OPENING STATEMENT

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Madam Chair, distinguished members of the Panel and fellow Panelists

I am truly honoured to be asked to participate in this Panel.

My comments this morning will be brief as I have already circulated a paper titled: "*Canadian Military Justice System: At a Cross roads*" which contends that the Canadian military justice system needs to be modernized to meet, *inter alia,* the standards of our *Charter of Rights and Freedoms.* My paper also explains why such structural reforms are slow in the making because innovative and workable structural solutions are resisted until they are, imposed, in a piecemeal fashion, by our appellate civilian courts.

It is not as if Canada is not aware of the significant reforms to military law that have taken place over the past two decades around the world. After all, each of our NATO European allies, as well as other countries with which we share a common law legal heritage, have already successfully modernized their structures, standards and best practices protocols for their military justice system.

In my writings, I have identified two themes that, in my opinion, should form the basis for reforms to military justice. I hope that these may have some resonance and applicability to the work undertaken by this Panel.

1. First and foremost**,** I believe that, as long as a military justice system, such as ours, continues to have jurisdiction over both disciplinary and criminal offences, to be effective, it must have two antipodal focuses:

    a. For disciplinary offences, the focus must be on meeting the 'needs' of the military, particularly the chain of command, in order to both enforce discipline and rehabilitate offenders before returning them to military duty; and

    b. For criminal offences, the focus must be on the delivery of victim-centred service by deterring and mitigating crime as well as sanctioning those who violated laws with criminal penalties so as to increase the safety of vulnerable members of society.

At present, however, the focus is on the 'needs of the military' for both disciplinary and criminal offences. This is particularly evident when the 'Executive', such as Reviewing Officers and Suspending Authorities, are permitted to toss out a criminal conviction or eliminate a sentence handed down by a competent court and jury following a finding of guilt on the basis of 'beyond a reasonable doubt'.

2. This brings me to the second theme**.** As a quintessential institution of a democratic society, the military must remain subservient to the Rule of Law and be subject to civil control. In my opinion, it is a *sine qua non* for any well-functioning military justice system, in that, the findings and sentences of an independent military judiciary should only be subject to review by a civilian appellate court.

   Having military officers, or members of the Cabinet – as is the case in Canada – involved in the review or suspension of findings and sentences must be seen as foreign to the notion of ‘due process’. Also, this can only undermine the confidence and respect of the public, in general, and victims, in particular, for the administration of justice.

The time has come to recognize that the functioning of a military penal justice system must be completely untrammelled by the executive or the chain of command. Until this is done, many victims of sexual assault serving in the military may lack confidence in the administration of military justice, enough at least to dissuade them from reporting these crimes. Who can blame them? If, at the end of the day; after having had their dignity, integrity and safety violated and then endured the ignominy of trial, they see their convicted assaulter set free by the arbitrary decision of persons outside the judicial process this cannot be seen as a fair and just outcome for a victim and their families.