LIBRARY of PARLIAMENT
BIBLIOTHÈQUE du PARLEMENT

LEGISLATIVE SUMMARY

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
24 April 2012
Revised 2 May 2013

Erin Shaw
Economics, Resources and International Affairs Division

Dominique Valiquet
Legal and Social Affairs Division

Parliamentary Information and Research Service

Library of Parliament ***Legislative Summaries*** summarize government bills currently before Parliament and provide background about them in an objective and impartial manner. They are prepared by the Parliamentary Information and Research Service, which carries out research for and provides information and analysis to parliamentarians and Senate and House of Commons committees and parliamentary associations. Legislative Summaries are revised as needed to reflect amendments made to bills as they move through the legislative process.

Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

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-15
(Legislative Summary)

Publication No. 41-1-C15-E

Ce document est également publié en français.

CONTENTS

LEGISLATIVE SUMMARY OF BILL C-15: AN ACT TO AMEND THE NATIONAL DEFENCE ACT AND TO MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

1 BACKGROUND

1.1 PURPOSE OF THE BILL

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), was introduced in the House of Commons on 7 October 2011 by the Minister of National Defence. **It passed second reading and was referred to the House of Commons Standing Committee on National Defence on 12 December 2012. The committee presented its report on 7 March 2013, and the bill passed third reading in the House on 1 May 2013.**

The bill largely reproduces the provisions of the former Bill C-41, which received first reading on 16 June 2010 during the 3rd Session of the 40th Parliament, but which died on the *Order Paper* when Parliament was dissolved for the 41st general election.

Bill C-15 also takes into account the amendments to the *National Defence Act* (NDA)[1] made by the former Bill S-3, which was passed into law in March 2007[2] and provides for a national databank for information about persons found guilty of military offences of a sexual nature. However, unlike the former Bill C-7,[3] which was introduced in the House of Commons on 27 April 2006 but did not proceed past first reading, Bill C-15 does not spell out the responsibilities of the Military Police Complaints Commission, nor does it include the 60-day deadline for placing a Provost Marshal's decision on a complaint before the Commission for review.[4]

Overall, Bill C-15 responds to many of the recommendations made by the Right Honourable Antonio Lamer, former Chief Justice of Canada, in his 2003 report on the first independent review of amendments made to the NDA in 1998 under the former Bill C-25 (Lamer Report).[5]

The amendments set out in Bill C-15 clarify the amendments introduced by the former Bill C-25.[6] While Bill C-15 makes the military justice system more consistent with the justice system established in the *Criminal Code*,[7] it also takes into account the unique nature of the military justice system, and therefore aims to provide a degree of flexibility, needed for maintaining discipline. The bill aims to enhance the effectiveness of the military justice system and provides greater independence and impartiality for the key players in that system, in particular military judges and the Director of Defence Counsel Services.

Bill C-15 was introduced into the House of Commons on the same day as Bill C-16, the Security of Tenure of Military Judges Act,[8] which provides security of tenure for military judges until a fixed age of 60 years, subject only to removal for cause on the recommendation of an Inquiry Committee.[9] Bill C-16 received Royal Assent on 29 November 2011.

1.2 Military Justice in Canada: An Overview of Recent Recommendations and Reforms

The *National Defence Act* creates a separate system of military justice, including a system of military courts.[10] The Act sets out a *Code of Service Discipline*, which includes specific military offences and incorporates all offences under the *Criminal Code* or any other Act of Parliament.[11] The *Code of Service Discipline* applies to members of the Canadian Forces and, in limited circumstances enumerated in the *National Defence Act*, to specific categories of civilians.[12]

Since the *Canadian Charter of Rights and Freedoms* (Charter) came into force in 1982,[13] Parliament and the courts have considered issues relating to the structure of the military justice system several times; as a result, the system has evolved considerably.[14]

1.2.1 Bill C-25 (1998)

The last comprehensive legislative reform of the military justice system occurred in 1998 with the passage of Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts.

Bill C-25 made wide-ranging amendments to the *National Defence Act*. The bill responded to many of the recommendations made in:

- the 1997 *Report of the Special Advisory Group on Military Justice and the Military Police Investigation Services*, chaired by former Supreme Court Chief Justice Brian Dickson;[15]
- the 1997 report of the Somalia Commission of Inquiry;[16] and
- the 1997 report of the Minister of Defence, the Honourable M. Douglas Young, to the Prime Minister in *Report to the Prime Minister on Leadership and Management in the Canadian Forces*.[17]

The purpose of the amendments in Bill C-25 was to promote integrity and fairness within the system established by the NDA. The principal changes included:

- abolition of the death penalty;
- application of common law provisions concerning ineligibility for conditional release;
- creation of the Canadian Forces Grievance Board (the Grievance Board), an independent body responsible for the impartial disposition of grievances in the Canadian Forces;
- establishment of the Military Police Complaints Commission, to provide independent oversight of complaints about the conduct of the military police and allegations of interference in investigations conducted by the military police;
- creation of new positions within the military justice system – the Director of Military Prosecutions and the Director of Defence Counsel Services – thus segregating the functions of investigation, prosecution and defence of accused persons;

- clarification and limitation of the functions of the Judge Advocate General, the Minister of National Defence and the members of the chain of command; and
- strengthening of the independence of military judges, by amending the provisions relating to their appointment, powers and tenure.

The bill received Royal Assent on 10 December 1998. The various parts of the bill came into force between 1999 and 2000.

1.2.2 LAMER REPORT (2003)

Clause 96 of Bill C-25 required that the minister undertake an independent review of the amendments to the NDA every five years following the bill's coming into force. Accordingly, former Chief Justice Lamer began the first review in March 2003, and his report was tabled in Parliament by the Minister of National Defence, John McCallum, on 5 November 2003.

The independent review related solely to the provisions and operation of Bill C-25, and did not encompass the NDA as a whole.

In the conclusion to his report, Justice Lamer observed that "Canada's military justice system generally works very well, subject to a few changes."[18] To improve an already effective military justice system that provided a model on the international scene, he recommended that certain changes be made.

The 88 recommendations in the Lamer Report were primarily designed to provide better guarantees of the independence of key players, in particular military judges and the Director of Defence Counsel Services, and to improve the grievance and military police complaints process. The proposed amendments to the *Code of Service Discipline* reflected a desire to incorporate certain *Criminal Code* rules into the military justice system.

1.2.3 BILLS C-7 (2006) AND C-45 (2008)

Bill C-7, An Act to amend the National Defence Act, was introduced on 27 August 2006. It did not go beyond first reading and died on the *Order Paper* at the end of the session. Bill C-45, An Act to amend the National Defence Act, which was virtually identical to Bill C-7, was introduced on 3 March 2008 but met the same fate as its predecessor when Parliament was dissolved for the 40th general election. Both bills proposed follow-up on the recommendations in the Lamer Report, in the form of amendments to the NDA. If either of them had passed, a number of changes similar to those found in Bill C-15 would have been made to the NDA:

- removal of the Director of Defence Counsel Services for cause only;
- security of tenure for military judges until retirement, and appointment of part-time military judges;
- description of the Military Judges Inquiry Committee and the Military Judges Compensation Committee in the provisions of the NDA;
- unanimous decisions by a court martial panel on guilt, unfitness to stand trial and non-responsibility on account of mental disorder;

- incorporation of a statement of sentencing principles;
- inclusion of new categories of sentence: absolute discharge, intermittent sentences and restitution;
- greater consistency with the rules in the *Criminal Code*, including in relation to arrest, preventive custody and victim impact statements; and
- delegation of the powers of the Chief of the Defence Staff (CDS) in relation to the grievance process.

1.2.4 BILL C-60 (2008)

Bill C-60, An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act, received Royal Assent on 18 June 2008. Bill C-60 represented the legislative response to the decision of the Court Marshal Appeal Court of Canada in *R. v. Trépanier*.[19]

On 24 April 2008, in *R. v. Trépanier*, the Court Martial Appeal Court of Canada declared unconstitutional the provisions in the NDA enabling the Director of Military Prosecutions to choose the type of court martial for a given accused (section 165.14 of the NDA). Bill C-60 rectified this defect by amending the NDA to include a three-pronged system consistent with the requirements of the decision in *Trépanier*: In certain cases, the convening of a General Court Martial is mandatory; in certain cases, the convening of a Standing Court Martial is mandatory; and, in certain cases the accused can select the type of court martial to be instituted.[20] Bill C-60 also responded to recommendations made in the Lamer Report and implemented amendments to the NDA that had been proposed in Bills C-7 and C-45.

Three significant amendments to the military justice system were introduced in Bill C-60:

- reduction of the types of court martial from four to two (General Court Martial and Standing Court Martial), specifying the circumstances in which each type of court martial could be used;
- the possibility for accused persons, in certain cases, to select the type of court martial to be convened; and
- the requirement that military panels, which act like juries in General Courts Martial, reach unanimous rather than majority verdicts of guilty or not guilty, of unfitness to stand trial or of not responsible on account of mental disorder.

1.2.5 *EQUAL JUSTICE*: THE REPORT OF THE STANDING SENATE COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

In a letter dated 17 June 2008, the Minister of National Defence asked the Standing Senate Committee on Legal and Constitutional Affairs to study the provisions and applications of Bill C-60 once the bill was enacted and to provide him with its observations and recommendations.[21] The committee's observations and recommendations were set out in its final report, *Equal Justice: Reforming Canada's System of Courts Martial*, tabled in the Senate in May 2009.[22] The committee issued nine recommendations relating to the conduct of courts martial and sentencing in the military courts.

The government's response to this report, tabled in the Senate on 22 October 2009, indicated that the government accepted, or accepted in principle, all of these recommendations.[23]

1.2.6 BILL C-41 (2010)

Bill C-41, 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), was introduced in the House of Commons on 16 June 2010 by the Minister of National Defence. The bill was reported back to the House of Commons following study by the House of Commons Standing Committee on National Defence,[24] but it died on the *Order Paper* when Parliament was dissolved for a general election in March 2011.

The bill incorporated the core provisions proposed in bills C-7 and C-45 not included in Bill C-60. The amendments in Bill C-41 followed up on many of the recommendations in the 2003 Lamer Report as well as on those made in the May 2009 report of the Standing Senate Committee on Legal and Constitutional Affairs.[25]

Unlike Bill C-7,[26] Bill C-41 did not spell out the responsibilities of the Military Police Complaints Commission,[27] nor did it include the 60-day deadline for requesting review of a decision of the Provost Marshal on a conduct complaint by the Commission.[28] Appearing before the House of Commons Standing Committee on National Defence in February 2011, the Honourable Peter MacKay, Minister of National Defence, indicated that this omission was deliberate. Given the matters under consideration by the Commission at that time, the Minister explained that he did not want legislative changes to "impact or in any way impugn" an ongoing complaints process.[29]

The committee also heard evidence from a number of witnesses and received written submissions on Bill C-41. Witnesses expressed strong support for a number of the reforms enacted in the bill, in particular with respect to the wide-ranging sentencing reforms, stronger protections for the independence and impartiality of military judges and improved due process provisions for accused persons. The provision of a statutory basis for the duties and responsibilities of the Provost Marshal was also commended as a positive development.[30]

Some witnesses raised concerns regarding specific clauses in the bill, including:

- provisions that would permit the Vice Chief of Defence Staff (VCDS) to issue instructions in respect of specific military police investigations;[31]
- provisions regarding the composition of the Grievance Board and provisions allowing active service members of the Canadian Forces to be appointed to the Grievance Board;[32] and
- provisions making the CDS the final authority in relation to grievances submitted by military judges not related to their judicial duties.[33]

A number of submissions to the committee suggested that while the bill was a very positive step, it ought to have gone further by, for example, reforming the summary trial system to include more procedural protections for accused persons or by diminishing the consequences of conviction before such tribunals.[34] The lack of authority of the CDS to provide financial compensation when compensation is found to be due under the grievance process, and the failure to implement certain outstanding recommendations in the Lamer Report relating to the Grievance Board were also raised as concerns during the hearings.[35]

The committee reported the bill back to the House of Commons on 24 March 2011, with amendments to six clauses.[36] Shortly thereafter, Parliament was dissolved and the bill died on the *Order Paper*. An amendment by the committee adding the duties and responsibilities of the Provost Marshal to the scope of future independent reviews of the military justice system was incorporated into Bill C-15. The committee's other amendments were not retained.

1.2.7 BILL C-16 (2011)

On 2 June 2011, in the case of *R. v. Leblanc*,[37] the Court Martial Appeal Court declared the current scheme for the appointment and tenure of military judges to be unconstitutional. The Court suspended the declaration of invalidity for six months to give Parliament an opportunity to amend the legislation. Bill C-16 was introduced in the House of Commons in October 2011, at the same time as Bill C-15.

The stated intention of Bill C-16 was to remove any impression of outside influence on the decisions of military judges in order to meet constitutional standards for judicial independence and impartiality. The bill was separated from the more comprehensive reforms to the military justice system envisioned in Bill C-15 in order to facilitate the swift passage of the amendments to the NDA in time to meet the deadline set out by the Court Martial Appeal Court in *R. v. Leblanc*.

During hearings before the Senate Standing Committee on National Defence, questions were raised regarding the constitutionality of the provision in the bill requiring military judges to retire at a fixed age of 60 years, even if the judge meets the physical fitness requirements for continued service in the Canadian Forces. Discussion centred on whether this provision violated legal prohibitions on discrimination on the basis of age in the *Canadian Human Rights Act*[38] and/or under section 15 of the Charter, guaranteeing the equality rights of all Canadians.[39]

Bill C-16 received Royal Assent on 29 November 2011.[40] Coordinating amendments in Bill C-15 provide that the relevant provisions related to the appointment and security of tenure of military judges in Bill C-15 will replace those contained in Bill C-16 if Bill C-15 receives Royal Assent.

1.2.8 Second Independent Review of the Operation of Bills C-25 and C-60 (2011)

In May 2011, the Minister of National Defence, the Honourable Peter MacKay, appointed the Honourable Patrick J. LeSage, retired Chief Justice of the Ontario Superior Court of Justice, to conduct the second independent review of Bill C-25 (first reviewed in the Lamer Report) and Bill C-60, passed in 2008.[41] Section 96 of Bill C-25, provides that the independent review should consider all of the provisions of that bill. However, in a letter dated 25 March 2011, Minister MacKay stated,

> In order to maximize the utility of the second independent review, the review might most effectively be accomplished by focusing upon the Lamer Report recommendations which have already been implemented.[42]

The Second Independent Review authority was directed to provide a final report suitable for release to the public by 31 December 2011. **The *Report of the Second Independent Review Authority to the Honourable Peter G. MacKay Minister of National Defence* was tabled in the House of Commons on 8 June 2012.[43]**

1.3 Principal Amendments Made by Bill C-15

Bill C-15 is part of an on-going process of reform of the military justice system. It incorporates the core provisions proposed in bills C-41, C-7 and C-45, while taking into account the amendments to the NDA upon passage of Bill C-60. The amendments in Bill C-15 implement many of the recommendations in the Lamer Report as well as several of those made in the May 2009 report of the Standing Senate Committee on Legal and Constitutional Affairs. Among the proposed amendments are:

- the reform of military sentencing practices, including the articulation of sentencing principles, the introduction of alternative sentencing options, improvements to the system for suspending custodial sentences, and provision for victim participation at certain stages of proceedings;
- reforms to the appointment and tenure system for military judges to ensure that their independence and impartiality meets constitutional standards;
- creation of a panel of Reserve Force military judges;
- expansion of the pool of members of the Canadian Forces eligible to sit on a court martial panel, reducing the rank of the senior member in most cases and increasing the number of non-commissioned members eligible to sit on a panel;
- limitations on the power of arrest without a warrant to meet constitutional standards;
- more effective resolution processes for grievances and complaints involving the Military Police;
- clarification of the position and enunciation of the responsibilities of the Canadian Forces Provost Marshal; and
- extension of the requirement for independent review to a broader range of NDA provisions, to be conducted every seven years.

2 DESCRIPTION AND ANALYSIS

2.1 DIRECTOR OF MILITARY PROSECUTIONS AND DIRECTOR OF DEFENCE COUNSEL SERVICES

Before Bill C-25 came into force, the Office of the Judge Advocate General handled both prosecution services and defence services for accused persons. Bill C-25 eliminated those functions by creating two positions: the Director of Military Prosecutions (DMP) and the Director of Defence Counsel Services (DDCS). The DMP is primarily responsible for laying charges and conducting prosecutions in courts martial. The DDCS is mainly responsible for supervising and managing the provision of legal services to accused persons.

2.1.1 REMOVAL FOR CAUSE (CLAUSE 71)

The minister appoints the DMP and the DDCS,[44] and they have security of tenure for a maximum renewable term of four years. At present, however, the security of tenure enjoyed by the DMP differs from that of the DDCS. In order to remove the DMP, the minister must obtain a recommendation from an inquiry committee. The DDCS does not have that protection. Clause 71(1) changes the situation by amending section 249.18(2) of the NDA and providing that the DDCS may only be removed upon the recommendation of an inquiry committee.[45]

2.1.2 REMUNERATION (CLAUSE 3)

Neither the NDA nor the *Queen's Regulations and Orders for the Canadian Forces* (QR&O) states how the remuneration of the DMP and the DDCS is established. To ensure that the process is transparent, clause 3(1) amends section 12(3)(*a*) of the NDA and provides that the pay of both directors shall be prescribed by Treasury Board regulation.[46]

2.2 MILITARY JUDGES

Before the passage of Bill C-16, military judges were appointed by the Governor in Council with security of tenure for a term of five years. Military judges could be removed during their tenure only by the Governor in Council on the recommendation of the Inquiry Committee created under the NDA.[47] Terms were renewable on the recommendation of the Renewal Committee until judges reached the age of retirement set out in regulations.[48]

In *R. v. Leblanc*, the Court Martial Appeal Court held that sections 165.21(2) to 165.21(4) of the NDA and articles 101.15, 101.16 and 101.17 of the QR&O, which together set out the procedure for the appointment and reappointment of military judges and their term of judicial tenure, breached the right of an accused to a trial before an independent and impartial tribunal under section 11(*d*) of the Charter.

To enhance judicial independence and impartiality, Bill C-15 reproduces amendments made in Bill C-16 to remedy the constitutional defect identified in *R. v. Leblanc* and makes additional amendments related to the remuneration and conditions of employment of military judges.

2.2.1 Oath of Military Judges (Clause 41)

At present, military judges must take an oath before each trial.[49] New section 165.21(2) of the NDA provides that they will henceforth take an oath when they are appointed.[50]

2.2.2 Security of Tenure of Military Judges (Clause 41)

Clause 41 of Bill C-15 amends section 165.21 of the NDA to provide that military judges hold office until they request to resign, or until they reach the age of 60 years (new section 165.21(4) of the NDA). The bill also sets out the notification process for resignation by military judges (new section 165.21(5) of the NDA).[51]

Under the bill, a military judge may be removed for cause only on the recommendation of a Military Judges Inquiry Committee (new section 165.21(3) of the NDA).[52]

2.2.3 Military Judges Inquiry Committee (Clause 45)

While the present NDA provides that the Governor in Council must obtain a recommendation of the Inquiry Committee to remove a military judge, the composition of the committee and the factors it must consider are set out only in the QR&O.[53]

The bill incorporates into new sections 165.31 to 165.32 of the NDA the essence of the rules set out in the QR&O.[54] The members of the committee will still be judges of the Court Martial Appeal Court and be appointed by the Chief Justice of that Court (new section 165.31(1) of the NDA). At the request of the minister, the committee must commence an inquiry into whether a military judge should be removed from office (new section 165.32(1) of the NDA), and it has the discretion to inquire into whether a military judge should be removed from office as a result of any complaint or allegation that it receives in writing from any other source (new section 165.32(2) of the NDA).

On the other hand, the bill differs in some respects from the scheme established by the QR&O, in particular with regard to the number of members of the committee and the grounds for removal. While the QR&O required that the committee be composed of at least two judges of the Court Martial Appeal Court, new section 165.31(1) of the NDA requires that at least three judges sit on the committee. New section 165.32(7) of the NDA reiterates the four grounds for removal set out in the QR&O:

- infirmity;
- having been guilty of misconduct;
- having failed in the due execution of his or her judicial duties; or
- having been placed, by his or her conduct or otherwise, in a position incompatible with the due execution of his or her judicial duties.

The bill adds a fifth ground: the fact that the military judge does not satisfy the physical and medical fitness standards applicable to officers. This last ground is currently considered by the Renewal Committee when renewing the appointment of a military judge.

2.2.4 Military Judges Compensation Committee (Clause 45)

The rates and conditions of issue of military judges' pay are prescribed by the Treasury Board.[55] At present, the NDA provides that judges' remuneration must be reviewed regularly by a committee, but the composition of the committee and the factors it is to consider in its review are set out in the QR&O.[56]

Clause 45 incorporates into the NDA the rules regarding judicial remuneration that are currently set out in the QR&O.[57] The Military Judges Compensation Committee remains composed of three part-time members: one is appointed by the minister, one is nominated by the military judges, and the chair is nominated by the other two members (new section 165.33(1) of the NDA). To determine whether military judges' remuneration is adequate, the committee considers the same factors as currently set out in the QR&O, including the federal government's economic position, the financial security of the military judiciary and the need to attract outstanding candidates to the military judiciary (new section 165.34(2) of the NDA).

The committee conducts its review of the military judiciary every four years (new section 165.34(3) of the NDA), and at any time at the request of the minister (new section 165.35(1) of the NDA).

Clause 46 stipulates that military judges represented before the committee by a lawyer shall be entitled to the costs of such representation.

The bill does not incorporate the Lamer Report's recommendation that the annual salary of military judges be set out in the NDA, along with a formula for the periodic revision and update of salaries.[58]

2.2.5 Chief Military Judge (Clauses 43 and 45)

The bill also clarifies the role of the Chief Military Judge. The Chief Military Judge, who must hold a rank no lower than colonel (new section 165.24(2) of the NDA), may, with the approval of the Governor in Council and following consultation with a rules committee appointed by the Governor in Council, make rules governing practice and procedure in courts martial. For example, rules may be made regarding pre-trial conferences, orders for release or detention, documents filed in court and the scheduling of trials (new section 165.3 of the NDA).

The Governor in Council may appoint a Deputy Chief Military Judge who can exercise the responsibilities of the Chief Military Judge in the event that the latter is absent or unable to carry out his or her duties, or the office is vacant (new sections 165.28 and 165.29 of the NDA).[59]

2.2.6 Part-Time Judges (Clauses 41, 43, 44 and 45)

To ensure that more military judges will be available to meet the growing need for judicial services, clause 41 permits a Reserve Force Military Judges Panel to be established (clause 41; new section 165.22(1) of the NDA).

The Governor in Council may name to the panel any officer of the reserve force who has been an officer for at least 10 years and:

- is a barrister or advocate of at least 10 years' standing at the bar of a province;
- has been a military judge;
- has presided at a Standing Court Martial or a Special General Court Martial; or
- has been a judge advocate at a court martial (new section 165.22(1) of the NDA).

It is the Chief Military Judge who selects a reserve force officer named to the panel to perform the duties of a military judge (clause 41; new section 165.222(1) of the NDA).

The Supreme Court of Canada has held that the fact that a judge performs his or her duties part-time does not create a reasonable apprehension of bias.[60] However, the judge's activities outside his or her judicial functions may cause problems.[61] Clause 41 provides that a part-time military judge shall not engage in any business or professional activity that is incompatible with his or her judicial duties (new section 165.223 of the NDA). As well, a part-time military judge may not be appointed the Chief Military Judge, exercise any delegated functions of the Chief Military Judge, or be appointed the Deputy Chief Military Judge (clauses 43, 44 and 45; new sections 165.24(1), 165.26, 165.28 of the NDA).

In addition, under clause 41, the name of a reserve force military judge will be removed from the panel upon retirement or upon release at his or her request from the Canadian Forces (new section 165.221(2) of the NDA).

2.2.7 Immunity of Military Judges (Clause 42)

Clause 42 expressly grants military judges the same protection from civil liability that the common law provides to civilian judges in superior courts which hear criminal cases.[62]

2.3 Court Martial Administrator (Clause 40)

The Court Martial Administrator is responsible for convening the court martial, in response to a decision by the DMP, and appointing the members of a General Court Martial.[63] Clause 40 amends section 165.19 of the NDA to provide that the Court Martial Administrator has the power to summon the accused person to appear before the court martial.[64]

2.4 Arrest, Pre-Trial Custody and Commencement of Proceedings

2.4.1 Arrest Without Warrant (Clauses 27 and 28)

The Court Martial Appeal Court in *R. v. Gauthier*,[65] and the Federal Court of Appeal in *Dulude v. The Queen*,[66] held that the Charter places limits, similar to those which apply under the *Criminal Code*,[67] on the discretion to arrest without a warrant conferred in sections 154 to 156 of the NDA. Clauses 27 and 28 of Bill C-15 essentially incorporate into the NDA the grounds set out in the *Criminal Code* for a lawful arrest without warrant.[68] Under the bill, an officer, a non-commissioned member (clause 27) or a member of the military police (clause 28) may arrest a person without warrant only:

- in the case of a serious offence;[69]
- if the arrest is in the public interest (for example, to identify the person or preserve evidence);
- in order to prevent the continuation or repetition of an offence or the commission of another offence; or
- if there are reasonable grounds to believe that the person will attempt to evade prosecution if he or she is released.

2.4.2 Pre-Trial Release and Retention in Custody of a Person Who Has Been Arrested (Clauses 30, 31 and 32)

At present, the NDA allows an officer in the chain of command to review a custody review officer's decision to release a person who has been arrested and to alter any release conditions that have been imposed on that person.[70] Military judges may review any decision to detain an individual,[71] but currently they do not have the power to review a decision to release, which includes the decision to impose conditions on release.

Clause 31 provides that a military judge may review release decisions of the custody review officer and the officer in the chain of command.[72] As a result, military judges may also alter any release conditions that have been imposed. A military judge may also, after the expiry of 30 days (new section 158.7(3) of the NDA), review the earlier decision of a military judge and make a direction regarding release.

At present, a military judge may direct that a person be detained in custody before trial (pre-trial detention) where "any other just cause [to do so] has been shown."[73] In the case of *R. v. Hall*,[74] the Supreme Court of Canada held that this ground, which also

appears in the *Criminal Code*,[75] was contrary to the Charter. Therefore, clause 32 replaces the expression "any other just cause has been shown" in section 159.2(*c*) of the NDA with the phrase "custody is necessary to maintain public trust in the administration of military justice."[76] That ground was held to be valid in *Hall*.

Currently, the NDA does not clearly specify the point at which an order for retention in custody, or the conditions of release on bail, expire. Clause 33 provides that the circumstances in which orders for retention in custody or conditions of release terminate are to be prescribed by the Governor in Council.[77] In his report, former Chief Justice Lamer noted that the Canadian Bar Association suggested that a custody order or conditions of release should expire 14 days after arrest, if no charge has been laid.[78]

2.4.3 Laying Charges (Clauses 34 and 39)

The NDA does not currently require that a charge be laid within a reasonable time against a person who has been retained in custody or released.[79] The Court Martial Appeal Court has held that the Charter nonetheless requires that charges under the NDA be subject to principles similar to those set out in the *Criminal Code* requiring that charges be laid without unreasonable delay.[80] Clause 34 provides that a charge must be laid as expeditiously as circumstances permit.[81]

Clause 39 provides that a charge remains valid despite an irregularity, an informality or a defect. In addition, if the DMP decides not to prefer a charge against an accused, it may reverse that decision and file a charge against the accused later.[82] At present, the NDA permits only the withdrawing of a charge already laid.[83]

2.5 Service Tribunals

The bill makes a number of changes to the NDA in respect of proceedings before service tribunals. The term "service tribunal" includes both a court martial and a person presiding over a summary trial.

2.5.1 Summary Trial (Clauses 35 and 36)

At present, the NDA stipulates that a summary trial must begin within one year after the day on which the offence is alleged to have been committed.[84] Once the limitation period is over, the charge must be tried by court martial. Clause 35 amends section 161(1.1) of the NDA to include the additional requirement that a charge be laid within six months of the day on which the offence is alleged to have been committed if it is to be tried by summary trial before a commanding officer. The clause would also allow an accused person to waive the one-year limitation period (new section 163(1.2) of the NDA).[85] Clause 36 introduces the same requirements for charges laid in proceedings where a summary trial will be held before a superior commander (sections 164(1.1) and 164(1.2) of the NDA).

Currently, only officers below the rank of lieutenant-colonel are subject to summary trial. Clause 36(1) makes officers holding the rank of lieutenant-colonel subject to summary trial. Clause 36 also prevents military judges from being tried by summary trial (new section 164(1.3) of the NDA).

2.5.2 Courts Martial

2.5.2.1 Public Access (Clause 50)

Clause 50 amends section 180 of the NDA to increase the range of proceedings before military judges that normally must be held in public. In addition to courts martial, which were already presumptively public under the NDA, Bill C-15 provides that the following types of proceedings will also be public (new section 180(1) of the NDA):

- proceedings relating to pre-trial custody and release (similar to bail hearings in civilian courts);
- preliminary proceedings prior to a trial by court martial;
- sentencing proceedings and hearings related to the breach of conditions imposed in cases where a sentence is suspended by a service tribunal or the Court Martial Appeal Court; and
- hearings related to the breach of conditions of release pending appeal.

This change represents a step toward reducing the differences between military court proceedings and civilian criminal trials.

New section 180(2) of the NDA adds two new situations in which a court martial or a military judge may order that the public be excluded: cases that may cause injury to national defence or to national security.

2.5.2.2 Membership of a General Court Martial Panel (Clauses 47 and 48)

Clause 47 changes the rank of the senior member of the five-member General Court Martial panel from colonel to lieutenant-colonel (section 167(2) of the NDA). Clause 47 consequently changes the rank of the senior member and of the other members of the panel depending on whether the accused person is a colonel (section 167(5) of the NDA), an officer of the rank of or below the rank of lieutenant-colonel (section 167(6) of the NDA), or a non-commissioned member (section 167(7) of the NDA).

Bill C-15 provides that a majority of those sitting on the panel trying a non-commissioned member will now be non-commissioned members themselves, rather than officers. Whereas the former Bill C-41 had required that only one of the three non-commissioned members be of or above the rank of sergeant, Bill C-15 requires that all non-commissioned members on the panel be of or above that rank (section 167(7) of the NDA).

In addition, unlike Bill C-41, Bill C-15 (clause 48), retains the NDA's prohibition on officers below the rank of captain sitting on General Court Martial panels (section 168(*e*) of the NDA).[86]

2.5.2.3 Absconding Accused (Clause 54)

Clause 54, like section 475 of the *Criminal Code*, deals with the case of an accused person who absconds during the course of his or her trial.[87] Frequently, a person accused of a military offence fails to appear at trial.[88] The military judge presiding over a court martial may now continue the trial and pass sentence in the absence of the accused. Counsel for the accused is not deprived of any authority he or she may have to represent an absconding accused. However, case law under the *Criminal Code* suggests that this clause will not confer any authority for counsel to continue to act for the accused, nor will it require counsel to do so.[89]

2.5.2.4 Civil Defences (Clause 15)

Clause 15 permits accused persons to raise the same legal defences to charges under the *Code of Service Discipline* as would be available in a trial before civilian courts (new section 72.1 of the NDA).

2.5.3 Mental Disorder (Clause 59)

Clause 59 imports the procedure set out in the *Criminal Code*[90] regarding the holding of hearings concerning mental disorders, with a few adjustments. Currently, if an accused is declared to be unfit to stand trial or not responsible on account of mental disorder, the court martial will hold a hearing to decide whether to release the individual or order that the individual be detained in custody in a hospital. The amendments provide for greater participation by victims in proceedings and require that, in making a disposition, the court martial consider, among other things, any victim impact statement (new section 202.201(15) of the NDA). The court may order that the DDCS appoint counsel for an accused who is not already represented (new section 202.201(8) of the NDA).

2.5.4 Sentencing (Clause 62)

The Lamer Report stated that the sentencing provisions in the NDA "require extensive reform"[91] and recommended that a more flexible range of punishments, similar to those found in the *Criminal Code*, be permitted. Clause 62 therefore adds a new division on sentencing to the NDA.[92]

2.5.4.1 Purposes and Principles of Sentencing by Service Tribunals

New sections 203.1 to 203.4 of the NDA deal with the purposes and principles of sentencing.

Section 203.1(1) of the NDA stipulates that the fundamental purposes of sentencing are to promote the operational effectiveness of the Canadian Forces – in particular the maintenance of discipline, efficiency and morale – as well as respect for the law and the maintenance of a just, peaceful and safe society. In addition to the purposes stated in the *Criminal Code*,[93] which include denunciation, deterrence and rehabilitation, section 203.1(2) of the NDA sets out certain purposes specific to the military justice system, including public trust in the Canadian Forces and the promotion of obedience to lawful commands and orders.

Sections 203.2 and 203.3 of the NDA are designed to prevent unduly harsh sentences from being imposed by service tribunals.[94] These sections reiterate sentencing principles stated in the *Criminal Code*,[95] including the important principle that the sentence must be proportional to the gravity of the offence and the degree of responsibility of the offender. The new sections also adapt certain principles to the military justice system. For example, they require that a service tribunal[96] impose the least severe sentence required to maintain discipline, efficiency and morale (new section 203.3(*d*) of the NDA). Section 203.3(*e*) of the NDA provides that a service tribunal must take into consideration any indirect consequences of the finding of guilt or of the sentence.

Section 203.3(*a*) of the NDA sets out the aggravating circumstances listed in the *Criminal Code* that must be taken into account when sentencing[97] and adds a number of aggravating circumstances specific to the military justice system:

- abuse of rank (section 203.3(*a*)(i));
- substantial harm to the conduct of a military operation (section 203.3(*a*)(v)); and
- offence committed in a theatre of hostilities (section 203.3(*a*)(vi)).

2.5.4.2 Evidence

New section 203.5 of the NDA provides that when a court martial sentences an individual, a disputed fact must be proved on a balance of probabilities, which is the standard of proof in civil trials. However, the prosecution must always prove aggravating facts and previous convictions beyond a reasonable doubt.

2.5.4.3 Victim Impact Statement

New sections 203.6 to 203.8 of the NDA incorporate into the NDA the rules in the *Criminal Code* relating to victim impact statements in their entirety.[98] The statement relates to the harm done to or loss suffered by the victim arising out of the perpetration of the offence and may be submitted to a court martial.

Under the definition in new section 203 of the NDA, a victim is a person to whom harm was done or who suffered loss as a direct result of the commission of the offence, and includes, if that person is incapable of making a statement, a relative, the spouse or common-law partner, or a caregiver.

The victim must be informed that he or she may prepare a statement. The court martial may adjourn the proceedings to permit a victim to prepare a statement (section 203.7 of the NDA).

2.5.4.4 New Sentences

The bill introduces three new types of sentences into the NDA that are also found in the *Criminal Code*: absolute discharge, intermittent sentences and restitution orders.[99]

2.5.4.4.1 Absolute Discharge

Having regard to the best interests of the accused and to the public interest, a service tribunal may direct that an accused person who is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life, be discharged absolutely (new section 203.8(1) of the NDA). These are the same criteria as are provided in the *Criminal Code*,[100] although the Code also allows for a conditional discharge.

A discharged offender is deemed not to have been convicted (new section 203.8(2) of the NDA). However, a firearms prohibition order (clause 22), a restitution order (new section 203.9 of the NDA) or an order for restitution of property (clause 74) may be made.

2.5.4.4.2 Restitution

New sections 203.9 to 203.94 deal with restitution orders, which a court martial may impose in addition to any other sentence imposed on an offender (service tribunals are not given the power to make restitution orders). A restitution order will require that the offender pay the victim an amount to cover property damage or bodily or psychological harm resulting from the offence (new section 203.9 of the NDA). For example, a victim may have lost income or, where the victim is a member of the offender's household, had expenses for housing, food and transportation. Money found in the possession of the offender at the time of the arrest may be used to cover part of those expenses (new section 203.92 of the NDA). These rules are taken from sections 738 and following of the *Criminal Code*. The bill also provides for civil enforcement of restitution orders (new section 203.91 of the NDA).

2.5.4.4.3 Intermittent Sentences (Clause 24)

The *Criminal Code* provides that an offender may be ordered to serve a sentence intermittently,[101] which often means on weekends. If this were not possible, a reservist who had to serve a sentence of imprisonment or detention might lose his or her civilian employment.[102]

Clause 24 therefore allows a service tribunal that imposes a sentence of imprisonment or detention for 14 days or less[103] to order that the offender serve the sentence intermittently (new section 148(1) of the NDA). During periods when the offender is not in confinement, he or she must comply with the conditions prescribed in the order. If the offender breaches a condition, the service tribunal may vary the conditions or add other conditions, or order that the offender serve the sentence on consecutive days (new section 148(5) of the NDA).

2.5.4.5 Sentencing of Officer Cadets (Clause 36)

At present, the NDA allows a superior commander presiding at a summary trial of an officer cadet to impose three types of punishment only: severe reprimand, reprimand and fine.[104] To allow the superior commander greater flexibility, clause 36(4) also allows him or her to impose a minor punishment.[105] Former Chief Justice Lamer suggested that this kind of punishment would be effective for maintaining discipline in an educational environment.[106]

2.6 Suspension of Imprisonment or Detention (Clauses 64, 65 and 66)

At present, to meet the needs of the military, the NDA allows a service tribunal and a "suspending authority" prescribed in regulations by the Governor in Council[107] to suspend the execution of punishment of an offender sentenced to imprisonment or detention.[108] The sentence is served at a later date. Currently, the "suspending authorities" listed are members of the military chain of command, not judges.

Clause 64 provides that the Court Martial Appeal Court also has this power (new section 215(1) of the NDA).[109] Responding in part to concerns articulated in the Lamer Report that the suspension provisions in the NDA lacked adequate safeguards against abuse, clause 65 provides that the suspending authority may suspend a punishment only if there are imperative reasons relating to military operations or the welfare of the offender (new section 216(2) of the NDA).[110]

Where a punishment is suspended by a service tribunal or the Court Martial Appeal Court, certain conditions, including keeping the peace and being of good behaviour, must be imposed on the offender (new section 215(2) of the NDA). Other reasonable conditions may also be imposed (new section 215(3) of the NDA). The suspension of punishment may be revoked, if the offender breaches these conditions, by the offender's commanding officer (for conditions imposed by summary trial), by a military judge (for conditions imposed by a court martial) or by a judge of the Court Martial Appeal Court (for conditions imposed by that Court) (new section 215.2 of the NDA).

Where punishment is suspended by a "suspending authority," the suspension may also be revoked if:

- the imperative reasons relating to military operations or the welfare of the offender no longer exist; or
- the conduct of the offender is inconsistent with the reasons for which the punishment was suspended (new section 216(2.2) of the NDA).

The suspending authority must still review the suspension every three months. The suspending authority may, at the time of the review, remit the punishment, in accordance with regulations to be made by the Governor in Council, as provided by clause 66. The bill does not alter the provisions of the NDA that provide for automatic remission of punishments and detention in certain circumstances.[111]

2.7 Enforcement of Fines (Clause 21)

While the current NDA allows a service tribunal to sentence an offender to pay a fine,[112] it is silent as to recovery of unpaid fines. Clause 21 establishes a mechanism for the civil enforcement of fines.[113]

2.8 CRIMINAL RECORD (CLAUSES 75 AND 105)

Clause 75 **adds to the NDA new section 249.27(1), which** provides that an accused who is convicted **– or was convicted before the coming into force of the new section –** of a service offence has not been convicted of a criminal offence in two situations:

- the person is convicted of an offence punishable by ordinary law[114] and designated as a "contravention" (**as opposed to a criminal offence) by regulation of the Governor in Council**[115] or
- **the person is convicted of any offence under the sections listed in the clause, for which the person has also been sentenced to a punishment specified in clause.**

When Bill C-15 was introduced in the House of Commons, the offences listed in new section 249.27(1)(*a*) were insubordinate behaviour;[116] quarrels and disturbances;[117] absence without leave;[118] drunkenness;[119] and conduct to the prejudice of good order and discipline,[120] if these offences were punished by a minor punishment or a fine of $500 or less, or both.

The House of Commons Standing Committee on National Defence amended the bill to add additional service offences and a broader range of punishments to clause 75 (new section 249.27(1)(a)). The amendments added the following additional offences:

- **resisting or escaping from arrest or custody (NDA, section 87);**
- **connivance at desertion (NDA, section 89);**
- **absence without leave (NDA, section 90);**
- **making a false statement in respect of leave (NDA, section 91);**
- **abuse of subordinates (NDA, section 95);**
- **making false accusations or statements or suppressing facts (NDA, section 96);**
- **detaining unnecessarily or failing to bring up for investigation (NDA, section 99);**
- **escape from custody (NDA, section 101);**
- **failure to comply with conditions (NDA, section 101.1);**
- **hindering arrest or confinement or withholding assistance when called on (NDA, section 102);**
- **withholding delivery of a member of the Canadian Forces to the civil power or withholding assistance in the lawful apprehension of such a person (NDA, section 103);**
- **signing an inaccurate certificate in relation to an aircraft or aircraft material (NDA, section 108);**
- **low flying (NDA, section 109);**
- **improper use of vehicles (NDA, section 112);**

- **destruction, damage, loss or improper disposal of property (NDA, section 116);**
- **miscellaneous offences, including exorbitant pricing, inappropriate demands for or receipt of compensation, carrying unauthorized cargo and other miscellaneous fraudulent acts (NDA, section 117);**
- **offences related to tribunals (NDA, section 118);**
- **failure to appear before a service tribunal (NDA, section 118.1);**
- **ill-treatment or non-payment of occupant or person with whom billeted (NDA, section 120);**
- **fraudulent enrolment in the Canadian Forces (NDA, section 121);**
- **knowingly giving false answers or false information (NDA, section 122);**
- **assisting unlawful enrollment in the Canadian Forces (NDA, section 123); and**
- **refusing immunization, tests, blood examination or treatment (NDA, section 126).**

The additional offences were selected for inclusion on the basis of their gravity as reflected in the maximum penalty for each section, which is less than two years' imprisonment.[121]

Under clause 75, a conviction for a listed service offence does not result in a criminal conviction so long as a second criterion is satisfied: the sentence imposed must be one of those listed in the clause. The amendments broaden the range of sentences that do not create a criminal conviction. The punishments of a severe reprimand and a reprimand are added. In addition, the maximum fine is increased from $500 to a fine not exceeding basic pay for one month. These punishments were added to clause 75 at the Committee stage to take account of the seriousness of the actual offence committed, as reflected in the punishment imposed.[122]

The stated intention of the amendments is to ensure that any person convicted in the past or in the future of a listed offence *and* sentenced to a listed punishment will not have a record of a criminal conviction under the *Criminal Records Act* or be required to apply for a record suspension.[123]

The bill makes it an offence to ask a question which requires an applicant to disclose a conviction for one of the above offences on any application form for enrolment in the Canadian Forces, or employment with the Department of National Defence or certain other federal departments, Crown corporations, or in any other business within the legislative authority of Parliament (clause 105). Anyone who asks such a question is liable to a maximum fine of $500 and imprisonment for up to six months, or both.

2.9 Appeal Committee (Clause 73)

A person who appeals a decision of a court martial to the Court Martial Appeal Court or the Supreme Court of Canada may ask the Appeal Committee to have the DDCS provide him or her with the services of a defence lawyer. Currently, the Appeal Committee is mentioned only in the QR&O, and not in the NDA.[124]

The QR&O was amended in 2008 to reflect former Chief Justice Lamer's recommendation that the committee be composed of three members and that its decisions be made by a majority vote.[125] The membership of the Appeal Committee set out in the QR&O, however, is different than that suggested in the Lamer Report.[126]

The bill amends the NDA to refer expressly to the Appeal Committee in new section 249.211. The bill permits (but does not require) the Governor in Council to create the Appeal Committee under regulations established by the Governor in Council.[127] The bill also requires that the factors the Appeal Committee must consider in determining whether to provide counsel be listed in the regulations.

Finally, new section 249.211(2) stipulates that members of the Appeal Committee shall enjoy immunity under civil and criminal law for actions performed in the exercise of their duties.

2.10 Military Police

2.10.1 Canadian Forces Provost Marshal

2.10.1.1 Appointment and Duties and Functions (Clause 4)

At present, the NDA does not clearly describe the role of the Provost Marshal,[128] which is largely governed by the Vice Chief of Defence Staff/Canadian Forces Provost Marshal Accountability Framework (Accountability Framework), developed in 1998, which aimed "to ensure both the independence of the Provost Marshal as well as a professional and effective military police service."[129] Clause 4 of the bill addresses the appointment and duties and functions of the Provost Marshal.[130]

The bill provides that the Provost Marshal, who must have been a member of the military police for at least 10 years and hold a rank that is not less than colonel, is appointed by the CDS for a term not exceeding four years. The Provost Marshal is eligible to be reappointed and may be removed by the CDS on the recommendation of an inquiry committee established under regulations (new section 18.3 of the NDA).

The main duties and functions of the Provost Marshal are listed in new section 18.4 of the NDA. The Provost Marshal's responsibilities include the establishment of training standards applicable to candidates for the military police and of professional standards applicable to serving members of the military police. The Provost Marshal must ensure compliance with those standards. The Provost Marshal is also responsible for investigations assigned to any unit and investigations in respect of conduct inconsistent with professional standards applicable to the military police or the *Military Police Professional Code of Conduct*.[131]

The Provost Marshal acts under the general supervision of the Vice Chief of the Defence Staff, who may issue general instructions or guidelines that are to be made public (new section 18.5(2) of the NDA), as well as instructions or guidelines in respect of a particular investigation that are to be made public unless the Provost Marshal considers that it is not in the best interests of the administration of justice to do so (new sections 18.5(3) to 18.5(5) of the NDA). The Provost Marshal must also submit an annual report for each fiscal year to the CDS concerning the activities of the Provost Marshal and the military police.[132] The report is then submitted to the minister (new section 18.6 of the NDA).

2.10.1.2 Military Police Conduct Complaints (Clause 83)

A conduct complaint is made under section 250.18(1) of the NDA against a member of the military police and concerns the member's conduct in the performance of his or her duties or functions.[133] The Provost Marshal is responsible for dealing with conduct complaints.[134]

At present, the NDA requires that the Provost Marshal explain why any conduct complaint has not been resolved or disposed of within six months.[135] To enhance the effectiveness of the process for resolving complaints against the military police, clause 83 provides that the Provost Marshal must resolve or dispose of a conduct complaint within one year after receiving it.[136] However, the one-year time limit does not apply if the complaint results in an investigation of a service offence or a criminal offence.

2.10.2 No Penalty for Complaints (Clauses 78 and 79)

The bill provides that a person may not be penalized for making a conduct complaint (new section 250.18(3) of the NDA) or an interference complaint (new section 250.19(3) of the NDA) in good faith.[137]

2.11 Grievance Procedure

The grievance procedure under the NDA consists of two levels. A grievance is initially brought before the commanding officer or the next superior officer of the commanding officer of the person bringing the grievance.[138] If the person bringing the grievance is not satisfied with the resolution of the grievance, he or she may submit the grievance to the CDS, who represents the final authority.[139] Before the CDS may begin the review, certain grievances[140] must be referred to an independent, external board for military grievances (the Grievance Board) for its findings and recommendations.[141]

In 2003, Justice Lamer noted that the grievance process "is not working properly,"[142] particularly because of the lengthy times taken for grievances to be disposed of: "Grievances still caught in the grievance process after ten and even twelve years are not unheard of, and those of two or more years at the level of the CDS seem to be the norm."[143] As a result, Justice Lamer recommended a number of changes be made to the military grievance system. Bill C-15 implements a number of his recommendations.

2.11.1 Duty of the Chief of Defence Staff to Act Expeditiously (Clause 6)

The NDA requires that the Grievance Board deal with all matters as expeditiously and informally as the circumstances and fairness permit.[144] Clause 6 places the same obligation on the CDS (new section 29.11 of the NDA).[145]

2.11.2 Power of the Chief of Defence Staff to Delegate (Clause 9)

Under the present NDA, the CDS must personally handle grievances submitted to the Grievance Board,[146] and may not delegate that responsibility. Clause 9 implements one of the solutions proposed by Justice Lamer[147] to expedite the grievance process: permit the CDS to delegate this responsibility to an officer under his or her direct command and control. The CDS will therefore be able to delegate the task of disposing of a grievance, whether the grievance has been submitted to the Grievance Board or not. Nevertheless, a grievance submitted by an officer may be delegated only to an officer of equal or higher rank.

However, the CDS will not be able to delegate his or her power to dispose of grievances in certain cases:

- a grievance may not be delegated to an officer who is in a conflict of interest;
- a grievance submitted by a military judge may not be delegated; and
- the CDS may not delegate his power of delegation.

Justice Lamer recommended that the CDS should personally dispose of any grievance that might have policy implications for the Canadian Forces, affect the capacity of the Canadian Forces, and/or have significant financial implications.[148] While the bill would not prohibit delegation of such grievances, the CDS retains discretion to determine whether delegation is appropriate for a particular grievance.

2.11.3 Grievance Submitted by a Military Judge (Clauses 5, 6 and 7)

Clause 6 provides that the CDS must personally deal with a grievance submitted by a military judge (new section 29.101 of the NDA). Under clause 7, before considering and determining a grievance submitted by a military judge, the CDS must refer it to the Grievance Board. The Grievance Board will provide the CDS with its findings and recommendations. However, a military judge may not submit a grievance in respect of a matter that is related to the exercise of his or her judicial duties (clause 5).[149]

2.11.4 Reinstatement of a Member of the Canadian Forces (Clause 12)

Clause 12 amends section 30(4) of the NDA to expressly provide that the CDS has the power to cancel the improper release or transfer of a person who has brought a grievance.[150] That person is therefore not required to re-enrol in the Canadian Forces and does not lose seniority.

2.11.5 Military Grievances External Review Committee (Clause 11)

In order to better reflect the independent nature of the Grievance Board, clause 11 amends section 29.16(1) of the NDA to give the body a new name: the Military Grievances External Review Committee.[151]

2.11.6 Limitation Period for Civil Actions (Clauses 99 and 114)

Clause 99 extends to two years (from six months) the time limit for bringing an action against the government for acts, neglect or default in execution of the NDA or any regulations or military or departmental duty or authority (section 269(1) of the NDA). The new limitation period applies only to acts, neglect or default occurring after the coming into force of this clause (clause 114).

2.12 Independent Review of the *National Defence Act*, and Coming into Force (Clauses 101, 129 and 135)

Under clause 101, the minister shall cause an independent review of certain provisions of the NDA to be undertaken every seven years, including those provisions relating to the Provost Marshal, the grievance process, the *Code of Service Discipline* and complaints by or about the military police.[152] The five-year independent review requirement incorporated into Bill C-25 (and which applied only to the provisions of that bill) is repealed (clause 129).

With the exception of certain specified clauses, including provisions relating to military judges, the bill will come into force on a day or days to be fixed by order of the Governor in Council (clause 135).

NOTES

1. *National Defence Act*, R.S.C., 1985, c. N-5.
2. *An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act*, S.C. 2007, c. 5.
3. Bill C-7, An Act the Amend the National Defence Act, which was introduced in the House of Commons on 27 April 2006, also proposed amendments to Part III of the *National Defence Act*, some of which had been recommended by the former Chief Justice of Canada, the Right Honourable Antonio Lamer, in his report on the first independent review of amendments made to the *National Defence Act* in 1998 under 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 Defence on 3 September 2003. See also the following legislative summary: Dominique Valiquet, *Bill C-7: An Act to amend the National Defence Act*, Publication no. LS-529E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 June 2006.

4. Under the *National Defence Act* as it stands, a complainant who has brought a conduct complaint against a member of the military police and who wishes to request a review of the Provost Marshal's decision by the Military Police Complaints Commission has unlimited time in which to do so. Clause 94 of the former Bill C-7 required a complainant to act within 60 days. This change responded to a recommendation made in Lamer (2003).

5. The Office of the Judge Advocate General indicates that Bill C-15 implements the following recommendations made in Lamer (2003): 1, 2, 3, 4, 6, 8, 9, 10, 11, 12, 13, 15, 19, 20, 26, 29, 31, 32, 33, 34, 36, 37, 38, 42, 51, 52, 53, 58, 59, 63, 66, 69, 72, 75 and 80. The Office of the Judge Advocate General indicates that 29 recommendations have already been implemented in statute, regulation, administrative policy or practice, and a further 21 recommendations remain pending. Three recommendations (recommendations 21, 71 and 74) have not been accepted by the Government of Canada: Communication from the Office of the Judge Advocate General to the Library of Parliament, 3 April 2012.

6. Bill C-25, An Act to amend the National Defence Act and to make consequential amendments to other Acts (S.C., 1998, c. 35), received Royal Assent in December 1998 and came into force on 1 September 1999. For an overview of the military justice system and the changes made to the military regime, see David Goetz, *Bill C-25: An Act to amend the National Defence Act*, Publication no. LS-311E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 25 November 1998.

7. *Criminal Code*, R.S.C., 1985, c. C-46.

8. Bill C-16: An Act to amend the National Defence Act (military judges), 1st Session, 41st Parliament.

9. For more information on Bill C-16, see Dominique Valiquet and Erin Shaw, *Legislative Summary of Bill C-16: An Act to amend the National Defence Act (military judges)*, Publication no. 41-1-C16-E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 29 November 2011.

10. An overview of the military justice system, from the perspective of the Department of National Defence, is available online at National Defence and the Canadian Forces, **Office of the Judge Advocate General, "Chapter 3: Framework of the Canadian Military Justice System," in *Military Justice at the Summary Trial Level 2.2*, Publication no. B-GG-005-027/AF-011, 12 January 2011. For a critical appraisal, see Gilles Létourneau, *Introduction to Military Justice: An Overview of the Military Penal Justice System and Its Evolution in Canada*, Wilson and Lafleur, 2012.**

11. *National Defence Act*, s. 130. See also section 70 for certain offences excepted from the jurisdiction of the military courts. More information on the *Code of Service Discipline* is available in the following publications: National Defence and the Canadian Forces, Office of the Judge Advocate General, *Code of Service Discipline and Me: A guide to the military justice system for Canadian Forces members*; and Office of the Judge Advocate General, *Code of Conduct for CF Personnel*, Publication B-GG-005-027/AF-023, Department of National Defence, Ottawa (code of conduct applicable to Canadian Forces personnel taking part in military operations outside Canada).

12. *National Defence Act*, ss. 60–61.

13. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Constitution Act, 1982* (UK), 1982, c. 11.

14. For a review of reforms to the military justice system up to 1997, see Michel Rossignol, *National Defence Act: Reform of the Military Justice System*, Publication no. 96-1E, Parliamentary Information and Research Service, Library of Parliament of Canada, Ottawa, 22 January 1997.

15. Special Advisory Group on Military Justice and Military Police Investigation Services, *Report of the Special Advisory Group on Military Justice and Military Police Investigation Services*, Department of National Defence, March 1997 (often referred to as "Dickson Report I" in other sources). The second part of the report, tabled in July 1997, dealt with the quasi-judicial role of the minister of National Defence under the *National Defence Act*.

16. Commission of Inquiry into the Deployment of Canadian Forces to Somalia, *Dishonoured Legacy: The Lessons of the Somalia Affair*, June 1997 [Somalia Report].

17. Minister of National Defence, *Report to the Prime Minister on Leadership and Management in the Canadian Forces*, March 1997 (often referred to as the "Young Report" in other sources).

18. Lamer (2003), p. 111.

19. *R. v. Trépanier*, 2008 CMAC 3.

20. See the following legislative summary: Robert Dufresne, *Bill C-60: An Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act*, Publication no. LS-615E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 2 September 2008.

21. It should be noted that because of the dissolution of Parliament for the 40th general election, the Standing Senate Committee on Legal and Constitutional Affairs was unable to submit its report to the Minister on the date requested. The committee did, however, obtain an order of reference from the Senate authorizing it to complete its study at the start of the 2nd Session of the 40th Parliament and to table its final report in the Senate by 30 June 2009. Upon enactment, Bill C-60 became an *Act to amend the National Defence Act (court martial) and to make a consequential amendment to another Act*, S.C. 2008, c. 29.

22. Senate, Standing Committee on Legal and Constitutional Affairs, *Equal Justice: Reforming Canada's System of Courts Martial – Final Report. A Special Study on the provisions and operation of* An Act to amend the National Defence Act (Court Martial) and to make a consequential amendment to another Act, *S.C. 2008, c. 29,* Final Report, 2nd Session, 40th Parliament, May 2009.

23. Government of Canada, *Government Response to the Final Report of the Standing Senate Committee on Legal and Constitutional Affairs,* Equal Justice: Reforming Canada's System of Courts Martial, tabled in the Senate on 22 October 2009.

24. Bill C-41: An Act to amend the National Defence Act and to make consequential amendments to other Acts, 3rd Session, 40th Parliament (report stage version, 24 March 2011).

25. Senate, Standing Committee on Legal and Constitutional Affairs, *Equal Justice* (2009).

26. Bill C-7, An Act the Amend the National Defence Act, which was introduced in the House of Commons on 27 April 2006, also proposed amendments to Part III of the *National Defence Act*, some of which had been recommended in Lamer (2003). See the following legislative summary: Dominique Valiquet, *Bill C-7: An Act to amend the National Defence Act*, Publication no. LS-529E, Parliamentary Information and Research Service, Library of Parliament, Ottawa, 13 June 2006.

27. See the Military Police Complaints Commission website for more information on the commission, including past and present public interest hearings.

28. See endnote 4, above.

29. House of Commons, Standing Committee on National Defence [NDDN], *Evidence*, 3rd Session, 40th Parliament, 7 February 2011, 1550 (Honourable Peter MacKay, Minister of National Defence).

30. See the House of Commons Standing Committee on National Defence website for transcripts of the evidence presented to the committee in its study of Bill C-41, An Act to amend the National Defence Act and to Make Consequential Amendments to Other Acts, during the 3rd Session of the 40th Parliament.

31. Military Police Complaints Commission, "Brief of the MPCC Regarding Bill C-41," 31 January 2011, p. 3. For opposing arguments, see NDDN, *Evidence*, 3rd Session, 40th Parliament, 2 March 2011 (Vice Admiral Bruce Donaldson, Vice-Chief of the Defence Staff, Department of National Defence, and Colonel Timothy Grubb, Canadian Forces Provost Marshal, Department of National Defence).

32. NDDN, *Evidence*, 3rd Session, 40th Parliament, 9 February 2011, 1630 (Mr. Bruno Hamel, Chairperson, Canadian Forces Grievance Board. See also Ms. Caroline Maynard, Director of Operations and General Counsel, Canadian Forces Grievance Board); Colonel (Retired) Michel W. Drapeau, "Submission to the House of Commons – Standing Committee on National Defence: Bill C-41, An Act to amend the National Defence Act and to make consequential amendments to other Acts," 28 February 2011, p. 5; and NDDN, *Evidence*, 3rd Session, 40th Parliament, 28 February 2011 (Colonel [Retired] Michel W. Drapeau, Professor, Faculty of Law, University of Ottawa).

33. NDDN (28 February 2011) (Lieutenant-Colonel (Retired) Jean-Marie Dugas); and Drapeau, "Submission" (2011), p. 7. This provision of the bill directly contradicts the recommendation of Justice Lamer, who stated in his 2003 report that "[i]t would be contrary to the principles of judicial independence to allow a military judge to apply to the executive for redress of a grievance, as this would open the door to executive interference with the judiciary." Justice Lamer, therefore, recommended that the Canadian Forces Grievance Board be awarded jurisdiction to issue final decisions in respect of grievances submitted by military judges: Lamer (2003), p. 24 and recommendation 11. For opposing arguments, see NDDN (2 March 2011), 1630 (Vice Admiral Bruce Donaldson, Vice-Chief of the Defence Staff, Department of National Defence).

34. NDDN, *Evidence*, 3rd Session, 40th Parliament, 16 February 2011 (Mr. Michael Spratt, Director, Criminal Lawyers' Association, and Ms. Constance Baran-Gerez, Criminal Lawyers' Association); and NDDN (28 February 2011) (Colonel [Retired] Michel W. Drapeau, Professor, Faculty of Law, University of Ottawa, and Mr. Jason Gratl, Vice-President, British Columbia Civil Liberties Association). See also the written submission of the British Columbia Civil Liberties Association, "Bill C-41, Supporting the Troops: Fairness for Canada's Soldiers," 11 March 2011, and Drapeau, "Submission" (2011). For opposing arguments, see NDDN (28 February 2011) (Lieutenant-Colonel (Retired) Jean-Marie Dugas), but see the subsequent testimony of Jason Gratl, representing the British Columbia Civil Liberties Association. See also NDDN, (28 February 2011), 1540 (Dr. Ian Holloway, Professor and Dean, Faculty of Law, University of Western Ontario); and NDDN (2 March 2011), 1630 (Vice Admiral Bruce Donaldson, Vice-Chief of the Defence Staff, Department of National Defence). See also Michael Gibson, "Canada's Military Justice System," *Canadian Military Journal*, Vol. 12, No. 2, Spring 2012, p. 61.

35. NDDN (9 February 2011) (Mr. Bruno Hamel, Chairperson, Canadian Forces Grievance Board); NDDN (16 February 2011), 1635 (Mr. Pierre Daigle, Ombudsman, National Defence and Canadian Forces). See also Pierre Daigle, *The Canadian Forces Grievance Process: Making It Right for Those Who Serve*, Special Report to the Minister of National Defence, May 2010. For opposing arguments, see NDDN (2 March 2011) (Vice Admiral Bruce Donaldson, Vice-Chief of the Defence Staff) and 1600 (Colonel Patrick K. Gleeson, Deputy Judge Advocate General, Military Justice and Administrative Law, Department of National Defence). The outstanding Lamer recommendations related to the Grievance Board are 85, 86 and 87.

36. NDDN, *Seventh Report*, 3rd Session, 40th Parliament, 23 March 2011. The report amended clauses 6, amending *National Defence Act*, s. 29.11; clause 9, amending *National Defence* Act, s. 29.14; clause 11, amending *National Defence Act*, s. 29.16; clause 75, amending *National Defence Act*, s. 249.27(1); clause 101, amending *National Defence Act*, s. 273.601(1)(*a*); and clause 135(3). Of these amendments, only those in clause 101 appear in Bill C-15. See Bill C-41: An Act to amend the National Defence Act and to make consequential amendments to other Acts, 3rd Session, 40th Parliament, (amended by the House of Commons Standing Committee on National Defence version).

37. *R. v. Leblanc*, 2011 CMAC 2 [*Leblanc*].

38. *Canadian Human Rights Act*, R.S.C., 1985, c. H-6, s. 15(1)(*c*).

39. Senate, Standing Committee on Legal and Constitutional Affairs, *Evidence*, 1st Session, 41st Parliament, 23 November 2011.

40. *An Act to amend the National Defence Act (military judges)*, S.C., 2011, c. 22.

41. National Defence, "Second Independent Authority Appointed to Review Amendments to the National Defence Act," News release, 20 May 2011.

42. *Ministerial Direction – Second Independent Review*, Preamble, 25 March 2011.

43. Patrick J. LeSage, *Report of the Second Independent Review Authority to The Honourable Peter G. MacKay Minister of National Defence*, December 2011. For tabling information, see House of Commons, *Debates*, 1st Session, 41st Parliament, 8 June 2012, p. 9093.

44. *National Defence Act*, ss. 165.1 and 249.18 respectively.

45. This amendment is in response to Lamer (2003), recommendation 3. Clause 71(1) provides that the inquiry committee has the same powers as a superior court of criminal jurisdiction, except the power to punish for contempt. An inquiry committee with the power to recommend the removal of the Director of Military Prosecutions is vested with the power to punish for contempt under ss. 165.1(2.1) and 179 of the *National Defence Act*.

46. This amendment is in response to Lamer (2003), recommendations 2 and 4. Chief Justice Lamer also recommended that the method of determining remuneration be clearly specified in the relevant regulations.

47. *National Defence Act*, s. 165.21(2).

48. *Queen's Regulations and Orders* [QR&O], as amended by Order in Council P.C. 2008-0548, 11 March 2008, arts. 101.15, 101.16 and 101.17.

49. *National Defence Act*, s. 251.

50. See Lamer (2003), p. 21.

51. The amendment responds not only to the decision of the Court Martial Appeal Court in *Leblanc*, but also to Lamer (2003), recommendation 5.

52. This amendment is in response to Lamer (2003), recommendation 5.

53. QR&O, arts. 101.13 and 101.14.

54. This amendment is in response to Lamer (2003), recommendation 6. However, responding to the judgment of the Court Martial Appeal Court in *Leblanc*, the amendment does not refer to the age of retirement for officers under the QR&O.

55. *National Defence Act*, ss. 12(3)(*a*) and 165.22(1).

56. QR&O, arts. 204.23 to 204.27.

57. This amendment is in response to Lamer (2003), recommendation 9.

58. Ibid., recommendation 8. In this respect, the determination of the rate of remuneration of military judges remains distinct from that of other federally appointed civilian judges. See also *Judges Act*, R.S.C., 1985, c. J-1, ss. 9–25.

59. These changes will allow military judges to function within a system that is administered in a manner that is similar to a permanent court of record, a change suggested in Lamer (2003), recommendation 15.

60. *R. v. Lippé*, [1991] 2 S.C.R. 114.

61. Lamer (2003), pp. 20–21 and 31.

62. This amendment is in response to Lamer (2003), recommendation 12. The immunity of civilian judges at common law was confirmed by the Supreme Court of Canada in *Morier and Boily v. Rivard*, [1985] 2 S.C.R. 716.

63. A General Court Martial "may try *any person* who is liable to be charged, dealt with and tried on a charge of having committed a service offence. A General Court Martial is composed of a *military judge and a panel of five members*, and has the power to order a maximum punishment of imprisonment for life." (Lamer [2003], p. 34; and *National Defence Act*, ss. 166–167; emphasis in the original).

64. This amendment partially responds to Lamer (2003), recommendation 19. This recommendation called for the role of the Court Martial Administrator to be defined in the *National Defence Act* to include such non-judicial work as might be delegated by the Chief Military Judge. In recommendation 18, Justice Lamer recommended that the Court Martial Administrator to be required to develop and maintain a court registry system once his recommendation to establish a permanent military court of record had been implemented (recommendation 14). Justice Lamer also recommended that the Court Martial Administrator be made deputy head of department under the *Financial Administration Act*, R.S.C., 1985, c. F-11 (recommendation 21).

65. *R. v. Gauthier*, [1998] C.M.A.J. No. 4, CMAC-414, paras. 25–26.

66. *Dulude v. Canada*, [2001] 1 F.C. 545 (FCA), paras. 11–12. See also *R. v. Larocque*, 2001 CMAC 2, para. 13 [*Larocque*].

67. *Criminal Code*, s. 495(2).

68. This amendment is in response to Lamer (2003), recommendation 32.

69. Section 2(1) of the *National Defence Act* defines a serious offence as

> an offence under this Act or an indictable offence under any other Act of Parliament, for which the maximum punishment is imprisonment for five years or more, or an offence that is prescribed by regulation under subsection 467.1(4) of the *Criminal Code*.

70. *National Defence Act*, s. 158.6(2). Conditions may be imposed upon release under section 158.6(1) of the *National Defence Act*.

71. Ibid., s. 159.

72. This amendment is in response to Lamer (2003), recommendation 34. Justice Lamer also recommended that art. 105.23 of the QR&O be amended to clarify that the representative of the Canadian Forces indicated in section 158.6(3) of the *National Defence Act* normally will be a lawyer appointed by the Director of Military Prosecutions. However, in the absence of such a lawyer, Justice Lamer recommended that the custody review officer be permitted to appoint another representative. This part of the recommendation is not reflected in the QR&O.

73. *National Defence Act*, s. 159.2(*c*).

74. *R. v. Hall*, [2002] 3 S.C.R. 309.

75. *Criminal Code*, s. 515(10)(*c*).

76. This amendment is in response to Lamer (2003), recommendation 36.

77. However, Justice Lamer proposed that the circumstances be specified in the *National Defence Act* (see Lamer [2003], recommendation 37).

78. Ibid., p. 54.

79. The *Criminal Code* allows for a period of 24 hours in the case of a person in custody (s. 503(1)(*a*)). In the case of a person who has been released from custody, an information must be laid as soon as practicable (s. 505(*b*)).

80. *R. v. Perrier*, CMAC-434; *Larocque*, para. 17; *R. v. Langlois*, 2001 CMAC 3, paras. 16–19; *R. v. Lachance*, 2002 CMAC 7, paras. 23–24.

81. This amendment is in response to the recommendation of the Canadian Bar Association to Justice Lamer, reiterated in Lamer (2003), recommendation 33.

82. This amendment is in response to Lamer (2003), recommendation 38.

83. *National Defence Act*, s. 165.12(3).

84. Ibid., s. 163(1.1). More information on summary trial procedures can be found in National Defence and Canadian Armed Forces (2011).

85. The Lamer Report recommended retaining the one-year limitation period for summary trials (recommendation 43), and did not recommend the inclusion of a waiver provision on the basis that "once an accused has been forced to wait a year for a trial, if the matter is to proceed at all, a court martial should be convened to ensure that the accused is given the attendant procedural and legal guarantees." (Lamer [2003], p. 59.)

86. Clause 48 of Bill C-41 would have replaced this provision with a section prohibiting an officer or non-commissioned officer who has been a member of the Canadian Forces for less than three years from sitting on a General Court Martial panel.

87. This amendment is in response to Lamer (2003), recommendation 20.

88. Ibid. (2003), p. 33.

89. *R. v. Garofoli* (1988), 41 C.C.C. (3d) 97 (Ont. C.A.), paras. 117–119.

90. *Criminal Code*, s. 672.5.

91. Lamer (2003), p. 65.

92. This amendment is in response to Lamer (2003), recommendation 52.

93. *Criminal Code*, s. 718.

94. NDDN (7 February 2011), 1535 (Honourable Peter MacKay, Minister of National Defence).

95. Except *Criminal Code*, ss. 718.2(*c*) ("where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh") and 718.2(*e*) ("all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders").

96. *National Defence Act*, s. 2(1).

97. *Criminal Code*, s. 718.2(*a*).

98. Ibid., ss. 722–722.2.

99. At present, section 139(1) of the *National Defence Act* sets out the scale of punishments:

> (*a*) imprisonment for life;
>
> (*b*) imprisonment for two years or more;
>
> (*c*) dismissal with disgrace from Her Majesty's service;
>
> (*d*) imprisonment for less than two years;
>
> (*e*) dismissal from Her Majesty's service;
>
> (*f*) detention;
>
> (*g*) reduction in rank;
>
> (*h*) forfeiture of seniority;
>
> (*i*) severe reprimand;
>
> (*j*) reprimand;
>
> (*k*) fine; and
>
> (*l*) minor punishments.

100. *Criminal Code*, s. 730(1).

101. Ibid., s. 732.

102. Lamer (2003), p. 66.

103. Ninety days, in the case of the *Criminal Code* (s. 732(1)).

104. *National Defence Act*, s. 164(4).

105. These punishments are confinement to ship or barracks; extra work and drill; stoppage of leave; and caution (QR&O, art. 104.13(2)).

106. This amendment is in response to Lamer (2003), recommendation 51.

107. They include the Chief of the Defence Staff (CDS) and an officer commanding a command (QR&O, art. 114.02(3) of the QR&O).

108. *National Defence Act*, ss. 215 and 216.

109. This amendment is in response to Lamer (2003), recommendation 31.

110. See ibid., recommendation 10:

> I recommend that the *National Defence Act* be amended to provide that the authority to suspend a custodial sentence shall reside with a military judge or judge of the Court Martial Appeal Court in the first instance, subject only to situations of military exigency when the decision to suspend a sentence may be taken by the chain of command and approved at the earliest opportunity by a military judge.

111. *National Defence Act*, ss. 217(2) and 217(3).

112. Ibid., s. 139(1)(*k*).

113. This amendment is in response to Lamer (2003), recommendation 53 of the Lamer Report.

114. *National Defence Act*, s. 130.

115. Section 2 of the *Contraventions Act*, S.C. 1992, c. 47, defines “contravention” as “an offence that is created by an enactment and is designated as a contravention by regulation of the Governor in Council.” The purpose of the Act is to distinguish between regulatory and criminal offences and distinguish their legal consequences (see *Contraventions Act*, s. 4). Contraventions are often dealt with using tickets and fines. A list of contraventions is found in a schedule to the *Contraventions Regulations*, SOR/96-313.

116. *National Defence Act*, s. 85.

117. Ibid., s. 86.

118. Ibid., s. 90.

119. Ibid., s. 97.

120. Ibid., s. 129.

121. House of Commons Standing Committee on National Defence, *Evidence*, 25 February 2013 (Colonel Michael Gibson, Deputy Judge Advocate General of Military Justice, Office of the Judge Advocate General, Department of National Defence); House of Commons Standing Committee on National Defence, *Evidence*, 4 March 2013 (Colonel Michael Gibson) and 1535 (Chris Alexander, MP).

122. House of Commons Standing Committee on National Defence, *Evidence*, 4 March 2013 (Chris Alexander, MP; and Colonel Michael Gibson).

123. Ibid., 1535 (Chris Alexander, MP).

124. QR&O, art. 101.21.

125. Ibid., art. 101.21; and Lamer (2003), recommendations 26 and 27.

126. The QR&O specifies that the Chair of the Appeal Committee will be appointed by the Judge Advocate General and must be a retired military judge, retired judge advocate, a retired president of a Standing or Special Court Martial, or a retired judge of a superior court. The Chief of Defence Staff and the Director of Defence Counsel Services each appoint one member, who must be a lawyer admitted to practice in a Canadian province, other than a legal officer reporting to the Director of Military Prosecutions or Director of Defence Counsel Services (QR&O, art. 101.21(2)). Justice Lamer had recommended that the Director of Defence Counsel Services or the Director’s representative chair the Appeal Committee, and that one member be a representative of the Office of the Judge Advocate General, and that the third member be a retired civilian judge (Lamer [2003], recommendation 26).

127. This amendment is in response to Lamer (2003), recommendation 29.

128. The bill replaces the expression “prévôt” with the expression “grand prévôt” in the French version of the *National Defence Act* (see, in particular, clause 107) and makes a number of other amendments to the language of the French version of the Act, as recommended in Lamer (2003), recommendation 69.

129. Lamer (2003), p. 74. The Accountability Framework can be found in Military Police Services Review Group, *Report of the Military Police Services Review Group*, “Annex B,” Department of National Defence, Ottawa, 1998.

130. This amendment is in response to Lamer (2003), recommendation 58.

131. *Military Police Professional Code of Conduct*, SOR/2000-14. It should be noted that the Provost Marshal is the Commanding Officer of the Canadian Forces National Investigation Service, which is responsible for laying charges as a consequence of investigations into serious or sensitive service offences (Lamer [2003], p. 74).

132. This amendment is in response to Lamer (2003), recommendation 59.

133. Part IV of the *National Defence Act* provides for two types of complaints: conduct complaints and interference complaints. An interference complaint is made under s. 250.19(1) of the *National Defence Act* by a member of the military police against an officer, non-commissioned member or senior official who is alleged to have interfered in an investigation. The Chairperson of the Military Police Complaints Commission is responsible for dealing with interference complaints under s. 250.34 of the *National Defence Act*.

134. *National Defence Act*, s. 250.26.

135. Ibid., s. 250.3.

136. This amendment is in response to Lamer (2003), recommendation 66. Former Chief Justice Lamer also recommended that following resolution of a complaint by the Provost Marshal, "the complainant or the member of the military police whose conduct was the subject of the complaint would have 60 days within which to request a review, except in cases where there is a compelling case for a review in the public interest. If a review is not requested within the 60-day period, the case would be deemed closed." This review is conducted by the MPCC.

137. This amendment is in response to Lamer (2003), recommendation 63.

138. QR&O, arts. 7.04(1) and 7.06.

139. *National Defence Act*, s. 29.11; and QR&O, art. 7.10.

140. For example, grievances relating to pay, allowances, conflict of interest and harassment (QR&O, art. 7.12). The CDS may also refer any other grievance to the Grievance Committee (*National Defence* Act, s. 29.12).

141. *National Defence Act*, s. 29.12. However, the findings and recommendations of the Grievance Committee are not binding on the CDS: *National Defence Act*, s. 29.13(1).

142. Lamer (2003), p. 86.

143. Ibid.

144. *National Defence Act*, s. 29.2(2).

145. This amendment is in response to Lamer (2003), recommendation 75.

146. *National Defence Act*, s. 29.14. However, the CDS may delegate this task in the case of a grievance that need not be referred to the Grievance Committee.

147. Lamer (2003), recommendation 72. The other solutions are to eliminate the grievance backlog, place an overall time limit on the grievance process and increase the resources available for reviewing grievances (Lamer [2003], p. 98 and following).

148. Ibid., recommendation 72.

149. This provision is in response to Lamer (2003), recommendation 11.

150. This amendment is in response to Lamer (2003), recommendation 80.

151. See NDDN (9 February 2011), 1535 (Mr. Bruno Hamel, Chairperson, Canadian Forces Grievance Board).

152. New section 273.601(1)(*d*) specifies that sections 251, 251.2, 256, 270, 272, 273–273.5 and 302 are subject to independent review. This amendment responds to Lamer (2003), recommendation 1.