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Legislative Summary

BILL C-11: AN ACT TO AMEND THE NATIONAL DEFENCE ACT AND OTHER ACTS

45-1-C11-E

27 May 2026

Revised by Sabrina Charland and Anne-Marie Therrien-Tremblay

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Legislative Summary of Bill C-11
(Preliminary version)

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LEGISLATIVE SUMMARY OF BILL C-11: AN ACT TO AMEND THE NATIONAL DEFENCE ACT AND OTHER ACTS

1 BACKGROUND

Bill C-11, An Act to amend the National Defence Act and other Acts (short title: Military Justice System Modernization Act),[1] was tabled in the House of Commons on 26 September 2025 by the Minister of National Defence (the minister). It received first reading the same day.

Except for certain coordinating amendments, Bill C-11 contains the same provisions as Bill C-66, An Act to amend the National Defence Act and other Acts, introduced on 21 March 2024 in the 44th Parliament.[2] Bill C-66 died on the *Order Paper* when Parliament was prorogued in January 2025.

Bill C-11 amends certain provisions of the *National Defence Act* (NDA)[3] that relate to the military justice system. Among other changes, it removes the jurisdiction of the Canadian Armed Forces (CAF) to investigate and prosecute sexual offences under the *Criminal Code*.[4] In addition, the bill exempts military judges from being charged under summary hearings, expands the eligibility requirements to be appointed as a military judge and modifies the appointment process for three key military justice authorities: the Canadian Forces Provost Marshal (CFPM),[5] the Director of Military Prosecutions (DMP)[6] and the Director of Defence Counsel Services (DDCS).[7]

Some of the amendments to the NDA seek to implement the recommendations made by former Supreme Court Justice Morris J. Fish in his independent review of certain provisions of the NDA,[8] and by former Supreme Court Justice Louise Arbour in her independent external review of sexual misconduct and harassment in the CAF.[9]

Pursuant to section 4.2 of the *Department of Justice Act*, the Minister of Justice tabled a Charter Statement for Bill C-11 to inform public and parliamentary debate.[10] The Statement identifies rights and freedoms that may be engaged under the *Canadian Charter of Rights and Freedoms* (Charter) – notably section 7 (fundamental justice), section 2(b) (freedom of expression), and section 11(d) (right to a fair trial) – and indicates that amendments to the NDA under the bill aim to enhance the independence of military justice authorities and align the military justice system with the civilian justice system.

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During its study of Bill C-11, the House of Commons Standing Committee on National Defence heard from witnesses and received briefs expressing a range of views on various aspects of the bill.[11] The committee adopted 20 amendments to the bill relating to aspects such as: the choice of jurisdiction over *Criminal Code* sexual offences; the transfer of evidence; the establishment of an office of the inspector general for sexual misconduct in the CAF; a review process relating to the bill's provisions relating to the jurisdiction over *Criminal Code* sexual offences; the appointment of the victim's liaison officer; trauma-informed training; legal and financial assistance for the accused person; and the appointment, tenure and mandate of the Judge Advocate General (JAG), the CFPM, the DMP, the DDCS, and military judges.[12]

Following a ruling by the Speaker of the House of Commons, six of the amendments adopted by the House of Commons Standing Committee on National Defence were found to be inadmissible.[13] Subsequent amendments were made at report stage and, as a result, only three of the amendments originally adopted by the committee were retained. Those amendments relate to the appointment of certain military justice authorities. The bill subsequently received first reading in the Senate on 26 May 2026.

1.1 OVERVIEW OF THE CANADIAN MILITARY JUSTICE SYSTEM

The Canadian military justice system is parallel to, and separate from, the civilian criminal justice system. On numerous occasions, the Supreme Court of Canada has recognized the need for a military justice system that is distinct from the civilian criminal justice system.[14] Nevertheless, the two systems share many underlying principles and are subject to the same constitutional framework, including the *Charter*.

The Canadian military justice system currently has two types of military tribunals for adjudicating service infractions and service offences, respectively: summary hearings and courts martial.[15]

First, summary hearings provide a process that is non-penal, but rather administrative in nature for addressing minor breaches of military discipline at the unit level. The summary hearing is restricted to cases of "service infractions," which are acts, omissions, or conduct of a "less serious" nature that breach CAF standards.[16]

Summary hearings have jurisdiction over all service infractions. The *Code of Service Discipline*, which is found in Part III of the NDA, contains the fundamental aspects of the military justice system, including summary hearings. The *Code of Service Discipline* states that summary hearings may be presided over by a superior

commander, a commanding officer or delegated officer. The officer conducting the hearing must determine whether the accused committed a service infraction and, if so, may impose one or more sanctions.

The service infractions described in the *Queen's Regulations and Orders for the Canadian Forces* include infractions in relation to property and information, to military service, and to drugs and alcohol.[17] The sanctions that may be imposed for service infractions are reduction in rank, severe reprimand, reprimand, deprivation of pay and any allowance for not more than 18 days, and minor sanctions prescribed in regulations. Bill C-11 amends certain rules for holding summary hearings.

Second, courts martial are formal military courts presided over by military judges. They are designed to deal with "service offences" that are "more serious" in nature. They follow rules and procedures similar to those of civilian criminal courts. At court martial, the prosecution is conducted by a military prosecutor under the authority of the DMP. The accused is entitled to be represented by counsel assigned by the DDCS or by civilian counsel.[18]

Courts martial have jurisdiction over all service offences, with the exception of the offences set out in section 70 of the NDA. Pursuant to section 70 of the NDA, a court martial currently "does not have jurisdiction to try … any of the following offences committed in Canada: (a) murder; (b) manslaughter; or (c) an offence under any of the sections 280 to 283 [abduction] of the *Criminal Code*."[19] Bill C-11 expands these exceptions to include certain offences committed in Canada that are of a sexual nature.

1.2 INDEPENDENT REVIEWS

Section 273.601 of the NDA requires the minister to request periodic independent reviews of specific provisions of the NDA relating to military justice, military police and police oversight, military grievances and the external review of grievances. The Supreme Court of Canada stated that these reviews are essential as they ensure that the country's military justice system "is rigorously scrutinized, analyzed, and refined at regular intervals."[20]

To date, the following three independent reviews of specific provisions of the NDA have been carried out:

1. The first independent review was conducted in 2003 by the Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada. The review examined the provisions and operation of Bill C-25, which received Royal Assent in 1998, concerning the evolution of certain aspects of the term for military judges.[21]

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2. The second independent review was completed in 2011 by the Honourable Patrick LeSage, former Chief Justice of the Ontario Superior Court. This review specifically involved consideration of the operation of aspects of the military justice system, military grievances and the military police complaints process.[22]
3. The third independent review was completed in 2021 by the Honourable Morris J. Fish, former Justice of the Supreme Court of Canada. This review examined the provisions of the NDA regarding military justice, military grievances, the CFPM and the Military Police Complaints Commission.[23]

In his report to Parliament on 1 June 2021, Justice Fish provided the minister with a total of 107 recommendations, most of which pertained to the military justice system, how sexual misconduct is addressed, the military police and military police oversight.

The report concludes that, "[a]s it currently stands, the military justice system needs better protection of the independence of its judges, courts, prosecutors, defence counsel and police."[24] Bill C-11 implements recommendations 2, 7, 8, 10, 13, 14, 15 and 16, which generally aim to enhance the independence of military justice authorities from the chain of command and increase Canadians' confidence in the military justice system.

1.3 INDEPENDENT EXTERNAL REVIEWS OF SEXUAL MISCONDUCT WITHIN THE CANADIAN ARMED FORCES

Following several reports of sexual misconduct in the CAF, various aspects of harassment and sexual misconduct within the Department of National Defence and the CAF were subject to external reviews.

On 29 April 2021, the minister launched an "independent external comprehensive review" on the way in which the military justice system responds to cases of harassment and sexual misconduct within the CAF and the Department of National Defence.[25] Conducted by the Honourable Louise Arbour, former Justice of the Supreme Court of Canada, the review considered previous independent reviews on the same theme, such as the *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces* carried out in March 2015 by the Honourable Marie Deschamps, former Justice of the Supreme Court of Canada,[26] and the third independent review by Justice Fish.

On 20 October 2021, Justice Arbour provided four interim recommendations to the minister regarding investigative and prosecutorial jurisdiction over all sexual offences by CAF members. These recommendations included the implementation of Justice Fish's Recommendation 68. In part, the interim recommendations state that "[a]ll sexual assaults and other criminal offences of a sexual nature under the

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Criminal Code, including historical sexual offences, alleged to have been perpetrated by a CAF member, past or present ('sexual offences') should be referred to civilian authorities."[27]

The minister accepted the interim recommendations and asked the Department of National Defence and the CAF to implement them. The process of referring criminal offences of a sexual nature alleged to have been perpetrated by a CAF member to civilian authorities began in December 2021.[28]

Justice Arbour's 20 May 2022 Report of the Independent External Comprehensive Review, which contains 48 recommendations, expands on these interim recommendations. At Recommendation 5 of the report, Justice Arbour proposes that all *Criminal Code* sexual offences committed by CAF members should be investigated and prosecuted exclusively in civilian criminal courts. Justice Arbour's report notes that these changes to the CAF's jurisdiction over *Criminal Code* sexual offences would require amendments to the NDA.[29] Bill C-11 sets out to implement Recommendation 5.

2 DESCRIPTION AND ANALYSIS

Bill C-11 includes 69 clauses. The following section of this Legislative Summary covers the most important provisions of the bill without, however, reviewing all the clauses of the bill.

2.1 JURISDICTION OVER *CRIMINAL CODE* SEXUAL OFFENCES COMMITTED IN CANADA (CLAUSES 7, 8, 60 AND 70)

The bill implements Justice Arbour's Recommendation 5 from the Report of the Independent External Comprehensive Review to transfer jurisdiction over certain offences of a sexual nature from the military justice system to civilian authorities. The recommendation reads as follows:

> *Criminal Code* sexual offences should be removed from the jurisdiction of the CAF. They should be prosecuted exclusively in civilian criminal courts in all cases. … This should include:
>
> - Sexual offences found in Part V of the *Criminal Code*;
> - Sexual offences found in Part VII of the *Criminal Code*, including but not limited to sexual assaults; and
> - Any "designated offence" as defined in subsections 490.011(1)(a), (c), (c.1), (d), (d.1) or (e) of the *Criminal Code*, to the extent not already captured above.[30]

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The military justice system presently has concurrent jurisdiction with the civilian authorities over *Criminal Code* sexual offences committed by any person subject to the *Code of Service Discipline*. These offences may be tried by courts martial under section 130 of the NDA, which creates a service offence for an act punishable under the NDA, the *Criminal Code* or any other Act of Parliament.

Section 70 of the NDA sets out offences that are excluded from the jurisdiction of a court martial. Clause 7 amends section 70 of the NDA to add *Criminal Code* sexual offences to the list of offences over which a court martial does not have jurisdiction. These offences include sexual offences listed in Part V of the *Criminal Code* (Sexual Offences, Public Morals and Disorderly Conduct) and Part VIII of the *Criminal Code* (Offences Against the Person and Reputation), as well as all other *Criminal Code* offences of a sexual nature or committed for a sexual purpose. The addition of these offences to section 70 of the NDA removes court martial jurisdiction over these offences, giving exclusive jurisdiction to civilian criminal courts.

Clause 60 states that the CAF has 60 days after the day on which clause 7 comes into force to transfer to the civilian authorities the responsibility for any ongoing investigation into the sexual offences added to section 70 of the NDA.

Clause 8 amends the NDA by adding new section 70.1, a provision stipulating that officers or non-commissioned members have no authority to investigate sexual offences. Clause 8 also adds new section 70.2 to the NDA to provide clarification with respect to investigative measures, evidence, and the transfer of arrested persons and evidence to the civilian authorities. It adds new section 70.3, which outlines that, despite an officer or non-commissioned member having no authority to investigate, this does not prevent them from initiating or conducting a private prosecution in relation to these offences.[31]

2.2 AMENDMENTS RESULTING FROM THE RECOMMENDATIONS IN THE REVIEW BY THE HONOURABLE MORRIS J. FISH

The bill addresses eight recommendations set out in Justice Fish's third independent review, namely recommendations 2, 7, 8, 10, 13, 14, 15 and 16.

These recommendations seek to promote the independence of certain military justice participants by modifying their role and powers so that these roles and mandates are more in line with those found in the civilian criminal justice system.

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2.2.1 Recommendation 2: Appointment Requirement for Military Judges (Clauses 18 and 19)

Currently, to be appointed a military judge, the NDA states that a candidate not only must be a barrister or advocate of at least 10 years' standing at the bar of a province, but must also have at least 10 years' experience as an officer in the CAF.[32] The NDA requires similar appointment requirement for reserve military judges.[33]

Recommendation 2 in Justice Fish's third independent review reflects a suggestion from the JAG to amend the NDA to broaden the second requirement "to allow the appointment of anyone having 10 years of experience as a *non-commissioned member*[34] in the CAF."[35] According to the JAG, this modified requirement would ensure that the appointees have a sufficient degree of military experience without necessarily having held the rank of officer for 10 years.

Clauses 18 and 19 replace sections 165.21(1) and 165.22(1) of the NDA with regard to the appointment requirement for military judges and reserve force military judges to achieve the objective of allowing non-commissioned members to be candidates.

2.2.2 Recommendation 7: Appointment, Tenure of Office and Removal of the Director of Military Prosecutions and Director of Defence Counsel Services, and Other Related Provisions (Clauses 3, 15, 16, 40, 63 and 65)

The NDA governs the appointment and term of the DMP and the DDCS. During his review, Justice Fish found that the current tenure and the possibility of renewal make the DMP and the DDCS vulnerable to political pressures, and that the existing mechanisms for removal by the minister "also fail to protect their independence to a sufficient degree."[36]

Clauses 15, 16 and 40 seek to address these concerns by legislating certain aspects of Recommendation 7 in the third independent review.

Specifically, they amend sections 165.1 and 249.18 of the NDA, on the appointment and term of the DMP and the DDCS, so that it is no longer the minister but the Governor in Council who appoints the DMP and the DDCS to hold office during good behaviour. The new term for each position is not more than seven years and is not renewable, compared to the current term that is limited to four years with the possibility of renewal. **During its consideration of the bill, the House of Commons Standing Committee on National Defence adopted amendments to add new sections 165.1(1.1) and 249.18(1.1) to the DNA, requiring that appointments to these positions be made within 120 days of a vacancy arising. These amendments introduce a statutory time limit intended to ensure that appointments are made in a timely manner. The introduction of a time limit aims to address concerns**

raised during the committee's study about delays in Governor in Council appointments to key military justice positions.[37] The bill states that the persons who hold office as the DMP (clause 63) and as the DDCS (clause 65) at the time the amendments to the NDA come into force will continue to hold office for the remainder of their term and may be appointed for an additional term of not more than seven years.

The bill introduces a power of inquiry with regard to the DMP and the DDCS by adding new sections 165.101 and 249.181 to the NDA. Under these new sections, the minister may request that the Governor in Council hold an inquiry in public – with the possibility of taking measures to ensure the confidentiality of the inquiry in certain specified circumstances – to determine whether the DMP or the DDCS should be subject to remedial or disciplinary measures for reasons set out in new sections 165.101(12) and 249.181(12) of the NDA.

On receipt of a request to hold an inquiry, the Governor in Council appoints a judge who has all the powers, rights and privileges that are vested in a superior court, who in turn may engage the services of counsel and other persons having technical or specialized knowledge to assist in conducting the inquiry.

Clauses 15 and 40 also add new sections 165.1(4) and 249.18(4) to the NDA, granting the Governor in Council the ability to suspend the DMP and the DDCS from office during the inquiry if the Governor in Council is of the opinion that there are exceptional circumstances. Exceptional circumstances include "allegations of serious misconduct or allegations related to a risk to occupational health and safety or to a risk of injury to international relations, national defence or national security."[38]

These changes replace the current provisions of the NDA giving the minister power to remove, on the recommendation of the inquiry committee, the DMP (clause 63) and the DDCS (clause 65). The bill states that any inquiry not completed when these changes come into force is continued. However, it is the Governor in Council who has the power to remove the DMP and the DDCS from office, not the minister.

Clauses 16 and 40 create new sections 165.16 and 249.182 of the NDA with regard to the acting DMP and the acting DDCS. These new sections limit the duration of the acting term, which is appointed by the minister if the DMP or DDCS are absent or unable to act, to 90 days only with the approval of the Governor in Council.

Lastly, clause 3 amends section 12(3)(a) of the NDA regarding the Treasury Board's power to prescribe the rates and conditions of issue of pay, so that it applies only to military judges, not to the DMP and the DDCS.

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The amendments recommended by Justice Fish in his third independent review would allow for the conditions governing the appointment, tenure and removal from office of the DMP and the DDCS to be more similar to those of the Director of Public Prosecutions in the civilian justice system.[39]

2.2.3 Recommendation 8: Removing the Judge Advocate General's Power of Influence in Military Prosecutions (Clause 17)

The NDA currently authorizes the JAG to issue general instructions or guidelines in writing to the DMP and the DDCS "regarding prosecutions or defence counsel services."[40] The JAG may also issue specific instructions to the DMP (but not to the DDCS) in respect of a particular prosecution.[41]

Although the NDA requires the DMP to make all the instructions and guidelines available to the public, unless otherwise specified in the NDA, Justice Fish does not consider this to be a sufficient safeguard to ensure the independence of the DMP. In his view, "the existence of this power clearly limits the independence of the DMP" and "this power should be removed."[42]

Clause 17 amends section 165.17 of the NDA so that the authority to issue specific instructions or guidelines to the DMP in respect of a particular prosecution be given to the minister rather than the JAG.

As well, while the DMP remains under the general supervision of the JAG, the JAG can no longer issue specific instructions or guidelines in respect of a particular prosecution. The JAG can still issue general instructions or guidelines in writing in respect of prosecutions, provided that a copy is submitted to the minister.

2.2.4 Recommendation 10: Superintendence of the Judge Advocate General (Clause 2)

Following the description of the JAG's authority over the administration of justice, clause 2 adds clarification on the independence of military justice authorities, including the Provost Marshal General, the DMP and the DDCS. This addition helps clarify what is meant by the JAG's "superintendence of the administration of military justice in the Canadian Forces."[43]

This amendment is consistent with Recommendation 10 in the third independent review, which, according to Justice Fish, provides the clarification needed to "avoid interpretations which could prove prejudicial to the independence of military prosecutors and defence counsel."[44]

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2.2.5 Recommendation 13: Appointment of the Provost Marshal (Clauses 4, 6, 43 to 45, 57 and 58)

In the third independent review, Justice Fish held, on recommendation of the JAG, "that the independence of the CFPM from the chain of command could be reinforced by amending the appointment, tenure and removal conditions of the CFPM."[45]

Clause 4 amends section 18.3 of the NDA with respect to the appointment, rank and tenure of the CFPM to ensure greater military police independence.

The amendments to section 18.3 of the NDA provide that the CFPM be appointed by the Governor in Council, instead of the Chief of the Defence Staff (CDS), and hold office during pleasure rather than during good behaviour. Consequently, the CFPM has a greater degree of independence by being made accountable to the minister, not the CDS, in the performance of their duties and functions. **An amendment adopted by the House of Commons Standing Committee on National Defence adds new section 18.3(1.1) to the NDA, which requires that the appointment of the CFPM be made within 120 days after a vacancy arises. This provision establishes a statutory time limit for filling the position and mirrors the requirements set out in sections 165.1(1.1) and 249.18(1.1) discussed above, thereby ensuring continuity in leadership within the military police.** Clause 57 states that the person who holds office as the CFPM at the time clause 4 comes into force continues to hold office for the remainder of their term, but they hold office during pleasure under section 18.3 of the NDA, as amended.

Clause 6 replaces references to the Vice Chief of the Defence Staff (VCDS) in sections 18.5 and 18.6 of the NDA with references to the minister. The minister may issue general instructions or guidelines in respect of the responsibilities of the CFPM. Clause 58 states that the general instructions and guidelines in effect on the day the bill comes into force will continue to be in effect but will be deemed to have been issued by the minister, not the VCDS. Meanwhile, the CFPM is responsible to the minister and must report annually to the minister on the activities of the CFPM and the military police during the year.

Recommendation 82 in the third independent review suggests that, if Recommendation 13 is implemented and "the [CFPM] becomes responsible to the minister of National Defence in the performance of his duties and functions," it is "the minister and not the [CDS who] should issue the notice of action where the [CFPM] is the subject of a complaint."[46] Clauses 43 to 45 make some amendments in this regard. Specifically, section 250.26(2) of the NDA regarding the disposal of conduct complaints, section 250.49(2) of the NDA regarding the review of conduct complaints, and section 250.5(2) regarding the review of interference in investigation complaints, are amended so that any complaints relating to the CFPM are processed and reviewed by the minister, not the CDS.

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2.2.6 Recommendation 14: Title of Provost Marshal General (Clauses 4, 5, 47, 53 and 54)

Because the CFPM reports directly to the minister, Justice Fish recommended that the tile of the CFPM be changed to "Provost Marshal General" so that it would be in keeping with "other senior specialist designations in the CAF, such as the Surgeon General, the Chaplain General and the JAG."[47] According to his review, such a change would

> (a) ensure that it is understood that the holder of this position is the senior law enforcement officer within the CAF; and (b) reinforce the independence of the CFPM from the chain of command in policing matters.[48]

Because director generals in the CAF usually rank as generals, future "Provost Marshal Generals" holding a rank of colonel "may not receive the recognition and deference to which their law enforcement functions entitle them."[49] To avoid this problem, clause 4 amends section 18.3(2) of the NDA to require that the Provost Marshal General hold a rank that is not less than brigadier-general, rather than the rank of colonel.

Subsequently, clauses 53 and 54 replace references to the CFPM with the term "Provost Marshal General" in the *Criminal Code* and in the *Sex Offender Information Registration Act*.[50] Clause 47 makes the same amendment to the sections of the NDA.

Lastly, clause 5 amends the duties and functions of the Provost Marshal General by replacing paragraph 18.4(a) of the NDA to specify that the Provost Marshal General is responsible for "the supervision of the performance of policing duties and functions" rather than limiting their responsibility to investigations.

2.2.7 Recommendation 15: Instructions to the Provost Marshal General (Clause 6)

Bill C-15, Strengthening Military Justice in the Defence of Canada Act, which was adopted in 2013, added section 18.5(3) to the NDA, enabling the VCDS (or the equivalent power which would be transferred to the minister once Recommendation 13 is implemented) to issue general instructions or guidelines in writing regarding a particular investigation.[51]

Although Justice Fish's third independent review indicates "that no particular instructions or guidelines have been issued to date"[52] on the basis of this section, it states that the provision nevertheless "significantly encroaches on police independence."[53] Justice Fish explains that the wording of this section is so broad that it may "prevent the constitution of *any* evidentiary record to begin with."[54]

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Clause 6 repeals section 18.5(3) of the NDA but retains the minister's authority to issue general instructions or guidelines to the Provost Marshal General. However, this authority does not include the power to give directions regarding specific law enforcement decisions in individual cases, as set out in Recommendation 15 in the third independent review.

2.2.8 Recommendation 16: Complaints to the Military Police Complaints Commission of Canada (Clause 42)

Section 250.19(1) of the NDA currently provides that only a member of the military police who conducts or supervises a military police investigation, or who has done so, and "who believes on reasonable grounds that any officer or non-commissioned member or any senior official of the Department has improperly interfered with the investigation" may make a complaint about that person to the Military Police Complaints Commission of Canada.[55]

In 2011, in the second independent review, Chief Justice LeSage recommended "that the standing to make an interference complaint be extended 'to include persons seconded to [military police] positions.'"[56]

Justice Fish is of the opinion that "[t]he public interest will be better served if every person informed of interference with the military police has a right to complain to the [Military Police Complaints Commission of Canada]."[57] In accordance with Recommendation 16 of the third independent review, clause 42 amends section 250.19 of the NDA in two ways.

First, it replaces section 250.19(1) of the NDA, which currently allows a member of the military police to make an interference complaint, with an obligation to make a complaint. The scope of this section is broadened to include any member of the military police and any person performing policing duties and functions under the Provost Marshal General's supervision, as opposed to just the members of the military police involved in an investigation.

Second, clause 42 adds section 250.19(1.1), which allows a victim, an individual acting on behalf of a victim and any other person affected by the performance of the policing duty or function to make a complaint about an officer, non-commissioned member or senior official of the Department if they believe on reasonable grounds that the person has improperly interfered with the performance of any policing duties or functions.

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Under both sections, the complaint must relate to interference "with the performance of any of the policing duties or functions that are prescribed for the purposes of section 250.18 in regulations made by the Governor in Council."

2.3 SUMMARY HEARINGS, ROLE OF MILITARY JUDGES, VICTIMS RIGHTS AND RELATED AMENDMENTS

The bill amends some of the rules governing summary hearings under Division 5 of Part III (*Code of Service Discipline*) of the NDA. It provides for the exclusion of military judges from the summary hearing system and expands access to victims' liaison officers under the "Declaration of Victims Rights" of the *Code of Service Discipline*[58] and to individuals acting on the victim's behalf.

2.3.1 Objectives of Sanctions (Clause 12)

Clause 12 repeals section 162.9(c) of the NDA so as to remove the denunciation of "indisciplined conduct" as an objective of sanctions.

2.3.2 Military Judges (Clauses 11, 13 and 62)

Since the coming into force of Bill C-77, An Act to amend the National Defence Act and to make related and consequential amendments to other Acts, which was adopted in 2019, summary hearings (also known as "summary trials") are reserved for service offences or infractions that can be tried quickly at the unit level without the presence of a military judge.[59]

According to section 162.5 of the NDA, a service infraction is not an offence, it does not result in a criminal record and therefore, according to section 162.4 of the NDA, it may be dealt with only by summary hearing.

Clause 13 amends the NDA by adding section 163(3), which states that a military judge may not conduct a summary hearing. In practice, these hearings are already conducted by an officer.

To ensure the judicial independence of military judges, clause 11 adds section 165.51 to the NDA, stating that a military judge is not to be charged with having committed a service infraction. Clause 62 specifies that any charge brought against a judge for a service infraction before the coming into force of clause 11 will be dropped on that day.

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2.3.3 Victims Rights

2.3.3.1 Victim's Liaison Officer (Clause 9)

Clause 9 amends section 71.16(1) of the NDA to state that an individual may act on behalf of the victim in the context of communications with the victim's liaison officer. It is up to the commanding officer to name, either an officer or non-commissioned member, who satisfies the conditions established in regulations made by the Governor in Council, to help the victim or individual understand and obtain information regarding service offence charges.

2.3.3.2 Order Restricting Publication (Clauses 20 and 21)

Clause 20 adds section 162.1 of the *Criminal Code* to the list of offences under section 183.5(1)(a)(i) of the NDA concerning orders restricting publication in connection with sexual offences. To this end, the victim, the prosecutor or any witness may make an application for an order in the case of non-consensual publication, dissemination, sale, etc. of intimate images. Under certain circumstances, the military judge shall make the order without even being asked.

Clause 21 amends section 183.6 of the NDA on orders directing that any information that could identify the victim or witness not be published in any document or broadcast or transmitted in any way.

2.3.3.2.1 Duty of the Military Judge

Clauses 20 and 21 add to the NDA the duty of the presiding military judge to inform the victim or the witness who is the subject of the order restricting publication as soon as possible of the fact that an order was made and of their right to revoke or vary it.

2.3.3.2.2 Duty of the Prosecutor

The same clauses add a new duty for the prosecutor to inquire with the victim or witness if the prosecutor is making an application for an order to the military judge. The prosecutor then has the duty to inform the military judge that the prosecutor has informed the individuals who are the subject of the order accordingly.

2.3.3.2.3 Limitation of the Order's Application to Victims and Witnesses

Clauses 20 and 21 add to sections 183.5(6) (sexual offences) and 183.6(4) (protecting the identity of victims and witnesses) of the NDA a limitation regarding the order to restrict the publication so as to (i) properly disclose information in the course of the

administration of justice without making the information known in the community; and (ii) protect disclosure of information in any forum made by a person who is the subject of the order or their particulars, without intentionally or recklessly revealing the identity of any other person whose identity is protected by the order.

Clauses 20 and 21 also add new sections to the NDA, namely sections 183.5(7) and 183.6(4.1), to make an exception for the application of an order allowing the victim or witness to disclose information "when it is not the purpose of the disclosure to make the information known to the public, including when the disclosure is made to a legal professional, a health care professional or a person in a relationship of trust with the victim or witness" or with a military justice system participant in the case of section 183.6(4.1).

2.3.3.3 Varying an Order Restricting Publication (Clause 22)

Clause 22 adds section 183.61 to the NDA concerning applications to vary or revoke an order made under section 183.5 or 183.6 of the NDA.

2.4 AMENDMENTS RELATING TO THE *SEX OFFENDER INFORMATION REGISTRATION ACT*

The bill amends the NDA in order to reconcile the provisions regarding sex offender information and publication bans with the amendments made to the *Criminal Code* by *An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act*.[60] According to the then-minister, "[t]hese amendments are necessary to ensure the military justice system remains constitutional and aligned with the *Criminal Code* and the civilian criminal justice system."[61]

2.4.1 Designated Offence (Primary and Secondary) (Clauses 23 and 24)

Clause 23 introduces new definitions under section 227 of the NDA, namely a "primary offence" and a "secondary offence." These new definitions refer to the definitions in section 490.011(1) of the *Criminal Code* that refer to specific offence provisions of the *Criminal Code* under each of these two categories of offences.

The bill amends many other sections to ensure that they refer to the new definition of "designated offence" as newly defined in section 227 of the NDA, including the sections of the NDA referring to convictions before 12 September 2008 (clauses 29 to 31).

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Clause 24 replaces section 227.01 of the NDA on orders to comply with the *Sex Offender Information Registration Act*, so as to define the conditions under which the court martial may make orders.

Section 227.01 of the NDA continues to require court martial judges to make an order to comply with the *Sex Offender Information Registration Act* under a particular set of circumstances, but only when they impose a sentence equivalent to a sentence of imprisonment of two years or more or for a designated offence against a victim under the age of 18 years.

Moreover, clause 24 adds new section 227.01(5) of the NDA, which prevents a court martial from making an order in respect of a secondary offence, unless the prosecutor applies for the order and establishes beyond a reasonable doubt that the accused committed the secondary offence with the intent to commit a primary offence.

2.4.2 Duration of Order and Reasons (Clauses 25 to 27)

Clause 25 replaces part of section 227.02 of the NDA regarding the duration of the order to comply with the *Sex Offender Information Registration Act*.

Clause 26 adds new section 227.021 to the NDA about the reasons for the order and new section 227.022 regarding the failure to make an order at the time the sentence is imposed on account of a mental disorder.

Both clauses 26 and 27 make amendments to include adaptation provisions for cases where the accused is found not criminally responsible on account of a mental disorder.

2.4.3 Termination Order (Clause 28)

Clause 28 amends section 227.04(1) of the NDA with respect to termination orders, adding new section 227.04(1)(a) to allow for the possibility that the accused has established that there would be no connection between continuing an order or an obligation and the purpose of helping police services prevent or investigate crimes of a sexual nature by registering them as sex offenders. The same clause adds section 227.04(1.1) to the NDA regarding the factors to be considered before making a termination order.

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2.4.4 Termination Order for Convictions Before 12 September 2008 (Clause 32)

Clause 32 replaces section 227.13(1) of the NDA to define two circumstances in which a termination order may be made for convictions before 12 September 2008. The person must be able to demonstrate that the impact of obligation of their registration would be grossly disproportionate to the public interest in their registration, or that there would be no connection between continuing the obligation and the purpose of helping police services prevent or investigate crimes of a sexual nature.

Clause 32 adds section 227.13(1.1) to the NDA to list the factors the court martial shall consider in determining whether to make the termination order. These include, for instance, the nature and seriousness of the offence, the victim's age and personal characteristics, the nature of the relationship with the victim and criminal history.

2.4.5 Prosecution Limitation and Disclosure of Information (Clauses 33 and 34)

Clauses 33 and 34 amend section 227.15(1)(b) of the NDA with respect to the possibility of appealing the legality of a decision made under certain specified sections of the *Criminal Code*, and section 227.18(1)(b) on the disclosure of information on the registered sexual offender, to include new sections added to the NDA through this bill, including sections 227.02, 227.22 and 227.23.

2.4.6 Variation of Order (Clause 35)

Given that the bill amends section 227.01 of the NDA regarding orders to comply with the *Sex Offender Information Registration Act*, clause 35 provides an opportunity for persons who were subject to an order before the day on which this clause of the bill comes into force, but after 15 April 2011, to apply for an exemption order (section 227.22 of the NDA). If an exemption order is granted based on the list of non-exhaustive factors in section 227.22(6), all the information that relates to the person shall be permanently removed from the Royal Canadian Mounted Police registries.

Clause 35 also adds new section 227.23 to the NDA, which provides for an application process to vary the duration of a compliance order that applies for life.

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2.4.7 Appeal Relating to a Compliance Order (Clauses 36 to 39)

Clauses 36 and 37 amend sections 230(g) and 230.1(h) of the NDA to include a person's or the minister's right to appeal the legality of the decision on the duration of an order to comply with the *Sex Offender Information Registration Act*.

Clause 38 replaces section 230.2 of the NDA in order to grant the minister or counsel instructed by the minister the right to appeal to the Court Martial Appeal Court in respect of the legality of the decision made under the new sections 227.22 or 227.23 of the NDA.

Meanwhile, clause 39 amends section 240.5 of the NDA on appeal regarding the legality of a decision rendered under the sections specifically mentioned regarding the order to comply with the *Sex Offender Information Registration Act*. This amendment provides that the Court Martial Appeal Court "or another court" can hear the appeal and cause the Provost Marshal to be notified of the court's decision to ensure the complete removal of information on the registered person.

2.5 OTHER TRANSITIONAL PROVISIONS, COORDINATING AMENDMENTS AND COMING-INTO-FORCE PROVISIONS

2.5.1 Related Amendments to the *Criminal Code* and the *Strengthening Military Justice in the Defence of Canada Act* (Clauses 48 to 52 and 54)

Clauses 48 to 52 amend certain sections of the *Criminal Code* that pertain to the *International Transfer of Offenders Act*.[62] These amendments are consistent with the new amendments made to the NDA in respect of orders to comply with the *International Transfer of Offenders Act* made as of 15 April 2011, but before the day on which the bill comes into force.

Clause 54 repeals section 13 of the *Strengthening Military Justice in the Defence of Canada Act*.[63] This section allowed for the Treasury Board to establish the rates and conditions of issue of pay of officers and non-commissioned members, other than military judges. However, new section 12(3)(a) of the NDA, as amended by clause 3, stipulates that the Treasury Board may make regulations prescribing the rates and conditions of issue of pay of military judges.

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2.5.2 Transitional Provisions and Coordinating Amendments (Clauses 56 to 68)

Clauses 56 to 65 provide for transitional provisions, particularly with regard to the transfer of investigations into offences of a sexual nature that are ongoing at the time clause 7 comes into force, and the term of the persons holding the positions of CFPM, DMP and DDCS at the time clauses 4, 15 and 40 come into force.

Clause 66 amends certain provisions of the NDA related to new sections 227.22 and 227.23 after the coming into force of clauses 35 and 47. Clause 67 pertains to clause 10 of the bill and section 32 of the *Tougher Penalties for Child Predators Act*.[64] Because clause 10 and section 32 provide for the same amendments to section 119.1(3) of the NDA, the bill states that the coming into force of one will repeal the other.

Clause 68 provides that, when clause 7 of the bill comes into force, the offence of a sexual nature relating to "child pornography" added by clause 7 under section 70(d)(xi) of the NDA will be replaced by the offence of a sexual nature relating to "child sexual abuse and exploitation material," in accordance with *An Act to amend the Criminal Code and to make consequential amendments to other Acts (child sexual abuse and exploitation material)*.[65]

2.5.3 Coming into Force

Clause 69 states that most of the clauses of the bill come into force by order of the Governor in Council. Clauses 7 and 8, pertaining to the transfer of jurisdiction over sexual offences, come into force on the 60th day after the day on which the bill receives Royal Assent.

NOTES

1. Bill C-11, An Act to amend the National Defence Act and other Acts, 45th Parliament, 1st Session.
2. Bill C-66, An Act to amend the National Defence Act and other Acts, 44th Parliament, 1st Session.
3. *National Defence Act* (NDA), R.S.C. 1985, c. N-5.
4. *Criminal Code*, R.S.C. 1985, c. C-46.
5. The Canadian Forces Provost Marshal (CFPM) is appointed by the Chief of the Defence Staff (CDS) and is the functional authority for the military police within the Canadian Armed Forces and advises the CDS on policing matters. The CFPM is also charged with the command of the Canadian Forces Military Police Group (CF MP Gp) and exercises full command over all military police personnel. See: Government of Canada, *Canadian Forces Provost Marshal Annual Report 2024-2025*, p. 10.
6. The Director of Military Prosecutions (DMP) is appointed by the Minister of National Defence. The DMP is head of the Canadian Military Prosecution Service. The DMP's role is to review cases referred to the competent courts, to decide on the relevance of military prosecutions and to present them in the courtroom, where applicable. See Government of Canada, *Director of Military Prosecutions*.

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7. The Director of Defence Counsel Services (DDCS) is appointed by the Minister of National Defence. The DDCS ensures that the legal services prescribed under article 101.20(2) of the *Queen's Regulations and Orders for the Canadian Forces* are available to persons charged or liable to be charged under the *Code of Service Discipline*. See Government of Canada, *Defence counsel services*.

8. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021.

9. The Honourable Louise Arbour, C.C., G.O.Q., *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, 20 May 2022.

10. Government of Canada, *Bill C-11: An Act to amend the National Defence Act and other Acts – Charter Statement*, 31 October 2025.

11. For information on evidence and briefs received by the House of Commons, Standing Committee on National Defence (NDDN) as part of its study of Bill C-11, see NDDN, *Bill C-11, An Act to amend the National Defence Act and other Acts*.

12. NDDN, *Bill C-11, An Act to amend the National Defence Act and other Acts*, Third report, 9 February 2026,

13. House of Commons, *Debates*, 21 April 2026, 1525 (Hon. Francis Scarpaleggia).

14. See *R. v. Généreux*, [1992] 1 S.C.R. 259; *MacKay v. The Queen*, [1980] 2 S.C.R. 370, para. 399; and *R. v. Moriarity*, 2015 SCC 55. In *R. v. Généreux*, the Supreme Court of Canada writes:

> The purpose of a separate system of military tribunals is to allow the Armed Forces to deal with matters that pertain directly to the discipline, efficiency and morale of the military. … Recourse to the ordinary criminal courts would, as a general rule, be inadequate to serve the particular disciplinary needs of the military. There is thus a need for separate tribunals to enforce special disciplinary standards in the military.

15. Before Bill C-77, An Act to amend the National Defence Act and to make related and consequential amendments to other Acts, came into force in June 2022, the two types of service tribunals of the military justice system were summary trials and courts martial.

16. Department of National Defence (DND), Judge Advocate General (JAG), *Judge Advocate General Annual Report 2023-2024*, pp. 16–17.

17. *Queen's Regulations and Orders for the Canadian Forces*, Chapter 120.

18. Ibid., Chapter 101.

19. *National Defence Act*, s. 70.

20. *R. v. Stillman*, 2019 SCC 40, para. 53.

21. The Right Honourable Antonio Lamer, P.C., C.C., C.D., *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*, 3 September 2003.

22. The Honourable Patrick J. LeSage, C.M., O.Ont., Q.C., *Report of the Second Independent Review Authority to The Honourable Peter G. MacKay, Minister of National Defence*, December 2011.

23. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021.

24. Ibid., p. 226.

25. DND, *Launch of an Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, Backgrounder, 29 April 2021; and Government of Canada, *Terms of Reference – Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*.

26. Government of Canada, Marie Deschamps, C.C. Ad.E., *External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces*, 27 March 2015.

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27. The Honourable Louise Arbour, C.C., G.O.Q., "Interim recommendations from Independent External Comprehensive Review team," *Interim recommendations from the Independent External Comprehensive Review of the Department of National Defence (DND) and the Canadian Armed Forces (CAF)*, Government of Canada, 20 October 2021.

28. DND, *Statement from the Canadian Forces Provost Marshal*, Statement, 12 May 2023.

29. The Honourable Louise Arbour, C.C., G.O.Q., *Report of the Independent External Comprehensive Review of the Department of National Defence and the Canadian Armed Forces*, 20 May 2022.

30. Ibid., p. 103.

31. A private prosecution is a prosecution started by a private individual who is not acting on behalf of a law enforcement agency or prosecution service.

32. *National Defence Act*, s. 165.21(1).

33. Ibid., s. 165.22(1).

34. Section 2 of the NDA states that the term "non-commissioned member" means "any person, other than an officer, who is enrolled in, or who pursuant to law is attached or seconded otherwise than as an officer to, the Canadian Forces."

35. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021, p. 19. [AUTHORS' EMPHASIS]

36. Ibid., p. 34.

37. NDDN, *Evidence*, 6 November 2025, 0830 (Charlotte Duval-Lantoine, Vice President, Ottawa Operations, Canadian Global Affairs Institute); NDDN, *Evidence*, 6 November 2025, 0840 (LCol (Retired) Rory Fowler, as an individual); and NDDN, *Evidence*, 18 November 2025, 1535 (Afton David, Senior Legal Counsel, as an individual).

38. Bill C-11, clauses 15 (concerning section 165.1(5) of the NDA) and 40 (concerning section 249.18(5) of the NDA).

39. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021, p. 33.

40. Ibid., p. 35; citing the NDA, ss. 165.17(2), 249.2(2) and 249.2(3).

41. Ibid.; citing the NDA, s. 165.17(3).

42. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021, pp. 35–37.

43. *National Defence Act*, s. 9.2(1).

44. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021, p. 40.

45. Ibid., p. 45.

46. Ibid., p. 165.

47. Ibid., p. 45.

48. Ibid., pp. 45–46.

49. Ibid., p. 46.

50. *Sex Offender Information Registration Act*, S.C. 2004, c. 10.

51. Bill C-15, An Act to amend the National Defence Act and to make consequential amendments to other Acts, 41st Parliament, 1st Session (S.C. 2013, c. 24).

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52. The Honourable Morris J. Fish, C.C., Q.C., *Report of the Third Independent Review Authority to the Minister of National Defence Pursuant to subsection 273.601(1) of the* National Defence Act, *RSC 1985, c N-5*, 30 April 2021, p. 46.

53. Ibid., p. 47.

54. Ibid. [AUTHORS' EMPHASIS]

55. Ibid., p. 48; citing the NDA, s. 250.19(1).

56. Ibid.; citing the Honourable Patrick J. LeSage, C.M., O.ONT., Q.C., *Report of the Second Independent Review Authority to the Honourable Peter G. MacKay, Minister of National Defence*, December 2011.

57. Ibid., p. 49.

58. Bill C-77, An Act to amend the National Defence Act and to make related and consequential amendments to other Acts, adopted in 2019, added a new section to the *Code of Service Discipline* entitled "Declaration of Victims Rights," which grants victims of service offences certain rights granted to other victims of crime by the *Canadian Victims Bill of Rights* in 2015.

59. Bill C-77, An Act to amend the National Defence Act and to make related and consequential amendments to other Acts, 42nd Parliament, 1st Session (S.C. 2019, c. 15).

60. Bill S-12, An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act, 44th Parliament, 1st Session (S.C. 2023, c. 28). For more information on Bill S-12, see Michaela Keenan-Pelletier and Julian Walker, *Legislative Summary of Bill S-12: An Act to amend the Criminal Code, the Sex Offender Information Registration Act and the International Transfer of Offenders Act*, Publication no. 44-1-S12-E, Library of Parliament, 23 June 2023.

61. National Defence, *Minister Blair introduces legislation to modernize the military justice system and advance culture change in the Department of National Defence and Canadian Armed Forces*, News release, 21 March 2024.

62. *International Transfer of Offenders Act*, S.C. 2004, c. 21.

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

64. *Tougher Penalties for Child Predators Act*, S.C. 2015, c. 23.

65. *An Act to amend the Criminal Code and to make consequential amendments to other Acts (child sexual abuse and exploitation material)*, S.C. 2024, c. 23.