Gen Withers: As Colonel Karwandy said earlier, I think the situation that has existed historically in the forces shows us that sexual orientation is an important question in terms of living in barracks, in terms of living in ships, and so forth. We do have requirements that are different from other parts of society. I think that we have to maintain doing what we have always done.

Senator Molson: Are you in danger of losing the ability to control that?

Gen Withers: Mr. Chairman, I think there would be that possibility.

Senator Molson: Has that case been made?

Col Karwandy: The case has been made.

Senator Molson: To whom?

Col Karwandy: To both Mr. Fairweather and officials from the Department of Justice.

Senator Molson: And you have received no response?

Col Karwandy: No positive feedback.

Senator Molson: Was that long ago?

Gen Wolfe: Both the colonel and I were at an interdepartmental meeting on the very subject of sexual orientation just this past winter. That meeting was chaired by Department of Justice officials. The same case was made again, but as Colonel Karwandy mentioned earlier in his address, what impact the overtures had or what effects they had on the policy, we have no way of knowing.

The Chairman: You received no response at all?

Gen Wolfe: No.

Senator Molson: That is my question. Are you not in danger of waking up some morning and finding a case which you cannot cope with? Am I right or wrong?

Gen Wolfe: If our views are continuously ignored and the amendments are proceeded with without taking cognizance of the military requirement, you are absolutely right. We will wake up to a fait accompli and our protests will have been in vain.

Senator Molson: As Senator McElman pointed out initially, if you are waiting for an amendment to that, and with the apparent time schedule, you are in for a long wait.

Gen Wolfe: The sexual orientation provision I think is only being considered in the context of the Canadian Human Rights Act and not the charter. We would still have the defence of the bona fide occupational requirement as a first line of defence in the context of the act as opposed to the charter.

Senator Neiman: Senator McElman mentioned that the human rights tribunal has interpreted the section with respect to sex as including sexual orientation.

Col Karwandy: As sexual harrassment.
[Text]
own purposes some of the offences that could be put into the
more trivial classification, because if either the Department of
Justice or parliamentarians pin you down by asking you where
you want to be or at what point you want to be exempt, you
have to be able to come up with some definitions.

I quite agree with you that there are many offences for
which the military are put on charge which you would certainly
not want to see come within this group at all. But there may be
some within that 10,000, once you get into the more serious
offences, as you would on city street, such as drug trafficking
or any of these other things—

Gen Withers: Mr. Chairman, in regard to those serious
offences, what takes place now, I submit, is entirely in line
with the spirit of the proposed legislation. It is a serious
offence; therefore the individual has the right to elect trial by
court martial. Having elected trial by court martial, the
individual then has the right either to select defence by an
officer of the Judge Advocate General's branch or going out
and getting his own counsel.

Just to be clear on what we are after, I mentioned before
that we have no dispute at all with the spirit of the proposed
actor the charter of rights; but it is the practical application of
the Code of Service Discipline to meet the rather special needs
that we do have. For example, as we are here today there are
over 200 Canadians who are in a pretty delicate part of the
world on the Golan Heights, between Israel and Syria. The
commander of those troops has to be able to take firm, resolute
action to ensure the safety of his force. Should that involve
placing someone on charge and dealing with him summarily, I
would want to see that he has what time has shown to be the
most effective way of dealing with it. I would not want him to
be in any way impeded properly carrying out his task and
ensuring the safety of his people.

Senator Neiman: The only other comment I wish to make is
that I am sure General Wolfe and his department have been
following the proceedings, particularly as they apply to these
sections in which they are interested, and they may recall that
the Canadian Police Association was rather unhappy with this
particular amendment and did not feel it was necessary.
The reason many of us felt it was unnecessary—and I must say as
far as the charter is concerned that I felt it was important that
it be there—was that there is a presumption. Certainly it has
been the practice from time to time, that people who are
charged and have not been given the benefit of counsel, or
allowed to see their counsel before they were interrogated in
the police station, have been persuaded that if they plead
guilty or take the summary route, they might get a lesser
sentence and everything will be over. There is the feeling that
from time to time something more than friendly coercion
occurs when a person does not really understand his legal
rights and the implications that might flow from choosing a
summary trial as opposed to a trial by jury before a judge.
That is the problem. Certainly under the Criminal Code there
is the further consequence that if one chooses the longer and
more complicated route, one may be subject to a greater

[Traduction]
propre usage, certaines infractions qui pourraient être des
infractions mineures, étant donné que si le Ministère de la
Justice ou si les députés vous demandent de quel régime vous
voulez relever, de quelles exemptions etc., il faudra leur pro-
duire un certain nombre de définitions à l'appui.

Je suis tout à fait d'accord avec vous, pour dire qu'il existe
un bon nombre d'infractions, suivies de peines dans le domaine
militaire, qui ne devraient pas rentrer dans cette catégorie.
Toutefois il pourrait y en avoir parmi les 10 000 auxquelles
vous faites allusion, lorsqu'il s'agit d'infractions plus graves,
telles que trafic de drogue ou autres, pouvant se produire au
civil . . .

Gen Withers: Monsieur le président, je pense qu'en ce qui
concerne ces infractions plus graves, les dispositions en vigueur
actuellement sont tout à fait conformes à l'esprit de la leglisla-
tion concernée. S'il y a infraction grave, la personne concernée
a le droit de demander à être jugée devant la cour martiale.
Dans ce cas, le prévenu a le droit de choisir un défenseur de la
division du juge-avocat général, ou de chercher un avocat à
l'extérieur.

Pour clarifier un peu les choses, je rappelle que j'ai déjà
signalé que nous ne contestons pas du tout l'esprit de ce projet
de loi ni de la Charte des droits; mais il faut réussir dans la
pratique à appliquer le code de discipline des forces armées et
faire face aux situations qui sont les nôtres. Par exemple, il y a
ce moment 200 Canadiens ou plus qui sont dans des zones de
conflit, par exemple sur les Hauteurs du Golan, entre Israël
et la Syrie. Le commandant de ces troupes doit être en mesure
de pouvoir toujours agir de façon ferme, décidée, afin de
preserver la sécurité de son unité. Supposons que cela l'amène
t un moment donné à mettre quelqu'un en accusation et régler
rapidement la question, je pense qu'il faudrait pouvoir lui
permettre d'agir de la façon la plus efficace possible. Je pense
qu'il faudrait aussi éviter qu'il soit empêché de mener à bien sa
tâche et préserver la sécurité de ses hommes.

Le sénateur Neiman: L'autre commentaire que j'aimerais
faire est que je suis sûr que le général Wolfe et son ministère
ont suivi les débats, et notamment lorsqu'il a été question de
ces articles qui les intéressent plus particulièrement, et ils se
souppliront peut-être que l'Association canadienne des forces
de police n'était pas très satisfaite de cet amendement particu-
lier, et n'avait pas l'impression qu'il fût nécessaire. Si un bon
nombre d'entre nous ont jugé qu'il n'était pas nécessaire, et je
dois dire qu'en ce qui concerne la charte, j'ai pour ma part eu
le sentiment que cet article était important, c'est qu'il existait
là une présomption implicite; il est fort probable que, de temps
e temps, certaines personnes sont interpellées et n'ont pas le
temps de pouvoir faire appel à un avocat, ou n'y sont pas
autorisées avant l'interrogation qui a lieu au poste de police, et
qu'on cherche à les persuader qu'en plaider coupable, ou en
optant pour une procédure expéditive, on peut s'en tirer avec
une condamnation plus légère et que l'affaire serait ensuite
enterrée. On a donc l'impression que, de temps en temps, on
fait pression, plus que de façon bien intentionnée, sur des
personnes qui ne connaissent pas très bien leurs droits, et qui
ne font pas la différence entre les conséquences d'une procé-
dure expéditive, par opposition à un jugement avec jury et