apply to a referral authority for disposal of the charge (i.e., have the decision not to proceed be reviewed) (new section 164.3(2)). If the referral authority is the one that decides not to proceed, the officer or non-commissioned member may refer the charge to the DMP (new section 164.3(3)).

In applying for the disposal of a charge in any of these situations, the CO, the referral authority or the individual who laid the charge may make any recommendations that he or she considers appropriate (new section 164.4).

Clause 15 replaces section 165.13 of the NDA. Currently, that provision allows the DMP to refer a charge for summary trial if he or she is satisfied that it should not proceed by court martial. Because Bill C-71 no longer allows service offences to be dealt with by summary trial, the section is amended to require the DMP to communicate the decision and the reasons for not proceeding by court martial in writing to the officer who referred the charge and to the CO of the accused, instead of sending the case back for summary trial.

2.11 Amendments to the Criminal Code (Clause 24 of the Bill)

Clause 24 states that the offence of intimidating a justice system participant under section 423.1 of the *Criminal Code* applies to military justice participants as well.

NOTES

1. *Canadian Victims Bill of Rights*, S.C. 2015, c. 13, s. 2.
2. According to the most recent report of the Judge Advocate General [JAG], summary trials represent 92.2% of all military justice proceedings. National Defence, *Annual Report of the Judge Advocate General 2014–2015: A Report to the Minister of National Defence on the Administration of Military Justice from 1 April 2014 to 31 March 2015* [JAG Annual Report 2014–2015], p. 12.
3. "[T]he purpose of summary proceedings is to provide prompt but fair justice in respect of minor service offences and to contribute to the maintenance of military discipline and efficiency, in Canada and abroad in time of peace or armed conflict." National Defence and the Canadian Armed Forces, "Chapter 4: Fairness and the Application of the Charter," *Military Justice at the Summary Trial Level 2.2*, January 2011, para.19.
4. S.C. 2015, c. 13. For more information on Bill C-32, see Lyne Casavant, Christine Morris and Julia Nicol, *Legislative Summary of Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, Publication no. 41-2-C32-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 23 July 2014.
5. *National Defence Act* [NDA], R.S.C. 1985, c. N-5.
6. House of Commons, *Debates*, 2nd Session, 41st Parliament, 9 April 2014, 1635.
7. The JAG is the senior legal officer in the Canadian Forces [CF]. Pursuant to his mandate under the NDA, the JAG acts as the legal advisor to the Governor General, the Minister of National Defence (the Minister), the Department of National Defence and the CF in all matters relating to military law. The JAG is also responsible for superintending the administration of military justice. Although the JAG is responsive to the chain of command for the provision of legal services within the CF, it is to the Minister that the JAG is responsible for the performance of his duties. The JAG is accountable to Parliament through the Minister. The powers and functions of the JAG are set out in sections 9 to 10.1 of the *National Defence Act*. For more information, see National Defence and the Canadian Armed Forces, *Judge Advocate General (JAG)*.
8. National Defence, *Annual Report of the Judge Advocate General 2014–2015*.
9. Gilles Létourneau, *Introduction to Military Justice: An Overview of the Military Penal Justice System and its Evolution in Canada*, Wilson & Lafleur, Montreal, 2012.
10. Service tribunals have jurisdiction not only over CF members, but also over civilians in certain circumstances, such as in the case of individuals accompanying deployed CF units. Section 60 of the NDA sets out who is subject to the *Code of Service Discipline* (CSD) and in what circumstances.
11. There is a wide range of specific military offences, such as mutiny, disobedience of lawful command, negligent performance of military duties and conduct to the prejudice of good order and discipline. These offences are set out in sections 72 to 133 of the NDA. However, conduct to the prejudice of good order and discipline, under section 129 of the NDA, is the single most common offence. This section is applied in the punishment of a number of behaviours, such as having hair that is too long, breaching the rules governing alcohol consumption, failing to handle a rifle safely and committing certain offences of a sexual nature (see National Defence, *Annual Report of the Judge Advocate General 2014–2015*, p. 27).
12. Under section 2 of the NDA, "[a] service offence means an offence under [the *National Defence Act*], the *Criminal Code* or any other Act of Parliament, committed by a person while subject to the Code of Service Discipline." The incorporation of offences under any Act of Parliament is provided for in section 130 of the NDA.

13. For more information on the CSD, see National Defence and the Canadian Armed Forces, *The Code of Service Discipline and Me*.

14. NDA, s. 70.

15. The military justice system is governed by the CSD and the associated regulations set out in the *Queen's Regulations and Orders for the Canadian Forces* [QR&Os], the *Canadian Forces Administrative Orders*, the *Defence Administrative Orders and Directives* and standard operating procedures.

16. For more information on the differences between the two types of service tribunals, see Létourneau (2012).

17. *MacKay v. The Queen,* [1980] 2 S.C.R. 370.

18. *R. v. Généreux,* [1992] 1 S.C.R. 259.

19. Ibid.

20. National Defence, *Annual Report of the Judge Advocate General 2014–2015*, p. 10.

21. Section 203.1(1) of the NDA states that "[t]he fundamental purposes of sentencing are (a) to promote the operational effectiveness of the Canadian Forces by contributing to the maintenance of discipline, efficiency and morale; and (b) to contribute to respect for the law and the maintenance of a just, peaceful and safe society."

22. Although the *Strengthening Military Justice in the Defence of Canada Act* (Bill C-15) received Royal Assent in June 2013, the clause at issue here (clause 62) was not in force at the time of writing. Clause 25 of Bill C-71 states that on the first day on which both clause 62 and clause 3(2) of Bill C-71 are in force, section 203.1(1)(b) of the NDA is replaced by the following: "(b) to *protect society* and contribute to respect for the law and the maintenance of a just, peaceful and safe society" (italics added by the authors).

23. For more information on the *Strengthening Military Justice in the Defence of Canada Act* (S.C. 2013, c. 24), see Erin Shaw and Dominique Valiquet, *Legislative Summary of Bill C-15: An Act to amend the National Defence Act and to make consequential amendments to other Acts*, Publication no. 41-1-C15-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 24 April 2012. The amendments regarding sentencing respond to recommendations made by the Right Honourable Antonio Lamer in his 2003 report prepared following the First Independent Review of the provisions and operation of Bill C-25. See Antonio Lamer, *The First Independent Review by the Right Honourable Antonio Lamer P.C., C.C., C.D., of the provisions and operation of Bill C-25,* An Act to amend the National Defence Act and to make consequential amendments to other Acts*, as required under section 96 of Statutes of Canada 1998, c. 35*, submitted to the Minister of National Defence on 3 September 2003.

24. *Not Criminally Responsible Reform Act*, S.C. 2014, c. 6.

25. *Strengthening Military Justice in the Defence of Canada Act*, S.C. 2013, c. 24.

26. These sections were not in force at the time of writing.

27. These sections, which were not in force at the time of writing, were added to the NDA by Bill C-14 and Bill C-15 (see the coordinating amendments in Bill C-71).

28. Except for service convicts serving their sentence in a civilian correctional facility. The new section 71.01 of the NDA defines the military justice system for the purpose of applying the rights set out in the "Declaration of Victims Rights." According to this definition, the military justice system does not include service prisoners incarcerated in a penitentiary or civil prison. As explained in section 2.4.4.1, in these cases, victims of service offences still have the right to information through the rights set out in the *Corrections and Conditional Release Act*. For more information, see the section on amendments to the *Corrections and Conditional Release Act* in Lyne Casavant, Christine Morris and Julia Nicol, *Legislative Summary of Bill C-32: An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts*, Publication no. 41-2-C32-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 23 July 2014.

29. S.C. 2001, c. 27.

30. Government of Canada, "Victims Rights in the Military Justice System Act," Backgrounder, 15 June 2015.

31. S.C. 1960, c. 44.

32. R.S.C. 1985, c. H-6.

33. R.S.C. 1985, c. 31 (4th Supp.).

34. R.S.C. 1985, c. A-1.

35. R.S.C. 1985, c. P-21.

36. R.S.C. 2015, c.13. See the coordinating amendment in section 28 of Bill C-71. This provision also amends section 22(2) of the *Canadian Victims Bill of Rights* to recognize the "Declaration of Victims Rights" in the NDA.

37. See clause 8 of Bill C-32, which provides that victims have the right, on request, to "information about reviews under the *Corrections and Conditional Release Act* relating to the offender's conditional release and the timing and conditions of that release."

38. See, in particular, sections 26(3) and 142(3) of the *Corrections and Conditional Release Act* [CCRA].

39. See "Procedure at Courts Martial," Chapter 112 in QR&Os, Vol. 2, art. 112.65.

40. This section was not in force at the time of writing.

41. This section was not in force at the time of writing.

42. This section was not in force at the time of writing.

43. *R. v. Fitzgibbon*, [1990] 1 S.C.R. 1005; *R. v. Biegus*, 1999 CanLII 3815 (ON CA), paras. 15 and 21; *R. v. Yates*, 2002 BCCA 583 (CanLII), paras. 12, 15 and 17; and *R. v. Siemens*, 1999 CanLII 18651 (MB CA), para. 8.

44. See the *Canadian Victims Bill of Rights*, ss. 28 and 29, p. 8.

45. An individual, including a victim, may invoke section 810 of the *Criminal Code* if the individual fears on reasonable grounds that another person

> (a) will cause personal injury to him or her or to his or her spouse or common-law partner or child or will damage his or her property; or
>
> (b) will commit an offence under section 162.1 (publication of an intimate image without consent).

The individual, or another person acting on his or her behalf, may lay an information before a justice of the peace to restrict communications between the accused and the individual, the individual's spouse or common-law partner, or the individual's child. If the justice is satisfied by the evidence adduced that the person on whose behalf the information was laid has reasonable grounds for the fear, the justice may order that the defendant enter into a recognizance, with or without sureties, to keep the peace and be of good behaviour for a period of not more than 12 months.

46. Although many of the provisions in sections 497 to 515 of the *Criminal Code* concerning arrest and pre-trial custody are also contained in the NDA, there are significant differences between the procedures applicable in the civilian criminal justice system and those in the military justice system. For more information on the differences between the two systems, see Gilles Létourneau and Michel Drapeau, *Military Justice in Action: Annotated National Defence Legislation,* 2nd Edition, Carswell, 2015.

47. The custody review officer is the commanding officer of the individual in custody or the officer designated by the commanding officer or, in certain cases, the commanding officer of the unit or element where the person is in custody (s. 153 of the NDA).

48. This new provision is similar to section 515(12) of the *Criminal Code*, which allows a justice of the peace who orders that an accused be detained in custody to direct that the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the order, except in accordance with such conditions specified in the order as the justice considers necessary. The equivalent of the custody review officer in the civilian criminal justice system, the officer in charge, does not have the authority to restrict the communications of the person he or she decides to detain in custody under sections 498 and 499 of the *Criminal Code*, as is the case with the custody review officer in accordance with the amendment proposed by the bill under consideration (new section 158.61 of the NDA). The officer in charge may not order that the person detained in custody abstain from communicating with a victim, witness or other person. Only the justice of the peace may impose such conditions when ordering the detention of the accused in custody under section 515 of the *Criminal Code*. The *Criminal Code* provisions respecting judicial interim release and the imposition of conditions attached to an undertaking by an accused for judicial interim release, namely sections 499 and 512, were amended in 1999 with the passage of Bill C-79, An Act to amend the Criminal Code (victims of crime) and another Act in consequence (assented to on 17 June 1999 (S.C. 1999, c. 25)).

49. These are sections 148, 158.7 and 215.2. The public nature of proceedings is not relevant to section 148 as it currently reads, and sections 158.7 and 215.2 are new provisions introduced by Bill C-15 that are not yet in force.

50. These are sections 151, 152, 153, 153.1, 155 or 159, subsection 160(2) or 160(3), and sections 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 286.1, 286.2 and 286.3 of the *Criminal Code*, which are all of a sexual nature or relate to the trafficking of persons.

51. New section 180.01 of the NDA.

52. In 2012, the Standing Senate Committee on Legal and Constitutional Affairs (Senate Committee) conducted a statutory review of the *Criminal Code* provisions concerning the production of records in sexual offence proceedings. Although the Committee found that the records production scheme in the Code is balanced and appropriate and is generally working well, several areas were identified where changes to the provisions could provide greater specificity and improve the effectiveness and clarity of the legislation. See *Statutory Review on the Provisions and Operation of the* Act to amend the Criminal Code (production of records in sexual offence proceedings, December 2012. Bill C-32 responded to some of the recommendations made by the Senate Committee in respect of the Code provisions concerning the production of records in sexual offence proceedings; most of those changes are reflected in the new provisions on third party records being introduced into the NDA by Bill C-71.

53. *R. v. Mills*, [1999] 3 S.C.R. 668, paras. 91 and 94.

54. *Toronto Star Newspapers Limited v. Canada*, 2007 FC 128, paras. 32–33.

55. Note that the provision in the NDA does not reflect recent changes to section 486.2 of the *Criminal Code* set out in Bill C-51.

56. National Defence and Canadian Armed Forces, *Defence Counsel Services*.

57. Note that the provision in the NDA does not reflect recent changes to section 486.31 of the *Criminal Code* from Bill C-51.

58. Currently, military judges must rely on the common law for authority to issue a publication ban.

59. Currently, section 112.24 of the QR&Os permits various pleas, including that the court lacks jurisdiction, that the charge has been dismissed, that the case has already been heard, that the accused is unfit to stand trial, and that the charge does not disclose a service offence.

60. This is currently allowed under section 112.26 of the QR&Os.

61. This appears to be narrower than the current section 112.25(5) of the QR&Os, which forbids the court from accepting a guilty plea in cases where the accused did not understand the nature or gravity of the charge, the accused disputes particulars of the charge sheet, or for *any other reason in the interest of justice*.

62. Section 112.05(6) of the QR&Os currently addresses this issue.

63. Section 112.05(8) of the QR&Os currently addresses this issue.

64. Clause 25 of Bill C-14 and clause 18 of Bill C-71 both include the same definition of a "serious personal injury offence." Section 26(3) in the Related and Coordinating Amendments section of Bill C-71 states that, on the first day that those two clauses are both in force, the definition of a "serious personal injury offence" will move to the definition section of the NDA under section 2(1).

65. Note that this is not the same as a suspended sentence under the *Criminal Code*.

66. Clause 64 of Bill C-15 and clause 20 of Bill C-71 both make changes to section 215 of the NDA. Sections 25(17) to 25(19) in the Related and Coordinating Amendments section of Bill C-71 apply to ensure that the changes from both Bill C-15 and Bill C-71 are integrated when they are both in force.

67. Clause 69 of Bill C-15 and clause 21 of Bill C-71 both make changes to section 230 of the NDA, and clause 70 of Bill C-15 and clause 22 of Bill C-71 make changes to section 230.1. Sections 25(20) to 25(25) in the Related and Coordinating Amendments section of Bill C-71 apply to ensure that these changes from both Bill C-15 and Bill C-71 are integrated when they are both in force.

68. For further information about the differences between a court martial and a civilian trial and between a court martial and a summary trial, see Mr. Justice (ret'd) Gilles Létourneau and Michel W. Drapeau, *Military Justice in Action: Annotated National Defence Legislation*, 2nd ed., Carswell, 2015, pp. 17–20.

69. National Defence and the Canadian Armed Forces, *Rank Appointment Insignia*.

APPENDIX – KEY BILLS AND REPORTS

Bill C-25	*An Act to amend the National Defence Act and to make consequential amendments to other Acts*, S.C. 1998, c. 35, 10 December 1998.
Bill C-60	*An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act*, S.C. 2008, c. 29. Royal Assent received on 18 June 2008.
Bill C-15	*An Act to amend the National Defence Act and to make consequential amendments to other Acts* (short title: Strengthening Military Justice in the Defence of Canada Act), S.C. 2013, c. 24. Royal Assent received on 19 June 2013. Bill C-15 adopted the majority of former Chief Justice Lamer's recommendations, as well as several of those made in a May 2009 report of the Standing Senate Committee on Legal and Constitutional Affairs in its study of Bill C-60.
Bill C-32	An Act to enact the Canadian Victims Bill of Rights and to amend certain Acts (short title: Victims Bill of Rights Act). Royal Assent received on 23 April 2015, S.C. 2015, c. 13.
Dickson Report	First and second reports of the Special Advisory Group on Military Justice and Military Police Investigation Services, 14 March 1997 and 25 July 1997.
Lamer Report	First Independent Review of the provisions and operation of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts, as required under section 96 of *Statutes of Canada* 1998, c. 35, 3 September 2003.
LeSage Report	In March 2011, the Honourable Patrick J. LeSage, former Chief Justice of the Ontario Superior Court, was appointed by the Minister of National Defence to conduct the second independent review of the provisions and operation of Bill C-25, with an additional mandate to review the provisions and operation of Bill C-60. The LeSage Report was submitted to the Minister on 22 December 2011 and tabled in Parliament on 8 June 2012.
Somalia Report	Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia, *Dishonoured Legacy: Lessons of the Somalia Affair*, 2 July 1997.