A review of Bill C-77 –
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XII.
A review of Bill C-77

XIII. Purpose of Code of Service Discipline

Section 60 of the National Defence Act\(^1\) (NDA) states that all members of the regular force are subject to the Code of Service Discipline (CSD) at all times\(^2\). Members of the reserve force are subject to the CSD under certain conditions when they are in uniform, on duty, undergoing drill or training whether in uniform or not, in or on any vessel, vehicle, or aircraft of the Canadian Forces or in or on any defence establishment or work for defence.\(^3\)

Section 55 as proposed by Bill C-77 states:

"55(1) The purpose of the Code of Service Discipline is to maintain the discipline, efficiency and morale of the Canadian Forces.

(2) For greater certainty, the behavior of persons who are subject to the Code of Service Discipline relates to the discipline, efficiency and morale of the Canadian Forces even when those persons are not on duty, in uniform or on a defence establishment."

The wording of 55(2) does apply to regular force members at all times. A member of the reserve force is only subject to the CSD when one of the conditions at paragraph 60(1)(c) is present. A member of the reserve force is not subject to the CSD if he or she is not on duty, not in uniform or not on a defence establishment. Parliament has set conditions for the jurisdiction of the CSD over reservists. These conditions reflect the volunteer and part-time status of reservists.

While we should expect reserve force members to behave in a manner that will reflect CAF values, how can this section of the CSD subject their behavior to the discipline, efficiency and morale of the CAF when the CSD does not have jurisdiction over them? One may easily question how this paragraph actually applies to reserve force members and thus, question the purpose of this paragraph. Subsection 55(2) does not bring greater certainty to the NDA. Should subsection 55(2) was deleted, subsection 55(1) would remain as a clear statement of the purpose of the CSD without creating confusion on the issue of the jurisdiction over the person.

Recommendation #1: Para 55(2) be deleted or be redrafted.

\(^1\) RSC, 1985, c. N-5
\(^2\) Ibid, para 60(1)(a)
\(^3\) Ibid, para 60(1)(c)
XIV. Are summary hearings administrative or criminal proceedings?

The Supreme Court of Canada (SCC) has set out a two parts test for determining which statutory infractions are criminal offences and which are administrative penalties:

“[45] A proceeding is criminal by its very nature when it is aimed at promoting public order and welfare within a public sphere of activity. Proceedings of an administrative nature, on the other hand, are primarily intended to maintain compliance or to regulate conduct within a limited sphere of activity: see Martineau, at paras. 21-22; Wigglesworth, at p. 560. The focus of the inquiry is not on the nature of the act which is the subject of the proceedings, but on the nature of the proceedings themselves, taking into account their purpose as well as their procedure: Martineau, at paras. 24 and 28-32; R. v. Shubley, 1990 CanLII 149 (SCC), [1990] 1 S.C.R. 3, at pp. 18-19. Proceedings have a criminal purpose when they seek to bring the subject of the proceedings “to account to society” for conduct “violating the public interest”: Shubley, at p. 20.

[46] A “true penal consequence” is “imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society at large rather than to the maintenance of internal discipline within [a] limited sphere of activity”: Wigglesworth, at p. 561; see also Martineau, at para. 57. There is inevitably some overlap between the analysis of the purpose of the scheme and the purpose of the sanction, but the jurisprudence has looked at both separately to the extent that is possible, recognizing that the proceeding will be an offence for s. 11 purposes if it meets either branch of the test, and that situations in which a proceeding meets one but not both branches will be rare: ibid.”

A. Part 1 of the test: The process leading to the imposition of the sanction

The SCC in Guindon further specified the first part of the test as follows:

“[63] With respect to the process, the heart of the analysis is concerned with the extent to which it bears the traditional hallmarks of a criminal proceeding. Fish J. referred to some of the relevant considerations in Martineau, including whether the process involved the laying of a charge, an arrest, a summons to appear before a court of criminal jurisdiction, and whether a finding of responsibility leads to a criminal record: para. 45. The use of words traditionally associated with the criminal process, such as “guilt”, “acquittal”, “indictment”, “summary conviction”, “prosecution”, and “accused”, can be a helpful indication as to whether a provision refers to criminal proceedings.”

“Traditional hallmarks of a criminal proceeding” - Application of the jurisprudence to summary hearings

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4 Guindon v. Canada, 2015 SCC 41 (Guindon)
A(1) Summary hearing procedures

Chapter 108 of QR&O (Summary proceedings) pertains to summary trials and contains very precise instructions on the following topics: provision of assistance and information to the accused, pre-trial procedures, trial procedure, reception of evidence, and general rules such as oath or solemn affirmation, who may be present at a summary trial, witnesses and adjournment. The summary trial procedure is in effect a trial process that respects Canadian law in the sphere of criminal justice.

One would expect a new Chapter 108 would contain instructions pertaining to “summary hearings” which should be quite similar to those found in Chapter 108 (Summary proceedings). The tenets of fundamental justice would require that a summary hearing incorporate the same rights as are presently found in a summary trial. Thus, the procedure for a summary hearing would be quite similar the procedure of a penal proceeding.

A(2) extent to which it bears the traditional hallmarks of a criminal proceeding

(a) laying of a charge: laying of a charge (C-77 s. 161(1));

(b) an arrest: no arrest power for a summary infraction presently in C-77,

(c) a summons to appear: most probably there will not be any formal documentary summons in the QR&O but a person charged with having committed a service infraction will surely be ordered to appear since the amended section 118.1 makes it an offence to not appear at a summary hearing as ordered;

(d) before a court of criminal jurisdiction: an officer conducting a summary hearing.

A summary hearing is not defined or described as a service tribunal since that term has been repealed. The definitions service tribunal and summary trial in subsection 2(1) of the Act are repealed by Bill C-77.

(e) whether a finding of responsibility leads to a criminal record: no criminal record but one would expect a conduct sheet.

Although a summary infraction is not an offence under the NDA and a summary hearing is not a court martial or a service tribunal; the failure “without lawful excuse, the proof of which lies on the person, to appear” as ordered, or to remain in attendance before an officer conducting a summary hearing, as a person charged with having committed a service infraction can lead to an accusation under s. 118.1 (Failure to appear or to attend), a trial by court martial and possibly a criminal conviction\(^5\).

\(^5\) C-77, s. 9 replacing s. 118.1 to the NDA

118.1 Every person who, being duly summoned or ordered to appear before a court martial or a military judge, as an accused, or before an officer conducting a summary hearing, as a person charged with
A(3) Comparison of Bill C-71 and Bill C-77

Bill C-71 used the term “disciplinary infraction” instead of “service infraction”. A disciplinary infraction was created by regulations as is the case for a service infraction. Just like a service infraction, a disciplinary infraction was not an offence under the NDA and not an offence for the purposes of the Criminal Records Act.

Section 162.6 (prior trial) of Bill C-71 is identical for all intents and purposes to s.162.6 of Bill C-77. Under Bill C-71, a disciplinary infraction could only be tried by summary trial and, under Bill C-77, a service infraction may only be dealt with by summary hearing.

The powers of punishment (sanctions) found at C-71 are identical to those in Bill C-77. As for the principles and objectives of sentencing:

s.162.9(2) of C-71 is identical to s.162.9 of C-77;
s.162.91 of C-71 is identical to s.162.91 of C-77;
s.162.92(a) to (c) of C-71 are identical to s.162.92 of C-77; and
s.162.92(d) of C-71 is identical to s.162.93 of C-77.

A summary trial under Bill C-71 was a service tribunal that dealt with disciplinary infractions and not service offences. It offered the accused practically all the protections of the criminal law. A summary hearing under Bill C-77 is, in effect, identical to the summary trial of C-71 except for one critical element. A finding in a summary hearing (C-77) is made on the balance of probabilities instead of beyond a reasonable doubt (C-71).

B. Part 2 of the test: True penal consequence

The SCC in Guindon further specified the second part of the test as follows:

“[75] Administrative monetary penalties are designed as sanctions to be imposed through an administrative process. They are not imposed in a criminal proceeding. ….

[76] Imprisonment is always a true penal consequence. A provision that includes the possibility of imprisonment will be criminal no matter the actual sanction imposed: see Wigglesworth, at p. 562. A monetary penalty may or may not be a true penal consequence. It will be so when it is, in purpose or effect, punitive. Whether this is the case is assessed by looking at considerations such as the magnitude of the fine, to whom it is paid, whether its magnitude is determined by regulatory considerations rather than principles of criminal sentencing, and whether stigma is associated with the penalty: see, e.g., Canada (Attorney General) v. United States Steel Corp., 2011 FCA 176 (CanLII), 333 D.L.R. (4th) 1, at paras. 76-77.”

having committed a service infraction, fails, without lawful excuse, the proof of which lies on the person, to appear as summoned or ordered, or to remain in attendance, is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.
B(1) Factors and principles of sentencing

The following is a comparison of the objectives and principles associated to the imposition of sanctions found in Bill C-77 with the purposes and principles of sentencing by service tribunals found in the NDA and the purposes and principles of sentencing found in the *Criminal Code*. Of note, the section or paragraph indicated in the NDA and *Criminal Code* columns are either identical or practically identical to the corresponding section or paragraph of Bill C-77.

C-77 s. 162.9 Objectives of sanctions

<table>
<thead>
<tr>
<th>C-77 s. 162.9</th>
<th>NDA s. 203.1(2)</th>
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<tr>
<td>s. 162.9(a)</td>
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<td>s. 162.9(b)</td>
<td>s. 203.1(2)(b)</td>
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<td>s. 162.9(c)</td>
<td>s. 203.1(2)(c)</td>
<td>s. 718(b)</td>
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<td>s. 203.1(2)(d)</td>
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<tr>
<td>s. 162.9(f)</td>
<td>s. 203.1(2)(i)</td>
<td>s. 718(f)</td>
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C-77 s. 162.91 Fundamental principle

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<thead>
<tr>
<th>C-77 s. 162.91</th>
<th>NDA s. 203.2</th>
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<tr>
<td>s. 162.91</td>
<td>NDA s. 203.2</td>
<td>Criminal Code s. 718.1</td>
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C-77 s. 162.92 Other principles

<table>
<thead>
<tr>
<th>C-77 s. 162.92</th>
<th>NDA s. 203.3</th>
<th>Criminal Code 718.2</th>
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<tr>
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<td>s. 718.2(a)</td>
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<td>s. 203.3(a)(ii)</td>
<td>s. 718.2(a)(i)</td>
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<td>s. 162.92(a)(iii)</td>
<td>s. 203.3(a)(v)</td>
<td>s. 718.2(a)(ii)</td>
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<td>s. 162.92(b)</td>
<td>s. 203.3(b)</td>
<td>s. 718.2(b)</td>
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<tr>
<td>s. 162.92(c)</td>
<td>s. 203.3(d)</td>
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C-77 s. 162.93 Consideration of indirect consequences

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<tr>
<th>C-77 s. 162.93</th>
<th>NDA s. 203.3(e)</th>
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<tr>
<td>s. 162.93</td>
<td>NDA s. 203.3(e)</td>
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B(2) Deprivation of pay and of any allowance

The magnitude of the deprivation of pay and of any allowance is **based on sentencing objectives and principles** that are either identical or similar to those found in Part III, Division 7.1 (Sentencing) of the NDA or in Part XXIII (Sentencing) of the *Criminal Code*. Note (I) to art. 108.20 of the QR&O provides the following guidance in the imposing of fines:
“Where a fine is to be imposed, it should be a reasonable amount having regard to the pay of the offender and the need to impress upon the offender the gravity of the offence. While a fine should be meaningful, it should not cause unnecessary hardship. A fine is not restitution and should not be equated with any financial loss resulting from the commission of the offence.”

A superior commander (Sup Comd) and a commanding officer (CO) can impose a deprivation of pay, and of any allowance described in regulations made by the Governor in Council (GiC), for no more than 18 days and a delegated officer (Del O) for no more than 7 days. 18 days of pay in a 30-day period (monthly) is the equivalent to 60% of the monthly pay and of any allowance. 7 days of pay in a 30-day period (monthly) is the equivalent to 23% of the monthly pay and of any allowance.

Thus, the CO, the Sup Comd and Del O have retained the same percentage as they presently have under their summary trial powers of punishment. The following are some examples of fines that may be presently imposed by presiding officers at summary trial:

<table>
<thead>
<tr>
<th>Rank</th>
<th>CO - Sup Comd (60%)</th>
<th>Del Off (25%)</th>
</tr>
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<tbody>
<tr>
<td>Private</td>
<td>4,382 x .6 = $2,692</td>
<td>4,382 x .25 = $1,096</td>
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<tr>
<td>Corporal</td>
<td>5,516 x .6 = $3,310</td>
<td>5,516 x .25 = $1,379</td>
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<tr>
<td>Sergeant</td>
<td>5,995 x .6 = $3,597</td>
<td>5,995 x .25 = $1,499</td>
</tr>
<tr>
<td>Chief Warrant Officer</td>
<td>9,113 x .6 = $5,468</td>
<td>9,113 x .25 = $2,278</td>
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<tr>
<td>Lieutenant (GSO)</td>
<td>8,232 x .6 = $4,939</td>
<td>8,232 x .25 = $2,058</td>
</tr>
<tr>
<td>Captain (GSO)</td>
<td>8,718 x .6 = $5,231</td>
<td>8,718 x .25 = $2,180</td>
</tr>
<tr>
<td>Captain (Legal)</td>
<td>9,132 x .6 = $5,479</td>
<td>9,132 x .25 = $2,283</td>
</tr>
<tr>
<td>Captain (Medical) (non-specialist)</td>
<td>16,393 x .6 = $9,836</td>
<td>16,393 x .25 = $4,098</td>
</tr>
<tr>
<td>Lieutenant-Colonel (GSO)</td>
<td>11,001 x .6 = $6,601</td>
<td>NA</td>
</tr>
<tr>
<td>Lieutenant-Colonel (Legal)</td>
<td>14,563 x .6 = $8,738</td>
<td>NA</td>
</tr>
<tr>
<td>Lieutenant-Colonel (Medical)(non-specialist)</td>
<td>25,660 x .6 = $15,396</td>
<td>NA</td>
</tr>
</tbody>
</table>

Under Bill C-77, a CO and a Sup Comd could impose “a deprivation of pay, and of any allowance. Presently under the NDA and the QR&O, a CO and a Sup Comd may only impose a fine based on the monthly basic pay. This means a CO or Sup Comd could impose a more severe sanction (a higher “fine”) at a summary hearing following a finding made on a balance of probabilities than they can when sentencing at a summary trial which had a threshold of beyond a reasonable doubt.

Although this sanction is called “deprivation of pay and of any allowance”, it is a fine under another name.

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6 See Annex A
7 The amount is the highest pay incentive for each rank; see http://www.forces.gc.ca/en/caf-community-pay/pay-rates.page
B(3) To whom the fine is paid

In *R. v. Wigglesworth*, Justice Wilson stated the following:

“One indicium of the purpose of a particular fine is how the body is to dispose of the fines that it collects. If, as in the case of proceedings under the Royal Canadian Mounted Police Act, the fines are not to form part of the Consolidated Revenue Fund but are to be used for the benefit of the Force, it is more likely that the fines are purely an internal or private matter of discipline…”

Fines presently imposed by a service tribunal, a court martial or a summary trial, form part of the Consolidated Revenue Fund and are not levied for the benefit of the CAF. It is highly likely that a deprivation of pay and of any allowance will also be sent to the Consolidated Revenue Fund.

B(4) Reduction in rank

Bill C-77 permits a Sup Comd to impose a reduction in rank. The following are examples of the effect of a reduction in rank on the yearly salary:

- **NCM:**
  From approx. $5,750 (Sgt to Cpl) to $20,915 (CWO to MWO)

- **Officers:**
  - General Service Officers
    From approx. $15,400 (Maj to Capt) to $12,000 (LCol to Maj)
  - Legal officers
    From approx. $44,616 (Maj to Capt) to $20,556 (LCol to Maj)
  - Medical officers
    Approx. $43,560 (LCol to Maj)

Without discussing the other significant impacts on an officer, warrant officer or NCO of a reduction in rank; the financial consequences of this sanction are important because they will be multiplied by the number of years the individual remains at the reduced rank. Furthermore, there will still be a negative impact on him or her following a promotion to the rank from which she or he had been reduced because he or she will start at the basic pay for that rank.

B(5) Minor sanctions

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9 Supra note 7, CAF pay rates online
Bill C-77 does not define the “minor sanctions” that may be imposed at summary hearings. Those sanctions are to be defined in “regulations made by the Governor in Council.” Chapter 104 of the QR&O pertains to punishments and sentences. Art.104.13 prescribes the following “minor punishments”: confinement to ship or barracks, extra work and drill and stoppage of leave.

Note (B) to art 104.13 of QR&O states that the “goal of minor punishments is to correct the conduct of service members who have committed service offence of a minor nature while allowing those members to remain productive members of the unit.” The CO must set out rules for the administration of minor punishments that will:

(i) tailor, to meet unit requirements, a programme of extra work and drill to improve the military efficiency and discipline of unit members convicted of minor service offences, and

(ii) define the geographic limits within which a member undergoing the punishment of stoppage of leave or confinement to ship or barracks must remain and the routine applicable to members serving those punishments.”

Chapter 108 of the QR&O provides further guidance on the administration of the punishments of confinement to ship or barracks and extra work and drill as follows:

“108.35 – EXTRA WORK AND DRILL

(1) The punishment of extra work and drill is intended to improve a service member's military efficiency and discipline.

(2) The punishment of extra work and drill may include performance of:

(a) normal duties for longer periods than would have been required of the offender if the punishment had not been imposed;

(b) any other useful extra work; and

(c) extra drill, at such times as may be authorized under unit orders, or other military training.

(3) The punishment of extra work and drill shall not be carried out on Sunday but that day shall count toward the completion of the term of the punishment

108.37 – CONFINEMENT TO SHIP OR BARRACKS

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10 C-77, s. 25 adding sub-paragraph 162.7(e) to the NDA.
12 Supra note 12, QR&O Note(C) to 104.13
(1) An officer cadet or non-commissioned member undergoing a punishment of confinement to ship or barracks shall not, without the specific permission of the commanding officer, be permitted during the hours the member is not on duty to go beyond the geographic limits prescribed by the commanding officer in standing orders.

(2) The punishment of confinement to ship or barracks includes the punishment of extra work and drill for the same term as the term of confinement to ship or barracks.

Would “minor sanctions” be identical or quite similar to “minor punishments”? Most probably and, if so, the punishments of confinement to ship or barracks and extra work and drill raise concerns. Art. 108.35 and 108.37 allow the CO much flexibility in setting the rules for the administration of these punishments. COs can confine to ship or barracks for up to 21 days. The rules could restrain the liberty of movement and of action of the defaulter. A defaulter could not go “beyond the geographic limits prescribed by the commanding officer in standing orders”. This deprivation of liberty can be very strict and would be similar to conditional sentence of imprisonment (“house arrest”).

Individuals serving a conditional sentence of imprisonment (“house arrest”) are partially deprived of their liberty, in comparison with full incarceration. As put by the SCC:

“Even if their liberty is restricted by the conditions attached to their sentence, they are not confined to an institution and they can continue to attend to their normal employment or educational endeavours. They are not deprived of their private life to the same extent. Nor are they subject to a regimented schedule or an institutional diet.”

Paragraph 108.37(2) of QR&O provides that confinement to ship or barracks includes the punishment of “extra work and drill” which is intended to “improve a service member's military efficiency and discipline by imposing performance of supplementary duties beyond normal hours”· Military Justice at Summary Trial Level (MJSTL), the military training manual for presiding officers, provides further information on the subject of minor punishments at chapters 11 and 14. The punishment of extra work and drill can represent additional work as a form of retribution to the military society and has been described as a form of community service: “offenders undergoing the punishment of extra work and drill could be assigned to help out at sporting events or concerts.”

The SCC has also stated that a conditional sentence is a form of imprisonment”.

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16 Ibid, Chap 14, para. 51.
17 R v Wu, 2003 SCC 73, para. 3.
“House arrest” can also include a portion of work as a form of retribution to the harm done to society. A judge can impose the offenders to perform up to 240 hours of community service over a period not exceeding eighteen months. But contrary to the punishment of confinement to ship or barracks, this option is not compulsory but is left to the discretion of a judge.

The combination of these two punishments may exceed the effect of the civilian sentence of “house arrest” although one must note that confinement to ship or barracks may only be imposed for a maximum of 21 days while a conditional sentence of imprisonment may be imposed for a period of two years.

Nonetheless, a person subject to confinement to ship or barracks could be ordered to stay within the unit lines during the complete period of the punishment. This means a person with a spouse or a family could be forced to live apart from them for the period of the punishment. A person undergoing a sentence of “house arrest” still lives with his or her spouse and family. This is a significant difference. Strict confinement to ship or barracks conditions could be very restrictive on a person liberty and could equate to detention.

The punishment of extra work and drill is not carried out on Sunday although that day will count toward the completion of punishment. If the rationale is to give individuals at least one day of rest per week, one may wonder whether that specific day is a relic of the past. The choice of the day of rest should be respectful of religious norms.

Recommendation #2: The QR&O should not specify Sunday but should indicate the day of rest will be determined in accordance with the offender’s religious convictions.

(C) Conclusion

C-77 keeps the same sentencing objectives and principles as found in a “criminal proceeding”, most probably the same procedure for summary hearings as presently exists for summary trials in chapter 108 of QR&O and increases the punishment power (higher “fine”) of an officer conducting a hearing while reducing the threshold of conviction from beyond a reasonable doubt to a balance of probabilities. The imposition of the “fine” (deprivation of pay and of any allowance) and the reduction in rank is based on sentencing principles and the “fine” will most probably form part of the Consolidated Central Fund.

This reasoning leads to the conclusion that a reduction in rank and a deprivation of pay and of any allowance represent a true penal consequence. Confinement to ship or barracks, because of its highly restrictive effect on an offender’s liberty is also a true penal consequence. Although a legitimate measure to re-instill discipline, “particularly

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18 Criminal Code, supra note 14, s. 742.3(2)d).
19 QR&O 108.35(3).
appropriate where the offender has not been able to demonstrate compliance with the routines of service life”,20 it is nevertheless a strict deprivation of freedom akin to detention.

In the absence of a statutory definition, it could be reasonably inferred that “minor sanctions” could be identical to the “minor punishments” but under a different name. Such punitive measures should not be considered minor and be expressly defined in the NDA since they engage legal rights protected by the Charter of Rights and Freedoms.

Under C-77, the accused is liable to be sentenced to a more severe punishment (“fine”) based on a lower threshold of conviction. The summary hearing under C-77 offers less protections to the accused than what was present in C-71 and what is actually present in the summary trial process.

Recommendation #3: The standard of proof “beyond a reasonable doubt” should be the standard of proof for a summary hearing since a summary hearing is a penal proceeding.

III Role of the Commanding Officer

“The commanding officer is at the heart of the entire system of discipline.”21 When commenting on the role of the chain of command within the military justice system, the Dickson report had this to say on the role of the CO:

“Just as it is not possible to understand the military justice system unless it is directly related to the need for military discipline, so it must also be recognized that all persons subject to the Code of Service Discipline have a commanding officer to whom they are accountable in matters of discipline. Service members are required to obey the lawful orders and instructions of their superiors. Commanding officers are in turn responsible to their superiors for all matters of discipline within their units. At each level - of the military hierarchy, there is an expectation that the person at the next higher level has the authority to hold subordinates accountable, and to impose disciplinary and administrative measures as a means of enforcing that accountability. Military justice and the chain of command are, therefore, closely intertwined”22.

The Chief of Defence Staff Guidance to Commanding Officers and their leadership teams focuses on discipline and military justice at section 22. It reads partly as follows:

“The responsibility to maintain discipline falls most directly on a unit CO. This is the reason for the concentration of legal authority and powers at the CO level.

20 Supra note 15, para. 47.
22 Ibid
A CO has significantly more powers of trial and punishment than a superior commander, who might otherwise have administrative and operational seniority. A CO performs a role that is unique in Canadian law. COs and other officers exercising summary trial jurisdiction are required to exercise discretion fairly and justly according to Canadian legal principles.”

Presently, the NDA and the QR&O reflect this key role. Para (1) of art 3.23 of the QR&O states “Unless the Chief of the Defence Staff otherwise directs, the officer in command of a base or other unit shall exercise command over all officers and non-commissioned members, at the base or other unit.” A CO is responsible for the whole of the organization and safety of the CO’s base, unit or element, but the detailed distribution of work between the CO and subordinates is left substantially to the CO’s discretion. The CO of a base, unit or element must ensure that all works and buildings at the base, unit or element are properly safeguarded at all times.

An officer is responsible to his immediate superior for the proper and efficient performance of his duties. An officer must promote the welfare, efficiency and good discipline of all subordinates; ensure the proper care and maintenance, and prevent the waste, of all public and non-public property within the officer's control; and report to the proper authority any infringement of the pertinent statutes, regulations, rules, orders and instructions governing the conduct of any person subject to the CSD when the officer cannot deal adequately with the matter. Art. 108.35 and 108.37 of the QR&O only refer to the CO and not to the Sup Comd. This is another example of the key role played by the CO in the maintenance of discipline within a unit. Del Os also play an important in the administration of discipline in a unit.

A review of the JAG annual reports from the fiscal years 2007-2008 to 2017-2018 provides very useful information to help one understand the present military justice system. Data from the years 07-08, 08-09 and 09-10 indicate that COs presided over 16% of the summary trials, Del O presided over 80% of summary trials and Sup Comds presided over 4% of summary trials. This distribution is probably similar today but the JAG has ceased providing these statistics since 2010. This is unfortunate because it does offer a clear picture of how discipline is enforced within units. It does appear that the great majority of summary trials are presided by the officer closest to the accused and who possesses the least severe powers of punishment.

Bill C-77, just as Bill C-71, radically transforms this concept. Bill C-77 gives the CO a wider jurisdiction over the person but reduces his/her powers of punishment. Bill C-77 gives the Sup Comd a wider jurisdiction over the person and increases his/her jurisdiction.
powers of punishment. Bill C-77 gives the Del O a wider jurisdiction over the person but slightly reduces his/her powers of punishment.

Bill C-77 give more powers of punishment to the superior commander than it does the CO. This brings into question whether the CO is still the most important actor in disciplinary matters within his/her unit or whether Bill C-77 is shifting this role to the Sup Comd since it gives the Sup Comd the most severe powers of punishment. This would be a fundamental change in our system of discipline. If this is the case, why?

**Recommendation #4:** Bill C-77 should be amended to ensure the CO retains his/her crucial role in the maintenance of discipline within his/her unit and within the CAF. At a minimum, Bill C-77 should give the CO the same powers of sanctions as it does the Sup Comd.

**IV. Jurisdiction**

**C. Section 163(1)**

C-77 provides that “163(1) A superior commander, commanding officer or delegated officer may conduct a hearing in respect of a charge alleging the commission of a service infraction if all of the following conditions are satisfied:

(a) the person charged is an officer or non-commissioned member who is at least one rank below the rank of the superior commander, commanding officer or delegated officer;”

One is either an officer or a non-commissioned member (NCM). Officers take precedence over all NCM\(^{29}\) An officer takes seniority over all NCM\(^{30}\). Command is exercised by the senior officer present, in the absence of an officer, the senior NCM present; or any other officer or NCM, where specifically authorized by the Chief of the Defence Staff (CDS), an officer commanding a command or formation or a commanding officer\(^{31}\). A NCM is not one rank below a superior commander, commanding officer or delegated officer independent of the officer’s rank and of the NCM’s rank.

**Recommendation #5:** Section 163(1)(a) should read as follows: the person charged is an officer who is at least one rank below the rank of the superior commander, commanding officer; or delegated officer or is a non-commissioned member;

**D. Summary hearing – jurisdiction over the person**

Under Bill C-77, a Sup Comd could conduct a hearing of any officer who is at least one rank below him or her (theoretically Lieutenant-General to Officer Cadet (Ocdt) and of an NCM (Chief Warrant Officer (CWO) to Private (Pte))). A CO could

\(^{29}\) QR&O 3.41(1)  
\(^{30}\) Ibid, 3.09(1)  
\(^{31}\) Ibid, 3.20
conduct a hearing of any officer who is at least one rank below him or her (Lieutenant-Colonel (LCol) if the CO is a colonel to Ocdt) and of an NCM (CWO to Pte).

Presently, a Sup Comd may try any officer of the rank of LCol to Ocdt and any NCM of the rank of CWO to Warrant Officer (WO). A CO may try an Ocdt and any NCM of the rank of Sergeant (Sgt) to Pte.

Bill C-77 would allow a CO to try anyone within his or her unit. This means a CO could try his/her second in command, sub-unit commanders, other officers, his/her unit sergeant-major and warrant officers (Master Warrant Officers (MWO) and WOs). The present summary trial system provides a definite rank separation between the CO and the person he/she can try summarily. A superior commander may try certain officers and warrant officers (CWO\MWO\WO). The superior commander would not have the same relationship and the daily proximity with these individuals as would a CO. This seems to permit a better impartial and independent presiding officer.

**Query:** Is this truly an improvement for the perception of proper discipline and justice within a unit?

V. Definitions

C. Service infraction

A service infraction will be created by regulations made by the Governor in Council\(^{32}\). A service infraction will not be an offence under the NDA\(^{33}\). Service infractions will only be dealt with by summary hearing\(^{34}\).

The new summary hearing process was created to address minor service infractions related to military discipline. There is no further information on the nature of these service infractions. These infractions would be created in Volume 2 of the Queen’s Regulations and Orders for the Canadian Forces (QR&O).

One could assume these service infractions would resemble the service offences\(^{35}\) referred to in art 108.17 of the QR&O since these service offences are deemed to be the less serious service offences (“minor offences”\(^{36}\) to be tried under the CSD. Should that be the case, what effect will the creation of these service infractions have on these identical service offences?

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\(^{32}\) C-77, s. 3 adding the definition of summary infraction to the NDA  
\(^{33}\) C-77, s. 25 adding s. 162.5 to the NDA  
\(^{34}\) C-77, s. 7 adding s. 162.4 to the NDA  
\(^{35}\) s. 85 (Insubordinate Behaviour), s.86 (Quarrels and Disturbances), s.90 (Absence Without Leave), s.97 (Drunkenness), and s. 129 (Conduct to the Prejudice of Good Order and Discipline), but only where the offence relates to military training, maintenance of personal equipment, quarters or work space, or dress and deportment  
\(^{36}\) Supra note 15, c 11 “Jurisdiction and Pre-Trial Determinations”, para. 68
Recommendation #6: Service infractions should be created by the NDA. Service infractions should be clearly defined and distinct from service offences.

D. Military justice

Bill C-77 defines military justice as “all aspects of the application of the Code of Service Discipline”\(^ {37}\). This definition appears to be more appropriate to the definition of “military justice system” than to “military justice” if one compares it to the definitions of criminal justice and criminal justice system\(^ {38}\).

Although military law is not defined in the NDA or the QR&O, it is defined in the Criminal Code as “includes all laws, regulations or orders relating to the Canadian Forces”. The Judge Advocate General (JAG) is the legal adviser to the Governor General, the Minister of National Defence, the Department of National Defence and the CAF in matters relating to military law.\(^ {39}\) The JAG has the superintendence of the administration of military justice in the CAF\(^ {40}\). Thus, military law includes military justice.

The term military justice is not used in the new provisions pertaining to summary hearings. One would expect chapter 108 (Summary proceedings) of the QR&O will be modified to reflect the new provisions of the NDA. One would also expect the new chapter 108 will greatly resemble the present chapter 108. Before commencing a summary trial, a presiding officer must determine whether “it would be inappropriate for the officer to try the case having regard to the interests of military justice and discipline”\(^ {41}\). This paragraph of art 106.16 was modified on 1 Sept 2018 by adding “military” before “justice”. Military justice is not presently defined in the NDA nor in QR&O.

While the term military justice, as it is defined in C-77, might be useful in understanding the JAG’s mandate of superintendence of the administration of military justice, it does not assist an officer hearing a summary infraction. The expression “in the interest of justice” is a recognized expression in Canadian law and the expression “in the interest of justice and discipline” is clearly described in the JAG manual on summary trials (MJSTL)\(^ {42}\). The proposed definition of “military justice” does not assist in ensuring the interest of justice as it is understood in Canada will be properly considered by an officer conducting a hearing.

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\(^ {37}\) C-77, s. 3 adding the definition of military justice to the NDA
\(^ {38}\) B. Garner, ed. Black’s Law Dictionary 7th Edition, (St-Paul’s, MN, West Group, 1999) defines criminal justice as “1. The methods by which a society deals with those who are accused of having committed crimes. 2. The field of study pursued by those seeking to enter law enforcement as a profession” and criminal justice system as “The collective institutions through which an accused offender passes until the accusations have been disposed of or the assessed punishment concluded.”
\(^ {39}\) Supra note 1, s 9.1 This specific responsibility was inserted in the NDA in 1998.
\(^ {40}\) Ibid, 9.2 (1) This specific responsibility was inserted in the NDA in 1998.
\(^ {41}\) QR&O 108.16(1)(a)(v)
\(^ {42}\) Supra note 15, Chap. 11, para 58 to 63
**Recommendation #7:** The definition of military justice should be replaced by one that will truly reflect the concept of justice in a military context.

**VI. Warrants and powers of arrest**

**D. Section 157**

Section 157 of the NDA authorizes a CO or a Del O to issue warrants for the arrest of persons subject to the CSD. Bill C-77 restricts this power by preventing the issuance of a warrant for the arrest of any person who is a member of, serving with, or attached or seconded to the same unit of the Canadian Forces as the officer issuing the warrant\(^{43}\). This amendment adds a new limitation to the powers of a CO and Del O to issue arrest warrants.

**Query:** Why does Bill C-77 restrict the authority of a CO or a Del O to issue a warrant in that manner when that officer could order the arrest of any person within his/her unit pursuant to s. 154 of the NDA? A discussion on s. 154 follows.

The present lack of guidance and directions in the issuance of a warrant for the arrest of a person subject to the CSD is of more concern than the issuance of warrants within a unit. The *Criminal Code* provides the procedure and the conditions for the issuance of an arrest warrant but the NDA and the QR&O are totally silent on these fundamental requirements. It is critical for the rights of the person subject to the warrant that the person issuing the warrant respect the law. This would also prevent such warrants be deemed illegal in subsequent legal proceedings.

**Recommendation #8:** Bill C-77 should be amended to include provisions in the NDA that would provide the relevant guidance and directions for the issuance of a warrant for arrest.

**E. Powers of arrest – sections 154, 155 and 156**

A person may be placed under arrest only if she or he has committed, is found committing or is believed on reasonable grounds to have committed a service offence, or who is charged with having committed a service offence. Thus, it appears that a person cannot be placed under arrest if he or she has committed, is found committing or is believed on reasonable grounds to have committed a service infraction, or who is charged with having committed a service infraction\(^{44}\).

**Query:** Is this the intention of the legislation?

Service infractions are supposed to be less serious than service offences but we do not know exactly what they will be since they will created by GiC regulations (QR&O). Service infractions will probably include such infractions as absence without

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\(^{43}\) C-77, s.17(4) adding subsection 157(2.1)  
\(^{44}\) Supra note 1, ss. 154, 155(3), 156
leave, drunkenness and quarrels and disturbances. There might well be a need to arrest the individual to: establish the person’s identity, secure or preserve evidence of or relating to the service infraction, and prevent the continuation or repetition of the service infraction or the commission of another service infraction. There might also be a need to arrest someone to serve a purpose of maintaining discipline and control over the situation.

**Recommendation #9:** Section 154 of the NDA should be amended to include service infractions.

**OR**

**Recommendation #10:** The NDA should clearly state that a person may not be arrested in connection with a service infraction if that is the clear intention of this legislation.

Also of note, section 157 would still authorize a CO and a Del O to issue a warrant to authorize the arrest of any person subject to the CSD who has committed, is found committing or is believed on reasonable grounds to have committed a service offence. Thus, officers who may only hear service infractions for which a person may not be arrested may issue warrants for the arrest of persons who have or may have committed a service offence.

**Comment:** There seems to be some inconsistency in this reasoning.

Bill C-77 repeals the definition of service tribunal at s.2 but does not amend para 155(2.1)(b).

**Recommendation #11:** Section 155(2.1)(b) should be amended to reflect this amendment to s. 2 of the NDA.

**F. Conclusion**

Bill C-77 does not permit a CO to issue a warrant for the arrest of a member of his/her unit but still allows him/her to order the arrest of any person in relation to a service offence. It permits the CO to conduct a summary hearing for any member of the unit and impose a minor sanction which could be as restrictive as being under arrest since confinement to barracks or ship will surely be included as a minor sanction. As is discussed in more details in that portion of the submission, confinement to barracks can be extremely restrictive on one’s liberty.

**Query:** Where is the consistency of the reasoning leading to these modifications to the NDA?
VII. Lack of record for a meaningful review

How can a proper review of the reasonableness of the findings and of the sanctions be exercised by a review authority without a proper record? The NDA and QR&O do not require the presiding officer to provide written reasons or record the proceedings. Bill C-77 does not address this issue. A full review of a summary trial or of a summary hearing cannot be undertaken without a record that provides the reviewing officer with the facts and the reasoning that produced the verdict and the sentence.

A presiding officer must be able to summarily note the reasons for his/her findings for each service infraction and for the sentence. He\she will surely have done this before giving his\her verdict or sentence. The Office of the JAG could easily amend the Record of Disciplinary Proceedings form (RDP)\(^{45}\) to include an “elements of the infraction” portion where the presiding officer could note the evidence accepted for each element that convinced him/her to reach the finding. The Office of the JAG could also produce a sentencing document where the presiding officer could indicate which principle of sentencing he/she considered important in reaching the decision on sentencing and the evidence supporting it.

One can easily wonder how a presiding officer reached a verdict and sentence if that presiding officer cannot write in bullet points or in short sentences his/her reasoning. A recorded audio or audio/video of the findings and of the sentencing would also suffice instead of a written account but the onus is on the presiding officer to ensure the recording is reliable and is kept securely for the period of time prescribed by regulations. The presiding officer would still have to justify his/her verdict and sentence as described above.

This is a simple measure that ensures the disciplinary system is more transparent. It might add a bit more work for the presiding officer but the disciplinary system will benefit from it by showing those subject to the CSD that it is a solid system that can be reviewed properly (since there would really be something to review).

**Recommendation #12:** The RDP form should be amended to include portions that would provide the justifications for the verdicts and the sentences.

VIII. Right to be tried by court martial and C-77

Under the present summary trial process, an accused can elect to be tried by court martial for “5 minor offences”\(^{46}\) if the presiding officer considers imposing a punishment of detention, reduction in rank or a fine in excess of 25 per cent of monthly basic pay. Assuming that service infractions could be quite similar to these 5 minor offences, C-77 now allows a summary hearing “presiding officer” to impose a reduction


\(^{46}\) QR&O 108.17(1)
in rank or a deprivation of pay and allowances for not more than 18 days (60%). His/her finding would be made on a balance of probabilities.

Thus, should the service infractions be identical or similar to the minor service offences, an accused could be awarded a more severe punishment based on a lower threshold of conviction without having the opportunity to choose to be tried by a court martial.

**Comment:** Bill C-77 strips the accused of protections that are presently available to him/her.

**IX. The need to change the military justice system**

**Query:** Why change the present military justice system by eliminating the summary trial? Why does the chain of command need new service infractions and a new disciplinary system to ensure the proper administration of discipline within a unit?

Over the 10-year period of 2008-09 to 2017-18, approximately 70% of the summary trials occurred without the offer of an election to court martial pursuant to QR&O 108.17(1)\(^{47}\). This statistic can be interpreted in the following manner:

The accused was charged with one or more of the 5 minor offences;  
The presiding officer was a Del O (a Del O cannot offer an election);  
The CO or the Sup Comd determined the offence was minor enough that he/she would not award a punishment of detention, a reduction in rank or a fine of more than 25% of the monthly pay.

Over that same 10-year period, the 5 minor offences and disobedience of a lawful command represent approx. 94% of the charges tried by summary trial\(^{48}\). The scale of punishment applicable to summary trials is:

- Detention;  
- Reduction in rank;  
- Severe reprimand;  
- Reprimand;  
- Fine; and  
- Minor punishments.

The punishments in order of the one awarded the most often are\(^ {49}\):

1. Fine (approx. 59%); may be awarded by all  
2. Confinement to barracks*(approx. 24%); may be awarded by all  
3. Extra work and drill*(approx. 6%); may be awarded by all

\(^{47}\) See Annex B  
\(^{48}\) See Annex C  
\(^{49}\) See Annex C
4. Reprimand (approx. 4%); may be awarded by CO and Sup Comd
5. Detention (approx. 2%); may be awarded by CO only
6. Stoppage of leave* (approx. 2%); may be awarded by all
7. Caution* (approx. 2%); may be awarded by all
8. Reduction in rank; and may be awarded by CO only
9. Severe reprimand may be awarded by Sup Comd only

Note: * indicates a minor punishment

As can be seen, minor offences and disobedience to a lawful command are mainly tried by summary trial and the presiding officers have most often imposed punishments of a fine or confinement to ship or barracks.

Query: Based on these statistics, why is there a need to create new summary infractions and a new disciplinary process to assist the CO in enforcing discipline within his/her unit?

X. Decriminalizing disciplinary infractions

Section 4 of the Criminal Records Act reads partly as follows:

“4 (1) A person is ineligible to apply for a record suspension until the following period has elapsed after the expiration according to law of any sentence, including a sentence of imprisonment, a period of probation and the payment of any fine, imposed for an offence:

(a) 10 years, in the case of an offence that is prosecuted by indictment or is a service offence for which the offender was punished by a fine of more than five thousand dollars, detention for more than six months, dismissal from Her Majesty’s service, imprisonment for more than six months or a punishment that is greater than imprisonment for less than two years in the scale of punishments set out in subsection 139(1) of the National Defence Act; or

(b) five years, in the case of an offence that is punishable on summary conviction or is a service offence other than a service offence referred to in paragraph (a).”

Section 249.27 of the NDA reads as follows:

“249.27 (1) A person who is convicted of any of the following offences, or who has been convicted of any of them before the coming into force of this section, has not been convicted of a criminal offence:

50 RSC, 1985, c. C-47
(a) an offence described in section 85, 86, 87, 89, 90, 91, 95, 96, 97, 99, 101, 101.1, 102, 103, 108, 109, 112, 116, 117, 118, 118.1, 120, 121, 122, 123, 126 or 129 for which the offender is sentenced to
(i) a severe reprimand,
(ii) a reprimand,
(iii) a fine not exceeding basic pay for one month, or
(iv) a minor punishment;

(b) an offence under section 130 that constitutes a contravention within the meaning of the Contraventions Act.

(2) An offence referred to in paragraph (1)(a) or (b) does not constitute an offence for the purposes of the Criminal Records Act.

The punishments which may be imposed by a service tribunal are listed in the “Scale of punishments” found at s. 139 of the NDA. They are:

(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.

A person found guilty of any of the service offences at paragraph 249.27(1)(a) and sentenced to a punishment of imprisonment, dismissal from Her Majesty’s Service (with disgrace or not), detention, reduction in rank, forfeiture of seniority or a fine exceeding one month of basic pay will have a criminal record.

The service offences found at s. 249.27 include the 5 minor offences: 85 (insubordinate behavior), 86 (quarrels and disturbances), 90 (absence without leave), 97 (drunkenness) and 129 (conduct prejudicial to good order and discipline). Section 83 (disobedience of a lawful command) is not included in s. 249.27.

COs and Sup Comds may try service offences that could be considered serious in a military context and impose punishments that rightfully reflect the seriousness of the conduct and the required severity of the punishment. Yet, one can easily presume these presiding officers would reconsider the punishment if they were fully aware of all the consequences of the punishment.
A person found guilty of a purely military offence (disobedience of a lawful command, insubordinate behavior, absence without leave, drunkenness and conduct prejudicial to good order and discipline) may have a criminal record. The consequences of having a criminal record are significant. Applying for employment or attempting to cross the Canadian border are but two of these everyday consequences that can have an important impact on a veteran’s life.

**Query:** Do we truly wish to burden a veteran with a criminal record when he/she has committed a service offence which may have no equivalent in our criminal justice system or in Canadian society?

The answer to this question is not s. 249.27, which was added to the NDA in 2013, or the creation of service infractions (Bill C-77). One should examine the nature of the service offence to determine whether the offender should suffer the consequences of a criminal record. One should not only examine the punishment or the service tribunal that tried the offence.

Also, section 4 of the *Criminal Records Act* should be amended to reflect the current state of the NDA. Detention may only be imposed for a maximum of 90 days since the 1998 modifications. Section 4 still indicates a maximum period of detention of six months; this was correct when the NDA permitted the imposition of a punishment of detention for a maximum of two years.

**Recommendation #13:** The *Criminal Records Act* and the NDA should be amended to only include service offences that truly warrant the creation of a criminal record.

**XI. Comprehensive review of the needs of discipline and the Canadian military justice system**

A thorough and comprehensive study of the Canadian military justice system is definitely required to address the issues raised by Bills C-71 and C-77 as well as the recent Court Martial Appeal Court decision in Beaudry51.

Any discussion on the subject of discipline and military justice must start with a basic understanding of the uniqueness of the CAF and its specific role in Canadian society. Canada maintains a military force whose primary purpose is to ultimately use deadly force to execute the government’s directives. This armed force must be well-led, well-trained, and disciplined. Military justice is but one facet of discipline; it is actually the means of last resort when all other aspects of discipline have failed. The military justice system is not synonymous with military discipline.

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Canadians must understand these concepts and then determine what they expect of their armed forces and what measures will be put in place to ensure Canada can rely on a disciplined, efficient and effective military force that reflects Canadian values (which includes respect for the rule of law).

Any major reform to the military justice system must be discussed in a public forum. A parliamentary committee could listen to Canadians, academics, lawyers and members of the CAF and would have the independence and the necessary resources for the thorough review and the creation of a modern system of military justice that will effectively balance the needs of discipline with the rights protected by the *Canadian Charter of Rights and Freedoms*.

**Recommendation #14:** Parliament should establish a joint committee that would examine and recommend a Code of Service Discipline that would serve the disciplinary needs of the CAF and reflect Canadian values.

**Recommendation #15:** The portions of Bill C-77 pertaining to the summary hearings and related provisions should be deleted.
<table>
<thead>
<tr>
<th>Jurisdiction C-77 (and C-71)</th>
<th>Sanctions C-77 (and C-71)</th>
<th>Jurisdiction NDA and QR&amp;O</th>
<th>Punishments NDA and QR&amp;O</th>
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<tr>
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<td>Officer at least one rank below presiding officer</td>
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<td>All: Severe reprimand; Reprimand; Fine (60% of monthly basic pay); and Ocdts only: Minor punishments Confinement to ship or barracks (21 days max); Extra work and drill (14 days max); Stoppage of leave (21 days max)</td>
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<td>Officer at least one rank below presiding officer</td>
<td>Reprimand; Deprivation of pay; and allowances (max 18 days); Minor sanctions</td>
<td>Ocdt Sgt to Pte</td>
<td>Detention (max 30 days) (Sgt to Pte); Reduction in rank (one substantive rank) (Sgt to Cpl); Reprimand (all); Fine (60% of monthly basic pay) (all); Ocdt, Mcpl, Cpl and Pte only: Confinement to ship or barracks (21 days max) and Extra work and drill (14 days max); Stoppage of leave (21 days max) (all)</td>
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### ANNEX B - SUMMARY TRIALS AND COURTS MARTIAL

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<td>790 (70%)</td>
<td>585 (71%)</td>
<td>520 (72%)</td>
<td>366 (66%)</td>
<td>451 (76%)</td>
</tr>
<tr>
<td>ST - election given</td>
<td>536</td>
<td>578</td>
<td>663</td>
<td>551</td>
<td>415</td>
<td>404</td>
<td>311</td>
<td>250</td>
<td>187</td>
<td>180</td>
</tr>
<tr>
<td>ST - elected</td>
<td>508</td>
<td>551</td>
<td>614</td>
<td>496</td>
<td>376</td>
<td>338</td>
<td>242</td>
<td>199</td>
<td>141</td>
<td>143</td>
</tr>
<tr>
<td>ST - CO</td>
<td>280 (15%)</td>
<td>299 (15%)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>ST - Del O</td>
<td>1534 (81%)</td>
<td>1566 (81%)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>ST - Sup Comd</td>
<td>84 (4%)</td>
<td>77 (4%)</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>CM - election</td>
<td>28 (5%)</td>
<td>27 (5%)</td>
<td>49 (7%)</td>
<td>55 (10%)</td>
<td>39 (9%)</td>
<td>66 (16%)</td>
<td>53 (17%)</td>
<td>51 (20%)</td>
<td>46 (25%)</td>
<td>37 (21%)</td>
</tr>
</tbody>
</table>

Note 1: No election given to the accused pursuant to QR&O 108.17(1). A Delegated officer (Del O) may not offer an election to an accused.

Note 2: Only a CO and a Sup Comd may offer an election to be tried by court martial pursuant to QR&O 108.17(1).

Note 3: The accused elected to be tried by summary trial.

Note 4: N/A - the information is not included in the JAG annual report. Data for 07-08: CO 393 (19%), Del O 1564 (77%), Sup C 89 (4%)

Note 5: The accused elected to be tried by court martial.

Source: JAG Annual Reports
## ANNEX C: SUMMARY TRIALS – CHARGES AND PUNISHMENTS

<table>
<thead>
<tr>
<th>Offences - total</th>
<th>08-09</th>
<th>09-10</th>
<th>10-11</th>
<th>11-12</th>
<th>12-13</th>
<th>13-14</th>
<th>14-15</th>
<th>15-16</th>
<th>16-17</th>
<th>17-18</th>
</tr>
</thead>
<tbody>
<tr>
<td>AWOL (90)**</td>
<td>693</td>
<td>716</td>
<td>733</td>
<td>655</td>
<td>614</td>
<td>667</td>
<td>459</td>
<td>446</td>
<td>395</td>
<td>305</td>
</tr>
<tr>
<td>129 *</td>
<td>1264</td>
<td>1336</td>
<td>1133</td>
<td>812</td>
<td>676</td>
<td>711</td>
<td>391</td>
<td>305</td>
<td>124</td>
<td>223</td>
</tr>
<tr>
<td>Disobedience (83)</td>
<td>52</td>
<td>55</td>
<td>66</td>
<td>67</td>
<td>27</td>
<td>62</td>
<td>31</td>
<td>31</td>
<td>32</td>
<td>17</td>
</tr>
<tr>
<td>Insubordination* (85)</td>
<td>65</td>
<td>87</td>
<td>97</td>
<td>80</td>
<td>54</td>
<td>60</td>
<td>52</td>
<td>67</td>
<td>44</td>
<td>42</td>
</tr>
<tr>
<td>Quarrels* (86)</td>
<td>39</td>
<td>64</td>
<td>42</td>
<td>65</td>
<td>51</td>
<td>63</td>
<td>39</td>
<td>37</td>
<td>31</td>
<td>58</td>
</tr>
<tr>
<td>Drunkenness* (97)</td>
<td>167</td>
<td>173</td>
<td>130</td>
<td>167</td>
<td>151</td>
<td>134</td>
<td>126</td>
<td>131</td>
<td>109</td>
<td>109</td>
</tr>
<tr>
<td>Total of 6 offences</td>
<td>2280(96%)</td>
<td>2431(94%)</td>
<td>2201(93%)</td>
<td>1846(93%)</td>
<td>1573(92%)</td>
<td>1697(97%)</td>
<td>1098(93%)</td>
<td>1017(94%)</td>
<td>735(90%)</td>
<td>754(94%)</td>
</tr>
<tr>
<td>And % of total</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Punishment – amount and rank</th>
<th>08-09</th>
<th>09-10</th>
<th>10-11</th>
<th>11-12</th>
<th>12-13</th>
<th>13-14</th>
<th>14-15</th>
<th>15-16</th>
<th>16-17</th>
<th>17-18</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detention</td>
<td>44</td>
<td>56</td>
<td>63</td>
<td>59</td>
<td>48</td>
<td>31</td>
<td>26</td>
<td>23</td>
<td>9</td>
<td>8</td>
</tr>
<tr>
<td>Reduction</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>9</td>
<td>7</td>
<td>4</td>
<td>4</td>
<td>6</td>
<td>4</td>
</tr>
<tr>
<td>Severe reprimand</td>
<td>2</td>
<td>2</td>
<td>4</td>
<td>5</td>
<td>5</td>
<td>5</td>
<td>3</td>
<td>6</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Reprimand</td>
<td>41</td>
<td>62</td>
<td>50</td>
<td>61</td>
<td>52</td>
<td>53</td>
<td>54</td>
<td>48</td>
<td>36</td>
<td>31</td>
</tr>
<tr>
<td>Fine</td>
<td>1449</td>
<td>1513</td>
<td>1459</td>
<td>1099</td>
<td>985</td>
<td>882</td>
<td>610</td>
<td>535</td>
<td>401</td>
<td>438</td>
</tr>
<tr>
<td>Confinement to barracks**</td>
<td>686</td>
<td>680</td>
<td>575</td>
<td>436</td>
<td>340</td>
<td>346</td>
<td>283</td>
<td>254</td>
<td>192</td>
<td>204</td>
</tr>
<tr>
<td>Extra work &amp;drill**</td>
<td>137</td>
<td>131</td>
<td>121</td>
<td>128</td>
<td>104</td>
<td>102</td>
<td>76</td>
<td>66</td>
<td>47</td>
<td>45</td>
</tr>
<tr>
<td>Stoppage of leave**</td>
<td>43</td>
<td>22</td>
<td>23</td>
<td>15</td>
<td>25</td>
<td>29</td>
<td>27</td>
<td>16</td>
<td>13</td>
<td>22</td>
</tr>
<tr>
<td>Caution**</td>
<td>60</td>
<td>41</td>
<td>35</td>
<td>39</td>
<td>21</td>
<td>39</td>
<td>18</td>
<td>19</td>
<td>18</td>
<td>28</td>
</tr>
</tbody>
</table>

**Note 1:** Each offence indicated by a * is one of the “5 minor offences” identified in QR&O 108.17(1)(a). A presiding officer may choose not to offer an election to be tried by court martial if the accused has been charged with one of the 5 minor offences and the presiding officer concludes that the offence is minor in nature and that a punishment of detention, reduction in rank or a fine in excess of 25 percent of the accused’s monthly basic pay would not be warranted if the accused were found guilty of the offence.

**Note 2:** Each punishment indicated by ** is a minor punishment.
Source: JAG Annual Reports