Modernization of courts martial: a matter of priority

Parliament needs to embark upon a review of the Canadian military justice system which will lead to its evaluation and rejuvenation to ensure its harmony with the ordinary laws of Canada and the open courts concept.

BY MICHEL DRAPEAU

OTTAWA—In January 2018, an interim report from the Department of National Defence (DND) on the courts martial examined some of the problems associated with the military’s court martial system. The results were anything but surprising. The report provided an overview of the courts martial system, a comparative study of military justice systems from around the world, and as an analysis of the high costs associated with running courts martial. The report clearly shows, and concludes, that courts martial are very expensive and inefficient. In May 2018, the auditor general also identified problems with the structure and administration of military justice.

Equally problematic, it also concluded that the former judge advocate general failed to exercise effective oversight. Last month, the Court Martial Appeal Court made a potentially groundbreaking decision in Beaudry v. Her Majesty the Queen, 2018 CMAC 4, challenging a linchpin provision of the Code of Military Justice. The judgment will soon land in the Supreme Court of Canada, where the constitutionality of the impugned provision will be decided upon. The perceived independence of military judges should not be subject to any influence, surveillance or any other form of direct or indirect coercion that would call into question their independence and impartiality. They must also ensure that their individual beliefs and values do not bias their decisions. They must always be, and be seen to be, objective and impartial.

Strangely, the judges presiding over courts martial could be likened as such, they are subject to the Code of Military Discipline, the same as the last eight individuals. To what end? The taxpayer who foots the bill for the necessary costs of such proceedings. Consider that at a June hearing held in Edmonton, a military judge, the two prosecutors, counsel for defence, the court reporter, the accused, as well as witnesses, and in total travelled to Edmonton to attend the trial. Incredibly, most of these individuals travelled to a courtroom where a full courtroom is available and underutilized. It was the taxpayer who funded the travel, accommodation, and meal allowances for all of these eight individuals. To what end?

The conclusion is that courts martial are normally held in isolated military garrisons, access is restricted under the Defence Security and Access Area Regulations, which allows the military to conduct searches of persons going into such areas. Not many of the members of the public actually attend the proceedings which makes the public right of access and the ‘open court’ principle.

I was disappointed also to find that at a court martial hearing, he sharply contrasted with the formal dress required for the public to attend judicial proceedings in a civil court, soldiers present were wearing camouflage fatigues. A courtroom is not a combat zone.

Showing respect for the judiciary, the law, and the purpose of courts martial proceedings, soldiers in attendance should be required to wear their regulatory service dress uniform as a means to approximate civilian attire for court.

Punctuality

This would help to better ensure compliance with the principles of public proceedings and open courts—an objective that is generally compatible with the continued military discipline and to facilitate the proper exercise of the profession of arms in defence of these very same rights and freedoms.

There is an urgent need therefore for Parliament to embark upon a review of the Canadian military law on which all will lead to its evaluation and rejuvenation to ensure its harmony with the ordinary laws of Canada and the open courts concept.

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