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Military Justice System lost its moral legitimacy

Canada's military justice system has lost the last shreds of its moral legitimacy.

The Judge Advocate General's brochure, "The Code of Service Discipline and Me" explains that "Summary trials are designed to deal with relatively minor service offences that are important for the maintenance of military discipline and efficiency at the unit level."

Commanding officers (CO), delegated officers or superior commanders preside over summary trials as both judge and jury, try the accused, determine if he or she is guilty, administer a punishment and return the member to duty. "The procedures of a summary trial," the booklet notes, "are less formal than at courts martial."

If you are a member of the Canadian Armed Forces, beware the comment: "The procedures of a summary trial are less formal." That means that the *Military Rules of Evidence* do not apply; there is no right to be represented by a lawyer; there is no appeal of a sentence.

A CO is both judge and jury and can punish the accused by up to 30 days detention; reduction in rank by one rank; a reprimand; a fine up to 60% of one month's pay and minor punishments, such as confinement to barracks (another form of detention) and stoppage of leave. The accused may also be assigned a criminal record.

The powers of the delegated officer and the superior officer are less than the CO's and do not include detention or confinement.

The Canadian government passed Bill C-77 which received Royal Assent and passed into Canadian law on June 21. Among other measures, the legislation replaces summary trials with *summary hearings*, and eliminates detention as a punishment.

This writer once believed Canadian military "justice" was edging closer to contemporary Canadian values. Until, that is, the public affairs officer for the Canadian Forces Provost Marshal recently noted that since June 21 two people were detained for 14 days and one for seven days at the Canadian Forces Service Prison and Detention Barracks, Canada's military prison in Edmonton, AB.

He added that "Detention by Summary Trial will cease once all the provisions of Bill C-77 are fully implemented by the CAF [Canadian Armed Forces]."

Personal liberty is one of the most important rights for people in Canada, second only to the right to life.

The Magna Carta, the basis of common law since 1215, clearly states “No freeman shall be arrested or imprisoned or disseised [wrongfully dispossessed] or outlawed or exiled or in any other way harmed. Nor will we [the king] proceed against him, or send others to do so, except according to the lawful sentence of his peers and according to the Common Law” (article 39).

The Magna Carta asserts the personal right to liberty of the person and freedom from domination or servitude, and to lose one’s liberty only by lawful judgment.

Section seven of the Canadian Charter of Rights and Freedoms states “Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.”

But, Bill C-77 states that “the provisions of this Act . . . come into force on a day or days to be fixed by order of the Governor in Council,” a process that may take additional months to years. Some provisions of Bill C-15, which received Royal Assent on June 19, 2013, took five years to be adopted.

Parliament expressed its will for the elimination of summary trials and detention up to 30 days on June 21 last year. Bill C-77 has just had its first anniversary. But, as of that anniversary, four members of the Canadian Armed Forces were deprived of their liberty: one for seven days, one for 30 days and two for 14 days each.

Any other punishment can be rectified: a reduction in rank can be reversed, a reprimand can be expunged and a fine can be reimbursed. But the denial of a person’s liberty is irreversible. Time spent in detention or confinement can never be returned to the individual.

A provincial judge once told this writer that “I would have to think long and hard before I deprived a person of liberty.”

Shamefully, that sentiment is not shared by the Canadian Armed Forces’ leadership and the legal branch.

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